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CHAPTER 1—BUREAU OF INDIAN AFFAIRS

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NATIONAL COUNCIL ON INDIAN OPPORTUNITY; APPROPRIATIONS AUTHORIZATION; TERMINATION DATE

Pub. L. 91–125, Nov. 26, 1969, 83 Stat. 220, provided for annual appropriations of $300,000 and a termination date of Nov. 26, 1974 for the National Council on Indian Opportunity which was established by Ex. Ord. 11399.

EXECUTIVE ORDER NO. 11399

Ex. Ord. No. 11399, Mar. 6, 1968, 33 F.R. 4245, as amended by Ex. Ord. 11551, Aug. 11, 1970, 35 F.R. 12885; Ex. Ord. No. 11688, Dec. 1, 1972, 37 F.R. 25815, established the National Council on Indian Opportunity and provided for the functions, compensation, assistance, and meetings with respect to the Council.

§ 1. Commissioner of Indian Affairs

There shall be in the Department of the Interior a Commissioner of Indian Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(R.S. § 462.)

CODIFICATION

R.S. § 462 derived from act July 9, 1832, ch. 174, § 1, 4 Stat. 564.

Provisions of this section relating to compensation of the Commissioner were omitted as obsolete. The position is in level V of the Executive Schedule under section 5316 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1a. Delegation of powers and duties by Secretary of the Interior and Commissioner of Indian Affairs

For the purpose of facilitating and simplifying the administration of the laws governing Indian affairs, the Secretary of the Interior is authorized to delegate, from time to time, and to the extent and under such regulations as he deems proper, his powers and duties under said laws to the Commissioner of Indian Affairs, insofar as such powers and duties relate to action in individual cases arising under general regulations promulgated by the Secretary of the Interior pursuant to law. Subject to the supervision and direction of the Secretary, the Commissioner is authorized to delegate, in like manner, any powers and duties so delegated to him by the Secretary, or vested in him by law, to the assistant commissioners, or the officer in charge of any branch, division, office, or agency of the Bureau of Indian Affairs, insofar as such powers and duties relate to action in individual cases arising under general regulations promulgated by the Secretary of the Interior or the Commissioner of Indian Affairs pursuant to law. Such delegated powers shall be exercised subject to appeal to the Secretary, under regulations to be prescribed by him, or, as from time to time determined by him, to the Deputy Secretary or to an Assistant Secretary of the Department of the Interior, or to the Commissioner of Indian Affairs. The Secretary or the Commissioner, as the case may be, may at any time revoke the whole or any part of a delegation made pursuant to this section, but no such revocation shall be given retroactive effect. Nothing in this section shall be deemed to abrogate or curtail any authority to make delegations conferred by any other provision of law, nor shall anything in this section be deemed to convey authority to delegate any power to issue regulations.

(Aug. 8, 1946, ch. 907, 60 Stat. 939; Pub. L. 101–509, title V, § 529 [title I, § 112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454.)

AMENDMENTS

1990—Pub. L. 101–509 substituted ''Deputy Secretary'' for ''Under Secretary'' before ''or to an Assistant Secretary''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on first day of first pay period beginning on or after Nov. 5, 1990, with continued service by incumbent Under Secretary of the Interior, see section 529 [title I, § 112(e)(1), (2)(B)] of Pub. L. 101–509, set out as a note under section 3404 of Title 20, Education.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

ASSISTANT COMMISSIONERS

An assistant commissioner was authorized by a provision of act July 16, 1914, ch. 141, § 1, 38 Stat. 490.

§ 2. Duties of Commissioner

The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations.

(R.S. § 463.)

CODIFICATION

R.S. § 463 derived from acts July 9, 1832, ch. 174, § 1, 4 Stat. 564; July 27, 1868, ch. 259, § 1, 15 Stat. 228.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2,

eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

All supervisory and appellate powers and duties in regard to Indian affairs theretofore vested in Secretary of the Treasury were thereafter to be exercised and performed by Secretary of the Interior under provisions of section 1 of act July 27, 1868, ch. 259, 15 Stat. 228.

Appointment by President of a Commissioner of Indian Affairs to act under direction of Secretary of War was provided for by section 1 of act July 9, 1832, ch. 174, 4 Stat. 564.

§ 2a. Assistant or deputy commissioners; appointment; powers and duties

Assistant or deputy commissioners of the Bureau of Indian Affairs, in the Department of the Interior, shall be appointed by the Secretary of the Interior, subject to the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5. Appointments to these positions shall be considered as made under the authority of section 3101 of title 5. Assistant and deputy commissioners so appointed shall be authorized to sign such letters, papers, and documents and to perform such other duties as may be directed by the commissioner of the Bureau of Indian Affairs. The Secretary may designate for the Bureau of Indian Affairs an assistant or deputy commissioner, who shall be authorized to perform the duties of the commissioner in case of the death, resignation, absence, or sickness of the commissioner.

(June 5, 1942, ch. 336, § 1, 56 Stat. 312; 1946 Reorg. Plan No. 3, § 403(d), eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

REFERENCES IN TEXT

The civil-service laws, referred to in text, are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

"Chapter 51 and subchapter III of chapter 53 of title 5" and "section 3101 of title 5" substituted in text for "the Classification Act of 1949, as amended" and "section 169 of the Revised Statutes, as amended (5 U.S.C., sec. 43)", respectively, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section embodies only those provisions of section 1 of act June 5, 1942, which relate to the Bureau of Indian Affairs. Provisions of section 1 of such act relating to the General Land Office were classified to section 3a of Title 43, Public Lands, and were omitted from the Code pursuant to Reorg. Plan No. 3 of 1946.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

REPEAL OF INCONSISTENT LAWS

Section 2 of act June 5, 1942, provided as follows: "All provisions of law inconsistent with this Act [this section] are hereby repealed to the extent of such inconsistency."

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

ASSISTANT COMMISSIONERS

An assistant commissioner was authorized by a provision of act July 16, 1914, ch. 141, § 1, 38 Stat. 490.

§ 3. Compilation of statutes regulating duties of Indian agents and inspectors

It shall be the duty of the Commissioner of Indian Affairs to cause to be compiled and printed for the use of Indian agents and inspectors the provisions of the statutes regulating the performance of their respective duties, and also to furnish said officers from time to time information of new enactments upon the same subject.

(May 17, 1882, ch. 163, § 7, 22 Stat. 88.)

CODIFICATION

Section is from the Indian Appropriation Act, 1883.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

There have been no Indian agents since 1908. See note under section 64 of this title.

§ 4. Defective record of deeds and papers legalized

The recording of all deeds and papers prior to July 26, 1892, in the office of the Commissioner of Indian Affairs is confirmed, approved, and legalized; and said record theretofore made shall be deemed, taken, and held to be good and valid and shall have all the force and effect and be entitled to the same credit as if it had been made in pursuance of and in conformity to law. But shall have no effect whatever upon the validity or invalidity of the deed or paper so recorded, and shall be no evidence of constructive notice to any persons not actually knowing the contents.

(July 26, 1892, ch. 256, § 1, 27 Stat. 272.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 5. Record of deeds by Indians requiring approval

The Commissioner of Indian Affairs is hereby empowered and directed to continue to make and keep a record of every deed executed by any Indian, his heirs, representatives, or assigns, which may require the approval of the President of the United States or of the Secretary of the Interior, whenever such approval shall have

been given, and the deed so approved returned to said office.

(July 26, 1892, ch. 256, § 2, 27 Stat. 273.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 6. Seal; authenticated and certified documents; evidence

The Commissioner of Indian Affairs shall cause a seal to be made and provided for the said office, with such device as the President of the United States shall approve, and copies of any public documents, records, books, maps, or papers belonging to or on the files of said office, authenticated by the seal and certified by the Commissioner thereof, or by such officer as may, for the time being, be acting as or for such Commissioner, shall be evidence equally with the originals thereof.

(July 26, 1892, ch. 256, § 3, 27 Stat. 273.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 7. Fees for furnishing certified copies of records

The Commissioner of Indian Affairs shall have the custody of said seal, and shall furnish certified copies of any such records, books, maps, or papers belonging to or on the files of said office, to any person applying therefor who shall comply with the requirements of said office, upon the payment by such parties at the rate of 10 cents per hundred words, and $1 for copies of maps or plats, and the additional sum of 25 cents for the Commissioner's certificate of verification, with the seal of said office; and one of the employees of said office shall be designated by the Commissioner as the receiving clerk, and the amounts so received shall, under the direction of the Commissioner, be paid into the Treasury of the United States; but fees shall not be demanded for such authenticated copies as may be required by the officers of any branch of the Government or by any Indian who shall satisfy the Commissioner by satisfactory legal evidence that he or she is not able, by reason of poverty, to pay such fees, nor for such unverified copies as the Commissioner in his discretion may deem proper to furnish.

(July 26, 1892, ch. 256, § 4, 27 Stat. 273; Pub. L. 92–310, title II, § 229(b), June 6, 1972, 86 Stat. 208.)

AMENDMENTS

1972—Pub. L. 92–310 struck out provisions which required the receiving clerk to give a bond in the sum of $1,000.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 8. Accounts for claims and disbursements

All accounts and vouchers for claims and disbursements connected with Indian affairs shall be transmitted to the Commissioner for administrative examination, and by him passed to the Government Accountability Office for settlement.

(R.S. § 464; June 10, 1921, ch. 18, title III, § 304, 42 Stat. 24; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

CODIFICATION

R.S. § 464 derived from act July 9, 1832, ch. 174, § 3, 4 Stat. 564.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

"Government Accountability Office" substituted in text for "General Accounting Office" pursuant to section 8(b) of Pub. L. 108–271, set out as a note under section 702 of Title 31, Money and Finance, which redesignated the General Accounting Office and any references thereto as the Government Accountability Office. Previously, "General Accounting Office" substituted in text for "proper accounting officer of the Department of the Treasury" pursuant to act June 10, 1921, which transferred all powers and duties of the Comptroller, six auditors, and certain other employees of the Treasury to the General Accounting Office. See section 701 et seq. of Title 31.

§ 9. Regulations by President

The President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and for the settlement of the accounts of Indian affairs.

(R.S. § 465.)

CODIFICATION

R.S. § 465 derived from act June 30, 1834, ch. 162, § 17, 4 Stat. 738.

§ 10. Employee to sign letters

The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may designate an employee of the Indian Office to sign letters of that office requiring the signature of the commissioner or assistant commissioner, and all signatures of such employee while acting under such designation shall have the same force and effect as if made by said commissioner or assistant commissioner.

(Mar. 3, 1909, ch. 263, 35 Stat. 783.)

CODIFICATION

Section is from the Indian Department Appropriation Act, 1910.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 11. Employee or employees to sign approval of tribal deeds

The Secretary of the Interior is authorized to designate an employee or employees of the Department of the Interior to sign, under the direction of the Secretary, in his name and for him, his approval of tribal deeds to allottees, to purchasers of town lots, to purchasers of unallotted lands, to persons, corporations, or organizations for lands reserved to them under the law for their use and benefit, and to any tribal deeds made and executed according to law for any of the Five Civilized Tribes of Indians in Oklahoma.

(Mar. 3, 1911, ch. 210, §17, 36 Stat. 1069.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 12. Agent to negotiate commutation of annuities

The Commissioner of Indian Affairs is authorized to send a special Indian Agent, or other representative of his office, to visit any Indian tribe for the purpose of negotiating and entering into a written agreement with such tribe for the commutation of the perpetual annuities due under treaty stipulations, to be subject to the approval of Congress; and the Commissioner of Indian Affairs shall transmit to Congress said agreements with such recommendations as he may deem proper.

(Apr. 30, 1908, ch. 153, 35 Stat. 73.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 13. Expenditure of appropriations by Bureau

The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:

General support and civilization, including education.

For relief of distress and conservation of health.

For industrial assistance and advancement and general administration of Indian property.

For extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies.

For the enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects.

For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

For the suppression of traffic in intoxicating liquor and deleterious drugs.

For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

And for general and incidental expenses in connection with the administration of Indian affairs.

Notwithstanding any other provision of this section or any other law, postsecondary schools administered by the Secretary of the Interior for Indians, and which meet the definition of an ''institution of higher education'' under section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001], shall be eligible to participate in and receive appropriated funds under any program authorized by the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.] or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

(Nov. 2, 1921, ch. 115, 42 Stat. 208; Pub. L. 94–482, title IV, §410, Oct. 12, 1976, 90 Stat. 2233; Pub. L. 105–244, title I, §102(a)(8)(A), Oct. 7, 1998, 112 Stat. 1619.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in text, is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1998—Pub. L. 105–244, which directed substitution of ''101'' for ''1201'' in the last paragraph of ''section 410 of the Act entitled 'An Act authorizing appropriations and expenditures for the administration of Indian Affairs, and for other purposes', approved November 2, 1921 (25 U.S.C. 13) (commonly known as the Snyder Act)'', was executed to last paragraph of this section, which is the act of Nov. 2, 1921, ch. 115, commonly known as the Snyder Act, to reflect the probable intent of Congress. This section was amended by section 410 of Pub. L. 94–482 to add the last paragraph.

1976—Pub. L. 94–482 inserted provisions relating to postsecondary schools administered by the Secretary of the Interior for Indians.

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.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise pro-

vided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub. L. 94–482, set out as a note under section 1001 of Title 20, Education.

SHORT TITLE

Act Nov. 2, 1921, which enacted this section, is popularly known as the ''Snyder Act''.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

AVAILABILITY OF HOUSING IMPROVEMENT PROGRAM GRANT REPAYMENTS FOR PROGRAM OBLIGATIONS

Pub. L. 101–121, title I, Oct. 23, 1989, 103 Stat. 714, provided: ''That hereafter, notwithstanding any other provision of law, amounts collected from grantees by the Secretary as grant repayments required under the Secretary's regulations for the Housing Improvement Program shall be credited in the year collected and shall be available for obligation under the terms and conditions applicable to the Program under that year's appropriation''.

ALTERNATIVE METHODS FOR EQUITABLE DISTRIBUTION OF SUPPLEMENTAL PROGRAM FUNDS; DEVELOPMENT, PUBLICATION, ETC., OF FORMULA

Pub. L. 95–561, title XI, §1102, Nov. 1, 1978, 92 Stat. 2316, provided that:

''(a) The Secretary of the Interior shall develop alternative methods for the equitable distribution of any supplement program funds provided, pursuant to an appropriation under the Act of November 2, 1921, commonly referred to as the Snyder Act [this section], for contracting under the Act of April 16, 1934, commonly referred to as the Johnson-O'Malley Act [sections 452 to 457 of this title], and shall publish in the Federal Register by March 1, 1979, such alternatives for the purpose of allowing eligible tribes to comment by May 1, 1979. At that time, the Secretary shall conduct a field survey listing all alternative formula.

''(b) By July 1, 1979, the Secretary shall establish and publish the formula in the Federal Register which the majority of such tribes determine, but vote certified to the Secretary, to be most equitable and shall use such formula for purposes of distribution of the funds appropriated pursuant to such Act beginning on or after October 1, 1979. The Secretary shall, in accordance with procedures consistent with that prescribed herein, revise such formula periodically as necessary''.

PAYMENTS FOR BASIC EDUCATIONAL SUPPORT GRANTS OR CONTRACTS; AUTHORIZATION; TIME

Pub. L. 95–561, title XI, §1103(a), Nov. 1, 1978, 92 Stat. 2316, as amended by Pub. L. 96–46, §2(b)(1), Aug. 6, 1979, 93 Stat. 341, provided that payments for basic educational support grants or contracts for fiscal year 1978, including any fiscal year 1978 funds subsequently obligated in fiscal year 1979, were to be made under the authority of act Apr. 16, 1934, and set forth conditions, time, etc., for payments.

§ 13–1. Authorization of appropriations for funds for basic educational support through parent committees

Such sums as are needed under section 13 of this title are authorized to be appropriated to provide funds for basic educational support through parent committees under the Act of April 16, 1934 [25 U.S.C. 452 et seq.], to those public schools educating Indian students and whose total sum of Federal, State, and local funds is insufficient to bring the education of the enrolled Indian students to a level equal to the level of education provided non-Indian students in the public schools in which they are enrolled where the absence of such support would result in the closing of schools or the reduction in quality of the education program afforded Indian students attending public schools.

(Pub. L. 95–561, title XI, §1103(b), Nov. 1, 1978, 92 Stat. 2316.)

REFERENCES IN TEXT

Act of April 16, 1934, referred to in text, is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 1530(a) of Pub. L. 95–561, set out as an Effective Date of 1978 Amendment note under section 1221e–3 of Title 20, Education.

§ 13a. Carryover funding

Notwithstanding any other provision of law, any funds appropriated pursuant to section 13 of this title, for any fiscal year which are not obligated or expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation or expenditures during such succeeding fiscal year. In the case of amounts made available to a tribal organization under a self-determination contract, if the funds are to be expended in the succeeding fiscal year for the purpose for which they were originally appropriated, contracted or granted, or for which they are authorized to be used pursuant to the provisions of section 450j–1(a)(3)[1] of this title, no additional justification or documentation of such purposes need be provided by the tribal organization to the Secretary as a condition of receiving or expending such funds.

(Pub. L. 93–638, §8, Jan. 4, 1975, 88 Stat. 2206; Pub. L. 100–472, title I, §105, Oct. 5, 1988, 102 Stat. 2287.)

REFERENCES IN TEXT

Section 450j–1(a)(3) of this title, referred to in text, was repealed and a new subsec. (a)(3) of section 450j–1 was added by Pub. L. 103–413, title I, §102(14)(C), Oct. 25, 1994, 108 Stat. 4257. See section 450j–1(a)(4) of this title.

AMENDMENTS

1988—Pub. L. 100–472 amended section generally. Prior to amendment, section read as follows: ''The provisions of any other laws to the contrary notwithstanding, any funds appropriated pursuant to section 13 of this title, for any fiscal year which are not obligated and expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure during such succeeding fiscal year.''

[1] See References in Text note below.

§ 13b. Payment of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, and schools; payment of rewards

On and after October 12, 1984, funds appropriated under this or any other Act for the Bureau of Indian Affairs may be used for the payment in advance or from date or admission of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools; and the payment of rewards for information or evidence concerning violations of law on Indian reservation lands or treaty fishing rights use areas.

(Pub. L. 98–473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1848.)

§ 13c. Source of funds to pay cost of lunches for nonboarding public school students

On and after October 12, 1984, any cost of providing lunches to nonboarding students in public schools from funds appropriated under this or any other Act for the Bureau of Indian Affairs shall be paid from the amount of such funds otherwise allocated for the schools involved without regard to the cost of providing lunches for such students.

(Pub. L. 98–473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1848.)

§ 13d. Limits on use of appropriated funds by Bureau for general or other welfare assistance

After September 30, 1985, no part of any appropriation (except trust funds) to the Bureau of Indian Affairs may be used directly or by contract for general or other welfare assistance (except child welfare assistance) payments (1) for other than essential needs (specifically identified in regulations of the Secretary or in regulations of the State public welfare agency pursuant to the Social Security Act [42 U.S.C. 301 et seq.] adopted by reference in the Secretary's regulations) which could not be reasonably expected to be met from financial resources or income (including funds held in trust) available to the recipient individual which are not exempted under law from consideration in determining eligibility for or the amount of Federal financial assistance or (2) for individuals who are eligible for general public welfare assistance available from a State except to the extent the Secretary of the Interior determines that such payments are required under sections 6(b)(2), 6(i), and 9(b) of the Maine Indian Claims Settlement Act of 1980 (94 Stat. 1793, 1794, 1796; 25 U.S.C. 1725(b)(2), 1725(i), 1728(b)).

(Pub. L. 98–473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1848.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

§ 13d–1. Standards of need as basis for general assistance payments by Bureau of Indian Affairs; ratable reductions

General assistance payments made by the Bureau of Indian Affairs shall be made—

(1) after April 29, 1985, and before October 1, 1995, on the basis of Aid to Families with Dependent Children (AFDC) standards of need; and

(2) on and after October 1, 1995, on the basis of standards of need established under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.],

except that where a State ratably reduces its AFDC or State program payments, the Bureau shall reduce general assistance payments in such State by the same percentage as the State has reduced the AFDC or State program payment.

(Pub. L. 99–88, title I, § 100, Aug. 15, 1985, 99 Stat. 338; Pub. L. 104–193, title I, § 110(k), Aug. 22, 1996, 110 Stat. 2172.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1996—Pub. L. 104–193, § 110(k), which directed the general amendment of the "4th proviso of chapter VII of title I of Public Law 99–88 (25 U.S.C. 13d–1)", was executed by amending this section, which is the 4th proviso under heading "BUREAU OF INDIAN AFFAIRS" of chapter VII of title I of Pub. L. 99–88, to reflect the probable intent of Congress. Prior to amendment, this section read as follows: "General assistance payments made by the Bureau of Indian Affairs after April 29, 1985, shall be made on the basis of Aid to Families with Dependent Children (AFDC) standards of need except where a State ratably reduces AFDC payments in which event the Bureau shall reduce general assistance payments in such State by the same percentage as the State has reduced the AFDC payment."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

MAXIMUM ALLOWABLE PAYMENTS

Pub. L. 99–349, title I, July 2, 1986, 100 Stat. 732, provided in part: "That the levels established for general assistance by Public Law 99–88 (99 Stat. 388) [probably means Pub. L. 99–88, 99 Stat. 338, which enacted this section], are the maximum allowable payments."

§ 13d–2. Enrollment and general assistance payments

(a) In general

The Secretary of the Interior shall not disqualify from continued receipt of general assist-

ance payments from the Bureau of Indian Affairs an otherwise eligible Indian for whom the Bureau is making or may make general assistance payments (or exclude such an individual from continued consideration in determining the amount of general assistance payments for a household) because the individual is enrolled (and is making satisfactory progress toward completion of a program or training that can reasonably be expected to lead to gainful employment) for at least half-time study or training in—

(1) a college assisted by the Bureau under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (92 Stat. 1325; 25 U.S.C. 1801) or the Navajo Community College Act (85 Stat. 645; 25 U.S.C. 640a);

(2) an institution of higher education or a vocational school (as defined for purposes of any program of assistance to students under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.]);

(3) a course the Secretary determines will lead to a high school diploma or an equivalent certificate; or

(4) other programs or training approved by the Secretary or by tribal education, employment or training programs.

(b) Factors not to be considered

In determining the amount of general assistance provided by the Bureau of Indian Affairs, the Secretary of the Interior shall not include consideration of—

(1) additional expenses in connection with the study or training described in subsection (a) of this section, and

(2) the amount of any financial assistance received by the individual as a student or trainee.

(c) No effect on other eligibility requirements

This section does not alter any eligibility requirement for general assistance from the Bureau of Indian Affairs other than the requirement to be available for employment and to seek employment.

(Pub. L. 100–297, title V, § 5404, Apr. 28, 1988, 102 Stat. 416; Pub. L. 105–244, title IX, § 901(d), Oct. 7, 1998, 112 Stat. 1828; Pub. L. 107–110, title X, § 1045, Jan. 8, 2002, 115 Stat. 2080; Pub. L. 110–315, title IX, § 941(k)(2)(G), Aug. 14, 2008, 122 Stat. 3466.)

REFERENCES IN TEXT

The Tribally Controlled Colleges and Universities Assistance Act of 1978, referred to in subsec. (a)(1), is Pub. L. 95–471, Oct. 17, 1978, 92 Stat. 1325, which is classified principally to chapter 20 (§ 1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Navajo Community College Act, referred to in subsec. (a)(1), is Pub. L. 92–189, Dec. 15, 1971, 85 Stat. 646, as amended, which is classified to section 640a et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 640a of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (a)(2), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2008—Subsec. (a)(1). 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''.

2002—Subsec. (a). Pub. L. 107–110, § 1045(1), added subsec. heading and introductory provisions and struck out former subsec. heading and introductory provisions. Former introductory provisions read as follows: ''The Secretary of the Interior shall not disqualify from continued receipt of general assistance payments from the Bureau of Indian Affairs an otherwise eligible Indian for whom the Bureau has been making general assistance payments for at least 3 months (or exclude such an individual from continued consideration in determining the amount of general assistance payments for a household) because the individual is enrolled (and is making satisfactory progress toward completion of a program or training that can reasonably be expected to lead to gainful employment) for at least half-time study or training in—''.

Subsec. (a)(4). Pub. L. 107–110, § 1045(2), added par. (4) and struck out former par. (4) which read as follows: ''other programs or training approved by the Secretary.''

1998—Subsec. (a)(1). Pub. L. 105–244 substituted ''Tribally Controlled College or University Assistance Act of 1978'' for ''Tribally Controlled Community College Assistance Act of 1978''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

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.

EFFECTIVE DATE

For effective date and applicability of section, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of Title 20, Education.

§ 13d–3. Tribal authority to change eligibility for, or amount of, general assistance payments

On and after October 21, 1998, notwithstanding any other provision of law, Indian tribal governments may, by appropriate changes in eligibility criteria or by other means, change eligibility for general assistance or change the amount of general assistance payments for individuals within the service area of such tribe who are otherwise deemed eligible for general assistance payments so long as such changes are applied in a consistent manner to individuals similarly situated and, that any savings realized by such changes shall be available for use in meeting other priorities of the tribes and, that any net increase in costs to the Federal Government which result solely from tribally increased payment levels for general assistance shall be met exclusively from funds available to the tribe from within its tribal priority allocation.

(Pub. L. 105–277, div. A, § 101(e) [title I], Oct. 21, 1998, 112 Stat. 2681–231, 2681–246.)

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 105–83, title I, Nov. 14, 1997, 111 Stat. 1555.
Pub. L. 104–208, div. A, title I, § 101(d) [title I], Sept. 30, 1996, 110 Stat. 3009–181, 3009–193.
Pub. L. 104–134, title I, § 101(c) [title I], Apr. 26, 1996, 110 Stat. 1321–156, 1321–170; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.
Pub. L. 103–332, title I, Sept. 30, 1994, 108 Stat. 2512.
Pub. L. 103–138, title I, Nov. 11, 1993, 107 Stat. 1392.
Pub. L. 102–381, title I, Oct. 5, 1992, 106 Stat. 1389.

§ 13e. Expenses of exhibits; advance payments for services; termination of Federal supervision; treaty expenses

On and after October 12, 1984, such appropriations [appropriations for the Bureau of Indian Affairs (except the revolving fund for loans and the Indian loan guarantee and insurance fund)] under this or any other act shall be available for: the expenses of exhibits; advance payments for services (including services which may extend beyond the current fiscal year) under contracts executed pursuant to the Act of June 4, 1936 (48 Stat. 596), as amended (25 U.S.C. 452 et seq.), the Act of August 3, 1956 (70 Stat. 896), as amended (25 U.S.C. 309 et seq.), and legislation terminating Federal supervision over certain tribes; and expenses required by continuing or permanent treaty provision.

(Pub. L. 98–473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1850.)

REFERENCES IN TEXT

Act of June 4, 1936, referred to in text, probably means act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended generally by act June 4, 1936, ch. 490, 49 Stat. 1458, known as the Johnson-O'Malley Act, which is classified generally to sections 452 to 457 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

Act of August 3, 1956, referred to in text, probably means act Aug. 3, 1956, ch. 930, 70 Stat. 986, which is classified generally to section 309 et seq. of this title. For complete classification of this Act to the Code, see Tables.

§ 13f. Tribal priority allocations in Alaska

(a) Notwithstanding any other provision of law, with respect to amounts made available for tribal priority allocations in Alaska, such amounts on and after October 11, 2000, shall only be provided to tribes the membership of which on June 1 of the preceding fiscal year is composed of at least 25 individuals who are Natives (as such term is defined in section 1602(b) of title 43) who reside in the area generally known as the village for such tribe.

(b) Amounts that would have been made available for tribal priority allocations in Alaska but for the limitation contained in subsection (a) of this section shall be provided to the respective Alaska Native regional nonprofit corporation (as listed in section 103(a)(2) of Public Law 104–193,[1] 110 Stat. 2159) for the respective region in which a tribe subject to subsection (a) of this section is located, notwithstanding any resolution authorized under federal[2] law to the contrary.

(Pub. L. 106–291, title I, § 122, Oct. 11, 2000, 114 Stat. 944; Pub. L. 107–20, title II, § 2608, July 24, 2001, 115 Stat. 178.)

[1] See References in Text note below.

[2] So in original. Probably should be capitalized.

REFERENCES IN TEXT

Section 103(a)(2) of Public Law 104–193, 110 Stat. 2159, referred to in subsec. (b), enacted section 419 of act Aug. 14, 1935, ch. 531, which is classified to section 619 of Title 42, The Public Health and Welfare, and contains a listing of Alaska Native regional nonprofit corporations.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–20 inserted "on and after October 11, 2000," after "such amounts" and substituted "June 1 of the preceding fiscal year" for "June 1, 2000".

§ 14. Money accruing to Indians from Department of Veterans Affairs or other governmental agencies

Any money accruing from the Department of Veterans Affairs or other governmental agency to incompetent adult Indians, or minor Indians, who are recognized wards of the Federal Government, for whom no legal guardians or other fiduciaries have been appointed may be paid, in the discretion of the Secretary of Veterans Affairs, or other head of a governmental bureau or agency, having such funds for payment, to such superintendent or other bonded officer of the Indian Service as the Secretary of the Interior shall designate, for the use of such beneficiaries, or to be paid to or used for, the heirs of such deceased beneficiaries, to be handled and accounted for by him with other moneys under his control, in accordance with existing law and the regulations of the Department of the Interior.

(Feb. 25, 1933, ch. 124, 47 Stat. 907; Pub. L. 102–54, § 13(j)(1), June 13, 1991, 105 Stat. 276.)

AMENDMENTS

1991—Pub. L. 102–54 substituted "Department of Veterans Affairs" for "Veterans' Administration" and "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs".

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 14a. Deposit of grant funds received by Bureau from other Federal agencies

On and after October 12, 1984, moneys received by grant to the Bureau of Indian Affairs from other Federal agencies to carry out various programs for elementary and secondary education, handicapped programs, bilingual education, and other specific programs shall be deposited into the appropriation account available for the operation of Bureau schools during the period covered by the grant and shall remain available as otherwise provided by law.

(Pub. L. 98–473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1848.)

§ 14b. Disposition of funds received from public for goods and services provided by Bureau of Indian Affairs

The Secretary of the Interior is authorized to retain collections from the public in payment

for goods and services provided by the Bureau of Indian Affairs. Such collections shall be credited to the appropriation account against which obligations were incurred in providing such goods and services.

(Pub. L. 101–301, § 10, May 24, 1990, 104 Stat. 211.)

§ 15. Utility facilities used in administration of Bureau; contracts for sale, operation, maintenance, repair or relocation of facilities; terms and conditions; exception; Congressional approval

Except for electric utility systems constructed and operated as a part of an irrigation system, the Secretary of the Interior is authorized to contract under such terms and conditions as he considers to be in the best interest of the Federal Government for the sale, operation, maintenance, repairs, or relocation of Government-owned utilities and utility systems and appurtenances used in the administration of the Bureau of Indian Affairs. The Secretary shall not execute a contract pursuant to this section until he has submitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a copy of the contract and a statement of his reasons for proposing the contract, and until such materials have lain before the Committees for sixty days (excluding the time during which either House is in recess for more than three days) unless prior thereto the Secretary is notified that neither committee has any objection to the proposed contract.

(Pub. L. 87–279, Sept. 22, 1961, 75 Stat. 577; Pub. L. 103–437, § 10(a), Nov. 2, 1994, 108 Stat. 4588.)

AMENDMENTS

1994—Pub. L. 103–437 substituted ''Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives'' for ''Committees on Interior and Insular Affairs of the Senate and the House of Representatives''.

§ 16. Transportation of Indians in Bureau vehicles

On and after October 12, 1984, passenger carrying motor vehicles of the Bureau of Indian Affairs may be used for the transportation of Indians.

(Pub. L. 98–473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1850.)

§ 17. Use of Bureau facilities

(a) In general

The Secretary of the Interior may permit tribal governments and organizations and student organizations to use Bureau of Indian Affairs equipment, land, buildings, and other structures if such use does not interfere with the purpose for which they are administered by the Bureau and when such use benefits Indians or Federal or federally funded programs. The Secretary may charge the user for the cost of the utilities and other expenses incurred for the use. The amounts collected shall be credited to the appropriation or fund from which the expenses are paid and shall be available until the end of the fiscal year following the fiscal year in which collected. The Secretary's decision to not permit a use under this section is final and shall not be subject to judicial review.

(b) Scope of authority

The authority provided by this section is in addition to, and not in derogation of, any other authority available to the Secretary of the Interior.

(c) Limitation of liability

The payment of any fee, or agreement to pay costs, to the Secretary shall not in any way or to any extent limit the right of the United States to rely upon sovereign immunity or any State or Federal statute limiting liability or damages from injuries sustained in connection with use under this section.

(Pub. L. 100–297, title V, § 5405, Apr. 28, 1988, 102 Stat. 417; Pub. L. 100–427, § 25, Sept. 9, 1988, 102 Stat. 1613.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–427, § 25(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary of the Interior may permit tribal, student, and other non-Federal organizations to use facilities, lands, and equipment administered by the Bureau of Indian Affairs if such use does not interfere with the purpose for which the facilities, land, and equipment are administered by the Bureau. The Secretary of the Interior may charge the user for the actual or estimated additional cost of utilities or other expenses incurred because of the use and the amounts collected shall be credited to the appropriation or fund from which the expenses are paid.''

Subsec. (c). Pub. L. 100–427, § 25(b), added subsec. (c).

EFFECTIVE DATE

For effective date and applicability of section, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of Title 20, Education.

CHAPTER 2—OFFICERS OF INDIAN AFFAIRS

Sec.
21 to 24. Repealed or Omitted.
25. Superintendent for Five Civilized Tribes.
25a. Application of civil service laws.
26 to 32. Repealed or Omitted.
33. Superintendents in charge of reservations; administration of oath of office.
34, 35. Repealed.
36. Special agents and other officers to administer oaths.
37 to 39. Repealed.
40. Limits of superintendencies, agencies, and subagencies.
41. Special agents and commissioners.
41a. Indian inspectors.
42. Repealed.
43. Persons paid for other services not paid for interpreting.
44. Employment of Indians.
45. Preference to Indians qualified for duties.
46. Preference to Indians in employment of clerical, mechanical, and other help.
47. Employment of Indian labor and purchase of products of Indian industry; participation in Mentor-Protege Program.
47a. Security required by Secretary; contracts with Indian-owned economic enterprise; public work.
48. Right of tribes to direct employment of persons engaged for them.
49 to 52a. Repealed.

Sec.
53. Disbursing officers; acting clerks.
54, 55. Repealed.
56. Quarters, fuel, and light for employees.
57. Omitted.
58. Limitation on number and kind of employment.
59. Transfer of funds for payment of employees; details for other service.
60. Compensation prescribed to be in full.
61. Estimates for personal services in Indian Office.
62. Discontinuance and transfer of agencies.
63. Consolidation of agencies.
64. Services of agents dispensed with.
65. Discontinuance of agents, subagents, and interpreters.
66. Duties of agency devolved on superintendent of Indian school.
67 to 68a. Repealed.

§§ 21, 22. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, 642

Section 21, R.S. § 2039, related to the Board of Indian Commissioners.

Section 22, act Aug. 24, 1912, ch. 388, § 1, 37 Stat. 521, authorized the Board of Indian Commissioners to employ and pay a secretary.

§§ 23, 24. Omitted

CODIFICATION

Section 23, act May 17, 1882, ch. 163, § 1, 22 Stat. 70, related to the powers and duties of the Board of Indian Commissioners, and was omitted as superseded by Ex. Ord. No. 6145 of May 25, 1933, which abolished the Board and transferred its records, property, and personnel to the supervision of the Secretary of the Interior.

Section 24, R.S. § 2042, related to the investigations by a member of the Board of Indian Commissioners, and was omitted as superseded by Ex. Ord. No. 6145 of May 25, 1933.

§ 25. Superintendent for Five Civilized Tribes

The offices of the Commissioner of the Five Civilized Tribes and superintendent of Union Agency, in Oklahoma, are abolished as of September 1, 1914, and in lieu thereof there shall be appointed by the President, by and with the advice and consent of the Senate, a Superintendent for the Five Civilized Tribes, with his office located in the State of Oklahoma, at a salary of $5,000 per annum, and said superintendent shall exercise the authority and perform the duties exercised prior to September 1, 1914, by the Commissioner to the Five Civilized Tribes and the superintendent of the Union Agency, with authority to reorganize the department and to eliminate all unnecessary clerks, subject to the approval of the Secretary of the Interior.

(Aug. 1, 1914, ch. 222, § 17, 38 Stat. 598.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 25a. Application of civil service laws

The position of Superintendent of the Five Civilized Tribes is included within the competitive classified civil service and shall be subject to civil service laws and rules.

(Mar. 4, 1929, ch. 705, 45 Stat. 1583.)

REFERENCES IN TEXT

The civil service laws, referred to in text, are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 26. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632

Section, R.S. § 2052, provided for appointment of Indian Agents by the President.

§ 27. Omitted

CODIFICATION

Section, R.S. 2062; acts July 13, 1892, ch. 164, § 1, 27 Stat. 120; July 1, 1898, ch. 545, § 1, 30 Stat. 573, authorized the President to require that military officers perform the duties of Indian agents. The services of Indian agents have been dispensed with since 1908. See section 64 of this title and notes thereunder.

§§ 28 to 31. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, 634

Section 28, R.S. § 2056; act May 17, 1882, ch. 163, § 1, 22 Stat. 87, fixed term of office for Indian Agents.

Section 29, R.S. § 2057, provided for a bond by Indian Agents.

Section 30, R.S. § 2060, prescribed limits of residence of Indian Agents.

Section 31, R.S. § 2058, related to duties of Indian Agents.

§ 32. Omitted

CODIFICATION

Section, act July 1, 1898, ch. 545, § 1, 30 Stat. 595, required Indian agents to account for funds received and to be responsible for such funds under their official bonds. The services of Indian agents have been dispensed with since 1908. See section 64 of this title and note set out thereunder.

§ 33. Superintendents in charge of reservations; administration of oath of office

Superintendents and acting superintendents in charge of Indian reservations, schools, irrigation and allotment projects are authorized and empowered to administer the oath of office required of employees placed under their jurisdiction.

(June 30, 1913, ch. 4, § 1, 38 Stat. 80.)

CODIFICATION

Section is from the Indian Appropriation Act, 1914.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§§ 34, 35. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, 642, 650

Section 34, acts Aug. 24, 1912, ch. 355, § 8, 37 Stat. 487; June 6, 1939, ch. 185, 53 Stat. 810, authorized the superintendent, acting superintendent, and principal clerks of the different Indian superintendencies or Indian agencies to administer oaths to expense accounts.

Section 35, R.S. § 2064, authorized Indian Agents to take acknowledgements of deeds and to administer oaths.

§ 36. Special agents and other officers to administer oaths

Each special agent, supervisor of schools, or other official charged with the investigation of Indian agencies and schools, in the pursuit of his official duties shall have power to administer oaths and to examine on oath all officers and persons employed in the Indian Service, and all such other persons as may be deemed necessary and proper.

(Mar. 1, 1899, ch. 324, § 1, 30 Stat. 927.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 37. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 633, 641

Section, acts Mar. 3, 1875, ch. 132, § 10, 18 Stat. 450; Mar. 3, 1909, ch. 263, 35 Stat. 784, related to keeping of books by Indian agents and penalties for the falsification thereof.

§ 38. Repealed. Dec. 16, 1930, ch. 14, § 1, 46 Stat. 1028

Section, R.S. § 2061, related to visits to Washington, D.C., by agents in California.

§ 39. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632

Section, R.S. § 2063, related to compensation for extra services rendered by Indian Agents.

§ 40. Limits of superintendencies, agencies, and subagencies

The limits of each superintendency, agency, and subagency shall be established by the Secretary of the Interior, either by tribes or geographical boundaries.

(R.S. § 2066.)

CODIFICATION

R.S. § 2066 derived from acts June 30, 1834, ch. 162, § 7, 4 Stat. 736; Mar. 3, 1847, ch. 66, § 1, 9 Stat. 203.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 41. Special agents and commissioners

All special agents and commissioners not appointed by the President shall be appointed by the Secretary of the Interior.

(R.S. § 2067.)

CODIFICATION

R.S. § 2067 derived from act Mar. 3, 1863, ch. 99, § 1, 12 Stat. 792.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 41a. Indian inspectors

Indian inspectors shall on and after March 4, 1909 be termed inspectors, and shall be included in the classified service.

(Mar. 4, 1909, ch. 297, § 1, 35 Stat. 888.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 42. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632

Section, R.S. § 2068, provided for interpreters for Indian agencies under Department of the Interior.

§ 43. Persons paid for other services not paid for interpreting

No person employed by the United States and paid for any other service shall be paid for interpreting.

(Apr. 4, 1910, ch. 140, § 2, 36 Stat. 272.)

§ 44. Employment of Indians

In the Indian Service Indians shall be employed as herders, teamsters, and laborers, and where practicable in all other employments in connection with the agencies and the Indian Service. And it shall be the duty of the Secretary of the Interior and the Commissioner of Indian Affairs to enforce this provision.

(Aug. 15, 1894, ch. 290, § 10, 28 Stat. 313.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 45. Preference to Indians qualified for duties

In all cases of the appointments of interpreters or other persons employed for the benefit of the Indians, a preference shall be given to persons of Indian descent, if such can be found, who are properly qualified for the execution of the duties.

(R.S. § 2069.)

CODIFICATION

R.S. § 2069 derived from act June 30, 1834, ch. 162, § 9, 4 Stat. 737.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 46. Preference to Indians in employment of clerical, mechanical, and other help

Preference shall at all times, as far as practicable, be given to Indians in the employment of clerical, mechanical, and other help on reservations and about agencies.

(May 17, 1882, ch. 163, § 6, 22 Stat. 88; July 4, 1884, ch. 180, § 6, 23 Stat. 97.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 47. Employment of Indian labor and purchase of products of Indian industry; participation in Mentor-Protege Program

So far as may be practicable Indian labor shall be employed, and purchases of the products (including, but not limited to printing, notwithstanding any other law) of Indian industry may be made in open market in the discretion of the Secretary of the Interior. Participation in the Mentor-Protege Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2301 note) or receipt of assistance pursuant to any developmental assistance agreement authorized under such program shall not render Indian labor or Indian industry ineligible to receive any assistance authorized under this section. For the purposes of this section—

(1) no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm pursuant to a mentor-protege agreement any form of developmental assistance described in subsection (f) of section 831 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2301 note); and

(2) the terms ''protege firm'' and ''mentor firm'' have the meaning given such terms in subsection (c) of such section 831.

(June 25, 1910, ch. 431, § 23, 36 Stat. 861; Pub. L. 100–581, title II, § 206, Nov. 1, 1988, 102 Stat. 2940; Pub. L. 103–435, § 14, Nov. 2, 1994, 108 Stat. 4572.)

REFERENCES IN TEXT

Section 831 of the National Defense Authorization Act for Fiscal Year 1991, referred to in text, is section 831 of Pub. L. 101–510, which is set out as a note under section 2302 of Title 10, Armed Forces.

CODIFICATION

Section is based on proviso of first sentence of section 23 of act of June 25, 1910. Remainder of first sentence of section 23 was classified to section 93 of this title prior to repeal by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1112.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Apr. 30, 1908, ch. 153, 35 Stat. 71, making appropriations for the Indian Department.

AMENDMENTS

1994—Pub. L. 103–435 inserted at end ''Participation in the Mentor-Protege Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2301 note) or receipt of assistance pursuant to any developmental assistance agreement authorized under such program shall not render Indian labor or Indian industry ineligible to receive any assistance authorized under this section. For the purposes of this section—

''(1) no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm pursuant to a mentor-protege agreement any form of developmental assistance described in subsection (f) of section 831 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2301 note); and

''(2) the terms 'protege firm' and 'mentor firm' have the meaning given such terms in subsection (c) of such section 831.''

1988—Pub. L. 100–581 inserted ''(including, but not limited to printing, notwithstanding any other law)'' after ''products''.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 47a. Security required by Secretary; contracts with Indian-owned economic enterprise; public work

The Secretary, in his discretion, may require security other than bonds required by sections 3131 and 3133 of title 40 when entering into a contract with an Indian-owned economic enterprise pursuant to the provisions of the Act of June 25, 1910 (25 U.S.C. 47), for the construction, alteration, or repair of any public work of the United States: *Provided*, That, the alternative form of security provides the United States with adequate security for performance and payment.

(Pub. L. 98–449, § 11, Oct. 4, 1984, 98 Stat. 1726.)

CODIFICATION

''Sections 3131 and 3133 of title 40'' substituted in text for ''the Miller Act (40 U.S.C. 270a)'' on authority of

Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 48. Right of tribes to direct employment of persons engaged for them

Where any of the tribes are, in the opinion of the Secretary of the Interior, competent to direct the employment of their blacksmiths, mechanics, teachers, farmers, or other persons engaged for them, the direction of such persons may be given to the proper authority of the tribe.

(R.S. § 2072.)

CODIFICATION

R.S. § 2072 derived from act June 30, 1834, ch. 162, § 9, 4 Stat. 737.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 49. Repealed. June 30, 1932, ch. 317, 47 Stat. 421

Section, act May 25, 1918, ch. 86, § 1, 40 Stat. 565, related to qualifications of farmers.

§ 50. Repealed. Pub. L. 88–448, title IV, § 402(a)(2), Aug. 19, 1964, 78 Stat. 492

Section, R.S. § 2074, related to holding of two offices. See section 5533 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins later than the 90th day following Aug. 19, 1964, see section 403 of Pub. L. 88–448.

§§ 51 to 52a. Repealed. Pub. L. 92–310, title II, § 229(a), (c)(2), (e), June 6, 1972, 86 Stat. 208

Section 51, R.S. § 2075, empowered President to require additional security from persons charged with disbursement of money or goods.

Section 52, act Apr. 30, 1908, ch. 153, 35 Stat. 71, empowered Secretary of the Interior to require new bonds from disbursing officers.

Section 52a, act Apr. 21, 1904, ch. 1402, 33 Stat. 191, related to special bonds for large per capita payments.

§ 53. Disbursing officers; acting clerks

Any disbursing agent of the Indian Service, with the approval of the Commissioner of Indian Affairs, may authorize a clerk employed in his office to act in his place and discharge all the duties devolved upon him by law or regulations during such time as he may be unable to perform the duties of his position because of absence, physical disability, or other disqualifying circumstances: *Provided*, That such clerk, while acting for his principal, shall be subject to all the liabilities and penalties prescribed by law for official misconduct of disbursing agents.

(Feb. 14, 1920, ch. 75, § 1, 41 Stat. 414; Pub. L. 92–310, title II, § 229(f), June 6, 1972, 86 Stat. 209.)

AMENDMENTS

1972—Pub. L. 92–310 struck out provisions which related to official bond of disbursing agent.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Disbursement functions of all Government agencies, except Departments of the Army, Navy, and Air Force and the Panama Canal, transferred to Division of Disbursements, Department of the Treasury, by Ex. Ord. No. 6166, § 4, June 10, 1933, and Ex. Ord. No. 6728, May 29, 1934. Division subsequently consolidated with other agencies into Fiscal Service in Department of the Treasury by Reorg. Plan No. III of 1940, § 1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231. See section 306 of Title 31, Money and Finance.

§§ 54, 55. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, 634

Section 54, R.S. § 2077, related to traveling expenses.

Section 55, act May 17, 1882, ch. 163, § 1, 22 Stat. 86, related to expenses of clerks detailed on special duty.

§ 56. Quarters, fuel, and light for employees

The Secretary of the Interior, in his discretion, may allow quarters, fuel, and light to employees of the Indian Service whose compensation is not prescribed by law, the salaries of such employees to be fixed on this basis and the cost of providing quarters, fuel, and light to be paid from any funds which are applicable and available therefor: *Provided*, That this authorization shall be retroactive to the extent of approving any expenditures for such purposes authorized by the Secretary of the Interior prior to June 7, 1924.

(June 7, 1924, ch. 328, 43 Stat. 634.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 57. Omitted

CODIFICATION

Section, act Mar. 3, 1925, ch. 462, 43 Stat. 1147, which authorized the Secretary of the Interior to allow employees in the Indian Service heat and light for quarters without charge, was not repeated in subsequent appropriation acts.

§ 58. Limitation on number and kind of employment

The number and kind of employees at each agency shall be prescribed by the Secretary of the Interior and none other shall be employed.

(June 7, 1897, ch. 3, 30 Stat. 90.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SALARY RESTRICTIONS

Act Apr. 18, 1912, ch. 83, § 10, 37 Stat. 88, as amended by act May 25, 1918, ch. 86, § 17, 40 Stat. 578, excluded the Osage Agency from the provisions of act June 7, 1897, limiting the amount of money to be expended for salaries of regular employees at any one agency.

Act Feb. 26, 1929, ch. 323, 45 Stat. 1307, which repealed a provision of act Aug. 24, 1912, ch. 388, § 1, 37 Stat. 521, imposing a salary limitation of $15,000 at any one agency and $20,000 at a consolidated agency, was itself repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 647.

§ 59. Transfer of funds for payment of employees; details for other service

When not required for the purpose for which appropriated, the funds provided for the pay of specified employees at any Indian agency may be used by the Secretary of the Interior for the pay of other employees at such agency, but no deficiency shall be thereby created; and, when necessary, specified employees may be detailed for other service when not required for the duty for which they were engaged.

(Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 60. Compensation prescribed to be in full

The several compensations prescribed by title 28 of the Revised Statutes shall be in full of all emoluments or allowances whatsoever. But where necessary, a reasonable allowance or provision may be made for offices and office contingencies.

(R.S. § 2076.)

REFERENCES IN TEXT

Title 28 of the Revised Statutes, referred to in text, was in the original ''this title'', meaning title 28 of the Revised Statutes, consisting of R.S. §§ 2039 to 2157. For complete classification of R.S. §§ 2039 to 2157 to the Code, see Tables.

CODIFICATION

R.S. § 2076 derived from act June 30, 1834, ch. 162, § 10, 4 Stat. 737.

§ 61. Estimates for personal services in Indian Office

Annual estimates in detail shall be submitted for all personal services required in the Indian Office, and it shall not be lawful to employ in said office any personal services other than those specifically appropriated for in the legislative, executive, and judicial appropriation Acts, except temporary details of field employees for service connected solely with their respective employments.

(Aug. 23, 1912, ch. 350, § 1, 37 Stat. 396.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 62. Discontinuance and transfer of agencies

The President shall, whenever he may judge it expedient, discontinue any Indian agency, or transfer the same, from the place or tribe designated by law, to such other place or tribe as the public service may require.

(R.S. § 2059.)

CODIFICATION

R.S. § 2059 derived from act June 30, 1834, ch. 162, § 4, 4 Stat. 735.

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Interior of authority vested in President by this section, see Ex. Ord. No. 10250, June 5, 1951, 16 F.R. 5385, set out as a note under section 301 of Title 3, The President.

§ 63. Consolidation of agencies

The President may, in his discretion, consolidate two or more agencies into one, and where Indians are located on reservations created by Executive order he may, with the consent of the tribes to be affected thereby, expressed in the usual manner, consolidate one or more tribes, and abolish such agencies as are thereby rendered unnecessary.

(May 17, 1882, ch. 163, § 6, 22 Stat. 88; July 4, 1884, ch. 180, § 6, 23 Stat. 97.)

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Interior of authority vested in President by this section, see Ex. Ord. No. 10250, June 5, 1951, 16 F.R. 5385, set out as a note under section 301 of Title 3, The President.

§ 64. Services of agents dispensed with

It shall be the duty of the President to dispense with the services of such Indian agents and superintendents as may be practicable; and where it is practicable he shall require the same person to perform the duties of two agencies or superintendencies for one salary.

(R.S. § 2053; June 22, 1874, ch. 389, § 1, 18 Stat. 147; Mar. 3, 1875, ch. 132, § 1, 18 Stat. 421.)

CODIFICATION

R.S. § 2053 derived from act Feb. 14, 1873, ch. 138, § 1, 17 Stat. 437.

INDIAN AGENTS

In a communication, dated November 29, 1940, from the Office of Indian Affairs of the Department of the Interior, it was stated that there have been no Indian agents since 1908, all of the agencies and schools having been placed under the supervision of superintendents.

§ 65. Discontinuance of agents, subagents, and interpreters

The Secretary of the Interior shall, under the direction of the President, cause to be discontinued the services of such agents, subagents, interpreters, and mechanics as may from time to time become unnecessary, in consequence of the emigration of the Indians, or other causes.

(R.S. § 2073; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 244.)

CODIFICATION

R.S. § 2073 derived from act July 9, 1832, ch. 174, § 5, 4 Stat. 564.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 66. Duties of agency devolved on superintendent of Indian school

The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may devolve the duties of Indian agency or part thereof upon the superintendent of the Indian school located at such agency or part thereof whenever in his judgment such superintendent can properly perform the duties of such agency.

The pay of any superintendent who performs agency duties in addition to those of his superintendency may be increased by the Commissioner of Indian Affairs, in his discretion, to an extent not exceeding $300 per annum.

(Mar. 1, 1907, ch. 2285, 34 Stat. 1020; Pub. L. 92–310, title II, § 229(d), June 6, 1972, 86 Stat. 208.)

AMENDMENTS

1972—Pub. L. 92–310 struck out provisions which required the superintendent of the Indian school to give a bond as other Indian agents.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 67. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 636

Section, act Mar. 3, 1893, ch. 209, § 1, 27 Stat. 614, provided that the superintendent of the training school at Cherokee Agency was to act as an agent.

§§ 68, 68a. Repealed. Pub. L. 96–277, § 2, June 17, 1980, 94 Stat. 545

Section 68, R.S. § 2078, prohibited employees in Indian affairs from trading with Indians and made offenders liable to a penalty of $5,000 and removal from office.

Section 68a, act June 19, 1939, ch. 210, 53 Stat. 840, authorized Federal employees, including Indian Service employees, under rules and regulations of Secretary of the Interior to purchase from Indians and Indian organizations arts and crafts, or other products, services, or commodities, produced, rendered, owned, controlled, or furnished by Indians or Indian organizations, but prohibited employee purchases for purpose of engaging directly or indirectly in commercial selling, reselling, trading, or bartering of such purchases.

EFFECTIVE DATE OF REPEAL

Section 4 of Pub. L. 96–277 provided that: ''The provisions of this Act [amending former section 437 of Title 18, Crimes and Criminal Procedure, repealing sections 68, 68a, 87a, and 441 of this title, and enacting provisions formerly set out as a note under section 437 of Title 18] shall take effect sixty days after the date of enactment of this Act [June 17, 1980].''

CHAPTER 2A—INDIAN CLAIMS COMMISSION

CLAIMS ACCRUING AFTER AUGUST 13, 1946

This chapter related only to claims accruing before Aug. 13, 1946. For jurisdiction of Indian claims against the United States accruing after that date, see section 1505 of Title 28, Judiciary and Judicial Procedure.

§§ 70 to 70n–2. Omitted

CODIFICATION

The Indian Claims Commission terminated on Sept. 30, 1978, pursuant to section 70v of this title.

Section 70, act Aug. 13, 1946, ch. 959, § 1, 60 Stat. 1049, established Indian Claims Commission.

Section 70a, acts Aug. 13, 1946, ch. 959, § 2, 60 Stat. 1050; Oct. 27, 1974, Pub. L. 93–494, § 2, 88 Stat. 1499, related to jurisdiction of claims considered by Commission.

Section 70b, acts Aug. 13, 1946, ch. 959, § 3, 60 Stat. 1050; Apr. 10, 1967, Pub. L. 90–9, §§ 2, 3, 81 Stat. 11; Oct. 12, 1978, Pub. L. 95–453, 92 Stat. 1110, related to members of Commission.

Section 70c, act Aug. 13, 1946, ch. 959, § 4, 60 Stat. 1051, related to staff and oath of Commission.

Section 70d, act Aug. 13, 1946, ch. 959, § 5, 60 Stat. 1051, related to principal office of Commission.

Section 70e, acts Aug. 13, 1946, ch. 959, § 6, 60 Stat. 1051; Apr. 10, 1967, Pub. L. 90–9, § 4, 81 Stat. 11; Mar. 30, 1972, Pub. L. 92–265, § 5, 86 Stat. 115, related to itemized vouchers and authorized appropriations for Commission.

Section 70f, act Aug. 13, 1946, ch. 959, § 7, 60 Stat. 1051, related to time of meetings of Commission.

Section 70g, act Aug. 13, 1946, ch. 959, § 8, 60 Stat. 1051, related to record of proceedings and public inspection of records of Commission.

Section 70h, act Aug. 13, 1946, ch. 959, § 9, 60 Stat. 1051, related to control of procedure of Commission.

Section 70i, act Aug. 13, 1946, ch. 959, § 10, 60 Stat. 1052, related to presentation of claims before Commission.

Section 70j, act Aug. 13, 1946, ch. 959, § 11, 60 Stat. 1052, related to forbidden transfer of suits in Court of Claims under prior Acts and offsets and counterclaims before Commission.

Section 70k, act Aug. 13, 1946, ch. 959, § 12, 60 Stat. 1052, related to limitation of time for presenting claims before Commission.

Section 70*l*, act Aug. 13, 1946, ch. 959, § 13, 60 Stat. 1052, related to notice to tribes, investigation of claims, and availability of data by Commission.

Section 70m, act Aug. 13, 1946, ch. 959, § 14, 60 Stat. 1052, related to information from governmental departments and official records as evidence before Commission.

Section 70n, act Aug. 13, 1946, ch. 959, § 15, 60 Stat. 1053, related to attorneys of claimants and representation of United States by Attorney General before Commission.

Section 70n–1, Pub. L. 88–168, § 1, Nov. 4, 1963, 77 Stat. 301; Pub. L. 89–592, Sept. 19, 1966, 80 Stat. 814; Pub. L. 93–37, § 2, May 24, 1973, 87 Stat. 73, related to revolving fund for expert assistance for preparation and trial of claims before Commission.

Section 70n–2, Pub. L. 88–168, § 2, Nov. 4, 1963, 77 Stat. 301, related to inability of applicants to pay for assistance required and denial of loans in cases of unreasonable fees.

INDIAN SELF-DETERMINATION CONFLICT OF INTEREST REQUIREMENT INAPPLICABLE TO COMMISSIONER NOT IN OFFICE

Section 1 of Pub. L. 95–453 provided in part that section 105(j) of the Indian Self-Determination Act (sec-

tion 450i(f) of this title) was not to apply to members of the Indian Claims Commission affected by Pub. L. 95–453 (which amended subsec. (c) of section 70b of this title).

§ 70n–3. Repealed. Pub. L. 93–608, § 1(16), Jan. 2, 1975, 88 Stat. 1970

Section, Pub. L. 88–168, § 3, Nov. 4, 1963, 77 Stat. 301, required a report to Committees on Interior and Insular Affairs of Senate and House of Representatives on every loan made under sections 70n–1 to 70n–7 of this title.

§§ 70n–4 to 70v–3. Omitted

CODIFICATION

The Indian Claims Commission terminated on Sept. 30, 1978, pursuant to section 70v of this title.

Section 70n–4, Pub. L. 88–168, § 4, Nov. 4, 1963, 77 Stat. 301, related to payment of interest and repayment from judgments.

Section 70n–5, Pub. L. 88–168, § 5, Nov. 4, 1963, 77 Stat. 301, related to crediting to revolving fund of repayments and interest.

Section 70n–6, Pub. L. 88–168, § 6, Nov. 4, 1963, 77 Stat. 301, related to liability of the United States.

Section 70n–7, Pub. L. 88–168, § 7, Nov. 4, 1963, 77 Stat. 301, prohibited approval of contingent fee contracts for witness before Commission.

Section 70*o*, act Aug. 13, 1946, ch. 959, § 16, 60 Stat. 1053, forbade a member of Congress from practicing before Commission.

Section 70p, act Aug. 13, 1946, ch. 959, § 17, 60 Stat. 1053, related to hearings by Commission.

Section 70q, acts Aug. 13, 1946, ch. 959, § 18, 60 Stat. 1054; Apr. 10, 1967, Pub. L. 90–9, § 4, 81 Stat. 11, related to testimony of witnesses before Commission.

Section 70r, act Aug. 13, 1946, ch. 959, § 19, 60 Stat. 1054, related to final determinations of Commission.

Section 70s, acts Aug. 13, 1946, ch. 959, § 20, 60 Stat. 1054; Sept. 8, 1960, Pub. L. 86–722, 74 Stat. 829; Mar. 13, 1978, Pub. L. 95–243, 92 Stat. 153, related to judicial review of questions or determinations of Commission.

Section 70t, act Aug. 13, 1946, ch. 959, § 21, 60 Stat. 1055, related to a report of determination of claim to Congress by Commission.

Section 70u, act Aug. 13, 1946, ch. 959, § 22, 60 Stat. 1055, related to payment of claim after final determination and an adverse determination as a bar to further claims against United States.

Section 70v, acts Aug. 13, 1946, ch. 959, § 23, 60 Stat. 1055; July 24, 1956, ch. 679, 70 Stat. 624; June 16, 1961, Pub. L. 87–48, 75 Stat. 92; Apr. 10, 1967, Pub. L. 90–9, § 1, 81 Stat. 11; Mar. 30, 1972, Pub. L. 92–265, § 1, 86 Stat. 114; Oct. 8, 1976, Pub. L. 94–465, § 2, 90 Stat. 1990, provided for dissolution of Commission.

Section 70v–1, act Aug. 13, 1946, ch. 959, § 27, as added Apr. 10, 1967, Pub. L. 90–9, § 5, 81 Stat. 11; amended Mar. 30, 1972, Pub. L. 92–265, §§ 2, 3, 86 Stat. 115, related to trial calendar of Commission.

Section 70v–2, act Aug. 13, 1946, ch. 959, § 28, as added Mar. 30, 1972, Pub. L. 92–265, § 4, 86 Stat. 115; amended Oct. 8, 1976, Pub. L. 94–465, § 3, 90 Stat. 1990, related to status reports to Congress by Commission.

Section 70v–3, act Aug. 13, 1946, ch. 959, § 29, as added July 20, 1977, Pub. L. 95–69, § 2, 91 Stat. 273; amended Apr. 2, 1982, Pub. L. 97–164, title I, § 149, 96 Stat. 46, related to cases transferred to United States Claims Court from Commission.

§ 70w. Repealed. May 24, 1949, ch. 139, § 142, 63 Stat. 110

Section, act Aug. 13, 1946, ch. 959, § 24, 60 Stat. 1055, related to Indian claims accruing after Aug. 13, 1946. See section 1505 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 3—AGREEMENTS WITH INDIANS

SUBCHAPTER I—TREATIES

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71. Future treaties with Indian tribes.
72. Abrogation of treaties.

SUBCHAPTER II—CONTRACTS WITH INDIANS

81. Contracts and agreements with Indian tribes.
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83, 84. Repealed.
85. Contracts relating to tribal funds or property.
86. Encumbrances on lands allotted to applicants for enrollment in Five Civilized Tribes; use of interest on tribal funds.
87, 87a. Repealed.
88. False vouchers, accounts, or claims.

SUBCHAPTER I—TREATIES

§ 71. Future treaties with Indian tribes

No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired. Such treaties, and any Executive orders and Acts of Congress under which the rights of any Indian tribe to fish are secured, shall be construed to prohibit (in addition to any other prohibition) the imposition under any law of a State or political subdivision thereof of any tax on any income derived from the exercise of rights to fish secured by such treaty, Executive order, or Act of Congress if section 7873 of title 26 does not permit a like Federal tax to be imposed on such income.

(R.S. § 2079; Pub. L. 100–647, title III, § 3042, Nov. 10, 1988, 102 Stat. 3641.)

CODIFICATION

R.S. § 2079 derived from act Mar. 3, 1871, ch. 120, § 1, 16 Stat. 566.

AMENDMENTS

1988—Pub. L. 100–647 inserted sentence at end relating to State tax treatment of income derived by Indians from exercise of fishing rights secured by treaties, Executive orders, or Acts of Congress.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or nonexistence or scope of any income tax exemption derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive order, see section 3044 of Pub. L. 100–647, set out as an Effective Date note under section 7873 of Title 26, Internal Revenue Code.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–179, § 1, Mar. 14, 2000, 114 Stat. 46, provided that: ''This Act [amending sections 81 and 476 of this title] may be cited as the 'Indian Tribal Economic Development and Contract Encouragement Act of 2000'.''

§ 72. Abrogation of treaties

Whenever the tribal organization of any Indian tribe is in actual hostility to the United States, the President is authorized, by proclamation, to declare all treaties with such tribe abrogated by such tribe if in his opinion the same can be done consistently with good faith and legal and national obligations.

(R.S. § 2080.)

CODIFICATION

R.S. § 2080 derived from act July 5, 1862, ch. 135, § 1, 12 Stat. 528.

SUBCHAPTER II—CONTRACTS WITH INDIANS

§ 81. Contracts and agreements with Indian tribes

(a) Definitions

In this section:

(1) The term ''Indian lands'' means lands the title to which is held by the United States in trust for an Indian tribe or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation.

(2) The term ''Indian tribe'' has the meaning given that term in section 450b(e) of this title.

(3) The term ''Secretary'' means the Secretary of the Interior.

(b) Approval

No agreement or contract with an Indian tribe that encumbers Indian lands for a period of 7 or more years shall be valid unless that agreement or contract bears the approval of the Secretary of the Interior or a designee of the Secretary.

(c) Exception

Subsection (b) of this section shall not apply to any agreement or contract that the Secretary (or a designee of the Secretary) determines is not covered under that subsection.

(d) Unapproved agreements

The Secretary (or a designee of the Secretary) shall refuse to approve an agreement or contract that is covered under subsection (b) of this section if the Secretary (or a designee of the Secretary) determines that the agreement or contract—

(1) violates Federal law; or

(2) does not include a provision that—

(A) provides for remedies in the case of a breach of the agreement or contract;

(B) references a tribal code, ordinance, or ruling of a court of competent jurisdiction that discloses the right of the Indian tribe to assert sovereign immunity as a defense in an action brought against the Indian tribe; or

(C) includes an express waiver of the right of the Indian tribe to assert sovereign immunity as a defense in an action brought against the Indian tribe (including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action).

(e) Regulations

Not later than 180 days after March 14, 2000, the Secretary shall issue regulations for identifying types of agreements or contracts that are not covered under subsection (b) of this section.

(f) Construction

Nothing in this section shall be construed to—

(1) require the Secretary to approve a contract for legal services by an attorney;

(2) amend or repeal the authority of the National Indian Gaming Commission under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.); or

(3) alter or amend any ordinance, resolution, or charter of an Indian tribe that requires approval by the Secretary of any action by that Indian tribe.

(R.S. § 2103; Pub. L. 85–770, Aug. 27, 1958, 72 Stat. 927; Pub. L. 106–179, § 2, Mar. 14, 2000, 114 Stat. 46.)

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (f)(2), is Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (§ 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

CODIFICATION

R.S. § 2103 derived from acts Mar. 3, 1871, ch. 120, § 3, 16 Stat. 570; May 21, 1872, ch. 177, §§ 1, 2, 17 Stat. 136.

AMENDMENTS

2000—Pub. L. 106–179 amended section generally, substituting present provisions for provisions which required agreements with Indian tribes or Indians to be in writing, to bear the approval of the Secretary, to contain the names of all parties in interest, to state the time and place of making, purpose, and contingencies, and to have a fixed time limit to run, and provisions which declared agreements made in violation of this section to be null and void and which authorized recovery of amounts in excess of approved amounts, with one half of recovered amounts to be paid into the Treasury.

1958—Par. Second. Pub. L. 85–770 struck out requirement that contracts with Indian tribes be executed before a judge of a court of record.

Par. Sixth. Pub. L. 85–770 struck out par. Sixth enumerating contractual elements to be certified to by the judge.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 81a. Counsel for prosecution of claims against the United States; cancellation; revival

Any contracts or agreements approved prior to June 26, 1936, by the Secretary of the Interior between the authorities of any tribe, band, or group of Indians and their attorneys for the prosecution of claims against the United States, which provide that such contracts or agreements shall run for a period of years therein specified, and as long thereafter as may be required to complete the business therein provided for, or words of like import, or which provide that compensation for services rendered shall be on a quantum-meruit basis not to exceed a spec-

ified percentage, shall be deemed a sufficient compliance with section 81 of this title: *Provided*, *however*, That nothing herein contained shall limit the power of the Secretary of the Interior, after due notice and hearing and for proper cause shown, to cancel any such contract or agreement: *Provided further*, That the provisions of this section and section 81b of this title shall not be construed to revive any contract which has been terminated by lapse of time, operation of law, or by acts of the parties thereto.

(June 26, 1936, ch. 851, § 1, 49 Stat. 1984.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 81b. Continuation of contracts with attorneys containing limitation of time where suits have been filed

Any existing valid contract made and approved prior to June 26, 1936, pursuant to any Act of Congress by any tribe, band, or group of Indians with an attorney or attorneys for the rendition of services in the prosecution of claims against the United States under authority of which suit or suits have been filed, and which contains a limitation of time for the completion of the services to be performed may be continued in full force unless a subsequent contract dealing with the same subject matter has been made and approved.

(June 26, 1936, ch. 851, § 2, 49 Stat. 1984.)

§ 82. Payments under contracts; aiding in making prohibited contracts

No money shall be paid to any agent or attorney by an officer of the United States under any such contract or agreement, other than the fees due him for services rendered thereunder; but the moneys due the tribe, Indian, or Indians, as the case may be, shall be paid by the United States, through its own officers or agents, to the party or parties entitled thereto; and no money or thing shall be paid to any person for services under such contract or agreement, until such person shall have first filed with the Commissioner of Indian Affairs a sworn statement, showing each particular act of service under the contract, giving date and fact in detail, and the Secretary of the Interior and Commissioner of Indian Affairs shall determine therefrom whether, in their judgment, such contract or agreement has been complied with or fulfilled; if so, the same may be paid, and, if not, it shall be paid in proportion to the services rendered under the contract.

(R.S. § 2104.)

CODIFICATION

R.S. § 2104 derived from act May 21, 1872, ch. 177, § 3, 17 Stat. 137.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 82a. Contracts for payment of money permitted certain tribes; payment for legal services

Contracts involving the payment or expenditure of any money or affecting any property belonging to the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes of Indians, including contracts for professional legal services, may be made by said tribes, with the approval of the Secretary of the Interior, or his authorized representative, under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That the provisions of this section shall not apply to contracts for professional legal services involving the prosecution of claims against the United States.

(July 3, 1952, ch. 549, § 1, 66 Stat. 323.)

CONTRACTS INVOLVING CHOCTAW AND CHICKASAW TRIBES

Section 2 of act July 3, 1952, provided: "That the second proviso in section 28 of the Act of April 26, 1906, ch. 1876 (34 Stat. 148) [not classified to the Code], and the provisions contained in the fifth paragraph of section 17 of the Act of March 3, 1911, ch. 210 (36 Stat. 1070) [not classified to the Code], dealing with contracts made by the Choctaw and Chickasaw Tribes of Indians for professional legal services of attorneys, are hereby repealed."

§ 83. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section, R.S. § 2105, related to payments under prohibited contracts.

EFFECTIVE DATE OF REPEAL

Repeal by act June 25, 1948 effective Sept. 1, 1948.

§ 84. Repealed. Pub. L. 106–568, title VIII, § 812(c)(1), Dec. 27, 2000, 114 Stat. 2917

Section, R.S. § 2106, related to restrictions on assignments of contracts.

§ 85. Contracts relating to tribal funds or property

No contract made with any Indian, where such contract relates to the tribal funds or property in the hands of the United States, shall be valid, nor shall any payment for services rendered in relation thereto be made unless the consent of the United States has previously been given.

(June 30, 1913, ch. 4, § 18, 38 Stat. 97.)

§ 86. Encumbrances on lands allotted to applicants for enrollment in Five Civilized Tribes; use of interest on tribal funds

Land allotted to any applicant for enrollment as a citizen in the Five Civilized Tribes whether an Indian or freedman, shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated under the laws of the United States: *Provided further*, That the interest accruing from tribal funds and deposited in banks in the State of Oklahoma may be

used as authorized by the Act of March third, nineteen hundred and eleven, under the direction of the Secretary of the Interior, to defray the expense of per capita payments authorized by Congress.

(Aug. 1, 1914, ch. 222, § 17, 38 Stat. 601; June 25, 1948, ch. 645, § 3, 62 Stat. 859.)

REFERENCES IN TEXT

Act of March third, nineteen hundred and eleven, referred to in text, is act Mar. 3, 1911, ch. 210, 36 Stat. 1060, as amended, which, insofar as classified to the Code, enacted sections 11, 118, 143, 156, 300, and 301 of this title. For classification of this Act to the Code, see Tables.

AMENDMENTS

1948—Act June 25, 1948, struck out provisions relating to prohibiting contracts for compensation for services in relation to enrollment in the Five Civilized Tribes.

EFFECTIVE DATE OF 1948 AMENDMENT

Amendment by act June 25, 1948 effective Sept. 1, 1948.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 87. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section, act June 22, 1874, ch. 389, § 10, 18 Stat. 177, related to interest of agents and employees in Indian contracts. See section 437 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 1, 1948, see section 20 of act June 25, 1948.

§ 87a. Repealed. Pub. L. 96–277, § 2, June 17, 1980, 94 Stat. 545

Section, act June 19, 1939, ch. 210, 53 Stat. 840, authorized Federal employees, including Indian Service employees, under rules and regulations of Secretary of the Interior to purchase from Indians and Indian organizations arts and crafts, or other products, services, or commodities, produced, rendered, owned, controlled, or furnished by Indians or Indian organizations, but prohibited employee purchases for purpose of engaging directly or indirectly in commercial selling, reselling, trading, or bartering of such purchases.

EFFECTIVE DATE OF REPEAL

Repeal effective sixty days after June 17, 1980, see section 4 of Pub. L. 96–277, set out as a note under section 68 of this title.

§ 88. False vouchers, accounts, or claims

Any disbursing or other officer of the United States, or other person, who shall knowingly present, or cause to be presented, any voucher, account, or claim to any officer of the United States, for approval or payment, or for the purpose of securing a credit in any account with the United States, relating to any matter pertaining to the Indian Service, which shall contain any material misrepresentation of fact in regard to the amount due or paid, the name or character of the article furnished or received; or of the service rendered, or to the date of purchase, delivery, or performance of service, or in any other particular, shall not be entitled to payment or credit for any part of said voucher, account, or claim; and if any such credit shall be given or received, or payment made, the United States may recharge the same to the officer or person receiving the credit or payment, and recover the amount from either or from both, in the same manner as other debts due the United States are collected: *Provided*, That where an account contains more than one voucher the foregoing shall apply only to such vouchers as contain the misrepresentation: *And provided further*, That the officers and persons by and between whom the business is transacted shall, in all civil actions in settlement of accounts, be presumed to know the facts in relation to the matter set forth in the voucher, account, or claim: *And provided further*, That the foregoing shall be in addition to the penalties prescribed by law, and in no way affect proceedings under existing law for like offenses. Where practicable this section shall be printed on the blank forms of vouchers provided for general use.

(July 4, 1884, ch. 180, § 8, 23 Stat. 97.)

TRANSFER OF FUNCTIONS

Transfer of disbursement functions of all Government agencies with certain exceptions to Fiscal Service, Department of the Treasury, see note set out under section 53 of this title.

CHAPTER 4—PERFORMANCE BY UNITED STATES OF OBLIGATIONS TO INDIANS

SUBCHAPTER I—PURCHASE OF SUPPLIES

Sec.
91 to 96. Omitted or Repealed.
97. Proposals or bids for contracts to be preserved.
98. Purchase of supplies without authority.
99. Contracts for supplies in advance of appropriations.
100. Repealed.
101. Payment for wagon transportation.
102. Payment of costs for furnishing coal for Indian Service.
103. Repealed.
104. Purchase of articles manufactured at schools.

SUBCHAPTER II—DISBURSEMENT OF MONEYS AND SUPPLIES

111. Payment of moneys and distribution of goods.
112. Persons present at delivery of goods and money.
113. Mode of disbursements.
114. Payment of annuities in coin.
115. Payment of annuities in goods.
116. Indians 18 years of age to have right to receipt for annuity.
117. Repealed.
117a. Per capita distribution of funds to tribe members.
117b. Distribution of funds.
117c. Standards for approval of tribal payments; United States not liable for distribution of funds; continuing responsibility under other provisions.
118. Payments in satisfaction of judgments.
119. Allotment of tribal funds to individual Indians.
120. Per capita payments to enrolled members of Choctaw and Chickasaw Tribes.

Sec.
121. Payment of share of tribal funds to helpless Indians.
122. Limitation on application of tribal funds.
123. Expenditure from tribal funds without specific appropriations.
123a. Tribal funds; use to purchase insurance for protection of tribal property.
123b. Tribal funds for traveling and other expenses.
123c. Advancement of tribal funds to Indian tribes; miscellaneous authorized purposes.
123d. Additional appropriations from tribal funds.
124. Expenditures from tribal funds of Five Civilized Tribes without specific appropriations.
125. Expenditure of moneys of tribes of Quapaw Agency.
126. Omitted.
127. Moneys or annuities of hostile Indians.
128. Appropriations not paid to Indians at war with United States.
129. Moneys due Indians holding captives other than Indians withheld.
130. Withholding of moneys or goods on account of intoxicating liquors.
131. Advances to disbursing officers.
132. Mode of distribution of goods.
133. Rolls of Indians entitled to supplies.
134. Appropriations for supplies available immediately; time for distribution.
135. Supplies distributed so as to prevent deficiencies.
136. Commutation of rations and other supplies; payment per capita.
137. Supplies distributed to able-bodied males on condition.
138. Goods withheld from chiefs violating treaty stipulations.
139. Appropriations for subsistence.
140. Diversion of appropriations for employees and supplies.
141 to 144. Omitted or Repealed.
145. Accounts between United States and tribes under reimbursable appropriations.
146. Report of Indians present and receiving food.
147. Appropriations for specified buildings; use for transportation of materials.
148. Appropriations for supplies; transfer to Indian Service supply fund; expenditure.

SUBCHAPTER III—DEPOSIT, CARE, AND INVESTMENT OF INDIAN MONEYS

151. Deposits in bank by disbursing agents.
152. Proceeds of sales of Indian lands.
153. Appropriation to carry out treaties.
154. Proceeds of sales of lands not subject to certain deductions.
155. Disposal of miscellaneous revenues from Indian reservations, etc.
155a. Transferred.
155b. Proceeds of labor accounts; deposits limited to funds held in trust for Indian tribes or individuals.
156. Deposit of funds from sales of lands and property of Five Civilized Tribes.
157. Investments of stock required by treaties.
158. Investment of proceeds of lands.
159. Moneys due incompetents or orphans.
160. Custody of stocks or bonds held in trust for tribes.
161. Deposit in Treasury of trust funds.
161a. Tribal funds in trust in Treasury Department; investment by Secretary of the Treasury; maturities; interest; funds held in trust for individual Indians.
161b. ''Indian Money, Proceeds of Labor'' fund; separate accounts for respective tribes; rate of interest.
161c. Surplus above requirements of fund; transfer to surplus fund of Treasury; retransfer.
161d. Disposition of accrued interest.
162. Repealed.
162a. Deposit of tribal funds in banks; bond or collateral security; investments; collections from irrigation projects; affirmative action required.
163. Roll of membership of Indian tribes.
164. Restoration to tribal ownership of unclaimed per capita and other individual payments of tribal trust funds; deposit in general fund of the Treasury.
165. Notice to Congressional committees.
166. Applicability of Federal Advisory Committee Act.

SUBCHAPTER I—PURCHASE OF SUPPLIES

§§ 91, 92. Omitted

CODIFICATION

Section 91, R.S. § 2083, related to purchase of goods pursuant to any Indian treaty. See section 5 of Title 41, Public Contracts.

Section 92, R.S. § 2084, related to purchase of goods by Office of Indian Affairs. See section 5 of Title 41.

PROCUREMENT FUNCTIONS

Effective Jan. 1, 1947, Procurement Division of Department of the Treasury changed to Bureau of Federal Supply by regulation issued by Secretary of the Treasury under authority of section 301 of Title 5, Government Organization and Employees. Functions of Bureau of Federal Supply transferred to Administrator of General Services by section 102 of act June 30, 1949, ch. 288, title I, 63 Stat. 380, which was repealed and reenacted as section 303(a) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304. Section 303(a) of Title 40 was amended generally by Pub. L. 109–313, § 2(a)(1), Oct. 6, 2006, 120 Stat. 1734, and, as so amended, no longer relates to the Bureau of Federal Supply. See Historical and Revision Notes and 2006 Amendment note under section 303 of Title 40.

Function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency transferred to a Procurement Division in Department of the Treasury by Ex. Ord. No. 6166, June 10, 1933, set out as a note under section 901 of Title 5.

§ 93. Repealed. Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1112

Section, acts June 25, 1910, ch. 431, § 23, 36 Stat. 861; May 18, 1916, ch. 125, § 1, 39 Stat. 126; Jan. 12, 1927, ch. 27, 44 Stat. 936, related to purchase of Indian supplies and services. See sections 5, 6a and 6b of Title 41, Public Contracts.

Construction of repeal, see Repeals note set out under section 6a of Title 41.

§ 94. Repealed. Dec. 16, 1930, ch. 14, § 1, 46 Stat. 1028

Section, act Apr. 30, 1908, ch. 153, 35 Stat. 71, related to purchase of supplies, advertisement therefor, and supplies for irrigation works. See section 5 of Title 41, Public Contracts.

§ 95. Repealed. Mar. 27, 1939, ch. 18, 53 Stat. 551

Section, acts June 22, 1874, ch. 389, § 6, 18 Stat. 176; Mar. 3, 1875, ch. 132, § 9, 18 Stat. 450; May 18, 1916, ch. 125, § 1, 39 Stat. 129, referred to bids under advertisements for goods or supplies.

§ 96. Repealed. Pub. L. 104–316, title I, § 112(a), Oct. 19, 1996, 110 Stat. 3833

Section, acts Mar. 3, 1875, ch. 132, § 7, 18 Stat. 450; July 31, 1894, ch. 174, §§ 3, 7, 28 Stat. 205, 206; June 10, 1921, ch.

18, title III, § 304, 42 Stat. 24, directed that copies of contracts made by Commissioner of Indian Affairs, or any other officer of Government for the Indian Service, be furnished to General Accounting Office prior to payment.

§ 97. Proposals or bids for contracts to be preserved

In all lettings of contracts in connection with the Indian Service, the proposals or bids received shall be filed and preserved..[1]

(Aug. 15, 1876, ch. 289, § 3, 19 Stat. 199; June 21, 1906, ch. 3504, 34 Stat. 328; Pub. L. 104–316, title I, § 112(b), Oct. 19, 1996, 110 Stat. 3833.)

AMENDMENTS

1996—Pub. L. 104–316 substituted a period for ''; and an abstract of all bids or proposals received for the supplies or services embraced in any contract shall be attached to, and filed with, the said contract when the same is filed in the office of the Second Comptroller of the Treasury''.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Effective Jan. 1, 1947, Procurement Division of Department of the Treasury changed to Bureau of Federal Supply by regulation issued by Secretary of the Treasury under authority of section 301 of Title 5. Functions of Bureau of Federal Supply transferred to Administrator of General Services by section 102 of act June 30, 1949, ch. 288, title I, 63 Stat. 380, which was repealed and reenacted as section 303(a) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304. Section 303(a) of Title 40 was amended generally by Pub. L. 109–313, § 2(a)(1), Oct. 6, 2006, 120 Stat. 1734, and, as so amended, no longer relates to the Bureau of Federal Supply. See Historical and Revision Notes and 2006 Amendment note under section 303 of Title 40.

Function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency transferred to a Procurement Division in Department of the Treasury by Ex. Ord. No. 6166, June 10, 1933, set out as a note under section 901 of Title 5, Government Organization and Employees.

§ 98. Purchase of supplies without authority

No claims for supplies for Indians, purchased without authority of law, shall be paid out of any appropriation for expenses of the Office of Indian Affairs, or for Indians.

(R.S. § 2085.)

CODIFICATION

R.S. § 2085 derived from act July 15, 1870, ch. 296, § 2, 16 Stat. 360.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

[1] So in original.

§ 99. Contracts for supplies in advance of appropriations

The Commissioner of Indian Affairs is authorized to advertise in the spring of each year for bids, and enter into contracts, subject to the approval of the Secretary of the Interior, for goods and supplies for the Indian Service required for the ensuing fiscal year, notwithstanding the fact that the appropriations for such fiscal year have not been made, and the contracts so made shall be on the basis of the appropriations for the preceding fiscal year, and shall contain a clause that no deliveries shall be made under the same and no liability attach to the United States in consequence of such execution if Congress fails to make an appropriation for such contract for the fiscal year for which those supplies are required.

(Aug. 15, 1894, ch. 290, § 4, 28 Stat. 312.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Effective Jan. 1, 1947, Procurement Division of Department of the Treasury changed to Bureau of Federal Supply by regulation issued by Secretary of the Treasury under authority of section 301 of Title 5. Functions of Bureau of Federal Supply transferred to Administrator of General Services by section 102 of act June 30, 1949, ch. 288, title I, 63 Stat. 380, which was repealed and reenacted as section 303(a) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304. Section 303(a) of Title 40 was amended generally by Pub. L. 109–313, § 2(a)(1), Oct. 6, 2006, 120 Stat. 1734, and, as so amended, no longer relates to the Bureau of Federal Supply. See Historical and Revision Notes and 2006 Amendment note under section 303 of Title 40.

Function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency transferred to a Procurement Division in Department of the Treasury by Ex. Ord. No. 6166, June 10, 1933, set out as a note under section 901 of Title 5, Government Organization and Employees.

§ 100. Repealed. Oct. 31, 1951, ch. 654, § 1(48), 65 Stat. 703

Section, acts Mar. 3, 1877, ch. 101, § 1, 19 Stat. 291; July 7, 1898, ch. 571, § 1, 30 Stat. 676, related to transportation of Indian goods and supplies under contract or in open market.

§ 101. Payment for wagon transportation

All wagon transportation from the point where delivery is made by the last common carrier to the agency, school, or elsewhere, and between points on the reservation or elsewhere, shall be paid from the funds appropriated or otherwise available for the support of the school, agency, or other project for which the supplies to be transported are purchased.

(June 30, 1913, ch. 4, § 1, 38 Stat. 79.)

TRANSFER OF FUNCTIONS

Effective Jan. 1, 1947, Procurement Division of Department of the Treasury changed to Bureau of Federal

Supply by regulation issued by Secretary of the Treasury under authority of section 301 of Title 5, Government Organization and Employees. Functions of Bureau of Federal Supply transferred to Administrator of General Services by section 102 of act June 30, 1949, ch. 288, title I, 63 Stat. 380, which was repealed and reenacted as section 303(a) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304. Section 303(a) of Title 40 was amended generally by Pub. L. 109–313, §2(a)(1), Oct. 6, 2006, 120 Stat. 1734, and, as so amended, no longer relates to the Bureau of Federal Supply. See Historical and Revision Notes and 2006 Amendment note under section 303 of Title 40.

Function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency transferred to a Procurement Division in Department of the Treasury by Ex. Ord. No. 6166, June 10, 1933, set out as a note under section 901 of Title 5, Government Organization and Employees.

§102. Payment of costs for furnishing coal for Indian Service

The cost of inspection, storage, transportation, and so forth, of coal for the Indian Service shall be paid from the support fund of the school or agency for which the coal is purchased.

(Feb. 14, 1920, ch. 75, §1, 41 Stat. 412.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Archivist transferred to Administrator of General Services by section 104(a) of act June 30, 1949, ch. 288, title I, 63 Stat. 381. See text of, and Historical and Revision Notes under, section 2102 of Title 44, Public Printing and Documents. Transfer of functions effective July 1, 1949, see section 605, formerly §505, of act June 30, 1949, ch. 288, 63 Stat. 403; renumbered Sept. 5, 1950, ch. 849, §6(a), (b), 64 Stat. 583.

§103. Repealed. Dec. 16, 1930, ch. 14, §1, 46 Stat. 1028

Section, act Apr. 30, 1908, ch. 153, 35 Stat. 73, related to maintenance of warehouses for goods of the Indian Service.

§104. Purchase of articles manufactured at schools

The Secretary of the Interior is authorized, whenever it can be done advantageously, to purchase for use in the Indian Service, from Indian manual and training schools, in the manner customary among individuals such articles as may be manufactured at such schools, and which are used in the Indian Service. Accounts of such transactions shall be kept in the Indian Bureau and in the training schools, and reports thereof made from time to time.

(May 11, 1880, ch. 85, §1, 21 Stat. 131.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Effective Jan. 1, 1947, Procurement Division of Department of the Treasury changed to Bureau of Federal Supply by regulation issued by Secretary of the Treasury under authority of section 301 of Title 5, Government Organization and Employees. Functions of Bureau of Federal Supply transferred to Administrator of General Services by section 102 of act June 30, 1949, ch. 288, title I, 63 Stat. 380, which was repealed and reenacted as section 303(a) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304. Section 303(a) of Title 40 was amended generally by Pub. L. 109–313, §2(a)(1), Oct. 6, 2006, 120 Stat. 1734, and, as so amended, no longer relates to the Bureau of Federal Supply. See Historical and Revision Notes and 2006 Amendment note under section 303 of Title 40.

Function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency transferred to a Procurement Division in Department of the Treasury by Ex. Ord. No. 6166, June 10, 1933, set out as a note under section 901 of Title 5, Government Organization and Employees.

SUBCHAPTER II—DISBURSEMENT OF MONEYS AND SUPPLIES

§111. Payment of moneys and distribution of goods

The payment of all moneys and the distribution of all goods stipulated to be furnished to any Indians, or tribe of Indians, shall be made in one of the following ways, as the President or the Secretary of the Interior may direct:

First. To the chiefs of a tribe, for the tribe.

Second. In cases where the imperious interest of the tribe or the individuals intended to be benefited, or any treaty stipulation, requires the intervention of an agency, then to such person as the tribe shall appoint to receive such moneys or goods; or if several persons be appointed, then upon the joint order or receipt of such persons.

Third. To the heads of the families and to the individuals entitled to participate in the moneys or goods.

Fourth. By consent of the tribe, such moneys or goods may be applied directly, under such regulations, not inconsistent with treaty stipulations, as may be prescribed by the Secretary of the Interior, to such purposes as will best promote the happiness and prosperity of the members of the tribe, and will encourage able-bodied Indians in the habits of industry and peace.

(R.S. §2086.)

CODIFICATION

R.S. §2086 derived from acts June 30, 1834, ch. 162, §11, 4 Stat. 737; Mar. 3, 1847, ch. 66, §3, 9 Stat. 203; Aug. 30, 1852, ch. 103, §3, 10 Stat. 56; July 15, 1870, ch. 296, §§2, 3, 16 Stat. 360.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 112. Persons present at delivery of goods and money

The superintendent, agent, or subagent, together with such military officer as the President may direct, shall be present, and certify to the delivery of all goods and money required to be paid or delivered to the Indians.

(R.S. § 2088.)

CODIFICATION

R.S. § 2088 derived from act June 30, 1834, ch. 162, § 13, 4 Stat. 737.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 113. Mode of disbursements

At the discretion of the President all disbursements of moneys, whether for annuities or otherwise, to fulfill treaty stipulations with individual Indians or Indian tribes, shall be made in person by the superintendents of Indian affairs, where superintendencies exist, to all Indians or tribes within the limits of their respective superintendencies, in the presence of the local agents and interpreters, who shall witness the same, under such regulations as the Secretary of the Interior may direct.

(R.S. § 2089.)

CODIFICATION

R.S. § 2089 derived from act Mar. 3, 1857, ch. 90, § 1, 11 Stat. 169.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Transfer of disbursement functions of all Government agencies with certain exceptions to the Fiscal Service, Department of the Treasury, see note set out under section 53 of this title.

§ 114. Payment of annuities in coin

The Secretary of the Treasury is authorized to pay in coin such of the annuities as by the terms of any treaty of the United States with any Indian tribe are required to be paid in coin.

(R.S. § 2081.)

CODIFICATION

R.S. § 2081 derived from act Mar. 3, 1865, ch. 127, § 3, 13 Stat. 561.

§ 115. Payment of annuities in goods

The President may, at the request of any Indian tribe, to which an annuity is payable in money, cause the same to be paid in goods, purchased as provided in section 91 of this title.

(R.S. § 2082.)

REFERENCES IN TEXT

Section 91 of this title, referred to in text, was omitted from the Code. See section 5 of Title 41, Public Contracts.

CODIFICATION

R.S. § 2082 derived from act June 30, 1834, ch. 162, § 12, 4 Stat. 737.

§ 116. Indians 18 years of age to have right to receipt for annuity

All Indians, when they shall arrive at the age of eighteen years, shall have the right to receive and receipt for all annuity money that may be due or become due to them, if not otherwise incapacitated under the regulations of the Indian Office.

(Mar. 1, 1899, ch. 324, § 8, 30 Stat. 947.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 117. Repealed. Pub. L. 98–64, § 4(a), Aug. 2, 1983, 97 Stat. 366

Section, act June 10, 1896, ch. 398, § 1, 29 Stat. 336, directed that any sums of money to be paid per capita to individual Indians be paid to said Indians by an officer of the Government designated by the Secretary of the Interior. See section 117a et seq. of this title.

§ 117a. Per capita distribution of funds to tribe members

Funds which are held in trust by the Secretary of the Interior (hereinafter referred to as the ''Secretary'') for an Indian tribe and which are to be distributed per capita to members of that tribe may be so distributed by either the Secretary or, at the request of the governing body of the tribe and subject to the approval of the Secretary, the tribe. Any funds so distributed shall be paid by the Secretary or the tribe directly to the members involved or, if such members are minors or have been legally determined not competent to handle their own affairs, to a parent or guardian of such members or to a trust fund for such minors or legal incompetents as determined by the governing body of the tribe.

(Pub. L. 98–64, § 1, Aug. 2, 1983, 97 Stat. 365.)

SHORT TITLE

Pub. L. 98–64, Aug. 2, 1983, 97 Stat. 365, which enacted sections 117a to 117c and repealed section 117 of this title and repealed section 19 (per capita payments provisions) of act June 28, 1898, ch. 517, 30 Stat. 502, is popularly known as the ''Per Capita Act''.

§ 117b. Distribution of funds

(a) Previous contractual obligations; tax exemption

Funds distributed under sections 117a to 117c of this title shall not be liable for the payment

of previously contracted obligations except as may be provided by the governing body of the tribe and distributions of such funds shall be subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466), as amended [25 U.S.C. 1407].

(b) Funds appropriated in satisfaction of judgments

Nothing in sections 117a to 117c of this title shall affect the requirements of the Act of October 19, 1973 (87 Stat. 466), as amended [25 U.S.C. 1401 et seq.], or of any plan approved thereunder, with respect to the use or distribution of funds subject to that Act: *Provided*, That per capita payments made pursuant to a plan approved under that Act may be made by an Indian tribe as provided in section 117a of this title if all other provisions of the 1973 Act are met, including but not limited to, the protection of the interests of minors and incompetents in such funds.

(c) Shoshone Tribe and Arapahoe Tribe of the Wind River Reservation, Wyoming

Nothing in sections 117a to 117c of this title, except the provisions of subsection (a) of this section, shall apply to the Shoshone Tribe and the Arapahoe Tribe of the Wind River Reservation, Wyoming.

(Pub. L. 98–64, § 2, Aug. 2, 1983, 97 Stat. 365.)

REFERENCES IN TEXT

Act of October 19, 1973, referred to in subsec. (b), is Pub. L. 93–134, Oct. 19, 1973, 87 Stat. 466, as amended, known as the Indian Tribal Judgment Funds Use or Distribution Act, which is classified generally to chapter 16 (§ 1401 et seq.) of this title. For complete classification of this Act to the Code, see section 1401(c) of this title and Tables.

§ 117c. Standards for approval of tribal payments; United States not liable for distribution of funds; continuing responsibility under other provisions

(a) The Secretary shall, by regulation, establish reasonable standards for the approval of tribal payments pursuant to section 117a of this title and, where approval is given under such regulations, the United States shall not be liable with respect to any distribution of funds by a tribe under sections 117a to 117c of this title.

(b) Nothing in sections 117a to 117c of this title shall otherwise absolve the United States from any other responsibility to the Indians, including those which derive from the trust relationship and from any treaties, Executive orders, or agreements between the United States and any Indian tribe.

(Pub. L. 98–64, § 3, Aug. 2, 1983, 97 Stat. 365.)

§ 118. Payments in satisfaction of judgments

Payments to Indians made from moneys appropriated by Congress in satisfaction of the judgment of any court shall be made under the direction of the officers of the Interior Department charged by law with the supervision of Indian affairs, and all such payments shall be accounted for to the Treasury in conformity with law.

(Mar. 3, 1911, ch. 210, § 28, 36 Stat. 1077.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Transfer of disbursement functions of all Government agencies with certain exceptions to the Fiscal Service, Department of the Treasury, see note set out under section 53 of this title.

§ 119. Allotment of tribal funds to individual Indians

The Secretary of the Interior is authorized, in his discretion, from time to time, to designate any individual Indian belonging to any tribe or tribes whom he may deem to be capable of managing his or her affairs, and he may cause to be apportioned and allotted to any such Indian his or her pro rata share of any tribal or trust funds on deposit in the Treasury of the United States to the credit of the tribe or tribes of which said Indian is a member, and the amount so apportioned and allotted shall be placed to the credit of such Indian upon the books of the Treasury, and the same shall thereupon be subject to the order of such Indian: *Provided*, That no apportionment or allotment shall be made to any Indian until such Indian has first made an application therefor: *Provided further*, That the Secretaries of the Interior and of the Treasury are directed to withhold from such apportionment and allotment a sufficient sum of the said Indian funds as may be necessary or required to pay any existing claims against said Indians that may be pending for settlement by judicial determination in the United States Court of Federal Claims or in the Executive Departments of the Government, at time of such apportionment and allotment.

(Mar. 2, 1907, ch. 2523, § 1, 34 Stat. 1221; Pub. L. 97–164, title I, § 160(a)(7), Apr. 2, 1982, 96 Stat. 48; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 120. Per capita payments to enrolled members of Choctaw and Chickasaw Tribes

The Secretary of the Interior, under rules and regulations to be prescribed by him, is authorized to make per capita payments of not to exceed $200 annually to the enrolled members of the Choctaw and Chickasaw Tribes of Indians of Oklahoma, entitled under existing law to share in the funds of said tribes, or to their lawful heirs, of all the available money held by the Government of the United States for the benefit of said tribes in excess of that required for expenditures authorized by annual appropriations made therefrom or by existing law.

(Feb. 14, 1920, ch. 75, § 18, 41 Stat. 427.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 121. Payment of share of tribal funds to helpless Indians

The pro rata share of any Indian who is mentally or physically incapable of managing his or her own affairs may be withdrawn from the Treasury in the discretion of the Secretary of the Interior and expended for the benefit of such Indian under such rules, regulations, and conditions as the said Secretary may prescribe: *Provided*, That said funds of any Indian shall not be withdrawn from the Treasury until needed by the Indian and upon his application and when approved by the Secretary of the Interior.

(Mar. 2, 1907, ch. 2523, § 2, 34 Stat. 1221; May 18, 1916, ch. 125, § 1, 39 Stat. 128.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 122. Limitation on application of tribal funds

No funds belonging to any Indian tribe with which treaty relations exist shall be applied in any manner not authorized by such treaty, or by express provisions of law; nor shall money appropriated to execute a treaty be transferred or applied to any other purpose, unless expressly authorized by law.

(R.S. § 2097.)

CODIFICATION

R.S. § 2097 derived from act July 26, 1866, ch. 266, § 2, 14 Stat. 280.

§ 123. Expenditure from tribal funds without specific appropriations

No money shall be expended from Indian tribal funds without specific appropriation by Congress except as follows: Equalization of allotments, education of Indian children in accordance with existing law, per capita and other payments, all of which are hereby continued in full force and effect: *Provided*, That this shall not change existing law with reference to the Five Civilized Tribes.

(May 18, 1916, ch. 125, § 27, 39 Stat. 158.)

§ 123a. Tribal funds; use to purchase insurance for protection of tribal property

On and after April 13, 1926, the funds of any tribe of Indians under the control of the United States may be used for payments of insurance premiums for protection of the property of the tribe against fire, theft, tornado, hail, earthquake, or other elements and forces of nature, and for protection against liability on account of injuries or damages to persons or property and other like claims.

(Apr. 13, 1926, ch. 118, 44 Stat. 242; Aug. 2, 1946, ch. 754, 60 Stat. 852.)

AMENDMENTS

1946—Act Aug. 2, 1946, provided for use of funds to pay premiums on personal and property damage insurance.

§ 123b. Tribal funds for traveling and other expenses

On and after May 9, 1938, tribal funds shall be available for appropriation by Congress for traveling and other expenses, including supplies and equipment, of members of tribal councils, business committees, or other tribal organizations, when engaged on business of the tribes.

(May 9, 1938, ch. 187, § 1, 52 Stat. 315.)

§ 123c. Advancement of tribal funds to Indian tribes; miscellaneous authorized purposes

On and after October 12, 1984, tribal funds may be advanced to Indian tribes during each fiscal year for such purposes as may be designated by the governing body of the particular tribe involved and approved by the Secretary including: expenditures for the benefit of Indians and Indian tribes; care, tuition, and other assistance to Indian children attending public and private schools (which may be paid in advance or from date of admission); purchase of land and improvements on land, title to which shall be taken in the name of the United States in trust for the tribe for which purchased; lease of lands and water rights; compensation and expenses of attorneys and other persons employed by Indian tribes under approved contracts; pay, travel, and other expenses of tribal officers, councils, committees, and employees thereof, or other tribal organizations, including mileage for use of privately owned automobiles and per diem in lieu of subsistence at rates established administratively but not to exceed those applicable to civilian employees of the Government; and relief of Indians, including cash grants.

(Pub. L. 98–473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1849.)

§ 123d. Additional appropriations from tribal funds

In addition to the tribal funds authorized to be expended by existing law, there is appropriated

in fiscal year 1988 and thereafter to the Secretary of the Interior for the benefit of the tribes on whose behalf such funds were collected, not to exceed $1,000,000 in each fiscal year from tribal funds not otherwise available for expenditure.

(Pub. L. 100–202, § 101(g) [title I, § 100], Dec. 22, 1987, 101 Stat. 1329–213, 1329–230.)

§ 124. Expenditures from tribal funds of Five Civilized Tribes without specific appropriations

No money shall be expended from tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress.

(May 24, 1922, ch. 199, 42 Stat. 575.)

§ 125. Expenditure of moneys of tribes of Quapaw Agency

No moneys shall be expended from tribal or individual funds belonging to the Quapaw or other tribes of Indians of the Quapaw Agency in the State of Oklahoma without specific authority of law.

(June 30, 1919, ch. 4, § 17, 41 Stat. 20.)

§ 126. Omitted

CODIFICATION

Section, R.S. § 2098, relating to payment of claims for Indian depredations, was omitted upon recommendation by Secretary of the Interior that this section be repealed as present day conditions make it unnecessary.

§ 127. Moneys or annuities of hostile Indians

No moneys or annuities stipulated by any treaty with an Indian tribe for which appropriations are made shall be expended for, or paid, or delivered to any tribe which, since the next preceding payment under such treaty, has engaged in hostilities against the United States, or against its citizens peacefully or lawfully sojourning or traveling within its jurisdiction at the time of such hostilities; nor in such case shall such stipulated payments or deliveries be resumed until new appropriations shall have been made therefor by Congress.

(R.S. § 2100; May 29, 1928, ch. 901, § 1(81), 45 Stat. 992.)

CODIFICATION

R.S. § 2100 derived from act Mar. 2, 1867, ch. 173, § 2, 14 Stat. 515.

AMENDMENTS

1928—Act May 29, 1928, struck out provision requiring the Commissioner of Indian Affairs to make periodic reports to Congress concerning hostilities with any tribes with which the United States has treaty stipulations.

§ 128. Appropriations not paid to Indians at war with United States

None of the appropriations made for the Indian Service shall be paid to any band of Indians or any portion of any band while at war with the United States or with the white citizens of any of the States or Territories.

(Mar. 3, 1875, ch. 132, § 2, 18 Stat. 449.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 129. Moneys due Indians holding captives other than Indians withheld

The Secretary of the Interior is authorized to withhold, from any tribe of Indians who may hold any captives other than Indians, any moneys due them from the United States until said captives shall be surrendered to the lawful authorities of the United States.

(Mar. 3, 1875, ch. 132, § 1, 18 Stat. 424.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 130. Withholding of moneys or goods on account of intoxicating liquors

No annuities, or moneys, or goods, shall be paid or distributed to Indians while they are under the influence of any description of intoxicating liquor, nor while there are good and sufficient reasons leading the officers or agents, whose duty it may be to make such payments or distribution, to believe that there is any species of intoxicating liquor within convenient reach of the Indians, nor until the chiefs and headmen of the tribe shall have pledged themselves to use all their influence and to make all proper exertions to prevent the introduction and sale of such liquor in their country.

(R.S. § 2087.)

CODIFICATION

R.S. § 2087 derived from act Mar. 3, 1847, ch. 66, § 3, 9 Stat. 203.

§ 131. Advances to disbursing officers

No superintendent of Indian affairs, or Indian agent, or other disbursing officer in such service, shall have advanced to him, on Indian or public account, any money to be disbursed in future, until such superintendent, agent, or officer in such service has settled his accounts of the preceding year, and has satisfactorily shown that all balances in favor of the Government, which may appear to be in his hands, are ready to be paid over on the order of the Secretary of the Interior.

(R.S. § 2092.)

CODIFICATION

R.S. § 2092 derived from act June 27, 1846, ch. 34, § 1, 9 Stat. 20.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with

power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Transfer of disbursement functions of all Government agencies with certain exceptions to the Fiscal Service, Treasury Department, see note set out under section 53 of this title.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

SUPERINTENDENT OF INDIAN AFFAIRS

No appropriation for any superintendent of Indian affairs has been made since act Mar. 3, 1877, ch. 101, §1, 19 Stat. 271.

§ 132. Mode of distribution of goods

Whenever goods and merchandise are delivered to the chiefs of a tribe, for the tribe, such goods and merchandise shall be turned over by the agent or superintendent of such tribe to the chiefs in bulk, and in the original package, as nearly as practicable, and in the presence of the headmen of the tribe, if practicable, to be distributed to the tribe by the chiefs in such manner as the chiefs may deem best, in the presence of the agent or superintendent.

(R.S. §2090.)

CODIFICATION

R.S. §2090 derived from act Apr. 10, 1869, ch. 16, §2, 16 Stat. 39.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 133. Rolls of Indians entitled to supplies

For the purpose of properly distributing the supplies appropriated for the Indian Service, it is made the duty of each agent in charge of Indians and having supplies to distribute, to make out, at the commencement of each fiscal year, rolls of the Indians entitled to supplies at the agency, with the names of the Indians and of the heads of families or lodges, with the number in each family or lodge, and to give out supplies to the heads of families, and not to the heads of tribes or bands, and not to give out supplies for a greater length of time than one week in advance.

(Mar. 3, 1875, ch. 132, §4, 18 Stat. 449.)

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 134. Appropriations for supplies available immediately; time for distribution

So much of the appropriations of any annual Indian Appropriation Act as may be required to pay for goods and supplies, for expenses incident to their purchase, and for transportation of the same, for the fiscal year for which such appropriations are made, shall be immediately available, upon the approval of such Act, but no such goods or supplies shall be distributed or delivered to any of said Indians prior to the beginning of such fiscal year.

(Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

§ 135. Supplies distributed so as to prevent deficiencies

It shall be the duty of the Secretary of the Interior, and the officers charged by law with the distribution of supplies to the Indians, under appropriations made by law, to distribute them and pay them out to the Indians entitled to them, in such proper proportions as that the amount of appropriation made for the current year shall not be expended before the end of such current year, so as to prevent deficiencies; and no expenditure shall be made or liability incurred on the part of the Government on account of the Indian Service for any fiscal year (unless in compliance with existing law) beyond the amount of money previously appropriated for said service during such year.

(Mar. 3, 1875, ch. 132, §6, 18 Stat. 450.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 136. Commutation of rations and other supplies; payment per capita

When, in the judgment of the Secretary of the Interior, any Indian tribe, or part thereof, who are receiving rations and clothing and other supplies under the Act of July 1, 1898, chapter 545, are sufficiently advanced in civilization to purchase such rations and clothing and other supplies judiciously, they may commute the same and pay the value thereof in money per capita to such tribe or part thereof, the manner of such payment to be prescribed by the Secretary of the Interior.

(July 1, 1898, ch. 545, §7, 30 Stat. 596.)

REFERENCES IN TEXT

Act of July 1, 1898, referred to in text, is act July 1, 1898, ch. 545, 30 Stat. 573, as amended, which enacted sections 32, 136, and 191 of this title and amended section 27 of this title. For complete classification of this Act to the Code, see Tables.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 137. Supplies distributed to able-bodied males on condition

For the purpose of inducing Indians to labor and become self-supporting, it is provided that, in distributing the supplies and annuities to the Indians for whom the same are appropriated, the agent distributing the same shall require all able-bodied male Indians between the ages of eighteen and forty-five to perform service upon the reservation, for the benefit of themselves or

of the tribe, at a reasonable rate, to be fixed by the agent in charge, and to an amount equal in value to the supplies to be delivered; and the allowances provided for such Indians shall be distributed to them only upon condition of the performance of such labor, under such rules and regulations as the agent may prescribe: *Provided*, That the Secretary of the Interior may, by written order, except any particular tribe, or portion of tribe, from the operation of this provision where he deems it proper and expedient.

(Mar. 3, 1875, ch. 132, § 3, 18 Stat. 449.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 138. Goods withheld from chiefs violating treaty stipulations

No delivery of goods or merchandise shall be made to the chiefs of any tribe, by authority of any treaty, if such chiefs have violated the stipulations contained in such treaty upon their part.

(R.S. § 2101.)

CODIFICATION

R.S. § 2101 derived from act Apr. 10, 1869, ch. 16, § 2, 16 Stat. 39.

§ 139. Appropriations for subsistence

The Secretary of the Interior, under the direction of the President, may use any surplus that may remain in any of the appropriations for the purchase of subsistence for the several Indian tribes, to an amount not exceeding $25,000 in the aggregate, to supply any subsistence deficiency that may occur: *Provided*, That any diversions which shall be made under authority of this section shall be reported in detail, and the reason therefor, to Congress, at the session of Congress next succeeding such diversion.

(Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 140. Diversion of appropriations for employees and supplies

The several appropriations made for millers, blacksmiths, engineers, carpenters, physicians, and other persons, and for various articles provided for by treaty stipulation for the several Indian tribes, may be diverted to other uses for the benefit of said tribes, respectively, within the discretion of the President, and with the consent of said tribes, expressed in the usual manner; and he shall cause report to be made to Congress, at its next session thereafter of his action under this provision.

(Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Interior of authority vested in President by this section, see Ex. Ord. No. 10250, June 5, 1951, 16 F.R. 5385, set out as a note under section 301 of Title 3, The President.

§ 141. Omitted

CODIFICATION

Section, R.S. § 2110, which related to issuance of army rations to Indians, was omitted on recommendation of Secretary of the Interior that this section be repealed because the practice of issuing army rations to Indians is no longer in use.

§ 142. Repealed. May 29, 1928, ch. 901, § 1(87), 45 Stat. 992

Section, act May 18, 1916, ch. 125, § 27, 39 Stat. 158, related to annual reports to Congress of tribal financial matters.

§ 143. Repealed. Aug. 30, 1954, ch. 1076, § 1(24), 68 Stat. 968

Section, act Mar. 3, 1911, ch. 210, § 27, 36 Stat. 1077, required Secretary of the Interior to submit an annual report to Speaker of House of Representatives of fiscal affairs of all Indian tribes for whose benefit expenditures from either public or tribal funds were made by any officer, clerk, or employee in Department of the Interior.

§ 144. Repealed. May 29, 1928, ch. 901, § 1(66), 45 Stat. 991

Section, act Aug. 1, 1914, ch. 222, § 1, 38 Stat. 587, related to an annual report of moneys appropriated for encouragement of industry.

§ 145. Accounts between United States and tribes under reimbursable appropriations

The Secretary of the Interior shall cause to be stated annual accounts between the United States and each tribe of Indians arising under appropriations made, which by law are required to be reimbursed to the United States, crediting in said accounts the sums so reimbursed, if any; and the Secretary of the Interior shall pay, out of any fund or funds belonging to such tribe or tribes of Indians applicable thereto and held by the United States in trust or otherwise, all balances of accounts due to the United States and not already reimbursed to the Treasury, and deposit such sums in the Treasury as miscellaneous receipts; and such accounts shall be received and examined by the Government Accountability Office and the balances arising thereon certified to the Secretary of the Treasury.

(Apr. 4, 1910, ch. 140, § 1, 36 Stat. 270; June 10, 1921, ch. 18, title III, § 304, 42 Stat. 24; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in

the Appendix to Title 5, Government Organization and Employees.

''Government Accountability Office'' substituted in text for ''General Accounting Office'' pursuant to section 8(b) of Pub. L. 108–271, set out as a note under section 702 of Title 31, Money and Finance, which redesignated the General Accounting Office and any references thereto as the Government Accountability Office. Previously, ''General Accounting Office'' substituted in text for ''proper auditor of the Treasury Department'' pursuant to act June 10, 1921, which transferred all powers and duties of the Comptroller, six auditors, and certain other employees of the Treasury to the General Accounting Office. See section 701 et seq. of Title 31.

§ 146. Report of Indians present and receiving food

Whenever the issue of food, clothing, or supplies of any kind to Indians is provided for, it shall be the duty of the agent or commissioner issuing the same, at such issue thereof, whether it be both of food and clothing, or either of them, or of any kind of supplies, to report to the Commissioner of Indian Affairs the number of Indians present and actually receiving the same.

(R.S. § 2109.)

CODIFICATION

R.S. § 2109 derived from act Feb. 14, 1873, ch. 138, § 7, 17 Stat. 463, 464.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 147. Appropriations for specified buildings; use for transportation of materials

Appropriations for specified buildings in the Indian Service shall be used for the transportation of materials purchased therefrom.

(Jan. 12, 1927, ch. 27, § 1, 44 Stat. 939.)

§ 148. Appropriations for supplies; transfer to Indian Service supply fund; expenditure

From time to time there is authorized to be transferred from each or any appropriation or fund available for the purchase of supplies for the Indian Service, to a fund to be set up and carried on the books of the Treasury as an Indian Service supply fund, such amounts as the Secretary of the Interior may estimate to be required to pay for supplies purchased through Indian warehouses for the Indian field service; and the expenditure of the said Indian Service supply fund for the purpose stated is hereby authorized, necessary adjustments to be made thereafter to the end that each appropriation and fund ultimately will be charged only with the cost of the supplies legally chargeable thereto.

(Jan. 12, 1927, ch. 27, § 1, 44 Stat. 939.)

SUBCHAPTER III—DEPOSIT, CARE, AND INVESTMENT OF INDIAN MONEYS

§ 151. Deposits in bank by disbursing agents

Any United States Indian agent, superintendent, or other disbursing agent of the Indian Service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such national bank or banks as he may select: *Provided*, That the bank or banks so selected by him shall first execute to said disbursing agent a bond, with approved surety, in such an amount as will properly safeguard the funds to be deposited. Such bond shall be subject to the approval of the Secretary of the Interior.

(Apr. 30, 1908, ch. 153, 35 Stat. 73; June 25, 1910, ch. 431, § 1, 36 Stat. 855; Mar. 3, 1928, ch. 122, 45 Stat. 161; Apr. 30, 1934, ch. 169, 48 Stat. 648.)

CODIFICATION

This section is also set out in the last two provisos of section 372 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Transfer of disbursement functions of all Government agencies with certain exceptions to the Fiscal Service, Treasury Department, see note set out under section 53 of this title.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 152. Proceeds of sales of Indian lands

All moneys received from the sales of lands that have been, or may be, ceded to the United States by Indian tribes, by treaties providing for the investment or payment to the Indians, parties thereto, of the proceeds of the lands ceded by them, respectively, after deducting the expenses of survey and sale, any sums stipulated to be advanced, and the expenses of fulfilling any engagements contained therein, shall be paid into the Treasury in the same manner that moneys received from the sales of public lands are paid into the Treasury.

(R.S. § 2093.)

CODIFICATION

R.S. § 2093 derived from act Jan. 9, 1837, ch. 1, § 1, 5 Stat. 135.

§ 153. Appropriation to carry out treaties

All sums that are or may be required to be paid, and all moneys that are or may be required to be invested by the treaties mentioned in section 152 of this title are appropriated in conformity to them, and shall be drawn from the Treasury as other public moneys are drawn therefrom, under such instructions as may from time to time be given by the President.

(R.S. § 2094.)

CODIFICATION

R.S. § 2094 derived from act Jan. 9, 1837, ch. 1, § 2, 5 Stat. 135.

§ 154. Proceeds of sales of lands not subject to certain deductions

No part of the expenses of the public lands service shall be deducted from the proceeds of Indian lands sold through the Bureau of Land Management, except as authorized by the treaty or agreement providing for the disposition of the lands.

(July 4, 1884, ch. 180, § 10, 23 Stat. 98; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

''Bureau of Land Management'' substituted in text for ''General Land Office'' pursuant to section 403 of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5, which established the Bureau and transferred thereto the functions of the General Land Office.

§ 155. Disposal of miscellaneous revenues from Indian reservations, etc.

All miscellaneous revenues derived from Indian reservations, agencies, and schools, except those of the Five Civilized Tribes and not the result of the labor of any member of such tribe, which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption ''Indian moneys, proceeds of labor'', and are made available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds, imposed by sections 123 and 142[1] of this title.

(Mar. 3, 1883, ch. 141, § 2, 22 Stat. 590; Mar. 2, 1887, ch. 320, 24 Stat. 463; May 17, 1926, ch. 309, § 1, 44 Stat. 560; May 29, 1928, ch. 901, § 1(68), 45 Stat. 991.)

REFERENCES IN TEXT

Section 142 of this title, referred to in text, was repealed by act May 29, 1928, ch. 901, § 1(87), 45 Stat. 992.

REPEALS

Act May 29, 1928, repealed the provisions of acts Mar. 3, 1883 and Mar. 2, 1887, which related to Indian moneys, proceeds of labor.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 155a. Transferred

CODIFICATION

Section, act May 17, 1926, ch. 309, § 1, 44 Stat. 560, which related to disposal of miscellaneous revenues from Indian reservations, was merged into section 155 of this title.

§ 155b. Proceeds of labor accounts; deposits limited to funds held in trust for Indian tribes or individuals

Except in the case of funds held in trust for Indian tribes or individuals, the funds available for expenditure under the ''Indian moneys, proceeds of labor'' accounts authorized by section 155 of this title may be expended until September 30, 1982 for any purpose for which funds are appropriated under the subheading ''Operation of Indian Programs''.

No funds shall be deposited in such ''Indian money, proceeds of labor'' (IMPL) accounts after September 30, 1982. The unobligated balance in IMPL accounts as of the close of business on September 30, 1982, including the income resulting from the investment of funds from such accounts prior to such date, shall be transferred to and held in escrow accounts at the locations of the IMPL accounts from which they are transferred. Funds in such escrow accounts may be invested as provided in section 162a of this title and the investment income added to such accounts. The Secretary shall determine no later than September 30, 1985 (after consultation with appropriate tribes and individual Indians) the extent to which the funds held in such escrow accounts represent income from the investment of special deposits relating to specific tribes or individual Indians. Upon such a determination by the Secretary and express acceptance of the determination by the beneficiary, the Secretary shall transfer such funds to trust accounts for such tribes or individual Indians. Not more than ten percent of the funds transferred to trust accounts for any tribe or individual Indian under this provision may be utilized to pay for legal or other representation relating to claims for such funds. Not to exceed two percent of the funds transferred from the IMPL accounts shall be available to reimburse the Bureau of Indian Affairs for administrative expenses incurred in determining ownership of the funds. Acceptance of a determination by the Secretary and the transfer of funds under this provision shall constitute a complete release and waiver of any and all claims by the beneficiary against the United States relating to the unobligated balance of IMPL accounts as of the close of business on September 30, 1982. During the period of October 1, 1985 through September 30, 1987, or earlier if a Secretarial determination on ownership and appropriate fund transfers has been completed, the funds remaining in such escrow accounts because they have not been transferred to trust accounts, may be expended subject to the approval of the Secretary for any purpose authorized under section 13 of this title and requested by the respective governing bodies of the tribes at the locations where such accounts are maintained. The unobligated balances of such escrow accounts as of the close of business on September 30, 1987, shall be deposited into miscellaneous receipts of the Treasury.

(Pub. L. 97–100, title I, § 100, Dec. 23, 1981, 95 Stat. 1400; Pub. L. 97–257, title I, § 100, Sept. 10, 1982, 96 Stat. 839.)

[1] See References in Text note below.

REFERENCES IN TEXT

The purposes for which funds are appropriated under the subheading ''Operation of Indian Programs'', referred to in text, are the purposes enumerated in the Department of the Interior and Related Agencies Appropriation Act, 1982, Pub. L. 97–100, title I, § 100, Dec. 23, 1981, 95 Stat. 1399.

AMENDMENTS

1982—Pub. L. 97–257 substituted ''No funds shall be deposited in such 'Indian money, proceeds of labor' (IMPL) accounts after September 30, 1982'' for ''On September 30, 1982, the balance of such accounts (except for the funds held in trust for Indian tribes or individuals, and not to exceed $10,000,000 which shall be available until expended by eligible tribes for purposes approved by the Bureau of Indian Affairs) shall be deposited into miscellaneous receipts of the Treasury to offset outlays of the Bureau of Indian Affairs and thereafter no funds shall be deposited in such accounts other than funds held in trust for Indian tribes or individuals'' and inserted provisions that the unobligated balance in IMPL accounts as of the close of business on September 30, 1982, including the income resulting from the investment of funds from such accounts prior to such date, be transferred to and held in escrow accounts at the locations of the IMPL accounts from which they are transferred, that Funds in such escrow accounts may be invested as provided in section 162a of this title and the investment income added to such accounts, that the Secretary determine no later than September 30, 1985 (after consultation with appropriate tribes and individual Indians) the extent to which the funds held in such escrow accounts represent income from the investment of special deposits relating to specific tribes or individual Indians, that upon such a determination by the Secretary and express acceptance of the determination by the beneficiary, the Secretary transfer such funds to trust accounts for such tribes or individual Indians, that not more than ten percent of the funds transferred to trust accounts for any tribe or individual Indian under this provision be utilized to pay for legal or other representation relating to claims for such funds, that not to exceed two percent of the funds transferred from the IMPL accounts be available to reimburse the Bureau of Indian Affairs for administrative expenses incurred in determining ownership of the funds, that acceptance of a determination by the Secretary and the transfer of funds under this provision constitute a complete release and waiver of any and all claims by the beneficiary against the United States relating to the unobligated balance of IMPL accounts as of the close of business on September 30, 1982, that during the period of October 1, 1985 through September 30, 1987, or earlier if determination on ownership and appropriate fund transfers has been completed, the funds remaining in such escrow accounts may be expended subject to the approval of the Secretary under section 13 of this title and requested by the respective governing bodies of the tribes, and that the unobligated balances of escrow accounts as of the close of business on September 30, 1987, be deposited into miscellaneous receipts of the Treasury.

§ 156. Deposit of funds from sales of lands and property of Five Civilized Tribes

The net receipts from the sales of surplus and unallotted lands and other tribal property belonging to any of the Five Civilized Tribes, after deducting the necessary expense of advertising and sale, may be deposited in national or State banks in the State of Oklahoma in the discretion of the Secretary of the Interior, such depositories to be designated by him under such rules and regulations governing the rate of interest thereon, the time of deposit and withdrawal thereof, and the security therefor, as he may prescribe. The interest accruing on such funds may be used to defray the expense of the per capita payments of such funds.

(Mar. 3, 1911, ch. 210, § 17, 36 Stat. 1070.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 157. Investments of stock required by treaties

All investments of stock, that are or may be required by treaties with the Indians, shall be made under the direction of the President; and special accounts of the funds under such treaties shall be kept at the Treasury, and statements thereof be annually laid before Congress.

(R.S. § 2095.)

CODIFICATION

R.S. § 2095 derived from act Jan. 9, 1837, ch. 1, § 3, 5 Stat. 135.

§ 158. Investment of proceeds of lands

The Secretary of the Interior shall invest in a manner which shall be in his judgment most safe and beneficial for the fund, all moneys that may be received under treaties containing stipulations for the payment to the Indians, annually, of interest upon the proceeds of the lands ceded by them; and he shall make no investment of such moneys, or of any portion, at a lower rate of interest than 5 per centum per annum.

(R.S. § 2096.)

CODIFICATION

R.S. § 2096 derived from act Jan. 9, 1837, ch. 1, § 4, 5 Stat. 135.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 159. Moneys due incompetents or orphans

The Secretary of the Interior is directed to cause settlements to be made with all persons appointed by the Indian councils to receive moneys due to incompetent or orphan Indians, and to require all moneys found to be due to such incompetent or orphan Indians to be returned to the Treasury; and all moneys so returned shall bear interest at the rate of 6 per centum per annum, until paid by order of the Secretary of the Interior to those entitled to the same. No money shall be paid to any person appointed by any Indian council to receive moneys due to incompetent or orphan Indians, but the same shall remain in the Treasury of the United States until ordered to be paid by the Secretary to those entitled to receive the same, and shall bear 6 per centum interest until so paid.

(R.S. § 2108.)

CODIFICATION

R.S. § 2108 derived from act July 5, 1862, ch. 135, § 6, 12 Stat. 529.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 160. Custody of stocks or bonds held in trust for tribes

All stocks, bonds, or other securities or evidences of indebtedness held by the Secretary of the Interior on June 10, 1876, in trust for the benefit of certain Indian tribes shall, within thirty days from that date, be transferred to the Treasurer of the United States, who shall become the custodian thereof; and it shall be the duty of said Treasurer to collect all interest falling due on said bonds, stocks, and so forth, and deposit the same in the Treasury of the United States, and to issue certificates of deposit therefor, in favor of the Secretary of the Interior, as trustee for various Indian tribes. And the Treasurer of the United States shall also become the custodian of all bonds and stocks which may be purchased for the benefit of any Indian tribe or tribes after the transfer of funds herein authorized, and shall make all purchases and sales of bonds and stocks authorized by treaty stipulations or by acts of Congress when requested so to do by the Secretary of the Interior: *Provided*, That nothing in this section shall in any manner impair or affect the supervisory and appellate powers and duties in regard to Indian affairs which may be vested in the Secretary of the Interior as trustee for various Indian tribes, except as to the custody of said bonds and the collection of interest thereon as hereinbefore mentioned.

(June 10, 1876, ch. 122, 19 Stat. 58.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury, with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

§ 161. Deposit in Treasury of trust funds

The Secretary of the Interior is authorized to deposit, in the Treasury of the United States, any and all sums held by him on April 1, 1880, or which may be received by him, as Secretary of the Interior and trustee of various Indian tribes, on account of the redemption of United States bonds, or other stocks and securities belonging to the Indian trust fund, and all sums received on account of sales of Indian trust lands, and the sales of stocks lately purchased for temporary investment, whenever he is of the opinion that the best interests of the Indians will be promoted by such deposits, in lieu of investments; and the United States shall pay interest semiannually, from the date of deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress.

(Apr. 1, 1880, ch. 41, 21 Stat. 70.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

APPROPRIATIONS

Section 2 of act June 26, 1934, ch. 756, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation provided for in the last clause of this section under the title ''Interest on Indian trust funds'' effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.

§ 161a. Tribal funds in trust in Treasury Department; investment by Secretary of the Treasury; maturities; interest; funds held in trust for individual Indians

(a) All funds held in trust by the United States and carried in principal accounts on the books of the United States Treasury to the credit of Indian tribes shall be invested by the Secretary of the Treasury, at the request of the Secretary of the Interior, in public debt securities with maturities suitable to the needs of the fund involved, as determined by the Secretary of the Interior, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(b) All funds held in trust by the United States and carried in principal accounts on the books of the United States Treasury to the credit of individual Indians shall be invested by the Secretary of the Treasury, at the request of the Secretary of the Interior, in public debt securities with maturities suitable to the needs of the fund involved, as determined by the Secretary of the Interior, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable securities.

(Feb. 12, 1929, ch. 178, § 1, 45 Stat. 1164; June 13, 1930, ch. 483, 46 Stat. 584; Pub. L. 98–451, Oct. 4, 1984, 98 Stat. 1729; Pub. L. 103–412, title I, § 103(a), Oct. 25, 1994, 108 Stat. 4241.)

AMENDMENTS

1994—Pub. L. 103–412 designated existing provisions as subsec. (a) and added subsec. (b).

1984—Pub. L. 98–451 amended section generally, substituting provisions directing that all funds held in trust by the United States and carried in principal accounts on the books of the United States Treasury to the credit of Indian tribes be invested by the Secretary

of the Treasury, at the request of the Secretary of the Interior, in public debt securities with maturities suitable to the needs of the fund involved, as determined by the Secretary of the Interior, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities for provisions which required that all funds with account balances exceeding $500 held in trust by the United States and carried in principal accounts on the books of the Treasury Department to the credit of Indian tribes, upon which interest was not otherwise authorized by law, bear simple interest at the rate of 4 per centum per annum.

1930—Act June 13, 1930, amended section generally.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 103(d) of Pub. L. 103–412 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to interest earned on amounts deposited or invested on or after the date of the enactment of this Act [Oct. 25, 1994].''

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury, with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

§ 161b. "Indian Money, Proceeds of Labor" fund; separate accounts for respective tribes; rate of interest

All tribal funds arising under section 155 of this title on June 13, 1930, included in the fund ''Indian Money, Proceeds of Labor'', shall, on and after July 1, 1930, be carried on the books of the Treasury Department in separate accounts for the respective tribes, and all such funds with account balances exceeding $500 shall bear simple interest at the rate of 4 per centum per annum from July 1, 1930.

(Feb. 12, 1929, ch. 178, §2, as added June 13, 1930, ch. 483, 46 Stat. 584.)

§ 161c. Surplus above requirements of fund; transfer to surplus fund of Treasury; retransfer

The amount held in any tribal fund account which, in the judgment of the Secretary of the Interior, is not required for the purpose for which the fund was created, shall be covered into the surplus fund of the Treasury; and so much thereof as is found to be necessary for such purpose may at any time thereafter be restored to the account on books of the Treasury without appropriation by Congress.

(Feb. 12, 1929, ch. 178, §3, as added June 13, 1930, ch. 483, 46 Stat. 584.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 161d. Disposition of accrued interest

The interest accruing on Indian tribal funds under sections 161a to 161c of this title shall be subject to the same disposition as prescribed by existing law for the respective principal funds.

(Feb. 12, 1929, ch. 178, §4, as added June 13, 1930, ch. 483, 46 Stat. 584.)

§ 162. Repealed. June 24, 1938, ch. 648, § 2, 52 Stat. 1037

Section, act May 25, 1918, ch. 86, §28, 40 Stat. 591, related to segregation, deposit, and investment of tribal funds. See section 162a of this title.

§ 162a. Deposit of tribal funds in banks; bond or collateral security; investments; collections from irrigation projects; affirmative action required

(a) Deposit of tribal trust funds in banks

The Secretary of the Interior is hereby authorized in his discretion, and under such rules and regulations as he may prescribe, to withdraw from the United States Treasury and to deposit in banks to be selected by him the common or community funds of any Indian tribe which are, or may hereafter be, held in trust by the United States and on which the United States is not obligated by law to pay interest at higher rates than can be procured from the banks. The said Secretary is also authorized, under such rules and regulations as he may prescribe, to withdraw from the United States Treasury and to deposit in banks to be selected by him the funds held in trust by the United States for the benefit of individual Indians: *Provided*, That no individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate, subject, however, to the regulations of the Board of Governors of the Federal Reserve System in the case of member banks, and of the Board of Directors of the Federal Deposit Insurance Corporation in the case of insured nonmember banks, except that the payment of interest may be waived in the discretion of the Secretary of the Interior on any deposit which is payable on demand: *Provided further*, That no tribal or individual Indian money shall be deposited in any bank until the bank shall have furnished an acceptable bond or pledged collateral security therefor in the form of any public-debt obligations of the United States and any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, except that no such bond or collateral shall be required to be furnished by any such bank which is entitled to the benefits of section 12B of the Federal Reserve Act, with respect to any deposits of such tribal or individual funds to the extent that such deposits are insured under such section: *Provided, however*, That nothing contained in this section, or in section 12B of the Federal Reserve Act, shall operate to deprive any Indian having unrestricted funds on deposit in any such bank of the full protection afforded by section 12B of the Federal Reserve Act, irrespective of any interest such Indian may have in any restricted Indian funds on deposit in the same bank to the credit of a disbursing agent of the United States. For the purpose of this section and said Act, said unrestricted funds shall constitute a separate and distinct basis for an insurance claim: *Provided*

further, That the Secretary of the Interior, if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any tribe or individual Indian in any public-debt obligations of the United States and in any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States: *And provided further*, That the foregoing shall apply to the funds of the Osage Tribe of Indians, and the individual members thereof, only with respect to the deposit of such funds in banks.

(b) Investment of collections from irrigation projects and power operations on irrigation projects

The Secretary of the Interior is authorized to invest any operation and maintenance collections from Indian irrigation projects and revenue collections from power operations on Indian irrigation projects in—

(1) any public-debt obligations of the United States;

(2) any bonds, notes, or other obligations which are unconditionally guaranteed as to both principal and interest by the United States; or

(3) any obligations which are lawful investments for trust funds under the authority or control of the United States.

The Secretary of the Interior is authorized to use earning[1] from investments under this subsection to pay operation and maintenance expenses of the project involved.

(c) Investment of tribal trust funds in public debt obligations

(1) Notwithstanding subsection (a) of this section, the Secretary of the Interior, at the request of any Indian tribe, in the case of trust funds of such tribe, or any individual Indian, in the case of trust funds of such individual, is authorized to invest such funds, or any part thereof, in guaranteed or public debt obligations of the United States or in a mutual fund, otherwise known as an open-ended diversified investment management company if—

(A) the portfolio of such mutual fund consists entirely of public-debt obligations of the United States, or bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, or a combination thereof;

(B) the trust funds to be invested exceed $50,000;

(C) the mutual fund is registered by the Securities and Exchange Commission; and

(D) the Secretary is satisfied with respect to the security and protection provided by the mutual fund against loss of the principal of such trust funds.

(2) The Secretary, as a condition to complying with a request pursuant to paragraph (1) of this subsection, is authorized to require such tribe or individual Indian, as the case may be, to enter into an agreement with the Secretary for the purpose of relieving the United States of any liability in connection with the interest, or amount thereof, payable in connection with such trust funds so invested during the period of that investment.

(3) Investments pursuant to paragraph (1) of this subsection shall be deemed to be the same as cash or a bank deposit for purposes of section 955 of this title.

(d) Trust responsibilities of Secretary of the Interior

The Secretary's proper discharge of the trust responsibilities of the United States shall include (but are not limited to) the following:

(1) Providing adequate systems for accounting for and reporting trust fund balances.

(2) Providing adequate controls over receipts and disbursements.

(3) Providing periodic, timely reconciliations to assure the accuracy of accounts.

(4) Determining accurate cash balances.

(5) Preparing and supplying account holders with periodic statements of their account performance and with balances of their account which shall be available on a daily basis.

(6) Establishing consistent, written policies and procedures for trust fund management and accounting.

(7) Providing adequate staffing, supervision, and training for trust fund management and accounting.

(8) Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.

(June 24, 1938, ch. 648, § 1, 52 Stat. 1037; Pub. L. 98–146, title I, Nov. 4, 1983, 97 Stat. 929; Pub. L. 101–644, title III, § 302, Nov. 29, 1990, 104 Stat. 4667; Pub. L. 103–412, title I, §§ 101, 103(b), (c), Oct. 25, 1994, 108 Stat. 4240, 4241.)

REFERENCES IN TEXT

Section 12B of the Federal Reserve Act, referred to in subsec. (a), formerly classified to section 264 of Title 12, Banks and Banking, has been withdrawn from the Federal Reserve Act and incorporated in the Federal Deposit Insurance Act which is classified to chapter 16 (§ 1811 et seq.) of Title 12.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–412, § 103(b), inserted ''to withdraw from the United States Treasury and'' after ''prescribe,'' in second sentence.

Subsecs. (b), (c). Pub. L. 103–412, § 103(c), redesignated subsec. (b), relating to investment of trust funds, as (c).

Subsec. (d). Pub. L. 103–412, § 101, added subsec. (d).

1990—Subsec. (a). Pub. L. 101–644, which directed the designation of existing provisions as subsec. (a) and the addition of subsec. (b), was executed by adding subsec. (b) relating to investment of trust funds. See 1983 Amendment note below.

1983—Pub. L. 98–146 designated existing provisions as subsec. (a) and added subsec. (b).

REPEAL OF INCONSISTENT PROVISIONS AND CONSTRUCTION WITH OTHER LAWS

Section 2 of act June 24, 1938, repealed act May 25, 1918, ch. 86, § 28, 40 Stat. 591, which was contained in former section 162 of this title, and all other inconsistent acts.

Section 3 of act June 24, 1938, provided: ''Nothing contained in this act shall be construed as affecting the provisions of the Federal Reserve Act or regulations issued thereunder relating to the payment of interest on deposits.''

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with cer-

[1] So in original. Probably should be ''earnings''.

tain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 163. Roll of membership of Indian tribes

The Secretary of the Interior is authorized, wherever in his discretion such action would be for the best interest of the Indians, to cause a final roll to be made of the membership of any Indian tribe; such rolls shall contain the ages and quantum of Indian blood, and when approved by the said Secretary are declared to constitute the legal membership of the respective tribes for the purpose of segregating the tribal funds as provided in section 162[1] of this title, and shall be conclusive both as to ages and quantum of Indian blood: *Provided*, That the foregoing shall not apply to the Five Civilized Tribes or to the Osage Tribe of Indians, or to the Chippewa Indians of Minnesota, or the Menominee Indians of Wisconsin.

(June 30, 1919, ch. 4, §1, 41 Stat. 9.)

REFERENCES IN TEXT

Section 162 of this title, referred to in text, was repealed by act June 24, 1938, ch. 648, §2, 52 Stat. 1037. See section 162a of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 164. Restoration to tribal ownership of unclaimed per capita and other individual payments of tribal trust funds; deposit in general fund of the Treasury

Unless otherwise specifically provided by law, the share of an individual member of an Indian tribe or group in a per capita or other distribution, individualization, segregation, or proration of Indian tribal or group funds held in trust by the United States, or in an annuity payment under a treaty, heretofore or hereafter authorized by law, and any interest earned on such share that is properly creditable to the individual shall be restored to tribal ownership if for any reason such share cannot be paid to the individual entitled thereto and remains unclaimed for a period of six years from the date of the administrative directive to make the payment, or one year from September 22, 1961, whichever occurs later: *Provided*, That if such individual is a member of an Indian tribe or group that has no governing body recognized by the Secretary of the Interior as authorized to act on behalf of the tribe or group, such unpaid share and interest shall be regarded as not capable of restoration to a tribal or group entity and shall be deposited in the general fund of the Treasury of the United States.

(Pub. L. 87–283, §1, Sept. 22, 1961, 75 Stat. 584.)

[1] See References in Text note below.

§ 165. Notice to Congressional committees

The Secretary shall not restore to tribal ownership or deposit in the general fund of the Treasury any funds pursuant to section 164 of this title and this section until sixty calendar days (exclusive of days on which either the Senate or the House of Representatives is not in session because of an adjournment of more than three days to a day certain) after he has submitted notice of his proposed action to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives unless each of said committees has theretofore notified him that it has no objection to the proposed action.

(Pub. L. 87–283, §2, Sept. 22, 1961, 75 Stat. 584; Pub. L. 103–437, §10(b), Nov. 2, 1994, 108 Stat. 4589.)

AMENDMENTS

1994—Pub. L. 103–437 substituted ''Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives'' for ''Committees on Interior and Insular Affairs of the Senate and the House of Representatives''.

§ 166. Applicability of Federal Advisory Committee Act

The activities of the Department of the Interior associated with the Department's consultation with Indian tribes and organizations related to the management of funds held in trust by the United States for Indian tribes shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

(Pub. L. 103–435, §19, Nov. 2, 1994, 108 Stat. 4574.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in text, is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 5—PROTECTION OF INDIANS

Sec.
171 to 173. Repealed.
174. Superintendence by President over tribes west of Mississippi.
175. United States attorneys to represent Indians.
176. Survey of reservations.
177. Purchases or grants of lands from Indians.
178. Fees on behalf of Indian parties in contests under public land laws.
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181. Rights of white men marrying Indian women; tribal property.
182. Rights of Indian women marrying white men; tribal property.
183. Marriage of white men to Indian women; evidence.
184. Rights of children born of marriages between white men and Indian women.
185. Protection of Indians desiring civilized life.
186 to 189. Repealed or Omitted.
190. Sale of plants or tracts not needed for administrative or allotment purposes.
191. Repealed.
192. Sale by agents of cattle or horses not required.
193. Proceedings against goods seized for certain violations.

Sec.
194. Trial of right of property; burden of proof.
195. Repealed.
196. Sale or other disposition of dead timber.
197. Disposition of dead timber on reservations in Minnesota.
198. Contagious and infectious diseases; quarantine.
199. Access to records of Five Civilized Tribes.
199a. Custody of records; Oklahoma Historical Society.
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201. Penalties; how recovered.
202. Inducing conveyances by Indians of trust interests in lands.

§§ 171 to 173. Repealed. May 21, 1934, ch. 321, 48 Stat. 787

Section 171, R.S. § 2111, related to imposition of a penalty for sending seditious messages intending to contravene a United States treaty or law.

Section 172, R.S. § 2112, related to imposition of a penalty for carrying seditious messages intending to contravene a United States treaty or law.

Section 173, R.S. § 2113, related to imposition of a penalty for corresponding with foreign nations intending to incite Indians to war.

§ 174. Superintendence by President over tribes west of Mississippi

The President is authorized to exercise general superintendence and care over any tribe or nation which was removed upon an exchange of territory under authority of the act of May 28, 1830, ''to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi;'' and to cause such tribe or nation to be protected, at their new residence, against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatever.

(R.S. § 2114.)

CODIFICATION

R.S. § 2114 derived from act May 28, 1830, ch. 148, §§ 7, 8, 4 Stat. 412.

AMERICAN INDIAN POLICY REVIEW COMMISSION

Pub. L. 93–580, Jan. 2, 1975, 88 Stat. 1910, as amended by Pub. L. 94–80, §§ 1–4, Aug. 9, 1975, 89 Stat. 415, 416; Pub. L. 95–5, Feb. 17, 1977, 91 Stat. 13, provided for the establishment, membership, etc., of the American Indian Policy Review Commission, and for investigations, studies, and a final report respecting Indian tribal government affairs, with the Commission to cease to exist three months after submission of the final report but not later than June 30, 1977, and Congressional committee reports to Congress within two years after referral to committee of the final report by the President of the Senate and Speaker of the House.

§ 175. United States attorneys to represent Indians

In all States and Territories where there are reservations or allotted Indians the United States attorney shall represent them in all suits at law and in equity.

(Mar. 3, 1893, ch. 209, § 1, 27 Stat. 631; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

CHANGE OF NAME

''United States attorney'' substituted in text for ''United States district attorney'' on authority of act June 25, 1948. See section 541 of Title 28, Judiciary and Judicial Procedure.

§ 176. Survey of reservations

Whenever it becomes necessary to survey any Indian or other reservations, or any lands, the same shall be surveyed under the direction and control of the Bureau of Land Management, and as nearly as may be in conformity to the rules and regulations under which other public lands are surveyed.

(R.S. § 2115; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

CODIFICATION

R.S. § 2115 derived from act Apr. 8, 1864, ch. 48, § 6, 13 Stat. 41.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

''Bureau of Land Management'' substituted in text for ''General Land Office'' pursuant to section 403 of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5, which established the Bureau and transferred thereto the powers and duties of the General Land Office.

§ 177. Purchases or grants of lands from Indians

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of $1,000. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty.

(R.S. § 2116.)

CODIFICATION

R.S. § 2116 derived from act June 30, 1834, ch. 161, § 12, 4 Stat. 730.

§ 178. Fees on behalf of Indian parties in contests under public land laws

In contests initiated by or against Indians, to an entry, filing or other claims, under the laws of Congress relating to public lands for any sufficient cause affecting the legality or validity of the entry, filing or claim, the fees to be paid by and on behalf of the Indian party in any case shall be one-half of the fees provided by law in such cases, and said fees shall be paid by the

Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, on an account stated by the proper land officers through the Secretary of the Interior or such officer as he may designate.

(Mar. 3, 1893, ch. 209, § 1, 27 Stat. 631; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

"Secretary of the Interior or such officer as he may designate" substituted in text for "Commissioner of the General Land Office" on authority of section 403(d) and (e) of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5, which abolished office of Commissioner of General Land Office and transferred functions of General Land Office to Secretary of the Interior or such officers and agencies of Department of the Interior as he may designate.

§ 179. Driving stock to feed on lands

Every person who drives or otherwise conveys any stock of horses, mules, or cattle, to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, is liable to a penalty of $1 for each animal of such stock. This section shall not apply to Creek lands.

(R.S. § 2117; Mar. 1, 1901, ch. 676, § 37, 31 Stat. 871; June 30, 1902, ch. 1323, § 17, 32 Stat. 504.)

CODIFICATION

R.S. § 2117 derived from act June 30, 1834, ch. 161, § 9, 4 Stat. 730.

§ 180. Settling on or surveying lands belonging to Indians by treaty

Every person who makes a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or surveys or attempts to survey such lands, or to designate any of the boundaries by marking trees, or otherwise, is liable to a penalty of $1,000. The President may, moreover, take such measures and employ such military force as he may judge necessary to remove any such person from the lands.

(R.S. § 2118.)

CODIFICATION

R.S. § 2118 derived from act June 30, 1834, ch. 161, § 11, 4 Stat. 730.

§ 181. Rights of white men marrying Indian women; tribal property

No white man, not otherwise a member of any tribe of Indians, who may after August 9, 1888, marry an Indian woman, member of any Indian tribe in the United States, or any of its Territories except the Five Civilized Tribes in the Indian Territory, shall by such marriage after August 9, 1888, acquire any right to any tribal property, privilege, or interest whatever to which any member of such tribe is entitled.

(Aug. 9, 1888, ch. 818, § 1, 25 Stat. 392.)

§ 182. Rights of Indian women marrying white men; tribal property

Every Indian woman, member of any such tribe of Indians, who may be married after August 9, 1888, to any citizen of the United States, is hereby declared to become by such marriage a citizen of the United States, with all the rights, privileges, and immunities of any such citizen, being a married woman: *Provided*, That nothing in sections 181 to 183 of this title contained shall impair or in any way affect the right or title of such married woman to any tribal property or any interest therein.

(Aug. 9, 1888, ch. 818, § 2, 25 Stat. 392.)

§ 183. Marriage of white men to Indian women; evidence

Whenever the marriage of any white man with any Indian woman, a member of any such tribe of Indians, is required or offered to be proved in any judicial proceeding, evidence of the admission of such fact by the party against whom the proceeding is had, or evidence of general repute, or of cohabitation as married persons, or any other circumstantial or presumptive evidence from which the fact may be inferred, shall be competent.

(Aug. 9, 1888, ch. 818, § 3, 25 Stat. 392.)

§ 184. Rights of children born of marriages between white men and Indian women

All children born of a marriage solemnized prior to June 7, 1897, between a white man and an Indian woman by blood and not by adoption, where said Indian woman was on that date, or was at the time of her death, recognized by the tribe, shall have the same rights and privileges to the property of the tribe to which the mother belongs, or belonged at the time of her death, by blood, as any other member of the tribe, and no prior Act of Congress shall be construed as to debar such child of such right.

(June 7, 1897, ch. 3, 30 Stat. 90.)

§ 185. Protection of Indians desiring civilized life

Whenever any Indian, being a member of any band or tribe with whom the Government has or shall have entered into treaty stipulations, being desirous to adopt the habits of civilized life, has had a portion of the lands belonging to his tribe allotted to him in severalty, in pursuance of such treaty stipulations, the agent and superintendent of such tribe shall take such measures, not inconsistent with law, as may be necessary to protect such Indian in the quiet enjoyment of the lands so allotted to him.

(R.S. § 2119.)

CODIFICATION

R.S. § 2119 derived from act June 14, 1862, ch. 101, § 1, 12 Stat. 427.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with

power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 186. Repealed. May 21, 1934, ch. 321, 48 Stat. 787

Section, R.S. § 2120, related to trespassing on lands of civilized Indians.

§ 187. Omitted

CODIFICATION

Section, R.S. § 2121, which directed the Superintendent of Indian Affairs to suspend a trespasser (as described in section 186 of this title) who is the chief or headman of a band or tribe from his office for 3 months and to deprive him of all benefits and emoluments of such office during that time but allowed the Superintendent to restore him to his office sooner if the Superintendent should so decide, was omitted in view of the repeal of section 186 of this title.

§§ 188, 189. Repealed. Oct. 31, 1951, ch. 654, § 1(49), (50), 65 Stat. 703

Section 188, R.S. § 2122, related to sale of buildings belonging to United States.

Section 189, R.S. § 2123, related to sale of lands with buildings.

§ 190. Sale of plants or tracts not needed for administrative or allotment purposes

Subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended,[1] the Secretary of the Interior is authorized in his discretion to sell and convey by deed or patent, under such terms and conditions as he may prescribe, at not less than their appraised value, nonreservation Government tracts or plants or tribal administrative plants or reserves, or parts thereof, not exceeding forty acres in area and not exceeding $2,000 in value, not longer needed for Indian administrative or allotment purposes, and small unallotted tracts not exceeding forty acres, where a sale will serve the tribal interests. All sales made under this section shall be at public auction, to the highest and best bidder.

And the Secretary of the Interior is further authorized, where a tract to be disposed of under this section or any other Act authorizing the disposition of tribal lands requires survey as basis for a deed or patent, to accept from the grantee, in addition to the purchase price, an amount sufficient to cover the survey costs.

The net proceeds of sale of any tribal site, plant, or tract shall be deposited in the Treasury of the United States to the credit of the Indians owning the same, to be disposed of for their benefit in accordance with existing law.

(Apr. 12, 1924, ch. 93, 43 Stat. 93; Oct. 31, 1951, ch. 654, § 2(16), 65 Stat. 707.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1951—Act Oct. 31, 1951, inserted reference to applicable regulations of Federal Property and Administrative Services Act of 1949, as amended, at beginning of first par., and, in third par., struck out requirement that net proceeds of sales of Government-owned nontribal plants or lands be deposited in Treasury of United States.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 191. Repealed. Oct. 31, 1951, ch. 654, § 1(51), 65 Stat. 703

Section, acts July 1, 1898, ch. 545, § 6, 30 Stat. 596; June 25, 1910, ch. 431, § 22, 36 Stat. 861, related to transfer or sale of Government property at reservations.

§ 192. Sale by agents of cattle or horses not required

The agent of each tribe of Indians, lawfully residing in the Indian country, is authorized to sell for the benefit of such Indians any cattle, horses, or other livestock belonging to the Indians, and not required for their use and subsistence, under such regulations as shall be established by the Secretary of the Interior. But no such sale shall be made so as to interfere with the execution of any order lawfully issued by the Secretary of the Army, connected with the movement or subsistence of troops.

(R.S. § 2127; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501.)

CODIFICATION

R.S. § 2127 derived from act Mar. 3, 1865, ch. 127, § 9, 13 Stat. 563.

CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

[1] See References in Text note below.

§ 193. Proceedings against goods seized for certain violations

When goods or other property shall be seized for any violation of title 28 of the Revised Statutes it shall be lawful for the person prosecuting on behalf of the United States to proceed against such goods, or other property, in the manner directed to be observed in the case of goods, wares, or merchandise brought into the United States in violation of the revenue laws.

(R.S. § 2125.)

REFERENCES IN TEXT

Title 28 of the Revised Statutes, referred to in text, was in the original "this Title", meaning title 28 of the Revised Statutes, consisting of R.S. §§ 2039 to 2157. For complete classification of R.S. §§ 2039 to 2157 to the Code, see Tables.

CODIFICATION

R.S. § 2125 derived from act June 30, 1834, ch. 161, § 28, 4 Stat. 734.

§ 194. Trial of right of property; burden of proof

In all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership.

(R.S. § 2126.)

CODIFICATION

R.S. § 2126 derived from act June 30, 1834, ch. 161, § 22, 4 Stat. 733.

§ 195. Repealed. Aug. 15, 1953, ch. 506, § 2(b), 67 Stat. 590

Section, act July 4, 1884, ch. 180, § 1, 23 Stat. 94, related to sale of cattle purchased by Government to nontribal members.

§ 196. Sale or other disposition of dead timber

The President of the United States may from year to year in his discretion under such regulations as he may prescribe authorize the Indians residing on reservations or allotments, the fee to which remains in the United States, to fell, cut, remove, sell or otherwise dispose of the dead timber standing, or fallen, on such reservation or allotment for the sole benefit of such Indian or Indians. But whenever there is reasonable cause to believe that such timber has been killed, burned, girdled, or otherwise injured for the purpose of securing its sale under this section then in that case such authority shall not be granted.

(Feb. 16, 1889, ch. 172, 25 Stat. 673.)

§ 197. Disposition of dead timber on reservations in Minnesota

The Secretary of the Interior may in his discretion, from year to year, under such regulations as he may prescribe, authorize the Indians residing on any Indian reservation in the State of Minnesota, whether the same has been allotted in severalty or is still unallotted, to fell, cut, remove, sell, or otherwise dispose of the dead timber, standing or fallen on such reservation or any part thereof, for the sole benefit of such Indians; and he may also in like manner authorize the Chippewa Indians of Minnesota who have any interest or right in the proceeds derived from the sales of ceded Indian lands or the timber growing thereon, whereof the fee is still in the United States, to fell, cut, remove, or dispose of the dead timber, otherwise than by sale, standing or fallen, on such ceded land. But whenever there is reason to believe that such dead timber in either case has been killed, burned, girdled, or otherwise injured for the purpose of securing its sale under this section, then in that case authority shall not be granted.

(June 7, 1897, ch. 3, 30 Stat. 90.)

CHIPPEWA RESERVATION AND CEDED LANDS IN MINNESOTA

Act June 27, 1902, ch. 1157, § 4, 32 Stat. 404, provided: "That so much of the Act of June seventh, eighteen hundred and ninety-seven, entitled 'An Act making appropriations for the current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes,' as authorizes the sale of dead timber, standing or fallen, under regulations prescribed by the Secretary of the Interior, on the Chippewa reservations and ceded lands in the State of Minnesota, is hereby repealed: *Provided*, That nothing herein contained shall be held in any way to affect contracts already entered into and now in force for the sale and cutting of dead timber, standing or fallen, on said reservations and ceded lands."

§ 198. Contagious and infectious diseases; quarantine

Whenever the Secretary of the Interior shall find any Indian afflicted with tuberculosis, trachoma, or other contagious or infectious diseases, he may, if in his judgment the health of the afflicted Indian or that of other persons require it, isolate or quarantine such afflicted Indian in a hospital or other place for treatment. The Secretary of the Interior may employ such means as may be necessary in the isolation, or quarantine, of such Indian, and it shall be the duty of such Indian so afflicted to obey any order or regulation made by the Secretary of the Interior in carrying out this provision.

(Aug. 1, 1914, ch. 222, § 1, 38 Stat. 584.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 199. Access to records of Five Civilized Tribes

The Secretary of the Interior, or his accredited representative, shall at all times have access to any books and records of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes, whether in possession of any of the officers of either of said tribes or any officer or custodian thereof, of the State of Oklahoma.

(Mar. 1, 1907, ch. 2285, 34 Stat. 1027.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 199a. Custody of records; Oklahoma Historical Society

Title to records of Indian tribes heretofore placed with the Oklahoma Historical Society of the State of Oklahoma by the Secretary of the Interior shall remain vested in the United States and such records shall be held by the said society under rules and regulations prescribed by the Archivist of the United States: *Provided*, That copies of any such records, documents, books, or papers held by the said society when certified by the secretary or chief clerk thereof under its seal, or by the officer or person acting as secretary or chief clerk, shall be evidence equally with the original, and in making such certified copies the said secretary or acting secretary and the said chief clerk or acting chief clerk shall be acting as a Federal agent, and such certified copies shall have the same force and effect as if made by the Archivist of the United States as provided in section 2116(b) of title 44: *Provided further*, That whenever such certified copies are desired for official use by the Federal Government they shall be furnished without cost: *Provided further*, That any such records held by the said society shall be promptly returned to the Government official designated by the Archivist of the United States upon his request therefor.

(Mar. 27, 1934, ch. 93, 48 Stat. 501; Oct. 25, 1951, ch. 562, §4(5), 65 Stat. 640; Pub. L. 98–497, title I, §107(i), Oct. 19, 1984, 98 Stat. 2292.)

CODIFICATION

"Section 2116(b) of title 44" substituted in text for "section 509(b) of the Federal Records Act of 1950 (64 Stat. 583)" on authority of section 2(b) of Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1305, the first section of which enacted Title 44, Public Printing and Documents, and restated such section 509(b) as section 2112(b) of Title 44, and Pub. L. 98–497, title I, §102(a)(1), Oct. 19, 1984, 98 Stat. 2280, which renumbered section 2112(b) as 2116(b).

AMENDMENTS

1984—Pub. L. 98–497 substituted "Archivist of the United States" for "Administrator of General Services" in three places.

1951—Act Oct. 25, 1951, transferred control of Indian tribal records, heretofore placed hereunder with Oklahoma Historical Society, from Secretary of the Interior to Administrator of General Services.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–497 effective Apr. 1, 1985, see section 301 of Pub. L. 98–497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

§ 200. Report of offense or case of Indian incarcerated in agency jail

Whenever an Indian shall be incarcerated in an agency jail, or any other place of confinement, on an Indian reservation or at an Indian school, a report or record of the offense or case shall be immediately submitted to the superintendent of the reservation or such official or officials as he may designate, and such report shall be made a part of the records of the agency office.

(Aug. 1, 1914, ch. 222, §1, 38 Stat. 586.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 201. Penalties; how recovered

All penalties which shall accrue under title 28 of the Revised Statutes shall be sued for and recovered in an action in the nature of an action of debt, in the name of the United States, before any court having jurisdiction of the same, in any State or Territory in which the defendant shall be arrested or found, the one half to the use of the informer and the other half to the use of the United States, except when the prosecution shall be first instituted on behalf of the United States, in which case the whole shall be to their use.

(R.S. §2124.)

REFERENCES IN TEXT

Title 28 of the Revised Statutes, referred to in text, was in the original "this Title", meaning title 28 of the Revised Statutes, consisting of R.S. §§2039 to 2157. For complete classification of R.S. §§2039 to 2157 to the Code, see Tables.

CODIFICATION

R.S. §2124 derived from act June 30, 1834, ch. 161, §27, 4 Stat. 733.

§ 202. Inducing conveyances by Indians of trust interests in lands

It shall be unlawful for any person to induce any Indian to execute any contract, deed, mortgage, or other instrument purporting to convey any land or any interest therein held by the United States in trust for such Indian, or to offer any such contract, deed, mortgage, or other instrument for record in the office of any recorder of deeds. Any person violating this provision shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding $500 for the first offense, and if convicted for a second offense may be punished by a fine not exceeding $500 or imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. This section shall not apply to any lease or other contract authorized by law to be made.

(June 25, 1910, ch. 431, §5, 36 Stat. 857.)

CODIFICATION

Section was formerly classified to section 115 of Title 18, Criminal Code and Criminal Procedure, prior to the general revision and enactment of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, §1, 62 Stat. 683.

CHAPTER 6—GOVERNMENT OF INDIAN COUNTRY AND RESERVATIONS

SUBCHAPTER I—GENERALLY

Sec.
211. Creation of Indian reservations.
212 to 228. Repealed.
229. Injuries to property by Indians.
230. Depositions by agents touching depredations.
231. Enforcement of State laws affecting health and education; entry of State employees on Indian lands.
232. Jurisdiction of New York State over offenses committed on reservations within State.
233. Jurisdiction of New York State courts in civil actions.

SUBCHAPTER II—TRAFFIC IN INTOXICATING LIQUORS

241 to 250. Repealed.
251. Setting up distillery.
252. Repealed.
253. Wines for sacramental purposes.
254. Repealed.

SUBCHAPTER III—TRADERS WITH INDIANS

261. Power to appoint traders with Indians.
262. Persons permitted to trade with Indians.
263. Prohibition of trade by President.
264. Trading without license; white persons as clerks.
265, 266. Repealed.

SUBCHAPTER I—GENERALLY

§ 211. Creation of Indian reservations

No Indian reservation shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of New Mexico and Arizona, except by Act of Congress.

(May 25, 1918, ch. 86, § 2, 40 Stat. 570.)

§§ 212 to 215. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section 212, R.S. § 2143, related to arson. See section 1153 of Title 18, Crimes and Criminal Procedure.

Section 213, R.S. § 2142, related to assault. See section 1153 of Title 18.

Section 214, R.S. § 2138; act June 30, 1919, ch. 4, § 1, 41 Stat. 9, related to removing cattle from Indian country.

Section 215, R.S. § 2144, related to forgery and depredations on the mails. See sections 1151 and 1152 of Title 18.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 1, 1948, see section 20 of act June 25, 1948.

§ 216. Repealed. Pub. L. 86–634, § 4, July 12, 1960, 74 Stat. 469

Section, R.S. § 2137, prohibited hunting by non-Indians on Indian lands except for subsistence. See section 1165 of Title 18, Crimes and Criminal Procedure.

§§ 217 to 218. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section 217, R.S. § 2145, related to general laws as to punishment extended to Indian country. See sections 1151 and 1152 of Title 18, Crimes and Criminal Procedure.

Section 217a, act June 8, 1940, ch. 276, 54 Stat. 249, related to jurisdiction of Kansas over offenses committed by or against Indians or reservations. See section 3243 of Title 18.

Section 218, R.S. § 2146; act Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318, related to exceptions as to extension of general laws. See sections 1151 and 1152 of Title 18.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 1, 1948, see section 20 of act June 25, 1948.

§§ 219 to 226. Repealed. May 21, 1934, ch. 321, 48 Stat. 787

Section 219, R.S. § 2134, related to foreigners entering Indian country without passports, penalty for such entry and contents of passports.

Section 220, R.S. § 2147, related to authority to remove person from Indian country and to use of military force.

Section 221, R.S. § 2148, related to person returning after removal from Indian country.

Section 222, R.S. § 2149, related to authority to remove person from Indian reservation and use of necessary force.

Section 223, R.S. § 2150, related to employment of military.

Section 224, R.S. § 2151, related to detention and treatment of persons apprehended by military.

Section 225, R.S. § 2152, related to arrest of absconding Indians, use of military force to apprehend such Indians and to prevent tribal hostilities.

Section 226, R.S. § 2153, related to posse comitatus in executing process.

§§ 227, 228. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section 227, R.S. § 2154, related to reparation for injuries to Indian property. See section 1160 of Title 18, Crimes and Criminal Procedure.

Section 228, R.S. § 2155, related to payment of reparation where offender is unable to. See section 1160 of Title 18.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 1, 1948, see section 20 of act June 25, 1948.

§ 229. Injuries to property by Indians

If any Indian, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy, any horse, or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or subagent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which such Indian shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time not exceeding twelve months, such superintendent, agent, or subagent shall make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury.

(R.S. § 2156.)

CODIFICATION

R.S. § 2156 derived from acts June 30, 1834, ch. 161, § 17, 4 Stat. 731; Feb. 28, 1859, ch. 66, § 8, 11 Stat. 401.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with cer-

tain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 230. Depositions by agents touching depredations

The superintendents, agents, and subagents within their respective districts are authorized and empowered to take depositions of witnesses touching any depredations, within the purview of sections 227, 228[1] and 229 of this title, and to administer oaths to the deponents.

(R.S. §2157.)

REFERENCES IN TEXT

Sections 227 and 228 of this title, referred to in text, were repealed by act June 25, 1948, ch. 645, §21, 62 Stat. 862, and are covered by section 1160 of Title 18, Crimes and Criminal Procedure.

CODIFICATION

R.S. §2157 derived from act June 30, 1834, ch. 161, §18, 4 Stat. 732.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 231. Enforcement of State laws affecting health and education; entry of State employees on Indian lands

The Secretary of the Interior, under such rules and regulations as he may prescribe, shall permit the agents and employees of any State to enter upon Indian tribal lands, reservations, or allotments therein (1) for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations or (2) to enforce the penalties of State compulsory school attendance laws against Indian children, and parents, or other persons in loco parentis except that this subparagraph (2) shall not apply to Indians of any tribe in which a duly constituted governing body exists until such body has adopted a resolution consenting to such application.

(Feb. 15, 1929, ch. 216, 45 Stat. 1185; Aug. 9, 1946, ch. 930, 60 Stat. 962.)

AMENDMENTS

1946—Act Aug. 9, 1946, permitted proper State officers to invoke penalties of State compulsory school attendance against Indian children, their parents, or other persons in loco parentis.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 232. Jurisdiction of New York State over offenses committed on reservations within State

The State of New York shall have jurisdiction over offenses committed by or against Indians on Indian reservations within the State of New York to the same extent as the courts of the State have jurisdiction over offenses committed elsewhere within the State as defined by the laws of the State: *Provided*, That nothing contained in this section shall be construed to deprive any Indian tribe, band, or community, or members thereof,[1] hunting and fishing rights as guaranteed them by agreement, treaty, or custom, nor require them to obtain State fish and game licenses for the exercise of such rights.

(July 2, 1948, ch. 809, 62 Stat. 1224.)

§ 233. Jurisdiction of New York State courts in civil actions

The courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians or between one or more Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as now or hereafter defined by the laws of such State: *Provided*, That the governing body of any recognized tribe of Indians in the State of New York shall have the right to declare, by appropriate enactment prior to September 13, 1952, those tribal laws and customs which they desire to preserve, which, on certification to the Secretary of the Interior by the governing body of such tribe shall be published in the Federal Register and thereafter shall govern in all civil cases involving reservation Indians when the subject matter of such tribal laws and customs is involved or at issue, but nothing herein contained shall be construed to prevent such courts from recognizing and giving effect to any tribal law or custom which may be proven to the satisfaction of such courts: *Provided further*, That nothing in this section shall be construed to require any such tribe or the members thereof to obtain fish and game licenses from the State of New York for the exercise of any hunting and fishing rights provided for such Indians under any agreement, treaty, or custom: *Provided further*, That nothing herein contained shall be construed as subjecting the lands within any Indian reservation in the State of New York to taxation for State or local purposes, nor as subjecting any such lands, or any Federal or State annuity in favor of Indians or Indian tribes, to execution on any judgment rendered in the State courts, except in the enforcement of a judgment in a suit by one tribal member against another in the matter of the use or possession of land: *And provided further*, That nothing herein contained shall be construed as authorizing the alienation from any Indian na-

[1] See References in Text note below.

[1] So in original. Probably should be followed by "of".

tion, tribe, or band of Indians of any lands within any Indian reservation in the State of New York: *Provided further*, That nothing herein contained shall be construed as conferring jurisdiction on the courts of the State of New York or making applicable the laws of the State of New York in civil actions involving Indian lands or claims with respect thereto which relate to transactions or events transpiring prior to September 13, 1952.

(Sept. 13, 1950, ch. 947, § 1, 64 Stat. 845.)

EFFECTIVE DATE

Section 2 of act Sept. 13, 1950, provided: ''This Act [this section] shall take effect two years after the date of its passage [Sept. 13, 1950].''

SUBCHAPTER II—TRAFFIC IN INTOXICATING LIQUORS

§§ 241 to 250. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section 241, R.S. § 2139; acts Feb. 27, 1877, ch. 69, § 1, 19 Stat. 244; July 23, 1892, ch. 234, 27 Stat. 260; June 15, 1938, ch. 435, § 1, 52 Stat. 696, related to sale of intoxicating liquor. See sections 1154 and 1156 of Title 18, Crimes and Criminal Procedure.

Section 241a, act Mar. 1, 1895, ch. 145, § 8, 28 Stat. 697, related to punishment for sale of intoxicating liquors. See section 1155 of Title 18.

Section 242, acts Mar. 2, 1917, ch. 146, § 17, 39 Stat. 983; June 13, 1932, ch. 245, 47 Stat. 302, related to manufacture and sale of alcohol in Osage County, Oklahoma. See section 1154 of Title 18.

Section 243, R.S. § 2139, act July 23, 1892, ch. 234, 27 Stat. 261, related to complaints, arrests, and convictions. See section 3041 of Title 18, and rule 5 of Title 18, Appendix.

Section 244, acts May 25, 1918, ch. 86, § 1, 40 Stat. 563; June 30, 1919, ch. 4, § 1, 41 Stat. 4, related to possession of intoxicating liquor in Indian country. See section 1156 of Title 18.

Section 244a, act Mar. 5, 1934, ch. 43, 48 Stat. 396, related to repeal of certain liquor laws affecting former Indian Territory now a part of Oklahoma. See sections 1154 to 1156 of Title 18.

Section 245, act May 18, 1916, ch. 125, § 1, 39 Stat. 124, related to possession of intoxicating liquor as prima facie evidence of unlawful production. See sections 3113 and 3488 of Title 18.

Section 246, R.S. § 2140, related to searches and seizures. See section 3113 of Title 18.

Section 247, act Mar. 2, 1917, ch. 146, § 1, 39 Stat. 970, related to seizure of vehicles. See section 3618 of Title 18.

Section 248, act Mar. 1, 1907, ch. 2285, 34 Stat. 1017, related to powers of special agents and deputies to suppress liquor traffic. See section 3113 of Title 18.

Section 249, act July 4, 1884, ch. 180, § 1, 23 Stat. 94, related to officers and soldiers of Army furnishing liquor to Indians. See section 1154 of Title 18.

Section 250, act Aug. 24, 1912, ch. 388, § 1, 37 Stat. 519, related to powers of chief special officer and deputies to suppress liquor traffic. See section 3055 of Title 18.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 1, 1948, see section 20 of act June 25, 1948.

§ 251. Setting up distillery

Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits, shall be liable to a penalty of $1,000; and the superintendent of Indian affairs, Indian agent, or subagent, within the limits of whose agency any distillery of ardent spirits is set up or continued, shall forthwith destroy and break up the same.

(R.S. § 2141.)

CODIFICATION

R.S. § 2141 derived from act June 30, 1834, ch. 161, § 21, 4 Stat. 732.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

SUPERINTENDENT OF INDIAN AFFAIRS

No appropriation for any superintendent of Indian affairs has been made since act Mar. 3, 1877, ch. 101, § 1, 19 Stat. 271.

§ 252. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section, act May 18, 1916, ch. 125, § 1, 39 Stat. 124, related to application of sections 246 and 251 of this title to search and seizure and setting up a distillery. See section 3113 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 1, 1948, see section 20 of act June 25, 1948.

§ 253. Wines for sacramental purposes

It shall not be unlawful to introduce and use wines solely for sacramental purposes, under church authority, at any place within the Indian country or any Indian reservation, including the Pueblo Reservations in New Mexico.

(Aug. 24, 1912, ch. 388, § 1, 37 Stat. 519.)

§ 254. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section, act June 27, 1934, ch. 846, 48 Stat. 1245, related to inapplicability of liquor laws to lands outside reservations free from restrictions against alienation. See sections 1154 and 1156 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 1, 1948, see section 20 of act June 25, 1948.

SUBCHAPTER III—TRADERS WITH INDIANS

§ 261. Power to appoint traders with Indians

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians.

(Aug. 15, 1876, ch. 289, § 5, 19 Stat. 200.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with cer-

tain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 262. Persons permitted to trade with Indians

Any person desiring to trade with the Indians on any Indian reservation shall, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians.

(Mar. 3, 1901, ch. 832, §1, 31 Stat. 1066; Mar. 3, 1903, ch. 994, §10, 32 Stat. 1009.)

CODIFICATION

Act Mar. 3, 1901, restricted provisions to the Osages and the Osage Indian Reservation. Act Mar. 3, 1903, extended the provisions to all Indian reservations.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 263. Prohibition of trade by President

The President is authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, and to direct all licenses to trade with such tribe to be revoked, and all applications therefor to be rejected. No trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued.

(R.S. §2132.)

CODIFICATION

R.S. §2132 derived from act June 30, 1834, ch. 161, §3, 4 Stat. 729.

§ 264. Trading without license; white persons as clerks

Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $500: *Provided*, That this section shall not apply to any person residing among or trading with the Choctaws, Cherokees, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes, residing in said Indian country, and belonging to the Union Agency therein: *And provided further*, That no white person shall be employed as a clerk by any Indian trader, except such as trade with said Five Civilized Tribes, unless first licensed so to do by the Commissioner of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior.

(R.S. §2133; July 31, 1882, ch. 360, 22 Stat. 179.)

CODIFICATION

R.S. §2133 derived from act June 30, 1834, ch. 161, §4, 4 Stat. 729.

Act July 31, 1882, inserted ''of the full blood'' and ''or on any Indian reservation'' and added the two provisos.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§§ 265, 266. Repealed. Aug. 15, 1953, ch. 506, § 1, 67 Stat. 590

Section 265, R.S. §2135, prohibited certain purchases and sales within Indian country by persons other than Indians.

Section 266, R.S. §§467, 2136, prohibited sale of arms in district occupied by uncivilized or hostile Indians.

CHAPTER 7—EDUCATION OF INDIANS

Sec.
271. Employment of instructors for Indians.
272. Superintendent of Indian schools.
272a. Other duties.
273. Detail of Army officer.
274. Employment of Indian girls and boys as assistants.
275. Leaves of absence to employees.
276. Vacant military posts or barracks for schools; detail of Army officers.
277. Former Apache military post established as Theodore Roosevelt Indian School.
278. Repealed.
278a. Use of appropriated funds for education in sectarian schools prohibited; exceptions.
279. Rations to mission schools.
280. Patents of lands to missionary boards of religious organizations.
280a. Land in Alaska for schools or missions; general land laws.
281. Children taking lands in severalty not excluded.
282. Regulations by Secretary of the Interior to secure attendance at school.
283. Regulations for withholding rations for nonattendance at schools.
284. Omitted.
285. Withholding annuities from Osage Indians for nonattendance at schools.
286. Sending child to school out of State without consent.
287. Taking child to school in another State without written consent.
288, 289. Repealed.
290. Transportation of pupils under 14 at Government expense.
290a. Bureau appropriations as not limiting transportation of school children.
291. Removal of Government property at schools.
292. Suspension or discontinuance of schools.
292a. Discontinuance of boarding and day schools having small attendance.
292b. Establishment of single system of education in Alaska; transfer of Indian schools to State of Alaska.
292c. Unavailability of appropriated funds for boarding schools.
293. Sale of lands purchased for day school or other Indian administrative uses.
293a. Conveyance of school properties to local school districts or public agencies.

Sec.
293b. Conveyance of abandoned school properties in Alaska to local town or city officials or school authorities; reservation of rights and claims by United States and use conditions; violations and forfeiture of grant; determinations; reversion to United States.
294. Sale of certain abandoned buildings on lands belonging to Indian tribes.
295. Supervision of expenditure of appropriations for school purposes.
296 to 301. Repealed or Omitted.
302. Indian Reform School; rules and regulations; consent of parents to placing youth in reform school.
303. Omitted.
304. South Dakota Indians; State course of study.
304a. Study and investigation of Indian education in United States and Alaska; contracts; report to Congress; appropriations.
304b. Deposits of funds of students and student activity associations in Indian schools.

§ 271. Employment of instructors for Indians

The President may, in every case where he shall judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be introduced with their own consent, employ capable persons of good moral character to instruct them in the mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic, and performing such other duties as may be enjoined according to such instructions and rules as the President may give and prescribe for the regulation of their conduct, in the discharge of their duties. A report of the proceedings adopted in the execution of this provision shall be annually laid before Congress.

(R.S. § 2071.)

CODIFICATION

R.S. § 2071 derived from act Mar. 3, 1819, ch. 85, 3 Stat. 516.

§ 272. Superintendent of Indian schools

There shall be appointed by the President, by and with the advice and consent of the Senate, a person of knowledge and experience in the management, training, and practical education of children, to be Superintendent of Indian Schools, whose duty it shall be to visit and inspect the schools in which Indians are taught in whole or in part from appropriations from the United States Treasury, and report to the Commissioner of Indian Affairs, what, in his judgment, are the defects, if any, in any of them, in system, in administration, or in means for the most effective advancement of the pupils therein toward civilization and self-support, and what changes are needed to remedy such defects as may exist, and to perform such other duties in connection with Indian schools as may be prescribed by the Secretary of the Interior.

(Mar. 2, 1889, ch. 412, § 10, 25 Stat. 1003.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 272a. Other duties

The Superintendent of Indian schools shall perform such other duties as may be imposed upon him by the Commissioner of Indian Affairs, subject to the approval of the Secretary of the Interior.

(Mar. 3, 1905, ch. 1479, § 1, 33 Stat. 1049.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 273. Detail of Army officer

The Secretary of the Army shall be authorized to detail an officer of the Army, not above the rank of captain, for special duty with reference to Indian education.

(June 23, 1879, ch. 35, § 7, 21 Stat. 35; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501.)

CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

§ 274. Employment of Indian girls and boys as assistants

The Commissioner of Indian Affairs shall employ Indian girls as assistant matrons and Indian boys as farmers and industrial teachers in all Indian schools when it is practicable to do so.

(June 7, 1897, ch. 3, § 1, 30 Stat. 83.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 275. Leaves of absence to employees

On and after August 24, 1912 teachers in schools operated by the Bureau of Indian Affairs may be allowed, in addition to annual leave, educational leave not to exceed thirty workdays per calendar year, or sixty workdays in every alternate year, for attendance at educational gatherings, conventions, institutions, or training schools, if the interest of the Government requires, under such regulations as the Secretary of the Interior may prescribe; and no additional salary or expense on account of such leave of absence shall be incurred.

(Aug. 24, 1912, ch. 388, § 1, 37 Stat. 519; Aug. 24, 1922, ch. 286, 42 Stat. 829; May 8, 1928, ch. 510, 45 Stat. 493; Pub. L. 85–89, July 10, 1957, 71 Stat. 282.)

AMENDMENTS

1957—Pub. L. 85–89 substituted ''Teachers in schools operated by the Bureau of Indian Affairs'' for ''Teachers of the Indian schools and physicians of the Indian Service''.

1928—Act May 8, 1928, made section applicable to physicians of the Indian Service.

1922—Act Aug. 24, 1922, increased educational leave allowance from 15 to 30 days.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 276. Vacant military posts or barracks for schools; detail of Army officers

The Secretary of the Army is authorized to set aside, for use in the establishment of normal and industrial training schools for Indian youth from the nomadic tribes having educational treaty claims upon the United States, any vacant posts or barracks, so long as they may not be required for military occupation, and to detail one or more officers of the Army for duty in connection with Indian education, under the direction of the Secretary of the Interior, at each such school so established: *Provided*, That moneys appropriated or to be appropriated for general purposes of education among the Indians may be expended, under the direction of the Secretary of the Interior, for the education of Indian youth at such posts, institutions, and schools as he may consider advantageous, or as Congress from time to time may authorize and provide.

(July 31, 1882, ch. 363, 22 Stat. 181; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501.)

CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'' which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

TRANSFER OF FUNCTIONS

For transfer of certain functions relating to real property under jurisdiction of Department of the Air Force from Secretary of the Army to Secretary of the Air Force, see Secretary of Defense Transfer Order Nos. 14 [§ 2(29)], eff. July 1, 1948, and 40 [App. A(53)], July 22, 1949.

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 277. Former Apache military post established as Theodore Roosevelt Indian School

The Secretary of the Interior is authorized to establish and maintain the former Fort Apache military post as an Indian boarding school for the purpose of carrying out treaty obligations, to be known as the Theodore Roosevelt Indian School: *Provided*, That the Fort Apache military post, and land appurtenant thereto, shall remain in the possession and custody of the Secretary of the Interior so long as they shall be required for Indian school purposes.

(Jan. 24, 1923, ch. 42, 42 Stat. 1187.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

LANDS HELD IN TRUST FOR WHITE MOUNTAIN APACHE TRIBE

Pub. L. 86–392, Mar. 18, 1960, 74 Stat. 8, provided: ''That all right, title, and interest of the United States in and to the lands, together with the improvements thereon, included in the former Fort Apache Military Reservation, created by Executive order of February 1, 1877, and subsequently set aside by the Act of January 24, 1923 (42 Stat. 1187) [this section], as a site for the Theodore Roosevelt School, located within the boundaries of the Fort Apache Indian Reservation, Arizona, are hereby declared to be held by the United States in trust for the White Mountain Apache Tribe, subject to the right of the Secretary of the Interior to use any part of the land and improvements for administrative or school purposes for as long as they are needed for that purpose.''

§ 278. Repealed. Pub. L. 90–280, § 1, Mar. 30, 1968, 82 Stat. 71

Section, acts June 7, 1897, ch. 3, § 1, 30 Stat. 79; Mar. 2, 1917, ch. 146, § 21, 39 Stat. 988, declared the settled policy of the Government to be opposed to the making of any appropriations whatever out of the Treasury of the United States for the education of Indian children in any sectarian school. See section 278a of this title.

§ 278a. Use of appropriated funds for education in sectarian schools prohibited; exceptions

Funds appropriated on and after March 30, 1968, to the Secretary of the Interior for the education of Indian children shall not be used for the education of such children in elementary and secondary education programs in sectarian schools. This prohibition shall not apply to the education of Indians in accredited institutions of higher education and in other accredited schools offering vocational and technical training, but no scholarship aid provided for an Indian student shall require him to attend an institution or school that is not of his own free choice, and such aid shall be, to the extent consistent with sound administration, extended to the student individually rather than to the institution or school.

(Pub. L. 90–280, § 2, Mar. 30, 1968, 82 Stat. 71.)

§ 279. Rations to mission schools

Mission schools on an Indian reservation may, under rules and regulations prescribed by the Commissioner of Indian Affairs, receive for such Indian children duly enrolled therein, the rations of food and clothing to which said children would be entitled under treaty stipulations if such children were living with their parents.

(June 21, 1906, ch. 3504, 34 Stat. 326.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 280. Patents of lands to missionary boards of religious organizations

The Secretary of the Interior is authorized and directed to issue a patent to the duly authorized missionary board, or other proper authority, of any religious organization engaged in mission or school work on any Indian reservation for such lands thereon as were prior to September 21, 1922, set apart to and were on that date being actually and beneficially used and occupied by such organization solely for mission or school purposes, the area so patented to not exceed one hundred and sixty acres to any one organization at any station: *Provided*, That such patent shall provide that when no longer used for mission or school purposes said lands shall revert to the Indian owners.

(Sept. 21, 1922, ch. 367, §3, 42 Stat. 995.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 280a. Land in Alaska for schools or missions; general land laws

The Indians or persons conducting schools or missions in the Territory of Alaska shall not be disturbed in the possession of any lands actually in their use or occupation on June 6, 1900, and the land, at any station not exceeding six hundred and forty acres, occupied on said date as missionary stations among the Indian tribes in the section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which the missionary stations respectively belong, and the Secretary of the Interior is directed to have such lands surveyed in compact form as nearly as practicable and patents issued for the same to the several societies to which they belong; but nothing contained in this Act shall be construed to put in force in the Territory the general land laws of the United States.

(June 6, 1900, ch. 786, §27, 31 Stat. 330.)

REFERENCES IN TEXT

This Act, referred to in text, means act June 6, 1900, ch. 786, 31 Stat. 321, as amended. For complete classification of Title I of this act to the Code, see Tables. Title III of this act provided for the Alaska Civil Code.

CODIFICATION

Section was formerly classified to section 356 of Title 48, Territories and Insular Possessions.

PRIOR PROVISIONS

Similar provisions were contained in act May 17, 1884, ch. 53, §8, 23 Stat. 26, which provided in part that the Indians or other persons in the district should not be disturbed in the possession of any lands actually in their use or occupation or claimed by them, but reserved for future legislation the terms under which such persons might acquire title. That section contained a further provision, similar to the provision contained in this section, continuing lands occupied as missionary stations in the occupancy of the several religious societies.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73, Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 281. Children taking lands in severalty not excluded

In the expenditure of money appropriated for any of the purposes of education of Indian children, those children of Indians who have taken or may take lands in severalty under any existing law shall not, by reason thereof, be excluded from the benefits of such appropriation.

(Aug. 15, 1894, ch. 290, §1, 28 Stat. 311.)

§ 282. Regulations by Secretary of the Interior to secure attendance at school

The Secretary of the Interior is authorized to make and enforce such rules and regulations as may be necessary to secure the enrollment and regular attendance of eligible Indian children who are wards of the Government in schools maintained for their benefit by the United States or in public schools.

(Feb. 14, 1920, ch. 75, §1, 41 Stat. 410.)

§ 283. Regulations for withholding rations for nonattendance at schools

The Secretary of the Interior may in his discretion, establish such regulations as will prevent the issuing of rations or the furnishing of subsistence either in money or in kind to the head of any Indian family for or on account of any Indian child or children between the ages of eight and twenty-one years who shall not have attended school during the preceding year in accordance with such regulations. This provision shall not apply to reservations or part of reservations where sufficient school facilities have not been furnished nor until full notice of such regulations shall have been given to the Indians to be affected thereby.

The amount and value of subsistence so withheld shall be credited to the tribe or tribes from whom the same is withheld, to be issued and paid when in the judgment of the Secretary of

the Interior they shall have fully complied with such regulations. The Secretary of the Interior may in his discretion withhold rations, clothing and other annuities from Indian parents or guardians who refuse or neglect to send and keep their children of proper school age in some school a reasonable portion of the year.

(Mar. 3, 1893, ch. 209, § 1, 27 Stat. 628, 635.)

§ 284. Omitted

CODIFICATION

Section, act July 13, 1892, ch. 164, § 1, 27 Stat. 143, which related to issuance and enforcement of regulations by the Commissioner of Indian Affairs to secure attendance of Indian children at school, was omitted as obsolete in view of the enactment of section 282 of this title, which provides that the Secretary of the Interior now issue and enforce such regulations. See section 282 of this title.

§ 285. Withholding annuities from Osage Indians for nonattendance at schools

The Commissioner of Indian Affairs is authorized in his discretion to withhold any annuities or other payments due to Osage Indian minors, above six years of age, whose parents fail, neglect, or refuse to place such minors in some established school for a reasonable portion of each year and to keep such children in regular attendance thereof. The Commissioner of Indian Affairs is authorized to make such rules and regulations as may be necessary to put this provision into force and effect.

(June 30, 1913, ch. 4, § 18, 38 Stat. 96.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 286. Sending child to school out of State without consent

No Indian child shall be sent from any Indian reservation to a school beyond the State or Territory in which said reservation is situated without the voluntary consent of the father or mother of such child if either of them is living, and if neither of them is living without the voluntary consent of the next of kin of such child. Such consent shall be made before the agent of the reservation, and he shall send to the Commissioner of Indian Affairs his certificate that such consent has been voluntarily given before such child shall be removed from such reservation. And it shall be unlawful for any Indian agent or other employee of the Government to induce, or seek to induce, by withholding rations or by other improper means, the parents or next of kin of any Indian to consent to the removal of any Indian child beyond the limits of any reservation.

(Aug. 15, 1894, ch. 290, § 11, 28 Stat. 313; Mar. 2, 1895, ch. 188, § 1, 28 Stat. 906.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

INDIAN AGENTS

The services of Indian agents have been dispensed with. See note set out under section 64 of this title.

§ 287. Taking child to school in another State without written consent

No Indian child shall be taken from any school in any State or Territory to a school in any other State against its will or without the written consent of its parents.

(June 10, 1896, ch. 398, § 1, 29 Stat. 348.)

§§ 288, 289. Repealed. Pub. L. 99–228, § 3(1), (2), Dec. 28, 1985, 99 Stat. 1748

Section 288, act Mar. 1, 1907, ch. 2285, 34 Stat. 1018, provided for admission of white children to Indian day schools.

Section 289, act Mar. 3, 1909, ch. 263, 35 Stat. 783, provided for admission of white children to Indian boarding schools. See section 2007 of this title.

§ 290. Transportation of pupils under 14 at Government expense

No Indian pupil under the age of fourteen years shall be transported at Government expense to any Indian school beyond the limits of the State or Territory in which the parents of such child reside or of the adjoining State or Territory.

(Mar. 3, 1909, ch. 263, 35 Stat. 783.)

§ 290a. Bureau appropriations as not limiting transportation of school children

On and after October 12, 1984, no part of any appropriation to the Bureau of Indian Affairs under this or any other act shall be used to subject the transportation of school children to any limitation on travel or transportation expenditures for Federal employees.

(Pub. L. 98–473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1850.)

§ 291. Removal of Government property at schools

Where there is Government property on hand at any of the Indian reservations or schools not required for the use or benefit of the Indians of reservations or said schools, the Secretary of the Interior is authorized to move such property to other Indian reservations or schools where it may be required.

(Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

§ 292. Suspension or discontinuance of schools

The Commissioner of Indian Affairs may, when in his judgment the good of the service will be promoted thereby, suspend or discontinue any reservation Indian school, and, with the approval of the Secretary of the Interior, may sell any reservation school building or plant that is no longer desirable as an Indian school upon any reservation and invest the proceeds in other school buildings and plants, as

the needs of the service may demand, under such rules and regulations as he may, with the approval of the Secretary of the Interior, prescribe.

(Apr. 21, 1904, ch. 1402, § 1, 33 Stat. 211.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 292a. Discontinuance of boarding and day schools having small attendance

All reservation and nonreservation boarding schools with an average attendance in any year of less than forty-five and eighty pupils, respectively, shall be discontinued on or before the beginning of the ensuing fiscal year. The pupils in schools so discontinued shall be transferred first, if possible, to Indian day schools or State public schools; second, to adjacent reservation or nonreservation boarding schools, to the limit of the capacity of said schools: *Provided*, That all day schools with an average attendance in any year of less then eight shall be discontinued on or before the beginning of the ensuing fiscal year: *Provided further*, That all moneys appropriated for any school discontinued pursuant to this section or for other cause shall be returned immediately to the Treasury of the United States.

(Mar. 4, 1929, ch. 705, 45 Stat. 1576.)

CODIFICATION

Section is from the Interior Department Appropriation Act, 1930. Similar provisions were contained in the following prior appropriation acts:
Mar. 7, 1928, ch. 137, 45 Stat. 215.
Jan. 12, 1927, ch. 27, 44 Stat. 947.
May 10, 1926, ch. 277, 44 Stat. 468.
Mar. 3, 1925, ch. 462, 43 Stat. 1155.
June 5, 1924, ch. 264, 43 Stat. 404.
Jan. 24, 1923, ch. 42, 42 Stat. 1182.
May 24, 1922, ch. 199, 42 Stat. 562.
Mar. 3, 1921, ch. 119, 41 Stat. 1227.
Feb. 14, 1920, ch. 75, 41 Stat. 410.

§ 292b. Establishment of single system of education in Alaska; transfer of Indian schools to State of Alaska

The Bureau of Indian Affairs shall not expend any other funds for the operation of any secondary education program or facility in the State of Alaska after June 30, 1983: *Provided*, That while consultation concerning day school transfers to the State of Alaska will continue with affected villages, local concurrence is not required in this continuing effort to establish a single system of education envisioned by the State's constitution: *Provided further*, That after June 30, 1984, the Bureau of Indian Affairs shall fund no more than ten day schools in Alaska: *Provided further*, That the Bureau of Indian Affairs shall not fund any schools in Alaska after June 30, 1985: *Provided further*, That $9,350,000 of such amount shall be available until expended for transfer to the State of Alaska to assist in the rehabilitation or reconstruction of Bureau-owned schools which are transferred to the State: *Provided further*, That the $9,350,000 appropriated in Public Law 97–394 available to the State of Alaska to assist in the rehabilitation of Bureau-owned schools which are transferred to the State may also be used for reconstruction: *Provided further*, That when any Alaska day school operated by contract is transferred, the State shall assume any existing contract pertaining to the operation or maintenance of such school for a minimum of two years or until the expiration of the negotiated contract, whichever comes first: *Provided further*, That nothing in the foregoing shall preclude assistance otherwise available under the Act of April 16, 1934 (48 Stat. 596) as amended (25 U.S.C. 452 et seq.), or any other Act to such schools on the same basis as other public schools.

(Pub. L. 98–63, title I, July 30, 1983, 97 Stat. 326.)

REFERENCES IN TEXT

Other funds, referred to in text, means funds other than the appropriation of $22,000,000 made available to the Bureau of Indian Affairs for transfer to the State of Alaska for the benefit of Alaska Native secondary students under the headings "Bureau of Indian Affairs" and "Operation of Indian Programs" of Pub. L. 98–63, title VII, July 30, 1983, 97 Stat. 326.

$9,350,000 of such amount, referred to in text, means $9,350,000 of the $53,150,000 appropriated as an additional amount for the operation of Indian programs by the Bureau of Indian Affairs under the headings "Bureau of Indian Affairs" and "Operation of Indian Programs" of Pub. L. 98–63, title VII, July 30, 1983, 97 Stat. 326.

Public Law 97–394, referred to in text, is Pub. L. 97–394, Dec. 30, 1982, 96 Stat. 1966. Provisions of that act relating to an appropriation of $9,350,000 available to the State of Alaska (96 Stat. 1974) are not classified to the Code.

Act of April 16, 1934, referred to in text, is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

§ 292c. Unavailability of appropriated funds for boarding schools

On and after October 12, 1984, no part of any appropriations to the Bureau of Indian Affairs under this or any other Act shall be available to continue academic and residential programs of the Chilocco, Seneca, Concho, and Fort Sill boarding schools, Oklahoma; Mount Edgecumbe boarding school, Alaska; Intermountain boarding school, Utah; and Stewart boarding school, Nevada.

(Pub. L. 98–473, title I, § 101(c) [title I], Oct. 12, 1984, 98 Stat. 1837, 1850.)

§ 293. Sale of lands purchased for day school or other Indian administrative uses

Subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended,[1] the Secretary of the Interior is authorized to cause to be sold, to the highest bidder, under such rules and regulations as he may prescribe any tract or part of a tract of land purchased by the United States for day school or other Indian administrative uses, not

[1] See References in Text note below.

exceeding one hundred and sixty acres in any one tract, when said land or a part thereof is no longer needed for the original purpose; the proceeds therefrom in all cases to be paid into the Treasury of the United States; title to be evidenced by a patent in fee simple for such lands as can be described in terms of the legal survey, or by deed duly executed by the Secretary of the Interior containing such metes-and-bounds description as will identify the land so conveyed as the land which had been purchased: *Provided*, That where the purchase price was paid from tribal funds, the net proceeds shall be placed in the Treasury of the United States to the credit of the respective tribes of Indians.

(Mar. 2, 1917, ch. 146, § 1, 39 Stat. 973; Oct. 31, 1951, ch. 654, § 2(17), 65 Stat. 707.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1951—Act Oct. 31, 1951, inserted reference to applicable regulations of the Federal Property and Administrative Services Act of 1949, as amended, at beginning of section; struck out ''net'' before ''proceeds'' in clause immediately following first semicolon; and, in proviso, substituted ''the net proceeds'' for ''such proceeds''.

§ 293a. Conveyance of school properties to local school districts or public agencies

The Secretary of the Interior, or his authorized representative, is authorized to convey to State or local governmental agencies or to local school authorities all the right, title, and interest of the United States in any land and improvements thereon and personal property used in connection therewith heretofore or hereafter used for Federal Indian school purposes and no longer needed for such purposes: *Provided*, That the consent of the beneficial owner shall be obtained before the conveyance of title to land held by the United States in trust for an individual Indian or Indian tribe: *Provided further*, That no more than fifty acres of land shall be transferred under the terms of this section in connection with any single school property conveyed to State or local governmental agencies or to local school authorities. Any conveyance under this section shall reserve all mineral deposits in the land and the right to prospect for and remove such deposits under rules and regulations prescribed by the Secretary of the Interior, shall require the property to be used for school or other public purposes, and shall require the property to be available to Indians and non-Indians on the same terms unless otherwise approved by the Secretary of the Interior. If at any time the Secretary of the Interior determines that the grantee of any such lands, improvements, and personal property has failed to observe the provisions of the transfer agreement and that the failure has continued for at least one year, he may declare a forfeiture of the conveyance and the title conveyed shall thereupon revert to the United States. Such determination by the Secretary of the Interior shall be final. If the grantee of such land fails for a period of one year to observe the provisions of the transfer agreement and the Secretary of the Interior fails to declare a forfeiture of the conveyance, the former beneficial owner, if an individual Indian or an Indian tribe, may petition the United States District Court for the district where the land is located to declare a forfeiture of the conveyance and to vest the title in the United States, in the same trust status as previously existed.

(June 4, 1953, ch. 98, 67 Stat. 41; Pub. L. 85–31, May 16, 1957, 71 Stat. 29; Pub. L. 87–417, Mar. 16, 1962, 76 Stat. 33.)

AMENDMENTS

1962—Pub. L. 87–417 increased land conveyance limitation from twenty to fifty acres.

1957—Pub. L. 85–31 inserted last sentence allowing the former beneficial owner, if an Indian or Indian tribe, to petition for declaration of forfeiture of conveyance where grantee has failed for period of one year to observe provisions of transfer agreement and Secretary has not declared forfeiture.

§ 293b. Conveyance of abandoned school properties in Alaska to local town or city officials or school authorities; reservation of rights and claims by United States and use conditions; violations and forfeiture of grant; determinations; reversion to United States

The Secretary of the Interior be, and he is hereby, directed to convey to local town or city officials or to school authorities in the Territory of Alaska, all the right, title, and interest of the United States in and to any parcel or tract of land and the improvements thereon for school or other public purposes whenever he shall determine that such land and improvements are no longer required by the Alaska Native Service for school purposes: *Provided*, That any conveyance made pursuant to this section shall be subject to all valid existing rights and claims, shall reserve to the United States all mineral deposits in the lands and the right to prospect for and remove the deposits under such rules and regulations as the Secretary of the Interior may prescribe, and shall provide that the lands and improvements conveyed shall be used for school or other public purposes only and that the school facilities maintained thereon or therein shall be available to all of the native children of the town, city, or other school district concerned on the same terms as to other children of such town, city, or district. The Secretary of the Interior, if at any time he determines that the grantee of any such lands and improvements has violated or failed to observe the foregoing provisions and that such violation or failure has continued for a period of at least one year, may declare a forfeiture of the grant. Such determination by the Secretary shall be final, and thereupon the lands and improvements covered thereby shall revert to the United States and become a part of the public domain subject to administration and disposal under the public land laws.

(Aug. 23, 1950, ch. 778, 64 Stat. 470.)

REFERENCES IN TEXT

The public land laws, referred to in text, are classified generally to Title 43, Public Lands.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 294. Sale of certain abandoned buildings on lands belonging to Indian tribes

The Secretary of the Interior is authorized to sell and convey at public sale, to the highest bidder, under such regulations and under such terms and conditions as he may prescribe, at not less than the appraised value thereof, any abandoned day or boarding school plant, or any abandoned agency buildings, situated on lands belonging to any Indian tribe and not longer needed for Indian or administrative purposes, and to sell therewith not to exceed one hundred and sixty acres of land on which such plant or buildings may stand. Title to all lands disposed of under the provisions of this section shall pass to the purchaser by deed or by patent in fee, with such reservations or conditions as the said Secretary may deem just and proper, no purchaser to acquire more than one hundred and sixty acres in any one tract: *Provided*, That the proceeds of all such sales shall be deposited in the Treasury of the United States to the credit of the Indians to whom said lands belong, to be disposed of in accordance with existing law.

(Feb. 14, 1920, ch. 75, § 1, 41 Stat. 415.)

§ 295. Supervision of expenditure of appropriations for school purposes

All expenditure of money herein or after April 30, 1908, appropriated for school purposes among the Indians, shall be at all times under the supervision and direction of the Commissioner of Indian Affairs, and in all respects in conformity with such conditions, rules, and regulations as to the conduct and methods of instruction and expenditure of money as may be from time to time prescribed by him, subject to the supervision of the Secretary of the Interior.

(Apr. 30, 1908, ch. 153, 35 Stat. 72.)

CODIFICATION

Act Apr. 30, 1908, embodied restrictions as to the amount which might be expended for the annual support and education of any one pupil and specified the method for determining the number of pupils in any school entitled to the per capita allowance provided for by the act.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SCHOOL AND EMPLOYMENT TRANSPORTATION

Separate appropriations for collection and transportation of pupils to and from Indian schools, etc., with a proviso that a specified part of the amount so appropriated may be used in placing Indian youths in employment in industrial pursuits were made by the following appropriation acts:

Mar. 3, 1925, ch. 462, 43 Stat. 1155.

May 24, 1922, ch. 199, 42 Stat. 562.

§ 296. Repealed. Mar. 2, 1929, ch. 576, 45 Stat. 1534

Section, acts Apr. 30, 1908, ch. 153, 35 Stat. 72; June 30, 1919, ch. 4, § 1, 41 Stat. 6; Feb. 21, 1925, ch. 280, 43 Stat. 958, placed a limitation on per capita expenditure for school purposes.

§ 297. Repealed. Pub. L. 99–228, § 3(3), Dec. 28, 1985, 99 Stat. 1748

Section, act May 25, 1918, ch. 86, § 1, 40 Stat. 564, provided for expenditures for education of children with less than one-fourth Indian blood. See section 2007 of this title.

§ 298. Omitted

CODIFICATION

Section, act July 4, 1884, ch. 180, § 9, 23 Stat. 98, which required Indian agents to submit a census of the Indians at the agency in their annual report, was omitted as obsolete since there have been no Indian agents since 1908. See note set out under section 64 of this title.

§§ 299 to 301. Repealed. May 29, 1928, ch. 901, § 1, 45 Stat. 990, 991

Section 299, act Mar. 2, 1887, ch. 320, § 1, 24 Stat. 465, related to report of expenditures of Indian education fund.

Section 300, act Mar. 3, 1911, ch. 210, § 1, 36 Stat. 1060, related to report of expenditures of Indian school and agency.

Section 301, act Mar. 3, 1911, ch. 210, § 1, 36 Stat. 1061, related to appropriations for experiments on Indian schools or agency farms.

§ 302. Indian Reform School; rules and regulations; consent of parents to placing youth in reform school

The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, is authorized and directed to select and designate some one of the schools or other institution herein specifically provided for as an ''Indian Reform School'', and to make all needful rules and regulations for its conduct, and the placing of Indian youth therein: *Provided*, That the appropriation for collection and transportation, and so forth, of pupils, and the specific appropriation for such school so selected shall be available for its support and maintenance: *Provided further*, That the consent of parents, guardians, or next of kin shall not be required to place Indian youth in said school.

(June 21, 1906, ch. 3504, 34 Stat. 328.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 303. Omitted

CODIFICATION

Section, act Oct. 12, 1949, ch. 680, title I, 63 Stat. 776, which related to education loans to worthy youths, was from Department of the Interior Appropriation Act, 1950, and was not repeated in Department of the Interior Appropriation Act, 1951, act Sept. 6, 1950, ch. 896, ch. VII, title I, 64 Stat. 679.

§ 304. South Dakota Indians; State course of study

On and after July 1, 1950, the course of study taught in any school operated and maintained by the Bureau of Indian Affairs on any Indian reservation in the State of South Dakota shall, upon a majority decision of the parents of children enrolled therein voting at a meeting called for that purpose by the superintendent of the reservation, meet the minimum education requirements prescribed by the department of public instruction for the public schools of that State.

(Sept. 7, 1949, ch. 566, 63 Stat. 694.)

§ 304a. Study and investigation of Indian education in United States and Alaska; contracts; report to Congress; appropriations

The Secretary of the Interior (hereinafter referred to as the ''Secretary''), acting through the Bureau of Indian Affairs, is authorized and directed to conduct a study and investigation of Indian education in the continental United States and Alaska, including a study and investigation of (1) the education problems of Indian children from non-English speaking homes, and (2) the possibility of establishing a more orderly, equitable, and acceptable program for transferring Indian children to public schools.

The Secretary, in carrying out the provisions of this section, is authorized to enter into contracts in accordance with the provisions of the Johnson-O'Malley Act of June 4, 1936 (49 Stat. 1458; 25 U.S.C. 452).

Not later than two years after funds are made available to carry out the purposes of this section, the Secretary shall submit to the Congress a complete report of the results of such study and investigation, together with such recommendations as he deems desirable.

There are authorized to be appropriated such sums as may be necessary for carrying out the purposes of this section.

(July 14, 1956, ch. 588, 70 Stat. 531.)

REFERENCES IN TEXT

The Johnson-O'Malley Act of June 4, 1936, referred to in text, probably means act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended generally by act June 4, 1936, ch. 490, 49 Stat. 1458, which is classified to sections 452 to 457 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

CODIFICATION

Section is composed of sections 1 to 4 of joint resolution July 14, 1956.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 304b. Deposits of funds of students and student activity associations in Indian schools

The Secretary of the Interior may authorize officials or employees of the Bureau of Indian Affairs to accept and to disburse deposits of funds of students and student activity associations in schools operated by the Bureau of Indian Affairs in accordance with the purposes of such deposits. Such deposits and disbursements shall be accounted for under rules and regulations prescribed by the Secretary of the Interior.

(Pub. L. 86–16, Apr. 27, 1959, 73 Stat. 20.)

CHAPTER 7A—PROMOTION OF SOCIAL AND ECONOMIC WELFARE

Sec.
305. Indian Arts and Crafts Board; creation and composition; per diem payments.
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306. Expenditures for encouragement of industry and self-support; repayment.
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310. Institute of American Indian and Alaska Native Culture and Arts Development.

§ 305. Indian Arts and Crafts Board; creation and composition; per diem payments

A board is created in the Department of the Interior to be known as ''Indian Arts and Crafts Board'', and hereinafter referred to as the Board. The Board shall be composed of five commissioners, who shall be appointed by the Secretary of the Interior as soon as possible after August 27, 1935 and shall continue in office, two for a term of two years, one for a term of three years, and two for a term of four years from the date of their appointment, the term of each to be designated by the Secretary of the Interior, but their successors shall be appointed for a term of four years except that any person chosen to fill a vacancy shall be appointed for the unexpired term of the commissioner whom he succeeds. Both public officers and private citizens shall be eligible for membership on the Board. The Board shall elect one of the commissioners as chairman. One or two vacancies on

the Board shall not impair the right of the remaining commissioners to exercise all the powers of the Board.

The commissioner shall serve without compensation: *Provided*, That each Commissioner shall be paid per diem in lieu of subsistence and other expenses at a rate that does not exceed the rate authorized by section 5703 of title 5 to be paid to persons serving without compensation.

(Aug. 27, 1935, ch. 748, § 1, 49 Stat. 891; Pub. L. 87–23, § 1, Apr. 24, 1961, 75 Stat. 45.)

CODIFICATION

''Section 5703 of title 5'' substituted in text for ''the Act of August 2, 1946 (60 Stat. 808) as heretofore or hereafter amended (5 U.S.C. 73b–2)'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1961—Pub. L. 87–23 substituted authorization for payment of per diem to Board members at the rate authorized for other persons serving without compensation for former provision reimbursing actual expenses, including travel expenses, subsistence and office overhead, incurred incidental to performance of duties.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–497, § 1, Nov. 9, 2000, 114 Stat. 2219, provided that: ''This Act [amending section 305e of this title] may be cited as the 'Indian Arts and Crafts Enforcement Act of 2000'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–644, title I, § 101, Nov. 29, 1990, 104 Stat. 4662, provided that: ''This title [enacting sections 305d and 305e of this title, amending section 305a of this title and sections 1158 and 1159 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 305e of this title] may be cited as the 'Indian Arts and Crafts Act of 1990'.''

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 305a. Promotion of economic welfare through development of arts and crafts; powers of Board

It shall be the function and the duty of the Secretary of the Interior through the Board to promote the economic welfare of the Indian tribes and Indian individuals through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship. In the execution of this function the Board shall have the following powers: (a) To undertake market research to determine the best opportunity for the sale of various products; (b) to engage in technical research and give technical advice and assistance; (c) to engage in experimentation directly or through selected agencies; (d) to correlate and encourage the activities of the various governmental and private agencies in the field; (e) to offer assistance in the management of operating groups for the furtherance of specific projects; (f) to make recommendations to appropriate agencies for loans in furtherance of the production and sale of Indian products; (g)(1) to create for the Board, or for an individual Indian or Indian tribe or Indian arts and crafts organization, trademarks of genuineness and quality for Indian products and the products of an individual Indian or particular Indian tribe or Indian arts and crafts organization; (2) to establish standards and regulations for the use of Government-owned trademarks by corporations, associations, or individuals, and to charge for such use under such licenses; (3) to register any such trademark owned by the Government in the United States Patent and Trademark Office without charge and assign it and the goodwill associated with it to an individual Indian or Indian tribe without charge; and (4) to pursue or defend in the courts any appeal or proceeding with respect to any final determination of that office; (h) to employ executive officers, including a general manager, and such other permanent and temporary personnel as may be found necessary, and prescribe the authorities, duties, responsibilities, and tenure and fix the compensation of such officers and other employees: *Provided*, That chapter 51 and subchapter III of chapter 53 of title 5 shall be applicable to all permanent employees and that all employees shall be appointed in accordance with the civil-service laws from lists of eligibles to be supplied by the Director of the Office of Personnel Management; (i) as a Government agency to negotiate and execute in its own name contracts with operating groups to supply management, personnel, and supervision at cost, and to negotiate and execute in its own name such other contracts and to carry on such other business as may be necessary for the accomplishment of the duties and purposes of the Board: *Provided*, That nothing in the foregoing enumeration of powers shall be construed to authorize the Board to borrow or lend money or to deal in Indian goods. For the purposes of this section, the term ''Indian arts and crafts organization'' means any legally established arts and crafts marketing organization composed of members of Indian tribes.

(Aug. 27, 1935, ch. 748, § 2, 49 Stat. 891; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 101–644, title I, § 102, Nov. 29, 1990, 104 Stat. 4662.)

REFERENCES IN TEXT

The civil-service laws, referred to in text, are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

The proviso in clause (h) originally provided that the Classification Act of 1923, as amended, shall be applicable to all permanent employees except executive officers, and that all employees other than executive officers shall be appointed in accordance with the civil-service laws from lists of eligibles to be supplied by the Civil Service Commission. The exception of ''executive officers'' has been omitted as obsolete and superseded.

Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While section 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of

continuing the exception in clause (h) because of section 1106(b) which provided that the application of the 1949 Act to any position, officers, or employee shall not be affected by section 1106(a). The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, § 8(a), 80 Stat. 632 (of which section 1 revised and enacted Title 5, Government Organization and Employees, into law). Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

Such appointments are subject to the civil service laws unless specifically excepted by such laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5.

''Chapter 51 and subchapter III of chapter 53 of title 5'' substituted in text for ''the Classification Act of 1949, as amended'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

1990—Pub. L. 101–644, § 102(1), in first sentence, substituted ''the Secretary of the Interior through the Board'' for ''the Board'' and ''Indian individuals'' for ''the Indian wards of the Government''.

Pub. L. 101–644, § 102(2), in second sentence, amended cl. (g) generally. Prior to amendment, cl. (g) read as follows: ''to create Government trade marks of genuineness and quality for Indian products and the products of particular Indian tribes or groups; to establish standards and regulations for the use of such trade marks; to license corporations, associations, or individuals to use them; and to charge a fee for their use; to register them in the United States Patent Office without charge;''.

Pub. L. 101–644, § 102(3), inserted sentence at end defining ''Indian arts and crafts organization''.

1949—Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923''.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in cl. (h), pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5.

§ 305a–1. Additional powers of Board; admission fees, rent, franchise fees and other fundraising activities; volunteers; transfer of revenues into special fund

In fiscal year 1997 and thereafter, the Indian Arts and Crafts Board may charge admission fees at its museums; charge rent and/or franchise fees for shops located in its museums; publish and sell publications; sell or rent or license use of photographs or other images in hard copy or other forms; license the use of designs, in whole or in part, by others; charge for consulting services provided to others; and may accept the services of volunteers to carry out its mission: *Provided*, That all revenue derived from such activities is covered into the special fund established by section 305c of this title.

(Pub. L. 104–208, div. A, title I, § 101(d) [title I, § 118], Sept. 30, 1996, 110 Stat. 3009–181, 3009–202.)

§ 305b. Rules and regulations; submission to Secretary of the Interior

The Board shall prescribe from time to time rules and regulations governing the conduct of its business and containing such provisions as it may deem appropriate for the effective execution and administration of the powers conferred upon it by this Act: *Provided*, That before prescribing any procedure for the disbursement of money the Board shall advise and consult with the Government Accountability Office: *Provided further*, That all rules and regulations proposed by the Board shall be submitted to the Secretary of the Interior and shall become effective upon his approval.

(Aug. 27, 1935, ch. 748, § 3, 49 Stat. 892; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

This Act, referred to in text, is act Aug. 27, 1935, ch. 748, 49 Stat. 891, as amended, which is classified generally to section 305 et seq. of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Disbursement functions of all Government agencies, except Departments of the Army, Navy, and Air Force and Panama Canal, transferred to Division of Disbursements, Department of the Treasury, by Ex. Ord. No. 6166, § 4, June 10, 1933, and Ex. Ord. No. 6728, May 29, 1934. Division subsequently consolidated with other agencies into the Fiscal Service in Department of the Treasury by Reorg. Plan No. III of 1940, § 1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231. See section 306 of Title 31, Money and Finance.

§ 305c. Appropriation

There is authorized to be appropriated out of any sums in the Treasury not otherwise appropriated such sums as may be necessary to defray the expenses of the Board and carry out the purposes and provisions of this Act. All income derived by the Board from any source shall be covered into the Treasury of the United States and shall constitute a special fund which is appropriated and made available until expended for carrying out the purposes and provisions of this Act. Out of the funds available to it at any time the Board may authorize such expenditures, consistent with the provisions of this Act, as it

may determine to be necessary for the accomplishment of the purposes and objectives of this Act.

(Aug. 27, 1935, ch. 748, § 4, 49 Stat. 892.)

REFERENCES IN TEXT

This Act, referred to in text, is act Aug. 27, 1935, ch. 748, 49 Stat. 891, as amended, which is classified generally to section 305 et seq. of this title. For complete classification of this Act to the Code, see Tables.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 305c–1. Repealed. Pub. L. 87–23, § 2, Apr. 24, 1961, 75 Stat. 45

Section, act May 10, 1939, ch. 119, § 1, 53 Stat. 699, provided for a limitation of $10 per diem in lieu of subsistence on amount that may be paid to members of the Indian Arts and Crafts Board. See section 305 of this title.

§ 305d. Referral for criminal and civil violations; complaints; recommendations

(a) The Board may receive complaints of violations of section 1159 of title 18 and refer complaints of such violations to the Federal Bureau of Investigation for appropriate investigation. After reviewing the investigation report, the Board may recommend to the Attorney General of the United States that criminal proceedings be instituted under that section.

(b) The Board may recommend that the Secretary of the Interior refer the matter to the Attorney General for civil action under section 305e of this title.

(Aug. 27, 1935, ch. 748, § 5, as added Pub. L. 101–644, title I, § 103, Nov. 29, 1990, 104 Stat. 4662.)

PRIOR PROVISIONS

A prior section, act Aug. 27, 1935, ch. 748, § 5, 49 Stat. 892, related to counterfeiting of a trade mark and penalty, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, effective Sept. 1, 1948. See section 1158 of Title 18, Crimes and Criminal Procedure.

§ 305e. Cause of action for misrepresentation of Indian produced goods

(a) Injunctive or equitable relief; damages

A person specified in subsection (c) of this section may, in a civil action in a court of competent jurisdiction, bring an action against a person who, directly or indirectly, offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States, to—

(1) obtain injunctive or other equitable relief; and

(2) recover the greater of—

(A) treble damages; or

(B) in the case of each aggrieved individual Indian, Indian tribe, or Indian arts and crafts organization, not less than $1,000 for each day on which the offer or display for sale or sale continues.

For purposes of paragraph (2)(A), damages shall include any and all gross profits accrued by the defendant as a result of the activities found to violate this subsection.

(b) Punitive damages; attorney's fee

In addition to the relief specified in subsection (a) of this section, the court may award punitive damages and the costs of suit and a reasonable attorney's fee.

(c) Persons who may initiate civil actions

(1) A civil action under subsection (a) of this section may be commenced—

(A) by the Attorney General of the United States upon request of the Secretary of the Interior on behalf of an Indian who is a member of an Indian tribe or on behalf of an Indian tribe or Indian arts and crafts organization;

(B) by an Indian tribe on behalf of itself, an Indian who is a member of the tribe, or on behalf of an Indian arts and crafts organization; or

(C) by an Indian arts and crafts organization on behalf of itself, or by an Indian on behalf of himself or herself.

(2) Any amount recovered pursuant to this section shall be paid to the individual Indian, Indian tribe, or Indian arts and crafts organization, except that—

(A) in the case of paragraph (1)(A), the Attorney General may deduct from the amount recovered—

(i) the amount for the costs of suit and reasonable attorney's fees awarded pursuant to subsection (b) of this section and deposit the amount of such costs and fees as a reimbursement credited to appropriations currently available to the Attorney General at the time of receipt of the amount recovered; and

(ii) the amount for the costs of investigation awarded pursuant to subsection (b) of this section and reimburse the Board the amount of such costs incurred as a direct result of Board activities in the suit; and

(B) in the case of paragraph (1)(B), the amount recovered for the costs of suit and reasonable attorney's fees pursuant to subsection (b) of this section may be deducted from the total amount awarded under subsection (a)(2) of this section.

(d) Definitions

As used in this section—

(1) the term ''Indian'' means any individual who is a member of an Indian tribe; or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

(2) subject to subsection (f) of this section, the terms ''Indian product'' and ''product of a particular Indian tribe or Indian arts and crafts organization'' has the meaning given such term[1] in regulations which may be promulgated by the Secretary of the Interior;

(3) the term ''Indian tribe'' means—

(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or

[1] So in original. Probably should be ''terms''.

community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

(4) the term ''Indian arts and crafts organization'' means any legally established arts and crafts marketing organization composed of members of Indian tribes.

(e) Severability

In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.

(f) Regulations

Not later than 180 days after November 9, 2000, the Board shall promulgate regulations to include in the definition of the term ''Indian product'' specific examples of such product to provide guidance to Indian artisans as well as to purveyors and consumers of Indian arts and crafts, as defined under this Act.

(Aug. 27, 1935, ch. 748, § 6, as added Pub. L. 101–644, title I, § 105, Nov. 29, 1990, 104 Stat. 4664; amended Pub. L. 106–497, § 2, Nov. 9, 2000, 114 Stat. 2219.)

REFERENCES IN TEXT

This Act, referred to in subsec. (f), is act Aug. 27, 1935, ch. 748, 49 Stat. 891, as amended, which is classified generally to section 305 et seq. of this title. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section, act Aug. 27, 1935, ch. 748, § 6, 49 Stat. 893, related to offering for sale without trade mark goods as Indian goods, prior to repeal by acts June 25, 1948, ch. 645, § 21, 62 Stat. 862; June 25, 1948, ch. 646, § 39, 62 Stat. 992, effective Sept. 1, 1948. See section 1159 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–497, § 2(1), inserted '', directly or indirectly,'' after ''against a person who'' in introductory provisions and inserted at end ''For purposes of paragraph (2)(A), damages shall include any and all gross profits accrued by the defendant as a result of the activities found to violate this subsection.''

Subsec. (c)(1)(C). Pub. L. 106–497, § 2(2)(A), added subpar. (C).

Subsec. (c)(2)(A). Pub. L. 106–497, § 2(2)(B), designated existing text as cl. (i) and added cl. (ii).

Subsec. (d)(2). Pub. L. 106–497, § 2(3), inserted ''subject to subsection (f) of this section,'' before ''the terms''.

Subsec. (f). Pub. L. 106–497, § 2(4), added subsec. (f).

CERTIFICATION OF INDIAN ARTISANS

Section 107 of Pub. L. 101–644 provided that: ''For the purposes of section 1159 of title 18, United States Code, and section 6 of the Act entitled 'An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes' (25 U.S.C. 305 et seq.) [25 U.S.C. 305e] an Indian tribe may not impose a fee in certifying an individual as an Indian artisan. For the purposes of this section, the term 'Indian tribe' has the same meaning given such term in section 1159(c)(3) of title 18, United States Code.''

§ 305f. Indian Arts and Crafts Board art collection

(a) Transfer of art collection and costs

Notwithstanding any other provision of law, the Secretary of the Interior is directed to transfer all right, title and interest in that portion of the Indian Arts and Crafts Board art collection maintained permanently by the Indian Arts and Crafts Board in Washington, District of Columbia, to the Secretary of the Smithsonian Institution to be a part of the collection of the National Museum of the American Indian, subject to subsection (b) of this section. Transfer of the collection and costs thereof shall be carried out in accordance with terms, conditions, and standards mutually agreed upon by the Secretary of the Interior and the Secretary of the Smithsonian Institution.

(b) Retention of permanent license to use of images

The Indian Arts and Crafts Board shall retain a permanent license to the use of images of the collection for promotional, economic development, educational and related nonprofit purposes. The Indian Arts and Crafts Board shall not be required to pay any royalty or fee for such license.

(Aug. 27, 1935, ch. 748, § 7, as added Pub. L. 105–277, div. A, § 101(e) [title III, § 356(a)], Oct. 21, 1998, 112 Stat. 2681–231, 2681–304.)

§ 306. Expenditures for encouragement of industry and self-support; repayment

On and after May 9, 1938, the expenditures for the purpose of encouraging industry and self-support among the Indians and to aid them in the culture of fruits, grains, and other crops shall be under conditions to be prescribed by the Secretary of the Interior for repayment to the United States on or before the expiration of five years, except in the case of loans on irrigable lands for permanent improvement of said lands, in which the period for repayment may run for nor exceeding twenty years, in the discretion of the Secretary of the Interior.

(May 9, 1938, ch. 187, § 1, 52 Stat. 302.)

§ 306a. Advances for support of old, disabled, or indigent allottees; lien against land

On and after May 9, 1938, the Secretary of the Interior is authorized, in his discretion and under such rules and regulations as he may prescribe, to make advances to old, disabled, or indigent Indian allottees, for their support, to remain a charge and lien against their land until paid; such advances for the fiscal year 1939 to be made from the appropriations in this paragraph and those for fiscal years thereafter to be made from appropriations specifically available for such purposes.

(May 9, 1938, ch. 187, § 1, 52 Stat. 302.)

REFERENCES IN TEXT

This paragraph, referred to in text, means the first undesignated paragraph contained at 52 Stat. 302, and the appropriations for advances for the fiscal year 1939, referred to in text, were contained in such part of the undesignated paragraph which was not classified to the Code.

§§ 307, 308. Omitted

CODIFICATION

Section 307, acts Mar. 17, 1949, ch. 22, §1, 63 Stat. 14; June 30, 1949, ch. 288, title I, §105, 63 Stat. 381, directed Administrator of General Services to transfer to Secretary of the Interior property known as Bushnell General Hospital, Brigham City, Utah, for use of Bureau of Indian Affairs as a vocational school for children and housing and training center for adults. Pub. L. 98–401, Aug. 27, 1984, 98 Stat. 1477, provided that when the Secretary ceases to use the property for school purposes, he shall publish the legal description of the property in the Federal Register and convey the property without consideration to Brigham City, Utah. The property was conveyed and notice was published in 50 F.R. 1636, Jan. 11, 1985.

Section 308, act Mar. 17, 1949, ch. 22, §2, 63 Stat. 14, directed Secretary of the Interior to take over the property as soon as Congress appropriated funds for alterations, maintenance, and operation.

§ 309. Vocational training program; eligibility; contracts or agreements

In order to help adult Indians who reside on or near Indian reservations to obtain reasonable and satisfactory employment, the Secretary of the Interior is authorized to undertake a program of vocational training that provides for vocational counseling or guidance, institutional training in any recognized vocation or trade, apprenticeship, and on the job training, for periods that do not exceed twenty-four months, and, for nurses' training, for periods that do not exceed thirty-six months, transportation to the place of training, and subsistence during the course of training. The program shall be available primarily to Indians who are not less than eighteen and not more than thirty-five years of age and who reside on or near an Indian reservation, and the program shall be conducted under such rules and regulations as the Secretary may prescribe. For the purposes of this program the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, or with any private school which has a recognized reputation in the field of vocational education and has successfully obtained employment for its graduates in their respective fields of training, or with any corporation or association which has an existing apprenticeship or on-the-job training program which is recognized by industry and labor as leading to skilled employment, or with any school of nursing offering a three-year course of study leading to a diploma in nursing which is accredited by a recognized body or bodies approved for such purpose by the Secretary.

(Aug. 3, 1956, ch. 930, §1, 70 Stat. 986; Pub. L. 88–230, §1(a), Dec. 23, 1963, 77 Stat. 471.)

AMENDMENTS

1963—Pub. L. 88–230 authorized Secretary of the Interior to undertake a program for nurses' training for periods not exceeding 36 months and to enter into contracts with accredited schools of nursing offering a 3-year course of study leading to a diploma in nursing.

§ 309a. Authorization of appropriations

There is authorized to be appropriated for the purposes of sections 309 and 309a of this title the sum of $25,000,000 for each fiscal year, and not to exceed $1,500,000 of such sum shall be available for administrative purposes.

(Aug. 3, 1956, ch. 930, §2, 70 Stat. 986; Pub. L. 87–273, Sept. 22, 1961, 75 Stat. 571; Pub. L. 88–230, §1(b), Dec. 23, 1963, 77 Stat. 471; Pub. L. 89–14, Apr. 22, 1965, 79 Stat. 74; Pub. L. 90–252, Feb. 3, 1968, 82 Stat. 4.)

AMENDMENTS

1968—Pub. L. 90–252 increased appropriation from $15,000,000 to $25,000,000.

1965—Pub. L. 89–14 increased appropriation from $12,000,000 to $15,000,000.

1963—Pub. L. 88–230 increased appropriation from $7,500,000 to $12,000,000 and amount available for administrative purposes from $1,000,000 to $1,500,000.

1961—Pub. L. 87–273 increased appropriation to $7,500,000 and amount available for administrative purposes to $1,000,000.

§ 309b. Vocational education funds

Notwithstanding any other provision of law, funds provided by the Bureau for adult vocational education to any vocational school (as defined for purposes of any program of assistance to students under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.]) may be treated as non-Federal, private funds of such school for purposes of any provision of Federal law which requires that non-Federal or private funds of such school be used in a project or for a specific purpose.

(Pub. L. 100–297, title V, §5403(c), Apr. 28, 1988, 102 Stat. 416.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in text, is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

EFFECTIVE DATE

For effective date and applicability of section, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of Title 20, Education.

§ 310. Institute of American Indian and Alaska Native Culture and Arts Development

(a)(1) To the extent of the availability of funds for such purpose, the Secretary of the Interior shall:

(A) enter into a thirty-year agreement with the College of Santa Fe, Santa Fe, New Mexico, to provide educational facilities for the use of, and to develop cooperative educational/arts programs to be carried out with the post-secondary fine arts and museum services programs of, the Institute of American Indian and Alaska Native Culture and Arts Development administered by the Bureau of Indian Affairs; and

(B) conduct such activities as are necessary to improve the facilities used by the Institute of American Indian and Alaska Native Culture and Arts Development at the College of Santa Fe.

(2) The provisions of this subsection shall take effect on October 1, 1984.

(b)(1) The Secretary of the Interior, acting through the Bureau of Indian Affairs, is directed to conduct a study for the purpose of determining the need, if any, for a museum facility to be established for the benefit of the Institute of American Indian and Alaska Native Culture and Arts Development, the feasibility of establishing such museum, and the need or desirability, if any, to establish any such museum in close proximity to the facilities currently being used by such Institute at the College of Santa Fe.

(2) On or before February 1, 1985, the Secretary of the Interior shall report the results of such study, together with his recommendations, to the Congress.

(3) Should the study recommend establishment of a museum, and should the College of Santa Fe be selected as the best site, any agreement entered into by the Secretary of the Interior for construction of such museum shall contain assurances, satisfactory to the Secretary, that appropriate lands at the College of Santa Fe will be available at no cost to the Federal Government for the establishment of a museum facility.

(Pub. L. 98–306, § 14, May 31, 1984, 98 Stat. 226; Pub. L. 99–498, title XV, § 1514(c), Oct. 17, 1986, 100 Stat. 1608.)

AMENDMENTS

1986—Subsecs. (a)(1), (b)(1). Pub. L. 99–498 substituted ''Institute of American Indian and Alaska Native Culture and Arts Development'' for ''Institute of American Indian Arts'' wherever appearing.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1514(f) of Pub. L. 99–498 provided that amendment made by Pub. L. 99–498 is effective Oct. 1, 1986.

CHAPTER 8—RIGHTS-OF-WAY THROUGH INDIAN LANDS

Sec.
311. Opening highways.
312. Rights-of-way for railway, telegraph, and telephone lines; town-site stations.
313. Width of rights-of-way.
314. Survey; maps; compensation.
315. Time for completion of road; forfeiture.
316. Rights of several roads through canyons.
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318b. Repealed.
319. Rights-of-way for telephone and telegraph lines.
320. Acquisition of lands for reservoirs or materials.
321. Rights-of-way for pipe lines.
322. Applicability of certain provisions to Pueblo Indians.
322a. Renewal of rights-of-way without consent of Pueblo Tribes; authority of Secretary; compensation, etc.
323. Rights-of-way for all purposes across any Indian lands.
324. Consent of certain tribes; consent of individual Indians.
325. Payment and disposition of compensation.
326. Laws unaffected.
327. Application for grant by department or agency.
328. Rules and regulations.

§ 311. Opening highways

The Secretary of the Interior is authorized to grant permission, upon compliance with such requirements as he may deem necessary, to the proper State or local authorities for the opening and establishment of public highways, in accordance with the laws of the State or Territory in which the lands are situated, through any Indian reservation or through any lands which have been allotted in severalty to any individual Indian under any laws or treaties but which have not been conveyed to the allottee with full power of alienation.

(Mar. 3, 1901, ch. 832, § 4, 31 Stat. 1084.)

§ 312. Rights-of-way for railway, telegraph, and telephone lines; town-site stations

A right of way for a railway, telegraph, and telephone line through any Indian reservation in any State or Territory, except Oklahoma, or through any lands reserved for an Indian agency or for other purposes in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation, is granted to any railroad company organized under the laws of the United States, or of any State or Territory, which shall comply with the provisions of sections 312 to 318 of this title and such rules and regulations as may be prescribed thereunder: *Provided*, That no right of way shall be granted under said sections until the Secretary of the Interior is satisfied that the company applying has made said application in good faith and with intent and ability to construct said road, and in case objection to the granting of such right of way shall be made, said Secretary shall afford the parties so objecting a full opportunity to be heard: *Provided further*, That where a railroad has heretofore been constructed, or is in actual course of construction, no parallel right of way within ten miles on either side shall be granted by the Secretary of the Interior unless, in his opinion, public interest will be promoted thereby: *Provided, also*, That as a condition precedent to each and every grant of a right of way under authority of said sections, each and every railway company applying for such grant shall stipulate that it will construct and permanently maintain suitable passenger and freight stations for the convenience of each and every town site established by the Government along said right of way.

(Mar. 2, 1899, ch. 374, § 1, 30 Stat. 990; Feb. 28, 1902, ch. 134, § 23, 32 Stat. 50; June 25, 1910, ch. 431, § 16, 36 Stat. 859.)

§ 313. Width of rights-of-way

Such right of way shall not exceed fifty feet in width on each side of the center line of the road, except where there are heavy cuts and fills, when it shall not exceed one hundred feet in width on each side of the road, and may include grounds adjacent thereto for station buildings, depots, machine shops, sidetracks, turn-outs, and water stations, not to exceed two hundred feet in width by a length of three thousand feet, and not more than one station to be located within any one continuous length of ten miles of road.

(Mar. 2, 1899, ch. 374, § 2, 30 Stat. 990; June 21, 1906, ch. 3504, 34 Stat. 330.)

§ 314. Survey; maps; compensation

The line of route of said road may be surveyed and located through and across any of said lands at any time, upon permission therefor being obtained from the Secretary of the Interior; but before the grant of such right of way shall become effective a map of the survey of the line or route of said road must be filed with and approved by the Secretary of the Interior, and the company must make payment to the Secretary of the Interior for the benefit of the tribe or nation, of full compensation for such right of way, including all damage to improvements and adjacent lands, which compensation shall be determined and paid under the direction of the Secretary of the Interior, in such manner as he may prescribe. Before any such railroad shall be constructed through any land, claim, or improvement, held by individual occupants or allottees in pursuance of any treaties or laws of the United States, compensation shall be made to such occupant or allottee for all property to be taken, or damage done, by reason of the construction of such railroad. In case of failure to make amicable settlement with any such occupant or allottee, such compensation shall be determined by the appraisement of three disinterested referees, to be appointed by the Secretary of the Interior, who, before entering upon the duties of their appointment, shall take and subscribe before competent authority an oath that they will faithfully and impartially discharge the duties of their appointment, which oath, duly certified, shall be returned with their award to the Secretary of the Interior. If the referees cannot agree, then any two of them are authorized to make the award. Either party being dissatisfied with the finding of the referees shall have the right within sixty days after the making of the award and notice of the same, to appeal, if said land is situated in any State or Territory other than Oklahoma, to the United States district court for such State or Territory, where the case shall be tried de novo and the judgment for damages rendered by the court shall be final and conclusive.

When proceedings are commenced in court as aforesaid, the railroad company shall deposit the amount of the award made by the referees with the court to abide the judgment thereof, and then have the right to enter upon the property sought to be condemned and proceed with the construction of the railway. Each of the referees shall receive for his compensation the sum of $4 per day while engaged in the hearing of any case submitted to them under sections 312 to 318 of this title. Witnesses shall receive the fees usually allowed by courts within the district where such land is located. Costs, including compensation of the referees, shall be made part of the award or judgment, and be paid by such railroad company.

(Mar. 2, 1899, ch. 374, § 3, 30 Stat. 991; Feb. 28, 1902, ch. 134, § 23, 32 Stat. 50.)

§ 315. Time for completion of road; forfeiture

If any such company shall fail to construct and put in operation one-tenth of its entire line in one year, or to complete its road within three years after the approval of its map of location by the Secretary of the Interior, the right of way granted shall be deemed forfeited and abandoned ipso facto as to that portion of the road not then constructed and in operation: *Provided*, That the Secretary may, when he deems proper, extend, for a period not exceeding two years, the time for the completion of any road for which right of way has been granted and a part of which shall have been built.

(Mar. 2, 1899, ch. 374, § 4, 30 Stat. 991.)

§ 316. Rights of several roads through canyons

The provisions of section 935[1] of title 43 relating to the rights of several railroads through any canyon, pass, or defile are extended and made applicable to rights of way granted under sections 312 to 318 of this title and to railroad companies obtaining such rights of way.

(Mar. 2, 1899, ch. 374, § 6, 30 Stat. 992.)

REFERENCES IN TEXT

Section 935 of title 43, referred to in text, was repealed by Pub. L. 94–579, title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, under, and through the public lands and lands in the National Forest System.

§ 317. Regulations

The Secretary of the Interior shall make all needful rules and regulations, not inconsistent with sections 312 to 318 of this title, for the proper execution and carrying into effect of all the provisions of said sections.

(Mar. 2, 1899, ch. 374, § 7, 30 Stat. 992.)

§ 318. Amendment or repeal of sections

Congress reserves the right at any time to alter, amend, or repeal sections 312 to 318 of this title or any portion thereof.

(Mar. 2, 1899, ch. 374, § 8, 30 Stat. 992.)

§ 318a. Roads on Indian reservations; appropriation

Appropriations are hereby authorized out of any money in the Treasury not otherwise appropriated for material, equipment, supervision and engineering, and the employment of Indian labor in the survey, improvement, construction, and maintenance of Indian reservation roads not eligible to Government aid under the Federal Highway Act and for which no other appropriation is available, under such rules and regulations as may be prescribed by the Secertary[1] of the Interior.

(May 26, 1928, ch. 756, 45 Stat. 750.)

REFERENCES IN TEXT

The Federal Highway Act, referred to in text, is act Nov. 9, 1921, ch. 119, 42 Stat. 212, which enacted sections 1, 2, 3, 3a, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 to 20, 21, 22, 23, 24, and 25 of former Title 23, Highways, and amended sections 5 and 12a of former Title 23 and section 3 of Title 50, War and National Defense. Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 919, repealed the Federal Highway Act, with the exception of the amendment to section 3 of

[1] See References in Text note below.

[1] So in original. Probably should be "Secretary".

Title 50, as part of the general revision and reenactment of Title 23, Highways.

APPROPRIATIONS FOR FISCAL YEARS 1950 AND 1951

Act June 29, 1948, ch. 732, § 4(c), 62 Stat. 1105, authorized the appropriation of $6,000,000 for fiscal years 1950 and 1951, respectively, for the carrying out of the provisions of this section.

§ 318b. Repealed. Pub. L. 85–767, § 2[19], [23], Aug. 27, 1958, 72 Stat. 919

Section, acts June 16, 1936, ch. 582, § 6, 49 Stat. 1521; Sept. 5, 1940, ch. 715, § 10, 54 Stat. 870; June 30, 1949, ch. 288, title I, § 103(a), 63 Stat. 380; 1949 Reorg. Plan No. 7, § 1, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1070, related to location and design of roads by the Bureau of Public Roads.

§ 319. Rights-of-way for telephone and telegraph lines

The Secretary of the Interior is authorized and empowered to grant a right of way, in the nature of an easement, for the construction, operation, and maintenance of telephone and telegraph lines and offices for general telephone and telegraph business through any Indian reservation, through any lands held by an Indian tribe or nation in the former Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation, upon the terms and conditions herein expressed. No such lines shall be constructed across Indian lands, as above mentioned, until authority therefor has first been obtained from the Secretary of the Interior, and the maps of definite location of the lines shall be subject to his approval. The compensation to be paid the tribes in their tribal capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct, and shall be subject to his final approval; and where such lines are not subject to State or Territorial taxation the company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding $5 for each ten miles of line so constructed and maintained; and all such lines shall be constructed and maintained under such rules and regulations as said Secretary may prescribe. But nothing herein contained shall be so construed as to exempt the owners of such lines from the payment of any tax that may be lawfully assessed against them by either State, Territorial, or municipal authority; and Congress hereby expressly reserves the right to regulate the tolls or charges for the transmission of messages over any lines constructed under the provisions of this section: *Provided*, That incorporated cities and towns into or through which such telephone or telegraphic lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such towns and cities.

(Mar. 3, 1901, ch. 832, § 3, 31 Stat. 1083.)

CODIFICATION

The ''former Indian Territory'', referred to in text, was in the original ''Indian Territory'', and has been designated as former Indian Territory by virtue of the admission of such former Territory and the Territory of Oklahoma to the Union as the State of Oklahoma, pursuant to act June 16, 1906, ch. 3335, 34 Stat. 267.

Section is comprised of the first par. of section 3 of act Mar. 3, 1901. The second par. of such section 3 is classified to section 357 of this title.

§ 320. Acquisition of lands for reservoirs or materials

When, in the judgment of the Secretary of the Interior, it is necessary for any railway company owning or operating a line of railway in any Indian reservation to acquire lands in such Indian reservation for reservoirs, material, or ballast pits for the construction, repair, and maintenance of its railway, or for the purpose of planting and growing thereon trees to protect its line of railway, the said Secretary is authorized to grant such lands to any such railway company under such terms and conditions and such rules and regulations as may be prescribed by the said Secretary.

When any railway company desiring to secure the benefits of this provision shall file with the Secretary of the Interior an application describing the lands which it desires to purchase, upon the payment of the price agreed upon the said Secretary shall cause such lands to be conveyed to the railway company applying therefor upon such terms and conditions as he may deem proper: *Provided*, That no lands shall be acquired under the terms of this provision in greater quantities than forty acres for any one reservoir, and one hundred and sixty acres for any material or ballast pit, to the extent of not more than one reservoir and one material or gravel pit in any one section of ten miles of any such railway in any Indian reservation: *And provided further*, That the lands acquired for tree planting shall be taken only at such places along the line of the railway company applying therefor as in the judgment of the said Secretary may be necessary, and shall be taken in strips adjoining and parallel with the right of way of the railway company taking the same, and shall not exceed one hundred and fifty feet in width.

All moneys paid for such lands shall be deposited in the Treasury of the United States to the credit of the tribe or tribes, and the moneys received by said Secretary as damages sustained by individual members of the Indian tribe, which damages shall be ascertained by the Secretary of the Interior and paid by the railway company taking such lands, shall be paid by said Secretary to the Indian or Indians sustaining such damages. The provisions of this section are extended and made applicable to any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation; the damages and compensation to be paid to any Indian allottee shall be ascertained and fixed in such manner as the Secretary of the Interior may direct and shall be paid by the railway company to said Secretary; the damages and compensation paid

to the Secretary of the Interior by the railway company taking any such land shall be paid by said Secretary to the allottee sustaining such damages.

(Mar. 3, 1909, ch. 263, 35 Stat. 781, 782; May 6, 1910, ch. 204, 36 Stat. 349.)

§ 321. Rights-of-way for pipe lines

The Secretary of the Interior is authorized and empowered to grant a right-of-way in the nature of an easement for the construction, operation, and maintenance of pipe lines for the conveyance of oil and gas through any Indian reservation, through any lands held by an Indian tribe or nation in the former Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian Service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation upon the terms and conditions herein expressed. Before title to rights of way applied for hereunder shall vest, maps of definite location shall be filed with and approved by the Secretary of the Interior: *Provided*, That before such approval the Secretary of the Interior may, under such rules and regulations as he may prescribe, grant temporary permits revocable in his discretion for the construction of such lines: *Provided*, That the construction of lateral lines from the main pipe line establishing connection with oil and gas wells on the individual allotments of citizens may be constructed without securing authority from the Secretary of the Interior and without filing maps of definite location, when the consent of the allottee upon whose lands oil or gas wells may be located and of all other allottees through whose lands said lateral pipe lines may pass has been obtained by the pipe-line company: *Provided further*, That in case it is desired to run a pipe line under the line of any railroad, and satisfactory arrangements cannot be made with the railroad company, then the question shall be referred to the Secretary of the Interior, who shall prescribe the terms and conditions under which the pipe-line company shall be permitted to lay its lines under said railroad. The compensation to be paid the tribes in their tribal capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct, and shall be subject to his final approval. And where such lines are not subject to State or Territorial taxation the company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding $5 for each ten miles of line so constructed and maintained under such rules and regulations as said Secretary may prescribe. But nothing herein contained shall be so construed as to exempt the owners of such lines from the payment of any tax that may be lawfully assessed against them by either State, Territorial, or municipal authority. And incorporated cities and towns into and through which such pipe lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such towns and cities, and nothing herein shall authorize the use of such right of way except for pipe line, and then only so far as may be necessary for its construction, maintenance, and care: *Provided*, That the rights herein granted shall not extend beyond a period of twenty years: *Provided further*, That the Secretary of the Interior, at the expiration of said twenty years, may extend the right to maintain any pipe line constructed under this section for another period not to exceed twenty years from the expiration of the first right, upon such terms and conditions as he may deem proper. The right to alter, amend, or repeal this section is expressly reserved.

(Mar. 11, 1904, ch. 505, §§ 1, 2, 33 Stat. 65; Mar. 2, 1917, ch. 146, § 1, 39 Stat. 973.)

CODIFICATION

The ''former Indian Territory'', referred to in text, was in the original ''Indian Territory'', and has been designated as former Indian Territory by virtue of the admission of such former Territory and the Territory of Oklahoma to the Union as the State of Oklahoma, pursuant to act June 16, 1906, ch. 3335, 34 Stat. 267.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, § 1–101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§ 322. Applicability of certain provisions to Pueblo Indians

The provisions of the following statutes:
Sections 311, 319, and 357 of this title;
Sections 312 to 318 of this title;
Section 321 of this title; and
Sections 323 to 328 of this title,

are extended over and made applicable to the Pueblo Indians of New Mexico and their lands, whether owned by the Pueblo Indians or held in trust or set aside for their use and occupancy by Executive order or otherwise, under such rules, regulations, and conditions as the Secretary of the Interior may prescribe.

(Apr. 21, 1928, ch. 400, § 1, 45 Stat. 442; Pub. L. 94–416, § 3, Sept. 17, 1976, 90 Stat. 1275.)

AMENDMENTS

1976—Pub. L. 94–416 inserted reference to sections 323 to 328 and 357 of this title with respect to the enumera-

tion of statutes, struck out reference to section 935 of title 43 with respect to the enumeration of statutes, and inserted ''whether owned by the Pueblo Indians or held in trust or set aside for their use and occupancy by Executive order or otherwise,'' after ''New Mexico and their lands''.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, §1–101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§ 322a. Renewal of rights-of-way without consent of Pueblo Tribes; authority of Secretary; compensation, etc.

Notwithstanding such provisions, the Secretary of the Interior may, without the consent of the affected Pueblo Tribes, grant one renewal for a period not to exceed ten years of any right-of-way acquired through litigation initiated under the Act of May 10, 1926 (44 Stat. 498), or by compromise and settlement in such litigation, prior to January 1, 1975. The Secretary shall require, as compensation for the Pueblo involved, the fair market value, as determined by the Secretary, of the grant of such renewal. The Secretary may grant such right-of-way renewal under this section only in the event the owner of such existing right-of-way and the Pueblo Tribe involved cannot reach agreement on renewal within ninety days after such renewal is requested. Nothing in this section shall be deemed to validate or authorize the renewal of a right-of-way which is otherwise invalid by reason of the invalidity of the Act of May 10, 1926, on the date said right-of-way was originally obtained.

(Apr. 21, 1928, ch. 400, §2, as added Pub. L. 94–416, §3, Sept. 17, 1976, 90 Stat. 1275.)

REFERENCES IN TEXT

Notwithstanding such provisions, referred to in text, means the provisions referred to in section 322 of this title.

Act of May 10, 1926, referred to in text, is act May 10, 1926, ch. 282, 44 Stat. 498, which was not classified to the Code.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, §1–101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§ 323. Rights-of-way for all purposes across any Indian lands

The Secretary of the Interior be, and he is empowered to grant rights-of-way for all purposes, subject to such conditions as he may prescribe, over and across any lands now or hereafter held in trust by the United States for individual Indians or Indian tribes, communities, bands, or nations, or any lands now or hereafter owned, subject to restrictions against alienation, by individual Indians or Indian tribes, communities, bands, or nations, including the lands belonging to the Pueblo Indians in New Mexico, and any other lands heretofore or hereafter acquired or set aside for the use and benefit of the Indians.

(Feb. 5, 1948, ch. 45, §1, 62 Stat. 17.)

EFFECTIVE DATE

Section 7 of act Feb. 5, 1948, provided that sections 323 to 328 should not become operative until 30 days after Feb. 5, 1948.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, §1–101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§ 324. Consent of certain tribes; consent of individual Indians

No grant of a right-of-way over and across any lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), as amended [25

U.S.C. 461 et seq.]; the Act of May 1, 1936 (49 Stat. 1250) [25 U.S.C. 473a, 496]; or the Act of June 26, 1936 (49 Stat. 1967) [25 U.S.C. 501 et seq.], shall be made without the consent of the proper tribal officials. Rights-of-way over and across lands of individual Indians may be granted without the consent of the individual Indian owners if (1) the land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant; (2) the whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known, or a majority thereof, consent to the grant; (3) the heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary of the Interior finds that the grant will cause no substantial injury to the land or any owner thereof; or (4) the owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

(Feb. 5, 1948, ch. 45, § 2, 62 Stat. 18.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Section 496 of this title, referred to in text, was repealed by Pub. L. 94–579, title VII, § 704(a), Oct. 21, 1976, 90 Stat. 2792.

Act of June 26, 1936, referred to in text, popularly known as the Oklahoma Welfare Act, is classified generally to subchapter VIII (§ 501 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 501 of this title and Tables.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, § 1–101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§ 325. Payment and disposition of compensation

No grant of a right-of-way shall be made without the payment of such compensation as the Secretary of the Interior shall determine to be just. The compensation received on behalf of the Indian owners shall be disposed of under rules and regulations to be prescribed by the Secretary of the Interior.

(Feb. 5, 1948, ch. 45, § 3, 62 Stat. 18.)

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, § 1–101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§ 326. Laws unaffected

Sections 323 to 328 of this title shall not in any manner amend or repeal the provisions of the Federal Water Power Act of June 10, 1920 (41 Stat. 1063), as amended by the Act of August 26, 1935 (49 Stat. 838) [16 U.S.C. 791a et seq.], nor shall any existing statutory authority empowering the Secretary of the Interior to grant rights-of-way over Indian lands be repealed.

(Feb. 5, 1948, ch. 45, § 4, 62 Stat. 18.)

REFERENCES IN TEXT

The Federal Water Power Act, referred to in text, is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, now known as the Federal Power Act, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, § 1–101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§ 327. Application for grant by department or agency

Rights-of-way for the use of the United States may be granted under sections 323 to 328 of this title upon application by the department or agency having jurisdiction over the activity for which the right-of-way is to be used.

(Feb. 5, 1948, ch. 45, § 5, 62 Stat. 18.)

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, § 1–101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§ 328. Rules and regulations

The Secretary of the Interior is authorized to prescribe any necessary regulations for the purpose of administering the provisions of sections 323 to 328 of this title.

(Feb. 5, 1948, ch. 45, § 6, 62 Stat. 18.)

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior relating to compliance with rights-of-way across Indian lands, issued under section 321 et seq. of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees, effective July 1, 1979, pursuant to Ex. Ord. No. 12142, § 1–101, June 21, 1979, 44 F.R. 36927, set out as a note under section 719e of Title 15, Commerce and Trade. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

CHAPTER 9—ALLOTMENT OF INDIAN LANDS

Sec.
331 to 333. Repealed.
334. Allotments to Indians not residing on reservations.
335. Extension of provisions as to allotments.
336. Allotments to Indians making settlement.
337. Allotments in national forests.
337a, 338. Repealed.
339. Tribes excepted from certain provisions.
340. Extension of certain provisions.
341. Power to grant rights-of-way not affected.
342. Removal of Southern Utes to new reservation.
343. Correction of errors in allotments and patents.
344. Cancellation of allotment of unsuitable land.
344a. Repealed.
345. Actions for allotments.
346. Proceedings in actions for allotments.
347. Limitations of actions for lands patented in severalty under treaties.
348. Patents to be held in trust; descent and partition.
348a. Extension of trust period for Indians of Klamath River Reservation.
349. Patents in fee to allottees.
350. Surrender of patent, and selection of other land.
351. Patents with restrictions for lots in villages in Washington.
352. Cancellation of trust patents within power or reservoir sites.
352a. Cancellation of patents in fee simple for allotments held in trust.
352b. Partial cancellation; issuance of new trust patents.
352c. Reimbursement of allottees or heirs for taxes paid on lands patented in fee before end of trust.
353. Sections inapplicable to certain tribes.
354. Lands not liable for debts prior to final patent.
355. Laws applicable to lands of full-blooded members of Five Civilized Tribes.
356. Allowance of undisputed claims of restricted allottees of Five Civilized Tribes.
357. Condemnation of lands under laws of States.
358. Repeal of statutory provisions relating to survey, classification, and allotments which provide for repayment out of Indian moneys.

§ 331. Repealed. Pub. L. 106–462, title I, § 106(a)(1), Nov. 7, 2000, 114 Stat. 2007

Section, acts Feb. 8, 1887, ch. 119, § 1, 24 Stat. 388; Feb. 28, 1891, ch. 383, § 1, 26 Stat. 794; June 25, 1910, ch. 431, § 17, 36 Stat. 859, related to allotments of irrigable and nonirrigable land on reservations.

CODIFICATION

Section was based on section 1 of act Feb. 8, 1887, as amended generally by section 1 of act Feb. 28, 1891, which was amended generally, by act June 25, 1910. The amendment by act June 25, 1910, to section 1 of act Feb. 28, 1891, was treated as an amendment to section 1 of act Feb. 8, 1887, to reflect the probable intent of Congress, and this section was based on the text of section 1 of act Feb. 28, 1891, as so amended. The repeal by Pub. L. 106–462 of section 1 of act Feb. 8, 1887, was executed by repealing this section, to reflect the probable intent of Congress.

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–153, § 1, Nov. 5, 1987, 101 Stat. 886, provided that: "This Act [amending sections 373, 1401, and 2301 of this title and section 4421 of Title 20, Education, and amending provisions set out as a note under this section] may be cited as the 'Indian Law Technical Amendments of 1987'."

SHORT TITLE

Act Feb. 8, 1887, ch. 119, 24 Stat. 388, as amended, enacting this section and sections 332 to 334, 339, 341, 342,

348, 349, 354, and 381 of this title, is popularly known as the ''Indian General Allotment Act''.

BLACKFEET RESERVATION, MONTANA

Act June 30, 1919, ch. 4, § 10, 41 Stat. 16, which provided for the allotment of lands within the Blackfeet Indian Reservation in Montana, was amended by act June 4, 1953, ch. 99, § 1, 67 Stat. 42, in order to remove the restrictions on alienation of the homestead allotments by making 80 acres of each allotment subject to sale, partition, issuance of patent in fee, or other disposition in accordance with the laws relating to the other allotments on the Reservation.

Act June 30, 1919, had provided that the 80-acre homestead allotment should remain inalienable. This restriction was removed on the alienation of homestead allotments after the death of the original allottee by act June 2, 1924, ch. 231, 43 Stat. 252, formerly set out as a note under this section. The restriction was completely removed by section 1 of act June 4, 1953. Section 2 of act June 4, 1953, repealed act June 2, 1924.

CREEK NATION

Act Mar. 2, 1917, ch. 146, § 18, 39 Stat. 986, provided in part as follows: ''Hereafter no allotments of land shall be made to members of the Creek Nation''.

CROW INDIAN RESERVATION

Act June 4, 1920, ch. 224, § 6, 41 Stat. 753, as amended by acts May 25, 1926, ch. 403, 44 Stat. 658; Sept. 16, 1959, Pub. L. 96–283, 73 Stat. 565; May 17, 1968, Pub. L. 90–308, 82 Stat. 123, provided for a reservation in perpetuity, for the benefit of the Crow Indian Tribe, of the minerals on or underlying the allotted lands on the Crow Indian Reservation.

Act Aug. 15, 1953, ch. 502, § 4, 67 Stat. 587, repealed act June 4, 1920, ch. 224, § 9, 41 Stat. 754, formerly set out as a note under this section. The act June 4, 1920, provided for allotment of lands of the Crow Tribe and section 9 of the act had provided that lands of the Crow Reservation should ''be subject to all laws of the United States prohibiting the introduction of intoxicating liquors into the Indian country until otherwise provided by Congress''.

Act June 4, 1953, ch. 100, 67 Stat. 42, permitted the Indian owners of homestead, irrigable, or agricultural land on the Crow Indian Reservation in Montana to sell such land, upon application in writing and subject to the approval of the Secretary of the Interior or his authorized representative. Restrictions against such sales were contained in act June 4, 1920, ch. 224, 41 Stat. 751. The act of June 4, 1920, set out as a note below, provided for the allotment of lands on the Crow Reservation.

Provisions for the allotment of lands of the Crow Tribe of Indians within the Crow Indian Reservation in Montana, and for the distribution of tribal funds, were made by act June 4, 1920, ch. 224, 41 Stat. 751. The time for making allotments on the Crow Reservation, Montana, as provided by this act was extended for a period of two years from Dec. 4, 1921, by act Sept. 21, 1922, ch. 367, 42 Stat. 994.

EASTERN BAND OF CHEROKEE INDIANS OF NORTH CAROLINA

Act June 4, 1924, ch. 253, 43 Stat. 376, provided: ''That the Eastern Band of Cherokee Indians of North Carolina is hereby authorized, pursuant to the resolution of its council adopted the 6th day of November 1919, to convey to the United States of America, in trust, all land, money, and other property of said band for final disposition thereof as hereinafter provided; and the United States will accept such conveyance when approved by the Secretary of the Interior.

''SEC. 2. That upon approval of such conveyance the Secretary of the Interior shall cause to be prepared a roll of the members of said band, to contain the names of all living on the date of this Act, and no person born after that date shall be entitled to enrollment.

''The roll shall show the name, age, sex, and degree of Cherokee Indian blood, and separately of that derived from any other Indian ancestor, of each member. The day of the month indicating the birthday of each member shall also be shown upon said roll: *Provided*, That if such date is unknown and cannot be ascertained, the date of the entry of the name on the schedule shall be taken for the purposes of this Act to be the birth date of the member to whom the entry applies.

''Said roll when approved by the Secretary of the Interior shall be final and conclusive as to the membership of said band, and as to the ages and degree of Indian blood of the members, but clerical changes relating to the names of such members or to sex designations may be made at any time thereafter.

''SEC. 3. That in the preparation of said roll due consideration shall be given to all rolls and lists heretofore made of the membership of said band, together with any evidence elicited in the course of any investigations, and to all documents and records on file in the Interior Department or any of its bureaus or offices.

''The fact that the name of any person appears on any such roll or list shall not be accepted to establish, conclusively, his right or that of his descendants to enrollment. Nor shall the absence of his name from such former rolls conclusively bar any person or his descendants from enrollment.

''That in the preparation of said roll the act of the State of North Carolina of March 8, 1895, chapter 166, entitled 'An Act to amend chapter 211, laws of 1889, relating to the charter of the Eastern Band of Cherokee Indians' shall be disregarded.

''Applications for enrollment may be presented in such manner and within such time as may be prescribed by regulations made by the Secretary of the Interior, but lack of application shall not prevent consideration of the right to enrollment of any person whose name appears on any former roll and his descendants or of any name brought in any manner to the attention of those in charge of the enrollment work, including the names of those persons of Cherokee Indian blood living July 27, 1868, in any of the counties of North Carolina, in which the common lands of said band are located, or in any of the contiguous counties of that State or of the States of Georgia and Tennessee, and of their descendants.

''SEC. 4. That the lands so conveyed shall be surveyed, where found necessary, and divided into appropriate tracts or parcels and appraised at their true value as of the date of such appraisement, without consideration being given to the location thereof or to any mineral deposits therein or to improvements thereon, but such appraisement shall include all merchantable timber on all allottable lands.

''SEC. 5. That reservations from allotment may be made, in the discretion of the Secretary of the Interior, of lands for cemeteries, schools, water-power sites, rights of way, and for other public purposes, with proper safeguards, however, for compensation to individuals who may suffer losses by reason of such reservations.

''There may also be reserved any tract chiefly valuable because of the timber or of stone, marble, or other quarries thereon, or which by reason of location or topographical features may be unsuitable for allotment purposes.

''Any land or other property reserved from allotment as above provided and lands not needed for allotments may be sold at such time, in such manner, and upon such terms as the Secretary may direct, and the proceeds of such sale shall be added to the funds of the band: *Provided*, That in the sale of timberlands the timber and the land may be sold separately.

''Conveyances under such sales shall be made as provided in the case of conveyances to allottees.

''SEC. 6. That all oil, gas, coal, and other mineral deposits on said lands are hereby reserved to said band for a period of twenty-five years from the date of this Act, and during such period said deposits may be leased for prospecting and mining purposes by the Secretary of the Interior, for such periods (not exceeding the period

for which such minerals are reserved) and upon such terms and conditions as he may prescribe: *Provided*, That at the end of such twenty-five year period all such deposits shall become the property of the individual owner of the surface of such land, unless Congress shall otherwise provide.

"SEC. 7. That all improvements on the lands of said band of a permanent and substantial character shall be appraised separately from the lands upon which the same may be, and shall be listed in the names of the members of the band prima facie entitled thereto, but the designation of ownership shall be tentative only until the true ownership thereof is ascertained and declared, after due notice and hearing. The right to have such improvements appraised, and to make disposition thereof, shall extend to all members, except tenants, owning such improvements at the date of this Act [June 4, 1924].

"Any person held to be the owner of improvements may remove the same, where found to be practicable, within ninety days from the date they are declared to belong to him, or may, within that period, dispose of the same at not more than the appraised value to any member of the band entitled to receive an allotment, under regulations to be prescribed: PROVIDED, That the vendor shall have a lien upon the rents and profits accruing from the tract on which such improvements may be located until the purchase price thereof is fully paid.

"SEC. 8. That the lands and money of said band shall be allotted and divided among the members thereof so as to give each an equal share of the whole in value, as nearly as may be, and to accomplish that the value of the standard allotment share shall be determined by dividing the total appraised value of all allotted and allottable lands by the total number of enrolled members.

"If any member shall fail to receive his full share of the tribal lands, he shall be entitled to the payment of money so as to adjust the difference as nearly as possible. If any member shall receive an allotment exceeding in value his full share of the tribal lands, the difference shall be adjusted by deduction from his distributive share of the tribal funds.

"SEC. 9. That when the tracts available for allotments are ascertained, each member of the said band may apply for a tract or tracts of land to the extent of thirty acres, as nearly as practicable, to include his home and improvements, if he so desires, and the selection so made shall be final as to the right to occupy and use the land so applied for as against all other members if no contest is filed against such selection within ninety days from and after formal application is made therefor: *Provided*, That any person claiming the right to select any given tract of land by reason of the purchase of improvements thereon shall have ninety days to make application therefor from and after the date of approval of any sale conveying to him said improvements, and such application shall become final as in other cases, subject to the right of any other member to contest such selection, ninety days from and after the same is duly made. All contests shall be instituted and heard pursuant to the rules and regulations of the Interior Department applicable thereto. Any allotment selection may be modified or limited, in the discretion of those in charge of the work, so as to give the selector of adjacent or contiguous lands access to firewood and drinking water.

"SEC. 10. That adults may select their own allotments, where mentally capable of so doing, but allotments for minors may be selected by their father or mother, in the order named, or by the officers in charge of the allotment work. The said officers may also select allotments for prisoners, convicts, aged, infirm, and insane or otherwise mentally incompetent members and for the estates of deceased members and, if necessary to complete any allotments or to bring the allotment work to a close, may make arbitrary selections for and on behalf of any member of said band.

"SEC. 11. That allotments may be selected for the members of any family, wherever practicable, from contiguous lands or other lands held by the head of the family, including both adult and minor children and such other relatives as are members of the household: *Provided*, That if any adult child shall claim the benefit of this section, he shall not be entitled as a matter of right to have his selection made from the lands desired by his father or mother or from lands needed by any minor member of the family for allotment purposes, but this shall not prevent selection of lands outside the family holdings if desired.

"SEC. 12. That where annuity or other payments to individuals have heretofore been suspended because their enrollment status has been questioned, the amounts involved in such suspended payments shall be paid to individuals found entitled to enrollment or to their heirs, and all funds of said band, after making such payments and after payments needed for equalizing allotments as hereinbefore provided and all other payments herein directed to be made, shall be distributed per capita among the enrolled members of said band and the heirs of those who shall die before distribution is completed, and shall be paid to the distributees or conserved and used for their benefit, according to whether they belong to the restricted or unrestricted class, at such time and in such manner as shall be deemed advisable.

"SEC. 13. That any member of said band whose degree of Indian blood is less than one-sixteenth may, in the discretion of the Secretary of the Interior, be paid a cash equivalent in lieu of an allotment of land. Any person desiring to avail himself of this provision may make application to the officers in charge of the allotment work at any time within ninety days after the date of the approval of the final roll, and preference shall be given in the order of application. The said officers shall have the power to add to the register of such names the names of any other members of the same class, including minors for whom no application is made for such time as may be allowed for the purpose by the regulations. Applications should be made in person by adults and for minors by their fathers or mothers, in the order named.

"SEC. 14. That if any member shall claim that he is the owner of a so-called private land claim, for the reason that money was advanced by him or his ancestor to pay in whole or in part for any land the title to which is now in the band, such claim may be submitted to and equitably adjusted by the Secretary of the Interior, whose decision thereon shall be final and not subject to review by the courts. In such adjustment due consideration shall be given to matters presented by the band in the way of offsets or counterclaims.

"SEC. 15. That a certificate of allotment shall be issued to each allottee upon the expiration of the contest period, if no contest is then pending, or, if a contest is then pending, upon final disposition thereof, but shall be dated as of the date of selection. Each certificate shall contain the name and roll number of the allottee, and the legal effect thereof shall be to give the allottee the right to occupy and use the surface of the land described therein, as against each and every other member of the band, but not as against the band itself, or against the United States: *Provided*, That the Secretary of the Interior may cancel any certificate of allotment at any time before title to the land described therein is conveyed to the allottee, if in his judgment said land should be reserved for allotment for any purpose herein authorized or for any other good and sufficient reason, but before such action is taken the allottee shall have due notice and opportunity to be heard. If any such certificate shall be revoked, the allottee may select other lands as if no certificate had been issued to him.

"SEC. 16. That as soon as practicable after a certificate of allotment is issued there shall be issued to the allottee a deed conveying all right, title, and interest of the United States, as trustee, and of the band, and of every other member thereof, in and to the land described in said certificate. Each deed shall recite the roll number and degree of Indian blood of the grantee and shall be executed by or in the name of the Sec-

retary of the Interior, who is hereby authorized to designate any clerk or employee of the department to sign his name for him to all such deeds.

''Each deed, when so issued, shall be recorded in the office of the recorder of deeds for the county in which the land conveyed thereby is located. When so recorded title to the land shall vest in the allottee subject to the conditions, limitations, and restrictions herein imposed. Upon the recording of any deed it shall be the duty of the officers representing the Government of the United States to deliver it to the allottee named therein.

''SEC. 17. That if any member enrolled as provided in this Act shall die before receiving his distributive share of the band or tribal property, the land and moneys to which he would be entitled, if living, shall descend to his heirs according to the laws of the State of North Carolina and be distributed to them accordingly, but in all such cases the allotment and deed therefor shall be made in the name of the deceased ancestor and shall be given the same force and effect as if made during his lifetime: *Provided*, That the provisions of the Act of Congress approved June 25, 1910 (Thirty-sixth Statutes, page 855), as amended by the Act of Congress of February 14, 1913 (Thirty-seventh Statutes, page 678), relating to the determination of heirs and approval of wills by the Secretary of the Interior, and to other matters, are hereby made applicable to the persons and estates of the members of the said band, and in the construction of said Acts no distinction shall be made between restricted lands and moneys and those conveyed or held in trust.

''SEC. 18. That leases of lands allotted under this Act may be made during the restricted period for any purpose and for any term of years, under rules and regulations to be prescribed by the Secretary of the Interior: *Provided*, That such leases shall be executed on behalf of minors and other incompetents, including any Indian deemed to be incapable, mentally or physically, of managing his business affairs properly and with benefit to himself and in their names, by a duly authorized representative of the Indian Service designated by said Secretary for the purpose: *Provided further*, That all leases of unpartioned estates shall be so made and approved unless all of the Indian heirs or owners are of the unrestricted class, and shall be subject to supervision during the restricted period the same as leases made on other restricted lands, but all rents and royalties accruing therefrom to unrestricted owners shall be paid, by the proper officers of the Indian Service, to such owners at the earliest date practicable after the collection thereof.

''Parents may use the lands allotted to their children and receive the rents and profits arising herefrom during the minority of such children: *Provided*, That this privilege may be revoked by the Commissioner of Indian Affairs at any time while said lands are restricted for such cause as may by him be deemed good and sufficient.

''SEC. 19. That lands allotted under this Act shall not be alienable, either by voluntary or enforced sale by the allottee or his heirs or otherwise, for a period of twenty-five years from and after the date when the deed conveying such land to the allottee is recorded as directed herein: *Provided*, That upon the completion of the allotments and the recording of the deeds as herein directed each allottee shall become a citizen of the United States and a citizen of the particular State wherein he (or she) may reside, with all the rights, privileges, and immunities of such citizens: *Provided further*, That the Secretary of the Interior may, in his discretion, at any time after a deed is recorded remove the restrictions on the lands described therein, either with or without application by the owner or owners, under such rules and regulations or special orders governing the terms of sale and the disposition of the proceeds as he shall prescribe.

''SEC. 20. That lands allotted under this Act shall not be subjected or held liable to any form of personal claim, or demand, against the allottee, arising or existing prior to the removal of restrictions; and any attempted alienation or incumbrance of restricted land by deed, mortgage, contract to sell, power of attorney, or other method of incumbering real estate, except leases specifically authorized by law, made before or after the approval of this Act and prior to removal of restrictions therefrom, shall be absolutely null and void.

''SEC. 21. That all lands, and other property, of the band, or the members thereof, except funds held in trust by the United States, may be taxed by the State of North Carolina, to and including the tax year following the date of this Act. Such taxes shall be paid from the common funds of said band for such period, except upon such tracts as shall have been lawfully sold prior to the date when tax assessments can be made thereon under the State law. All tax assessments made pursuant to this Act on restricted allotments or undivided tribal property held in trust by the United States shall be subject to revision by the Commissioner of Indian Affairs for a period of one year following the date when such assessments are spread on the local tax rolls, but if he shall take no action thereon during said year, such assessments shall be final, but this shall not be construed to deprive any allottee of any remedy to which he would be entitled under the State law: *Provided*, That such restricted and undivided property shall be exempt from sale for unpaid taxes for two years from the date when such taxes become due and payable, and no penalty for delinquency in the payment of such taxes shall be charged or collected for or during said period, so that Congress may have an opportunity to make provision for the payment of such taxes if the band, or tribal, funds are found insufficient for the purpose.

''After the expiration of the tax year following that in which this Act is approved all lands allotted to members of said band, from which restrictions shall have been removed, shall be subject to taxation the same as other lands. But from and after the expiration of said tax year all restricted allotments and undivided property shall be exempt from taxation until the restrictions on the alienation of such allotments are removed or the title of the band to such undivided property is extinguished.

''SEC. 22. That the removal of restrictions upon allotted lands shall not deprive the United States of the duty or authority to institute and prosecute such action in its own name, in the courts of the United States, as may be necessary to protect the rights of the allottees, or of their heirs, until the said band shall be dissolved by congressional action, unless the order removing such restrictions is based upon an express finding that the Indian to whom it relates if fully competent and capable of managing his own affairs.

''SEC. 23. That the authority of the Eastern Band of Cherokee Indians of North Carolina to execute conveyances of lands owned by said band, or any interest therein, is recognized, and any such conveyance heretofore made, whether to the United States or to others, shall not be questioned in any case where the title conveyed or the instrument of conveyance has been or shall be accepted or approved by the Secretary of the Interior.

''SEC. 24. That the reinvestment of the proceeds arising from the sale of surplus and unallotted lands of said band in other lands in the vicinity of the Indian school at Cherokee, North Carolina, is hereby authorized, in the discretion of the Secretary of the Interior, and lands so purchased may be allotted as provided for herein respecting the allotment of lands now owned by said band.

''SEC. 25. That all things provided for herein shall be done under the direction of the Secretary of the Interior, who is authorized to prescribe needed rules and regulations.

''All questions as to enrollment and as to all other matters involving the disposition of the lands or moneys of said band, or of the members thereof, shall be decided by the Secretary of the Interior, and such decision as to any matter of fact or law shall be final.

''SEC. 26. That in addition to any sum or sums heretofore or hereafter regularly appropriated for salaries and expenses, there is hereby authorized to be appropriated, from the funds of the United States in the Treasury not otherwise appropriated, the sum of $10,000, or so much thereof as may be necessary, for the payment of such expenses as shall be necessarily incurred, including the salaries of additional employees in the administration of this Act.''

FLATHEAD RESERVATION, MONTANA

Act Feb. 25, 1920, ch. 87, 41 Stat. 452, provided for allotments on the Flathead Reservation, Montana, to all unallotted, living children, enrolled with the tribe, enrolled or entitled to enrollment.

FORT BELKNAP RESERVATION, MONTANA

Act Mar. 3, 1921, ch. 135, 41 Stat. 1355, provided for the enrollment of the Indians of the Gros Ventre and Assiniboine Tribes in the Fort Belknap Reservation, Montana, and for the allotment among such enrolled Indians of the unreserved and undisposed of lands on the reservation; declared the Indians to whom trust patents for such allotted lands shall be issued to be citizens of the United States; provided for reservation from allotment of lands chiefly valuable for the development of water power, and for Indian agency, school, religious, cemetery and administrative purposes; provided for the reservation of certain of the lands for park purposes and for a site for a sanatorium for the benefit of the Indians; provided for the issue of patents for a certain limited number of acres of the lands to missionary, religious and educational purposes; provided for the examination of the lands, prior to their allotment, to determine the mineral character thereof; provided for the reservation of coal on the lands for certain purposes; provided that the timber lands shall remain tribal property and for the use of the timber thereon by the Indians; provided for the reservation and disposition of town-sites on the lands; provided for the construction of irrigation projects on the lands; provided for the grant of certain of the lands to the State of Montana for school lands and made an appropriation to carry out the purposes of the act.

KANSAS OR KAW TRIBE OF OKLAHOMA

Act Mar. 4, 1923, ch. 297, 42 Stat. 1561, extended period of restriction against alienation of lands allotted to minor members of Kansas or Kaw Tribe of Oklahoma for a period of twenty-five years from Mar. 4, 1923.

LAC DU FLAMBEAU BAND OF WISCONSIN

Act May 19, 1924, ch. 158, 43 Stat. 132, as amended by Pub. L. 87–25, Apr. 24, 1961, 75 Stat. 46, provided for enrollment and allotment of members of Lac du Flambeau Band of Lake Superior Chippewas in Wisconsin.

OSAGE INDIAN TRIBE OF OKLAHOMA

Pub. L. 98–576, Oct. 30, 1984, 98 Stat. 3065, provided: ''That (a) any Osage headright or restricted real estate or funds which is part of the estate of a deceased Osage Indian with respect to whom—

''(1) a certificate of competency had never been issued before the time of death, or

''(2) a certificate of competency had been revoked by the Secretary of the Interior before the death of such Osage Indian,

shall be exempt from any estate or inheritance tax imposed by the State of Oklahoma.

''(b) Subsection (a) shall apply to the estate of any Osage Indian who dies on or after the date of the enactment of this Act [Oct. 30, 1984].

''SEC. 2. For purposes of this Act—

''(1) the term 'headright' means any right of any person to share in any royalties, rents, sales, or bonuses arising from the Osage mineral estate;

''(2) the term 'Osage mineral estate' means any right, title, or interest in any oil, gas, coal, or other mineral held by the United States in trust for the benefit of the Osage Tribe of Indians under section 3 of the Osage Tribe Allotment Act;

''(3) the term 'restricted real estate or funds' means any real estate or fund held by an Osage Indian or by the Secretary of the Interior in trust for the benefit of such Indian which is subject to any restriction against alienation, or transfer by any other means, under any Act of Congress applicable to the Osage Tribe of Indians or applicable generally to Indians or any bands, tribes, or nations of Indians; and

''(4) the term 'Osage Tribe Allotment Act' means the Act approved June 28, 1906, and entitled 'An Act for the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes' (34 Stat. 539).''

Pub. L. 95–496, §§3–11, Oct. 21, 1978, 92 Stat. 1660–1664, as amended by Pub. L. 98–605, §2, Oct. 30, 1984, 98 Stat. 3163, provided that:

''SEC. 3. (a) [Repealed act Feb. 5, 1948, ch. 46, 62 Stat. 18, formerly set out below.]

''(b) Any Osage Indian having received a certificate of competency under paragraph 7 of section 2 of the Act of June 28, 1906 (34 Stat. 539, 542); section 3 of the Act of March 2, 1929 (45 Stat. 1478, 1480) [amending act Feb. 27, 1925, ch. 359, 43 Stat. 1008, which is set out below]; or the Act of February 5, 1948 (62 Stat. 18) [Act Feb. 5, 1948, ch. 46, 62 Stat. 18], may make application to the Secretary of the Interior to revoke such certificate and the Secretary shall revoke such certificate: *Provided*, That revocation of any certificate shall not affect the legality of any transactions heretofore made by reason of the issuance of any such certificate. Restrictions against alienation of lands heretofore removed are not reimposed.

''(c) [Amended act Feb. 27, 1925, set out below, act Mar. 2, 1929, ch. 493, §4, 45 Stat. 1480, and June 24, 1938, ch. 645, §§1, 3, 52 Stat. 1034, 1035.

''SEC. 4. In order to conserve natural resources and provide for the greatest ultimate recovery of oil and gas underlying the Osage mineral estate, the Secretary of the Interior is authorized to establish rules and regulations under which oil and gas leases producing from a common source of supply may be unitized.

''SEC. 5. (a) [Amended act Apr. 18, 1912, ch. 83, §8, 37 Stat. 88.]

''(b) [Amended act Apr. 18, 1912, ch. 83, §3, 37 Stat. 86.]

''(c) [Amended act Feb. 27, 1925, set out below.]

''(d)(1) Notwithstanding any provision of—

''(A) section 3 or 8 of the Osage Indians Act of 1912 (as amended by subsections (b) and (a), respectively) [not classified to the Code], or

''(B) section 7 of the Osage Indians Act of 1925 (as amended by subsection (c)) [act Feb. 27, 1925, set out below],

any sale or transfer or any disposition by any other means of any headright shall be subject to section 7 of this Act [set out below].

''(2) Notwithstanding section 6(a) of this Act [set out below] or section 8 of the Osage Indians Act of 1912, no Osage Indian may—

''(A) provide for the transfer of any interest of such person in any headright—

''(i) by will to any person which is not an individual, or

''(ii) by the establishment of an inter vivos trust for the benefit of any person which is not an individual; or

''(B) provide, whether by the terms of a will, the terms of a testamentary trust established by a will, or by the terms of an instrument establishing an inter vivos trust, that any interest in any headright—

''(i) which such Osage Indian had (at the time of death of such person or at the time any such inter vivos trust was established), and

''(ii) in which any individual was granted a life estate by such Osage Indian,

may be transferred to or held for the benefit of any individual who is not an Osage Indian upon the death of the individual who held such life estate.

''SEC. 6. (a) With the approval of the Secretary of the Interior, any person of Osage Indian blood, eighteen years of age or older, may establish an inter vivos trust covering his headright or mineral interest except as provided in section 8 hereof; surplus funds; invested surplus funds; segregated trust funds; and allotted or inherited land, naming the Secretary of the Interior as trustee. An Osage Indian having a certificate of competency may designate a banking or trust institution as trustee. Said trust shall be revocable and shall make provision for the payment of funeral expenses, expenses of last illness, debts, and an allowance to members of the family dependent on the settlor.

''(b) Property placed in trust as provided by this section shall be subject to the same restrictions against alienation that presently apply to lands and property of Osage Indians, and the execution of such instrument shall not in any way affect the tax-exempt status of said property.

''RULES GOVERNING DEVOLUTION OF INTERESTS IN OSAGE HEADRIGHTS

''SEC. 7. (a) GENERAL RULE.—No person who is not an Osage Indian may, on or after October 21, 1978, receive any interest in any headright, other than a life estate in accordance with subsection (b), whether such interest would be received by such person (but for this subsection) under a will, a testamentary or inter vivos trust, or the Oklahoma laws of intestate succession.

''(b) EXCEPTION FOR LIFE ESTATES.—Notwithstanding subsection (a) and subject to section 5(d)(2) [set out above], an individual who is not an Osage Indian may receive a life estate in any headright held by a testator, settlor, or decedent who is or was an Osage Indian under a will, or under a testamentary trust established by a will, of such testator, an inter vivos trust established by such settlor, or the Oklahoma laws of intestate succession relating to the administration of the estate of such decedent.

''(c) SPECIAL RULES GOVERNING INTERESTS IN OSAGE HEADRIGHT UPON DEATH OF INDIVIDUAL WHO HELD LIFE ESTATE IN SUCH HEADRIGHT.—

''(1) DESIGNATED OSAGE REMAINDERMEN.—Upon the death of any individual who is not an Osage Indian and who held a life estate in any headright of a testator or settlor described in subsection (b), all remaining interests in such headright shall vest in any remaindermen who—

''(A) are designated in the will of the testator or the instrument establishing the trust of the settlor to receive such remainder interest, and

''(B) are Osage Indians.

''(2) NO DESIGNATED OSAGE REMAINDERMEN.—Upon the death of any individual who is not an Osage Indian and who held a life estate in any headright of a testator, settlor, or decedent described in subsection (b) who—

''(A) did not designate any remainderman who is an Osage Indian to receive any remaining interest in such headright in the will of such testator or instrument of such settlor, or

''(B) died intestate,

all remaining interests in such headright shall vest in any heirs, as determined under the Oklahoma laws of intestate succession, of such testator, settlor, or decedent who are Osage Indians.

''(3) NO HEIR WHO IS AN OSAGE INDIAN.—Upon the death of any individual who is not an Osage Indian and who held a life estate in any headright of an Osage testator, settlor, or decedent described in subsection (b) who—

''(A) designated no remainderman who is an Osage Indian for any remaining interest in such headright, and

''(B) had no heir under the Oklahoma laws of intestate succession who is an Osage Indian and is living at the time of death of the individual who held such life estate,

all remaining interests in such headright shall vest in the Osage Tribe of Indians.

''(d) LIABILITY OF TRIBE IN CASE OF REMAINDERMAN OR HEIR WHO IS NOT AN OSAGE INDIAN.—In any case in which—

''(1) any remainder interest of a testator, settlor, or decedent described in subsection (b) vests in the Osage Tribe of Indians under subsection (c)(3), and

''(2) an individual who is not an Osage Indian and who, but for this section, would have received any portion of such remaining interest in the headright by virtue of—

''(A) having been designated under the will of such testator, or the instrument of such settlor which established any such trust, to receive such remainder interest, or

''(B) being the heir of such decedent under the Oklahoma laws of intestate succession,

the tribe shall pay any such individual the fair market value of the portion of the interest in such headright such individual would have received but for this section.

''SEC. 8. (a)(1) No headright owned by any person who is not of Indian blood may be sold, assigned, or transferred without the approval of the Secretary. Any sale of any interest in such headright (and any other transfer which divests such person of any right, title, or interest in such headright) shall be subject to the following rights of purchase:

''(1) First right of purchase by the heirs in the first degree of the first Osage Indian to have acquired such headright under an allotment who are living and are Osage Indians, or, if they all be deceased, all heirs in the second through the fourth degree of such first Osage Indian who are living and are Osage Indians.

''(2) Second right of purchase by any other Osage Indian for the benefit of any Osage Indian in his or her individual capacity.

''(3) Third right of purchase by the Osage Tribal Council on behalf of the Osage Tribe of Indians.

No owner of any headright shall be required, by reason of this subsection, to sell such headright for less than its fair market value or to delay any such sale more than 90 days from the date by which notice of intention to sell (or otherwise transfer) such headright has been received by each person with respect to whom a right of purchase has been established under this subsection.

''(b) Notwithstanding the paragraph designated 'First' of section 4 of the Osage Tribe Allotment Act or any other provision of law, any income from the Osage mineral estate may be used for the purchase of any headright offered for sale to the Osage Tribal Council pursuant to subsection (a) or vested in the Osage Tribe pursuant to section 7 if, prior to the time that any income from the Osage mineral estate is segregated for distribution to holders of headrights, the Osage Tribal Council requests the Secretary to authorize such use of such funds and the Secretary approves such request.

''SEC. 9. Under such regulations as the Secretary of the Interior may prescribe, the heirs and legatees of any deceased owner of an Osage headright or mineral interest, real estate on which restrictions against alienation have not been removed, and funds on deposit at the Osage Agency may be determined by the Secretary if such aggregate interests do not exceed $10,000: *Provided*, That no court of competent jurisdiction has undertaken the probate of the deceased's estate and a request for such administrative determination has been made to the Secretary by one or more of the heirs or legatees.''

''SEC. 10. Except where any provision of this Act explicitly provides otherwise, wherever the term 'Osage Indian' is used in this Act, such term shall be construed so as to include any child who has been adopted by an Osage Indian (pursuant to the decision of any court of competent jurisdiction) and any lineal descendant of such child.

''SEC. 11. For purposes of this Act—

''(1) the term 'Osage mineral estate' means any right, title, or interest in any oil, gas, coal, or other mineral held by the United States in trust for the benefit of the Osage Indian Tribe under section 3 of the Osage Tribe Allotment Act;

''(2) the term 'headright' means any right of any person to share in any royalties, rents, sales, or bonuses arising from the Osage mineral estate;

''(3) the term 'Secretary' means the Secretary of the Interior;

''(4) the term 'person' has the meaning given to such term in section 1 of title 1, United States Code;

''(5) the term 'Osage Tribe Allotment Act' means the Act approved June 28, 1906, and entitled 'An Act For the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes.' (34 Stat. 539);

''(6) the term 'Osage Indians Act of 1912' means the Act approved April 18, 1912, and entitled 'An Act Supplementary to and amendatory of the Act entitled ''An Act for the division of the lands and funds of the Osage Nation of Indians in Oklahoma,'' approved June twenty-eighth, nineteen hundred and six, and for other purposes.' (37 Stat. 86); and

''(7) the term 'Osage Indians Act of 1925' means the Act approved February 27, 1925, and entitled 'An Act To amend the Act of Congress of March 3, 1921, entitled ''An Act to amend section 3 of the Act of Congress of June 28, 1906, entitled 'An Act of Congress for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes.' '' ' (43 Stat. 1008) [set out below].''

Pub. L. 95–496, § 3(a), Oct. 21, 1978, 92 Stat. 1660, repealed act Feb. 5, 1948, ch. 46, 62 Stat. 18, which related to issuance of certificates of competency to members of the Osage Tribe of less than one-half Indian blood upon attaining age twenty-one.

Act Aug. 4, 1947, ch. 474, § 1, 61 Stat. 747, as amended by Pub. L. 85–857, § 13(n), Sept. 2, 1958, 72 Stat. 1266, provided: ''That the provisions of section 6 of the Act approved February 27, 1925 (43 Stat. 1008) [set out in note below], as amended by section 5 of the Act approved March 2, 1929, (45 Stat. 1478) [set out in note below], which make invalid contracts of debt entered into by certain members of the Osage Tribe of Indians, shall not apply to any debt contracted pursuant to title III of the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code, by any member of such tribe who, by reason of his service in the armed forces of the United States during World War II, is eligible for the benefits of such title III or chapter 37; and any other member of the Osage Tribe upon attaining the age of twenty-one years may contract a valid debt without approval of the Secretary of the Interior: *Provided*, That the Osage lands and funds and any other property which has heretofore or which may hereafter be held in trust or under supervision of the United States for such Osage Indians not having a certificate of competency shall not be subject to lien, levy, attachment, or forced sale to satisfy any debt or obligation contracted or incurred prior to the issuance of a certificate of competency.''

Act Feb. 27, 1925, ch. 359, 43 Stat. 1008, as amended by acts Mar. 2, 1929, ch. 493, §§ 3, 4, 45 Stat. 1480; Sept. 1, 1950, ch. 832, 64 Stat. 572; Oct. 21, 1978, Pub. L. 95–496, §§ 3(c), 5(c), formerly 5(7), 92 Stat. 1661, 1662; Oct. 30, 1984, Pub. L. 98–605, §§ 2(b), 4, 98 Stat. 3163, 3167, provided that:

''The Secretary of the Interior shall cause to be paid at the end of each fiscal quarter to each adult member of the Osage Tribe of Indians in Oklahoma having a certificate of competency, his or her pro rata share, either as a member of the tribe or heir or devisee of a deceased member, of the interest on trust funds, the bonus received from the sale of oil or gas leases, the royalties therefrom and any other moneys due such Indian received during each fiscal quarter, including all moneys received prior to the passage of this Act and remaining unpaid; and so long as the accumulated income is sufficient the Secretary of the Interior shall cause to be paid to the adult members of said tribe not having a certificate of competency $1,000 quarterly, except where such adult members have legal guardians, in which case the amounts provided for herein may be paid to the legal guardian or direct to such Indian in the discretion of the Secretary of the Interior, the total amounts of such payments, however, shall not exceed $1,000 quarterly except as hereinafter provided; and shall cause to be paid for the maintenance and education, to either one of the parents or legal guardians actually having personally in charge, enrolled or unenrolled, minor member under twenty-one years of age, and above eighteen years of age, $1,000 quarterly out of the income of each of said minors, and out of the income of minors under eighteen years of age, $500 quarterly, and so long as the accumulated income of the parent or parents of a minor who has no income or whose income is less than $500 per quarter is sufficient, shall cause to be paid to either of said parents having the care and custody of such minor $500 quarterly, or such proportion thereof as the income of such minor may be less than $500, in addition to the allowances above provided for such parents. Rentals due such adult members from their lands and their minor children's lands and all income from such adults' investments shall be paid to them in addition to the allowance above provided. All payments to legal guardians of Osage Indians shall be expended subject to the joint approval in writing of the court and the superintendent of the Osage Agency. All payments to adults not having certificates of competency, including amounts paid for each minor, shall, in case the Secretary of the Interior finds that such adults are wasting or squandering said income, be subject to the supervision of the superintendent of the Osage Agency: *Provided*, That if an adult member, not having a certificate of competency, so desires, his entire income accumulating in the future from the sources herein specified may be paid to him without supervision, unless the Secretary of the Interior shall find, after notice and hearing, that such member is wasting or squandering his income, in which event the Secretary of the Interior shall pay to such member only the amounts hereinbefore specified to be paid to adult members not having certificates of competency. The Secretary of the Interior shall invest the remainder, after paying the taxes of such members, in United States bonds, Oklahoma State bonds, real estate, first mortgage real estate loans not to exceed 50 per centum of the appraised value of such real estate, and where the member is a resident of Oklahoma such investment shall be in loans on Oklahoma real estate, stock in Oklahoma building and loan associations, livestock, or deposit the same in banks in Oklahoma, or expend the same for the benefit of such member, such expenditures, investments, and deposits to be made under such restrictions, rules, and regulations as he may prescribe: *Provided*, That the Secretary of the Interior shall not make any investment for an adult member without first securing the approval of such member of such investment: *Provided further*, That at the beginning of each fiscal year there shall first be reserved and set aside, out of Osage tribal funds available for that purpose, a sufficient amount of money for the expenditures authorized by Congress out of Osage funds for that fiscal year. No guardian shall be appointed except on the written application or approval of the Secretary of the Interior for the estate of a member of the Osage Tribe of Indians who does not have a certificate of competency or who is of one-half or more Indian blood. All moneys now in the possession or control of legal guardians heretofore paid to them in excess of $4,000 per annum each for adults and $2,000 each for minors under the Act of Congress of March 3, 1921, relating to the Osage Tribe of Indians, shall be returned by such guardians to the Secretary of the Interior, and all property, bonds, securities, and stock purchased, or investments made by such guardians out of said moneys paid them shall be delivered to the Secretary of the Interior by them, to be held by him or disposed of by him as he shall deem to be for the best interest of the members to whom the same belongs. All bonds, securities, stocks, and property purchased and other investments made by legal guardians shall not be subject to alienation, sale, disposal, or assignment without the ap-

proval of the Secretary of the Interior. Any indebtedness heretofore lawfully incurred by guardians shall be paid out of the funds of the members for whom such indebtedness was incurred by the Secretary of the Interior. All funds other than as above mentioned, and other property heretofore or hereafter received by a guardian of a member of the Osage Tribe of Indians, which was theretofore under the supervision and control of the Secretary of the Interior or the title to which was held in trust for such Indian by the United States, shall not thereby become divested of the supervision and control of the Secretary of the Interior or the United States be relieved of its trust; and such guardian shall not sell, dispose of or otherwise encumber such fund or property without the approval of the Secretary of the Interior, and in accordance with orders of the county court of Osage County, Oklahoma. In case of the death, resignation, or removal from office of such a guardian, the funds and property in his possession subject to supervision and control of the Secretary of the Interior or to which the United States held the title in trust shall be immediately delivered to the superintendent of the Osage Agency, to be held by him and supervised or invested as hereinbefore provided. Within thirty days after the passage of this Act, such guardian shall render and file with the Secretary of the Interior or the superintendent of the Osage Agency a complete accounting, fully itemized, under oath, for the funds so paid to him and pay to the said Secretary or superintendent any and all moneys in his hands at the time of the passage of this Act, which have been paid him in excess of $4,000 per annum each for adults and $2,000 each for minors. The said guardian shall at the same time tender to said Secretary or superintendent all property or whatsoever kind in his possession at the time of the passage of this Act, representing the investment by him of said funds. The Secretary or superintendent is hereby authorized to accept such property or any part thereof at the price paid therefore by said guardian for the benefit of the ward of such guardian, if in his judgment he deems it advisable, and to make such settlement with such guardian as he deems best for such ward. Failing to make satisfactory settlement with said guardian as to said investments or any part thereof, the Secretary is authorized to bring such suit or suits against said guardian, his bond, and other parties in interest as he may deem necessary for the protection of the interests of the ward and may bring such action in any State court of competent jurisdiction or in the United States district court for the district in which said guardian resides.

''The Secretary of the Interior be, and is hereby, authorized, in his discretion, under such rules and regulations as he may prescribe, upon application of any member of the Osage Tribe of Indians not having a certificate of competency, to pay all or any part of the funds held in trust for such Indian: *Provided*, That the Secretary of the Interior shall, within one year after this Act is approved, pay to each enrolled Indian of less than half Osage blood, one-fifth part of his or her proportionate share of accumulated funds. And such Secretary shall on or before the expiration of ten years from the date of the approval of this Act, advance and pay over to such Osage Indians of less than one-half Osage Indian blood, all of the balance appearing to his credit of accumulated funds, and shall issue to such Indian a certificate of competency: *And provided further*, That nothing herein contained shall be construed to interfere in any way with the removal by the Secretary of the Interior of restrictions from and against any Osage Indian at any time.

''SEC. 2. Upon the death of an Osage Indian who does not have a certificate of competency, his or her moneys and funds and other property accrued and accruing to his or her credit and which have heretofore been subject to supervision as provided by law may be paid to the administrator or executor of the estate of such deceased Indian or direct to his heirs or devisees, or may be retained by the Secretary of the Interior in the discretion of the Secretary of the Interior, under regulations to be promulgated by him: *Provided*, That the Secretary of the Interior shall pay to administrators and executors of the estates of such deceased Osage Indians a sufficient amount of money out of such estates to pay all lawful indebtedness and costs and expenses of administration when approved by him; and, out of the shares belonging to heirs or devisees, above referred to, he shall pay the costs and expenses of such heirs or devisees, including attorney fees, when approved by him, in the determination of heirs or contest of wills. Upon the death of any Osage Indian of less than one-half of Osage Indian blood or upon the death of an Osage Indian who has a certificate of competency, his moneys and funds and other property accrued and accruing to his credit shall be paid and delivered to the administrator or executor of his estate to be administered upon according to the laws of the State of Oklahoma: *Provided*, That upon the settlement of such estate any funds or property subject to the control or supervision of the Secretary of the Interior on the date of the approval of this Act, which have been inherited by or devised to any adult or minor heir or devisee who does not have a certificate of competency, and which have been paid or delivered by the Secretary of the Interior to the administrator or executor shall be paid or delivered by such administrator or executor to the Secretary of the Interior for the benefit of such Indian and shall be subject to the supervision of the Secretary as provided by law.

''SEC. 3. Lands devised to members of the Osage Tribe who do not have certificates of competency, under wills approved by the Secretary of the Interior, and lands inherited by such Indians, shall be inalienable unless such lands be conveyed with the approval of the Secretary of the Interior. Property of Osage Indians not having certificates of competency purchased as hereinbefore set forth shall not be subject to the lien of any debt, claim, or judgment except taxes, or be subject to alienation, without the approval of the Secretary of the Interior.

''SEC. 4. Whenever the Secretary of the Interior shall find that any member of the Osage Tribe, to whom has been granted a certificate of competency, is squandering or misusing his or her funds, he may revoke such certificate of competency after notice and hearing in accordance with such rules and regulations as he may prescribe, and thereafter the income of such member shall be subject to supervision and investment as herein provided for members not having certificates of competency to the same extent as if a certificate of competency had never been granted: *Provided*, That all just indebtedness of such member existing at the time his certificate of competency is revoked shall be paid by the Secretary of the Interior, or his authorized representative, out of the income of such member, in addition the quarterly income hereinbefore provided for: *And provided further*, That such revocation or cancellation of any certificate of competency shall not affect the legality of any transactions theretofore made by reason of the issuance of any certificate of competency.

''SEC. 5. No person convicted of having taken, or convicted of causing or procuring another to take, the life of an Osage Indian shall inherit from or receive any interest in the estate of the decedent, regardless of where the crime was committed and the conviction obtained.

''SEC. 6. No contract for debt hereafter made with a member of the Osage Tribe of Indians not having a certificate of competency, shall have any validity, unless approved by the Secretary of the Interior. In addition to the payment of funds heretofore authorized, the Secretary of the Interior is hereby authorized in his discretion to pay, out of the funds of a member of the Osage Tribe not having a certificate of competency, any indebtedness heretofore or hereafter incurred by such member by reason of his unlawful acts of carelessness or negligence.

''SEC. 7. Except as provided in sections 5(d) and 7 of the Act approved October 21, 1978, and entitled 'An Act to amend certain laws relating to the Osage Tribe of Oklahoma, and for other purposes.', on or after October

21, 1978 [Pub. L. 95–496, set out above], none but heirs of Indian blood and children legally adopted by a court of competent jurisdiction and parents, Indian or non-Indian, shall inherit, in accordance with the laws of the State of Oklahoma relating to intestate succession from Osage Indians any right, title, or interest to any restricted land, moneys, or Osage headright or mineral interest. No adopted child of any Osage Indian who is not an Osage Indian shall be eligible to inherit, as the collateral heir (within the meaning of the laws of the State of Oklahoma relating to intestate succession) of any Osage Indian decedent, any property or interest in property held in trust by the Secretary of the Interior for the benefit of such decedent.''

Act Mar. 2, 1929, ch. 493, § 5, 45 Stat. 1481, provided that: ''The restrictions concerning lands and funds of allotted Osage Indians, as provided in this Act and all prior Acts now in force, shall apply to unallotted Osage Indians born since July 1, 1907, or after the passage of this Act, and to their heirs of Osage Indian blood, except that the provisions of section 6 of the Act of Congress approved February 27, 1925 [set out below], with reference to the validity of contracts for debt, shall not apply to any allotted or unallotted Osage Indian of less than one-half degree Indian blood: *Provided*, That the Osage lands and funds and any other property which has heretofore or which may hereafter be held in trust or under supervision of the United States for such Osage Indians of less than one-half degree Indian blood not having a certificate of competency shall not be subject to forced sale to satisfy any debt or obligation contracted or incurred prior to the issuance of a certificate of competency: *Provided further*, That the Secretary of the Interior is hereby authorized in his discretion to grant a certificate of competency to any unallotted Osage Indian when in the judgment of the said Secretary such member is fully competent and capable of transacting his or her own affair.''

Act Apr. 12, 1924, ch. 95, 43 Stat. 94, provided that any right to an interest in lands, money, or mineral interests, as provided in act June 28, 1906, ch. 3572, 34 Stat. 539 (Osage Indians), and in the amendatory and supplemental acts, vested in, determined, or adjudged to be the right or property of any person not an Indian by blood, may, with the approval of the Secretary of the Interior, and not otherwise, be sold, assigned, and transferred under such rules and regulations as the Secretary of the Interior may prescribe.

PUEBLO INDIANS OF NEW MEXICO

Act May 31, 1933, ch. 45, §§ 4, 5, 6, 8, 9, 48 Stat. 109, 110, 111, as amended by Pub. L. 91–550, Dec. 15, 1970, 84 Stat. 1437, in addition to authorizing appropriations to pay in part the liability of the United States to the Indian pueblos, provided:

''SEC. 4. (a) That, for the purpose of safeguarding the interests and welfare of the tribe of Indians known as the Pueblo de Taos of New Mexico, the following described lands and improvements thereon, upon which said Indians depend and have depended since time immemorial for water supply, forage for their domestic livestock, wood and timber for their personal use, and as the scene of certain religious ceremonials, are hereby declared to be held by the United States in trust for the Pueblo de Taos:

''Beginning at the southeast corner of the Tenorio tract on the north boundary of the Taos Pueblo grant in section 22, township 26 north, range 13 east;

''thence northwesterly and northeasterly along the east boundary of the Tenorio tract to the point where it intersects the boundary of the Lucero de Godoi or Antonio Martinez Grant;

''thence following the boundary of the Lucero de Godoi Grant northeasterly, southeasterly and northerly to station 76 on the east boundary of the survey of the Lucero de Godoi Grant according to the March 1894 survey by United States Deputy Surveyor John H. Walker as approved by the United States Surveyor's Office, Santa Fe, New Mexico, on November 23, 1894;

''thence east 0.85 mile along the south boundary of the Wheeler Peak Wilderness, according to the description dated July 1, 1965, and reported to Congress pursuant to section 3(a)(1) of the Wilderness Act (Public Law 88–577) [16 U.S.C. 1132(a)(1)];

''thence northeast approximately 0.25 mile to the top of an unnamed peak (which is approximately 0.38 mile southeasterly from Lew Wallace Peak);

''thence northwesterly 1.63 miles along the ridgetop through Lew Wallace Peak to Old Mike Peak;

''thence easterly and northeasterly along the ridgetop of the divide between the Red River and the Rio Pueblo de Taos to station numbered 109 of said 1894 survey, at the juncture of the divide with the west boundary of the Beaubien and Miranda Grant, New Mexico (commonly known as the Maxwell Grant), according to the official resurvey of said grant executed during July and August 1923 by United States Surveyor Glen Haste and approved by the General Land Office, Washington, District of Columbia, on April 28, 1926;

''thence southeasterly, southwesterly, and southerly along the west boundary of the Maxwell grant to the north line of unsurveyed section 33, township 26 north, range 15 east;

''thence southerly to the north boundary of fractional township 25 north, range 15 east;

''thence southerly and southwesterly through sections 4, 9, 8, and 7, township 25 north, range 15 east to the southwest corner of said section 7;

''thence westerly along the divide between the Rio Pueblo de Taos and Rio Fernando de Taos to the east boundary of the Taos Pueblo grant;

''thence north to the northeast corner of the Taos Pueblo grant;

''thence west to the point of beginning; containing approximately 48,000 acres, more or less.

''(b) The lands held in trust pursuant to this section shall be a part of the Pueblo de Taos Reservation, and shall be administered under the laws and regulations applicable to other trust Indian lands: *Provided*, That the Pueblo de Taos Indians shall use the lands for traditional purposes only, such as religious ceremonials, hunting and fishing, a source of water, forage for their domestic livestock, and wood, timber, and other natural resources for their personal use, all subject to such regulations for conservation purposes as the Secretary of the Interior may prescribe. Except for such uses, the lands shall remain forever wild and shall be maintained as a wilderness as defined in section 2(c) of the Act of September 3, 1964 (78 Stat. 890) [16 U.S.C. 1131(c)]. With the consent of the tribe, but not otherwise, nonmembers of the tribe may be permitted to enter the lands for purposes compatible with their preservation as a wilderness. The Secretary of the Interior shall be responsible for the establishment and maintenance of conservation measures for these lands, including, without limitation, protection of forests from fire, disease, insects or trespass; prevention or elimination of erosion, damaging land use, or stream pollution; and maintenance of streamflow and sanitary conditions; and the Secretary is authorized to contract with the Secretary of Agriculture for any services or materials deemed necessary to institute or carry out any of such measures.

''(c) Lessees or permittees of lands described in subsection (a) which are not included in the lands described in the Act of May 31, 1933 [this Act], shall be given the opportunity to renew their leases or permits under rules and regulations of the Secretary of the Interior to the same extent and in the same manner that such leases or permits could have been renewed if this Act had not been enacted; but the Pueblo de Taos may obtain the relinquishment of any or all of such leases or permits from the lessees or permittees under such terms and conditions as may be mutually agreeable. The Secretary of the Interior is authorized to disburse, from the tribal funds in the Treasury of the United States to the credit of said tribe, so much thereof as may be necessary to pay for such relinquishments and

for the purchase of any rights or improvements on said lands owned by non-Indians. The authority to pay for the relinquishment of a permit pursuant to this subsection shall not be regarded as a recognition of any property right of the permittee in the land or its resources.

''(d) The Indian Claims Commission is directed to determine in accordance with the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1049, 1050) [former 25 U.S.C. 70a], the extent to which the value of the interest in land conveyed by this Act should be credited to the United States or should be set off against any claim of the Taos Indians against the United States.

''(e) Nothing in this section shall impair any vested water right.

''SEC. 5. Except as otherwise provided herein the Secretary of the Interior shall disburse and expend the amounts of money herein authorized to be appropriated, in accordance with and under the terms and conditions of the Act approved June 7, 1924: *Provided, however*, That the Secretary be authorized to cause necessary surveys and investigations to be made promptly to ascertain the lands and water rights that can be purchased out of the foregoing appropriations and earlier appropriations made for the same purpose, with full authority to disburse said funds in the purchase of said lands and water rights without being limited to the appraised values thereof as fixed by the appraisers appointed by the Pueblo Lands Board appointed under said Act of June 7, 1924 [set out below] and all prior Acts limiting the Secretary of the Interior in the disbursement of said funds to the appraised value of said lands as fixed by said appraisers of said Pueblo Lands Board be, and the same are, expressly repealed: *Provided further*, That the Secretary of the Interior be, and he is hereby, authorized to disburse a portion of said funds for the purpose of securing options upon said lands and water rights and necessary abstracts of title thereof for the necessary period required to investigate titles and which may be required before disbursement can be authorized: *Provided further*, That the Secretary of the Interior be, and he is hereby, authorized, out of the appropriations of the foregoing amounts and out of the funds heretofore appropriated for the same purpose, to purchase any available lands within the several pueblos which in his discretion it is desirable to purchase, without waiting for the issuance of final patents directed to be issued under the provisions of the Act of June 7, 1924, where the right of said pueblos to bring independent suits, under the provisions of the Act of June 7, 1924, has expired; *Provided further*, That the Secretary of the Interior shall not make any expenditures out of the pueblo funds resulting from the appropriations set forth herein, or prior appropriations for the same purpose, without first obtaining the approval of the governing authorities of the pueblo affected: *And provided further*, That the governing authorities of any pueblo may initiate matters pertaining to the purchase of lands in behalf of their respective pueblos, which matters, or contracts relative thereto, will not be binding or concluded until approved by the Secretary of the Interior.

''SEC. 6. Nothing in this Act shall be construed to prevent any pueblo from prosecuting independent suits as authorized under section 4 of the Act of June 7, 1924. The Secretary of the Interior is authorized to enter into contract with the several Pueblo Indian tribes, affected by the terms of this Act, in consideration of the authorization of appropriations contained in section 2 hereof, providing for the dismissal of pending and the abandonment of contemplated original proceedings, in law or equity, by, or in behalf of said Pueblo Indian tribes, under the provisions of section 4 of the Act of June 7, 1924, (43 Stat. L. 636), and the pueblo concerned may elect to accept the appropriations herein authorized, in the sums herein set forth, in full discharge of all claims to compensation under the terms of said Act, notifying the Secretary of the Interior in writing of its election so to do: *Provided*, That if said election by said pueblo be not made, said pueblo shall have one year from the date of this approval of the Act within which to file any independent suit authorized under section 4 of the Act of June 7, 1924, at the expiration of which period the right to file such suit shall expire by limitation: *And provided further*, That no ejectment suits shall be filed against non-Indians entitled to compensation under this Act, in less than six months after the sums herein authorized are appropriated.

''SEC. 8. The attorney or attorneys for such Indian tribe or tribes shall be paid such fee as may be agreed upon by such attorney or attorneys and such Indian tribe or tribes, but in no case shall the fee be more than 10 per centum of the sum herein authorized to be appropriated for the benefit of such tribe or tribes, and such attorney's fees shall be disbursed by the Secretary of the Interior in accordance herewith out of any funds appropriated for said Indian tribe or tribes under the provisions of the Act of June 7, 1924 (43 Stat. L. 636), or this Act: *Provided however*, That 25 per centum of the amount agreed upon as attorneys' fees shall be retained by the Secretary of the Interior to be disbursed by him under the terms of the contract, subject to approval of the Secretary of the Interior, between said attorneys and said Indian tribes, providing for further services and expenses of said attorneys in furtherance of the objects set forth in section 19 of the Act of June 7, 1924.

''SEC. 9. Nothing herein contained shall in any manner be construed to deprive any of the Pueblo Indians of a prior right to the use of water from streams running through or bordering on their respective pueblos for domestic, stock-water, and irrigation purposes for the lands remaining in Indian ownership, and such water rights shall not be subject to loss by nonuse or abandonment thereof as long as title to said lands shall remain in the Indians.''

Act June 7, 1924, ch. 331, 43 Stat. 636, as amended by act May 31, 1933, ch. 45, §7, 48 Stat. 111; Pub. L. 109–133, §1, Dec. 20, 2005, 119 Stat. 2573, provided:

''That in order to quiet title to various lots, parcels, and tracts of land in the State of New Mexico for which claim shall be made by or on behalf of the Pueblo Indians of said State as hereinafter provided, the United States of America, in its sovereign capacity as guardian of said Pueblo Indians shall, by its Attorney General, file in the District Court of the United States for the District of New Mexico, its bill or bills of complaint with a prayer for discovery of the nature of any claim or claims of any kind whatsoever adverse to the claim of said Pueblo Indians, as hereinafter determined.

''SEC. 2. That there shall be, and hereby is, established a board to be known as 'Pueblo Lands Board' to consist of the Secretary of the Interior, the Attorney General, each of whom may act through an assistant in all hearings, investigations, and deliberations in New Mexico, and a third member to be appointed by the President of the United States. The board shall be provided with suitable quarters in the city of Santa Fé, New Mexico, and shall have power to require the presence of witnesses and the production of documents by subpoena, to employ a clerk who shall be empowered to administer oaths and take acknowledgments, shall employ such clerical assistance, interpreters, and stenographers with such compensation as the Attorney General shall deem adequate, and it shall be provided with such necessary supplies and equipment as it may require on requisitions to the Department of Justice. The compensation and allowance for travel and expenses of the member appointed by the President shall be fixed by the Attorney General.

''It shall be the duty of said board to investigate, determine, and report and set forth by metes and bounds, illustrated where necessary by field notes and plats, the lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico by any authority of the United States of America, or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise, title to which the said board shall find not to have been extinguished in accordance with the provisions of this Act, and the board shall not include in their report any

claims of non-Indian claimants who, in the opinion of said board after investigation, hold and occupy such claims of which they have had adverse possession, in accordance with the provisions of section 4 of this Act: *Provided, however*, That the board shall be unanimous in all decisions whereby it shall be determined that the Indian title has been extinguished.

''The board shall report upon each pueblo as a separate unit and upon the completion of each report one copy shall be filed with the United States District Court for the District of New Mexico, one with the Attorney General of the United States, one with the Secretary of the Interior, and one with the Board of Indian Commissioners.

''SEC. 3. That upon the filing of each report by the said board, the Attorney General shall forthwith cause to be filed in the United States District Court for the District of New Mexico, as provided in section 1 of this Act, a suit to quiet title to the lands described in said report as Indian lands the Indian title to which is determined by said report not to have been extinguished.

''SEC. 4. That all persons claiming title to, or ownership of, any lands involved in any such suit, or suits, may in addition to any other legal or equitable defenses which they may have or have had under the laws of the Territory and State of New Mexico, plead limitation of action, as follows, to wit:

''(a) That in themselves, their ancestors, grantors, privies, or predecessors in interest or claim of interest, they have had open, notorious, actual, exclusive, continuous, adverse possession of the premises claimed, under color of title from the 6th day of January, 1902, to the date of the passage of this Act, and have paid the taxes lawfully assessed and levied thereon to the extent required by the statutes of limitation, or adverse possession of the Territory or of the State of New Mexico, since the 6th day of January, 1902, to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such tax payment.

''(b) That in themselves, their ancestors, grantors, privies, or predecessors in interest or claim of interest, they have had open, notorious, actual, exclusive, continuous, adverse possession of the premises claimed with claim of ownership, but without color of title from the 16th day of March, 1889, to the date of the passage of this Act, and have paid the taxes lawfully assessed and levied thereon to the extent required by the statutes of limitation or adverse possession of the Territory or of the State of New Mexico, from the 16th day of March, 1899, to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such tax payment.

''Nothing in this Act contained shall be construed to impair or destroy any existing right of the Pueblo Indians of New Mexico to assert and maintain unaffected by the provisions of this Act their title and right to any land by original proceedings, either in law or equity, in any court of competent jurisdiction and any such right may be asserted at any time prior to the filing of the field notes and plats as provided in section 13 hereof, and jurisdiction with respect to any such original proceedings is hereby conferred upon the United States District Court for the District of New Mexico with right of review as in other cases: *Provided, however*, That any contract entered into with any attorney or attorneys by the Pueblo Indians of New Mexico, to carry on such litigation shall be subject to and in accordance with existing laws of the United States.

''SEC. 5. The plea of such limitations, successfully maintained, shall entitle the claimants so pleading to a decree in favor of them, their heirs, executors, successors, and assigns for the premises so claimed by them, respectively, or so much thereof as may be established, which shall have the effect of a deed of quitclaim as against the United States and said Indians, and a decree in favor of claimants upon any other ground shall have a like effect.

''The United States may plead in favor of the pueblo, or any individual Indian thereof, as the case might be, the said limitations hereinbefore defined.

''SEC. 6. It shall be the further duty of the board to separately report in respect of each such pueblo—

''(a) The area and character of any tract or tracts of land within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico and the extent, source, and character of any water right appurtenant thereto in possession of non-Indian claimants at the time of filing such report, which are not claimed for said Indians by any report of the board.

''(b) Whether or not such tract or tracts of land or such water rights could be or could have been at any time recovered for said Indians by the United States by seasonable prosecution of any right of the United States or of said Indians. Seasonable prosecution is defined to mean prosecution by the United States within the same period of time as that within which suits to recover real property could have been brought under the limitation statutes of the Territory and State of New Mexico.

''(c) The fair market value of said water rights and of said tract or tracts of land (exclusive of any improvements made therein or placed thereon by non-Indian claimants) whenever the board shall determine that such tract or tracts of land or such water rights could be or could have been at any time recovered for said Indians by the United States by seasonable prosecution of any right of the United States or of said Indians, and the amount of loss, if any, suffered by said Indians through failure of the United States seasonably to prosecute any such right.

''The United States shall be liable, and the board shall award compensation, to the pueblo within the exterior boundaries of whose lands such tract or tracts of land shall be situated or to which such water rights shall have been appurtenant to the extent of any loss suffered by said Indians through failure of the United States seasonably to prosecute any right of the United States or of said Indians, subject to review as herein provided. Such report and award shall have the force and effect of a judicial finding and final judgment upon the question and amount of compensation due to the Pueblo Indians from the United States for such losses. Such report shall be filed simultaneously with and in like manner as the reports hereinbefore provided to be made and filed in section 2 of this Act.

''At any time within sixty days after the filing of said report with the United States District Court for the District of New Mexico as herein provided the United States or any pueblo or Indians concerned therein or affected thereby may, in respect of any report upon liability or of any finding of amount or award of compensation set forth in such report, petition said court for judicial review of said report, specifying the portions thereof in which review is desired. Said court shall thereupon have jurisdiction to review, and shall review, such report, finding, or award in like manner as in the case of proceedings in equity. In any such proceeding the report of the board shall be prima facie evidence of the facts, the values, and the liability therein set forth, subject, however, to be rebutted by competent evidence. Any party in interest may offer evidence in support or in opposition to the findings in said report in any respect. Said court shall after hearing render its decision so soon as practicable, confirming, modifying, or rejecting said report or any part thereof. At any time within thirty days after such decision is rendered said court shall, upon petition of any party aggrieved, certify the portions of such report, review of which has been sought, together with the record in connection therewith, to the United States Circuit Court of Appeals for the Eighth Circuit, which shall have jurisdiction to consider, review, and decide all questions arising upon such report and record in like manner as in the case of appeals in equity, and its decision thereon shall be final.

''Petition for review of any specific finding or award of compensation in any report shall not affect the finality of any findings nor delay the payment of any award set forth in such report, review of which shall not have been so sought, nor in any proceeding for review in any

court under the provisions of this section shall costs be awarded against any party.

''SEC. 7. It shall be the further duty of the board to investigate, ascertain, and report to the Secretary of the Interior who shall report to the Congress of the United States, together with his recommendation, the fair market value of lands, improvements appurtenant thereto, and water rights of non-Indian claimants who, in person or through their predecessors in title prior to January 6, 1912, in good faith and for a valuable consideration purchased and entered upon Indian lands under a claim of right based upon a deed or document purporting to convey title to the land claimed or upon a grant, or license from the governing body of a pueblo to said land, but fail to sustain such claim under the provisions of this Act, together with a statement of the loss in money value thereby suffered by such non-Indian claimants. Any lands lying within the exterior boundaries of the pueblo of Nambe land grant, which were conveyed to any holder or occupant thereof or his predecessor or predecessors in interest by the governing authorities of said pueblo, in writing, prior to January 6, 1912, shall unless found by said board to have been obtained through fraud or deception, be recognized as constituting valid claims by said board and by said courts, and disposed of in such manner as lands the Indian title to which has been determined to have been extinguished pursuant to the provisions of this Act: *Provided*, That nothing in this section contained with reference to the said Nambe Pueblo Indians shall be construed as depriving the said Indians of the right to impeach any such deed or conveyance for fraud or to have mistakes therein corrected through a suit in behalf of said pueblo or of an individual Indian under the provisions of this Act.

''SEC. 8. It shall be the further duty of the board to investigate, ascertain, and report to the Secretary of the Interior the area and the value of the lands and improvements appurtenant thereto of non-Indian claimants within or adjacent to Pueblo Indian settlements or towns in New Mexico, title to which in such non-Indian claimants is valid and indefeasible, said report to include a finding as to the benefit to the Indians in anywise of the removal of such non-Indian claimants by purchase of their lands and improvements and the transfer of the same to the Indians, and the Secretary of the Interior shall report to Congress the facts with his recommendations in the premises.

''SEC. 9. That all lands, the title to which is determined in said suit or suits, shall, where necessary, be surveyed and mapped under the direction of the Secretary of the Interior, at the expense of the United States, but such survey shall be subject to the approval of the judge of the United States District Court for the District of New Mexico, and if approved by said judge shall be filed in said court and become a part of the decree or decrees entered in said district court.

''SEC. 10. That necessary costs in all original proceedings under this Act, to be determined by the court, shall be taxed against the United States and any party aggrieved by any final judgment or decree shall have the right to a review thereof by appeal or writ of error or other process, as in other cases, but upon such appeal being taken each party shall pay his own costs.

''SEC. 11. That in the sense in which used in this Act the word 'purchase' shall be taken to mean the acquisition of community lands by the Indians other than by grant or donation from a sovereign.

''SEC. 12. That any person claiming any interest in the premises involved but not impleaded in any such action may be made a party defendant thereto or may intervene in such action, setting up his claim in usual form.

''SEC. 13. That as to all lands within the exterior boundaries of any lands granted or confirmed to the Pueblo Indians of New Mexico, by any authority of the United States of America or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise and which have not been claimed for said Indians by court proceedings then pending or the findings and report of the board as herein provided, the Secretary of the Interior at any time after two years after the filing of said reports of the board shall file field notes and plat for each pueblo in the office of the surveyor general of New Mexico at Santa Fé, New Mexico, showing the lands to which the Indian title has been extinguished as in said report set out, but excluding therefrom lands claimed by or for the Indians in court proceedings then pending, and copies of said plat and field notes certified by the surveyor general of New Mexico as true and correct copies shall be accepted in any court as competent and conclusive evidence of the extinguishment of all the right, title, and interest of the Indians in and to the lands so described in said plat and field notes and of any claim of the United States in or to the same. And the Secretary of the Interior within thirty days after the Indians' right to bring independent suits under this Act shall have expired, shall cause notice to be published in some newspaper or newspapers of general circulation issued, if any there be, in the county wherein lie such lands claimed by non-Indian claimants, respectively, or wherein some part of such lands are situated, otherwise in some newspaper or newspapers of general circulation published nearest to such lands, once a week for five consecutive weeks, setting forth as nearly as may be the names of such non-Indian claimants of land holdings not claimed by or for the Indians as herein provided, with a description of such several holdings, as shown by a survey of Pueblo Indian lands heretofore made under the direction of the Secretary of the Interior and commonly known as the 'Joy Survey,' or as may be otherwise shown or defined by authority of the Secretary of the Interior, and requiring that any person or persons claiming such described parcel or parcels of land or any part thereof, adversely to the apparent claimant or claimants so named as aforesaid, or their heirs of assigns, shall, on or before the thirtieth day after the last publication of such notice, file his or their adverse claim in the United States Land Office in the land district wherein such parcel or parcels of land are situate, in the nature of a contest, stating the character and basis of such adverse claim, and notice of such contest shall be served upon the claimant or claimants named in the said notice, in the same manner as in cases of contest of homestead entries. If no such contest is instituted as aforesaid, the Secretary of the Interior shall issue to the claimant or claimants, or their heirs or assigns, a patent or other certificate of title for the parcel or parcels of land so described in said notice; but if a contest be filed it shall proceed and be heard and decided as contests of homestead entries are heard and decided under the rules and regulations of the General Land Office pertinent thereto. Upon such contest either party may claim the benefit of the provisions of section 4 of this Act to the same extent as if he were a party to a suit to quiet title brought under the provisions of this Act, and the successful party shall receive a patent or certificate of title for the land as to which he is successful in such proceeding. Any patent or certificate of title issued under the provisions of this Act shall have the effect only of a relinquishment by the United States of America and the said Indians.

''If after such notice more than one person or group of persons united in interest makes claim in such land office adverse to the claimant or claimants named in the said notice, or to any other person or group of persons who may have filed such contest, each contestant shall be required to set forth the basis and nature of his respective claim, and thereupon the said claims shall be heard and decided as upon an original contest or intervention.

''And in all cases any person or persons whose right to a given parcel or parcels of land has become fixed either by the action of the said board or the said court or in such contest may apply to the Commissioner of the General Land Office for a patent or certificate of title and receive the same without cost or charge.

''SEC. 14. That if any non-Indian party to any such suit shall assert against the Indian title a claim based

upon a Spanish or Mexican grant, and if the court should finally find that such claim by the non-Indian is superior to that of the Indian claim, no final decree or judgment of ouster of the said Indians shall be entered or writ of possession or assistance shall be allowed against said Indians, or any of them, or against the United States of America acting in their behalf. In such case the court shall ascertain the area and value of the land thus held by any non-Indian claimant under such superior title, excluding therefrom the area and value of lots or parcels of land the title to which has been found to be in other persons under the provisions of this Act: *Provided, however*, That any findings by the court under the provisions of this section may be reviewed on appeal or writ of error at the instance of any party aggrieved thereby, in the same manner, to the same extent, and with like effect as if such findings were a final judgment or decree. When such finding adverse to the Indian claim has become final, the Secretary of the Interior shall report to Congress the facts, including the area and value of the land so adjudged against the Indian claim, with his recommendations in the premises.

''SEC. 15. That when any claimant, other than the United States for said Indians not covered by the report provided for in section 7 of this Act, fails to sustain his claim to any parcel of land within any Pueblo Indian grant, purchase, or donation under provisions of this Act, but has held and occupied any such parcel in good faith, claiming the same as his own, and the same has been improved, the value of the improvements upon the said parcel of land shall be found by the court and reported by the Secretary of the Interior to Congress, with his recommendations in the premises.

''SEC. 16. That if the Secretary of the Interior deems it to be for the best interest of the Indians that any land adjudged by the court or said Lands Board against any claimant be sold, he may, with the consent of the governing authorities of the pueblo, order the sale thereof, under such regulations as he may make, to the highest bidder for cash; and if the buyer thereof be other than the losing claimant, the purchase price shall be used in paying to such losing claimant the adjudicated value of the improvements aforesaid, if found under the provisions of section 15 hereof, and the balance thereof, if any, shall be paid over to the proper officer, or officers, of the Indian community, but if the buyer be the losing claimant, and the value of his improvements has been adjudicated as aforesaid, such buyer shall be entitled to have credit upon his bid for the value of such improvements so adjudicated.

''SEC. 17. No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior.

''SEC. 18. That the pleading, practice, procedure, and rules of evidence shall be the same in all causes arising under this Act as in other civil causes in the Federal courts, except as otherwise herein provided.

''SEC. 19. That all sums of money which may hereafter be appropriated by the Congress of the United States for the purpose of paying in whole or in part any liability found or decreed under this Act from the United States to any pueblo or to any of the Indians of any pueblo, shall be paid over to the Bureau of Indian Affairs, which Bureau, under the direction of the Secretary of the Interior, shall use such moneys at such times and in such amounts as may seem wise and proper for the purpose of the purchase of lands and water rights to replace those which have been lost to said pueblo or to said Indians, or for purchase or construction of reservoirs, irrigation works, or the making of other permanent improvements upon, or for the benefit of lands held by said pueblo or said Indians.

''SEC. 20. CRIMINAL JURISDICTION.

''(a) IN GENERAL.—Except as otherwise provided by Congress, jurisdiction over offenses committed anywhere within the exterior boundaries of any grant from a prior sovereign, as confirmed by Congress or the Court of Private Land Claims to a Pueblo Indian tribe of New Mexico, shall be as provided in this section.

''(b) JURISDICTION OF THE PUEBLO.—The Pueblo has jurisdiction, as an act of the Pueblos' inherent power as an Indian tribe, over any offense committed by a member of the Pueblo or an Indian as defined in title 25 [United States Code], sections 1301(2) and 1301(4), or by any other Indian-owned entity.

''(c) JURISDICTION OF THE UNITED STATES.—The United States has jurisdiction over any offense described in chapter 53 of title 18, United States Code, committed by or against an Indian as defined in title 25 [United States Code], sections 1301(2) and 1301(4) or any Indian-owned entity, or that involves any Indian property or interest.

''(d) JURISDICTION OF THE STATE OF NEW MEXICO.—The State of New Mexico shall have jurisdiction over any offense committed by a person who is not a member of a Pueblo or an Indian as defined in title 25 [United States Code], sections 1301(2) and 1301(4), which offense is not subject to the jurisdiction of the United States.''

WHITE EARTH RESERVATION LAND SETTLEMENT

Pub. L. 99–264, Mar. 24, 1986, 100 Stat. 61, as amended by Pub. L. 100–153, §6(a), (b), Nov. 5, 1987, 101 Stat. 887; Pub. L. 100–212, §4, Dec. 24, 1987, 101 Stat. 1443; Pub. L. 101–301, §8, May 24, 1990, 104 Stat. 210; Pub. L. 102–572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–263, §4, May 31, 1994, 108 Stat. 708, provided: ''That this Act may be cited as the 'White Earth Reservation Land Settlement Act of 1985'.

''SEC. 2. The Congress finds that—

''(1) claims on behalf of Indian allottees or heirs and the White Earth Band involving substantial amounts of land within the White Earth Indian Reservation in Minnesota are the subject of existing and potential lawsuits involving many and diverse interests in Minnesota, and are creating great hardship and uncertainty for government, Indian communities, and non-Indian communities;

''(2) the lawsuits and uncertainty will result in great expense and expenditure of time, and could have a profound negative impact on the social and well-being of everyone on the reservation;

''(3) the White Earth Band of Chippewa Indians, State of Minnesota, along with its political subdivisions, and other interested parties have made diligent efforts to fashion a settlement to these claims, and the Federal Government, by providing the assistance specified in this Act, will make possible the implementation of a permanent settlement with regard to these claims;

''(4) past United States laws and policies have contributed to the uncertainty surrounding the claims;

''(5) it is in the long-term interest of the United States, State of Minnesota, White Earth Band, Indians, and non-Indians for the United States to assist in the implementation of a fair and equitable settlement of these claims; and

''(6) this Act will settle unresolved legal uncertainties relating to these claims.

''SEC. 3. For purposes of this Act:

''(a) 'Allotment' shall mean an allocation of land on the White Earth Reservation, Minnesota, granted, pursuant to the Act of January 14, 1889 (25 Stat. 642), and the Act of February 8, 1887 (24 Stat. 388) [see Short Title note above], to a Chippewa Indian.

''(b) 'Allottee' shall mean the recipient of an allotment.

''(c) 'Full blood' shall mean a Chippewa Indian of the White Earth Reservation, Minnesota, who was designated as a full blood Indian on the roll approved by

the United States District Court for the District of Minnesota on October 1, 1920, or who was so designated by a decree of a Federal court of competent jurisdiction; it shall also refer to an individual who is not designated on said roll but who is the biological child of two full blood parents so designated on the roll or of one full blood parent so designated on the roll and one parent who was an Indian enrolled in any other federally recognized Indian tribe, band, or community.

''(d) 'Inherited' shall mean received as a result of testate or intestate succession or any combination of testate or intestate succession, which succession shall be determined by the Secretary of the Interior or his authorized representative.

''(e) 'Mixed blood' shall mean a Chippewa Indian of the White Earth Reservation, Minnesota, who was designated as a mixed blood Indian on the roll approved by the United States District Court of Minnesota on October 1, 1920, unless designated a full blood by decree of a Federal court of competent jurisdiction; it shall also refer to any descendants of an individual who was listed on said roll providing the descendant was not a full blood under the definition in subsection (c) of this section. The term 'mixed blood' shall not include an Indian enrolled in any federally recognized Indian tribe, band, or community other than the White Earth Band.

''(f) 'Tax forfeited' shall mean an allotment which, pursuant to State law, was declared forfeited for nonpayment of real property taxes and purportedly transferred directly to the State of Minnesota or to private parties or governmental entities.

''(g) 'Majority' shall mean the age of twenty-one years or older.

''(h) 'Secretary' shall mean the Secretary of the Interior or his/or her authorized representative.

''(i) 'Trust period' shall mean the period during which the United States held an allotment in trust for the allottee or the allottee's heirs. For the purpose of this Act, the Executive Order Numbered 4642 of May 5, 1927, Executive Order Numbered 5768 of December 10, 1931, and Executive Order Numbered 5953 of November 23, 1932, shall be deemed to have extended trust periods on all allotments or interests therein the trust periods for which would otherwise have expired in 1927, 1932, or 1933, notwithstanding the issuance of any fee patents for which there were no applications, and if such allotments were not specifically exempted from the Executive orders; and the Indian Reorganization Act of June 18, 1934 [see Short Title note set out under section 461 of this title], shall be deemed to have extended indefinitely trust periods on all allotments or interests therein the trust periods for which would otherwise have expired on June 18, 1934, or at any time thereafter. Said Executive orders and Act shall be deemed not to have extended the trust period for allotments or interests which were sold or mortgaged by adult mixed bloods, by non-Indians, or with the approval of the Secretary, or for allotments or interests which were sold or mortgaged by anyone where such sale or mortgage was the subject of litigation in Federal court which proceeded to a judgment on the merits and where the outcome of such litigation did not vacate or void said sale or mortgage.

''(j) 'Interest', except where such item is used in conjunction with 'compound', shall mean a fractional holding, less than the whole, held in an allotment.

''(k) 'Adult' shall mean having attained the age of majority.

''(*l*) 'Heir' means a person who received or was entitled to receive an allotment or interest as a result of testate or intestate succession under applicable Federal or Minnesota law, or one who is determined under section 9, by the application of the inheritance laws of Minnesota in effect on March 26, 1986 (not including laws relating to spousal allowance and maintenance payments), to be entitled to receive compensation payable under section 8.

''(m) 'Transfer' includes but is not limited to any voluntary or involuntary sale, mortgage, tax forfeiture or conveyance pursuant to State law; any transaction the purpose of which was to effect a sale, mortgage, tax forfeiture or conveyance pursuant to State law; any Act, event, or circumstance that resulted in a change of title to, possession of, dominion over, or control of an allotment or interest therein.

''SEC. 4. (a) The provisions of this Act shall apply to the following allotments:

''(1) allotments which were never sold or mortgaged by the allottees or by their heirs and which were tax forfeited during the trust period;

''(2) allotments which were sold or mortgaged during the trust period, without the approval of the Secretary, by the allottees prior to having attained majority, and were never again sold or mortgaged either by the allottees upon their having attained majority or by heirs of the allottees;

''(3) allotments which were sold or mortgaged during the trust period by full blood allottees without the approval of the Secretary, and were never again the subject of a sale or mortgage by heirs of the allottees; and

''(4) allotments which were never sold or mortgaged by the allottees, but which subsequent to the deaths of the allottees, purportedly were sold or mortgaged, during the trust period, by administrators, executors, or representatives, operating under authority from State courts, and were never again the subject of a sale or mortgage by heirs of the allottees.

''(b) The provisions of this Act shall also apply to the following allotments or interests in allotments:

''(1) allotments or interests which were inherited by full or mixed bloods who never sold or mortgaged their allotments or interests or by Indians enrolled in other federally recognized Indian tribes, bands, or communities who never sold or mortgaged their allotments or interests, where the allotments or interests were tax forfeited during the trust period;

''(2) allotments or interests which were inherited by mixed bloods under the age of majority and which were sold or mortgaged during the trust period without the approval of the Secretary prior to such mixed bloods having attained majority, but which were never again sold or mortgaged by them upon having attained majority or by their heirs;

''(3) allotments or interests which were inherited by full bloods or by Indians enrolled in other federally recognized Indian tribes, bands, or communities, who sold or mortgaged such allotments or interests during the trust period without the approval of the Secretary;

''(4) allotments or interests which were inherited by full or mixed bloods who never sold or mortgaged their allotments or interests, but which, subsequent to the deaths of such heirs, were sold or mortgaged during the trust period by administrators, operating under authority from State courts;

''(5) allotments or interests which were owned by allottees or which were inherited by full or mixed bloods for whom guardians were appointed by State courts, which guardians sold or mortgaged the allotments or interests during the trust period without the approval of the Secretary;

''(6) interests which were inherited by full or mixed bloods who never sold or mortgaged their interests during the trust period, even though other interests in the same allotment were sold by other heirs where the land comprising the allotment has been claimed in full by other parties adversely to the full or mixed bloods who never sold or mortgaged their interests; and

''(7) allotments or interests which were inherited by full or mixed bloods or by Indians enrolled in other federally recognized Indian tribes, bands, or communities which were never sold or mortgaged during the trust period but which were purportedly distributed by State court probate proceedings to other individuals.

''(c) This Act shall not apply to—

''(1) any allotment or interest the sale or mortgage of which was the subject of litigation which pro-

ceeded to a judgment on the merits in Federal courts and where the outcome of such litigation was other than vacating and voiding such sale or mortgage;

''(2) any allotment or interest which was tax forfeited subsequent to the date on which the tax exemption was declared by a Federal court to have expired;

''(3) any allotment or interest which was sold, mortgaged, or tax forfeited after the expiration of the trust period; or

''(4) any allotment or interest which was sold or mortgaged at any time by an adult mixed blood Indian.

Nothing in this Act is intended to question the validity of the transactions relating to allotments or interests as described in section 4(c), and such allotments and interests are declared to be outside the scope of this Act.

''SEC. 5. (a) Any determination of the heirs of any person holding an allotment or interest, made by the courts of the State of Minnesota, which is filed with the proper county recording officer prior to May 9, 1979, shall be deemed to have effectively transferred the title of the decedent in the allotment or interest to the heirs so determined unless a separate determination of heirs has been made by the Secretary before the effective date of this Act [Mar. 24, 1986] and such determination has been filed with the proper county recording officer within six months after the effective date of this Act. Nothing in this subsection shall be construed to remove any allotment described in section 4 from the compensation provided for in the Act.

''(b) The 'proper county recording officer', as that term is used in subsection (a) of this section, shall be a county recorder, registrar of titles, or probate court in Becker, Clearwater, or Mahnomen Counties, Minnesota.

''(c) As to any allotment which was granted to an allottee who had died prior to the selection date of the allotment, the granting of such allotment is hereby ratified and confirmed, and shall be of the same effect as if the allotment had been selected by the allottee before the allottee's death: *Provided*, That the White Earth Band of Chippewa Indians shall be compensated for such allotments in the manner provided in sections 6, 7, and 8.

''(d) As to any allotment that was made under the provisions of the Treaty of March 19, 1867 (16 Stat. 719), and which was reallotted under the provisions of the Act of January 14, 1889 (25 Stat. 642), such reallotment is hereby ratified and confirmed.

''SEC. 6. (a) As soon as the conditions set forth in section 10 of this Act have been met, the Secretary shall publish a certification in the Federal Register that such conditions have been met. After such publication, any allotment or interest which the Secretary, in accordance with this Act, determines falls within the provisions of section 4(a), 4(b), or 5(c), the tax forfeiture, sale, mortgage, or other transfer, as described therein, shall be deemed to have been made in accordance with the Constitution and all laws of the United States specifically applicable to transfers of allotments or interests held by the United States in trust for Indians, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer, subject to the provisions of section 6(c). Compensation for loss of allotments or interests resulting from this approval and ratification shall be determined and processed according to the provisions of section 8.

''(b) By virtue of the approval and ratification of transfers of allotments or interests therein effected by this section, all claims against the United States, the State of Minnesota or any subdivisions thereof, or any other person or entity, by the White Earth Band, its members, or by any other Indian tribe or Indian, or any successors in interest thereof, arising out of, and at the time of or subsequent to, the transfers described in section 4(a), 4(b), or 5(c) and based on any interest in or nontreaty rights involving such allotments or interests therein, shall be deemed never to have existed as of the date of the transfer, subject to the provisions of this Act.

''(c) Notwithstanding any provision of law other than the provisions of this section, any action in any court to recover title or damages relating to transactions described in section 4(a), 4(b), 5(a) or 5(c), shall be forever barred unless the complaint is filed not later than one hundred and eighty days following enactment of this Act [Mar. 24, 1986], or prior to the publication required by section 6(a) whichever occurs later in time: *Provided*, That immediately upon the date of enactment of this Act any such action on behalf of the White Earth Band of Chippewa Indians shall be forever barred, unless the publication required by section 6(a) does not take place within two years of the date of enactment of this Act in which case the bar of any such action on behalf of the White Earth Band of Chippewa Indians shall be deemed lifted and nullified: *Provided further*, That the Secretary shall not issue to the White Earth Band any report rejecting litigation nor submit to Congress any legislation report pursuant to section 2415 of title 28, United States Code, relating to transactions described in section 4(a), 4(b), 5(a) or 5(c) of this Act, until and unless the bar against actions on behalf of the White Earth Band is lifted and nullified. Any such action filed within the time period allowed by this subsection shall not be barred; however, the filing of any such action by an allottee, heir, or others entitled to compensation under this Act shall bar such allottee, heir, or others from receiving compensation pursuant to the provisions of section 8. The United States District Court for the District of Minnesota shall have exclusive jurisdiction over any such action otherwise properly filed within the time allowed by this subsection.

''(d) This section shall not bar an heir, allottee, or any other person entitled to compensation under this Act from maintaining an action, based on the transactions described in section 4(a), 4(b), 5(a), or 5(c), against the United States in the Court of Federal Claims pursuant to the Tucker Act, section 1491 of title 28, United States Code, challenging the constitutional adequacy of the compensation provisions of section 8(a) as they apply to a particular allotment or interest: *Provided*, That such action shall be filed with the Court of Federal Claims not later than one hundred and eighty days after the issuance of the notice of the Secretary's compensation determination as provided in section 8(c). If such an action is not filed within the one-hundred-and-eighty-day period, it shall be forever barred. The United States hereby waives any sovereign immunity defense it may have to such an action but does not waive any other defenses it may have to such action. The filing of an action by any heir, allottee, or any other person under the provisions of this section shall bar such person forever from receiving compensation pursuant to the provisions of section 8.

''SEC. 7. (a) The Secretary is hereby authorized to and shall diligently investigate to the maximum extent practicable all White Earth allotments and shall determine which allotments or interest fall within any of the provisions of section 4(a), 4(b), or 5(c). As to all such allotments or interests determined to be within the provisions of section 4(a), 4(b), or 5(c), the Secretary shall prepare lists of such allotments or interests, which shall include allotment number, land description, and allottee's name, in English and Ojibway where available. A first list shall be published within one hundred and eighty days after the date of enactment of this Act [Mar. 24, 1986] in the Federal Register; in a newspaper of general circulation in Mahnomen County, Minnesota; in a newspaper of general circulation in Becker County, Minnesota; in a newspaper of general circulation in Clearwater County, Minnesota; in one newspaper of general circulation in metropolitan Minneapolis-Saint Paul; and, in the Secretary's discretion, in any appropriate band or tribal newspaper. Publication in the required newspapers shall take place no later than thirty days after publication in the Federal Register.

''(b) Any tribe, band, or group of Indians, or any individual shall have one year after the date of publication in the Federal Register to submit to the Secretary any

additional allotments or interests which the tribe, band, group, or individual believes should fall within any of the provisions of section 4(a), 4(b), or 5(c). The Secretary, without such submissions, may also independently determine that additional allotments or interests fall within such provisions. Any additional allotments or interests submitted to the Secretary shall be accompanied by a statement identifying the allotment or interest and its land description and summarizing the reasons why it should be added to the list required by this section.

''(c) The Secretary shall determine which additional allotments or interests fall within the provisions of section 4(a), 4(b), or 5(c), and not later than March 12, 1989, the Secretary shall publish a second list in the Federal Register and previously required newspapers of the allotments or interests the Secretary has determined should be corrected or added to the first published list.

''(d) Any determination made by the Secretary under this section to include an allotment or interest on the first list required by the section to be published in the Federal Register may be judicially reviewed pursuant to the Administrative Procedure Act [5 U.S.C. 701 et seq.] not later than ninety days of the publication date of the first list of the Federal Register. Any such action not filed within such ninety-day period shall be forever barred. Any determination made by the Secretary to include an allotment or interest on the second list required by this section to be published in the Federal Register, or any determination made by the Secretary not to include an allotment or interest on such list, may be judicially reviewed pursuant to the Administrative Procedure Act within ninety days of the publication date of the second list in the Federal Register. Any such action not filed within such ninety-day period shall be forever barred. Exclusive jurisdiction over actions under this subdivision is hereby vested in the United States District Court for the District of Minnesota.

''(e)(1) After publication of the second list under subsection (c), the Secretary may, at any time, add allotments or interests to that second list if the Secretary determines that the additional allotment or interest falls within the provisions of section 5(c) or subsection (a) or (b) of section 4.

''(2) The Secretary shall publish in the Federal Register notice of any additions made under paragraph (1) to the second list published under subsection (c).

''(3) Any determination made by the Secretary to add an allotment or interest under paragraph (1) to the second list published under subsection (c) may be judicially reviewed in accordance with chapter 7 of title 5, United States Code, within 90 days after the date on which notice of such determination is published in the Federal Register under paragraph (2). Any legal action challenging such a determination that is not filed within such 90-day period shall be forever barred. Exclusive jurisdiction over any legal action challenging such a determination is vested in the United States District Court for the District of Minnesota.

''(f)(1) The Secretary is authorized to make a one-time deletion from the second list published under subsection (c) or any subsequent list published under subsection (e) of any allotments or interests which the Secretary has determined do not fall within the provisions of subsection (a) or (b) of section 4, or subsection (c) of section 5, or which the Secretary has determined were erroneously included in such list by reason of misdescription or typographical error.

''(2) The Secretary shall publish in the Federal Register notice of deletions made from the second list published under subsection (c) or any subsequent list published under subsection (e).

''(3) The determination made by the Secretary to delete an allotment or interest under paragraph (1) may be judicially reviewed in accordance with chapter 7 of title 5, United States Code, within 90 days after the date on which notice of such determination is published in the Federal Register under paragraph (2). Any legal action challenging such a determination that is not filed within such 90-day period shall be forever barred. Exclusive jurisdiction over any legal action challenging such a determination is vested in the United States District Court for the District of Minnesota.

''SEC. 8. (a) Compensation for a loss of an allotment or interest shall be the fair market value of the land interest therein as of the date of tax forfeiture, sale, allotment, mortgage, or other transfer described in section 4(a), 4(b), or 5(c), less any compensation actually received, plus interest compounded annually at 5 per centum from the date of said loss of an allotment or interest until the date of enactment of this Act [Mar. 24, 1986], and at the general rate of interest earned by United States Department of the Interior funds thereafter. A determination of compensation actually received shall be supported by Federal, State, or local public documents filed contemporaneously with the transaction or by clear and convincing evidence. Compensation actually received shall not be subtracted from the fair market value in any instance where an allotment or interest was sold or mortgaged by a full or mixed blood, under the age of eighteen years, or in any instance where there is prima facie evidence that fraud occurred in a sale or mortgage. No compensation for loss of an allotment or interest relating to transfers described in section 4(b) shall be granted to any person or the heirs of such person where such allotment or interest was received pursuant to State court probate proceedings and where also it has been or is determined by the Secretary that such person or heirs were not entitled to inherit the allotment or interest.

''(b) For the purpose of this section, the date of transfer applicable to interests described in section 4(b)(6) shall be the last date on which any interest in the subject allotment was transferred by document of record by any other heir of the allottee; and the date of transfer applicable to allotments described in section 5(c) shall be the selection date. For purposes of this section, the Secretary shall establish the fair market value of various types of land for various years, which shall govern the compensation payable under this section unless a claimant demonstrates that a particular allotment or interest had a value materially different from the value established by the Secretary.

''(c) The Secretary shall provide written notice of the Secretary's compensation determination to the allottees or heirs entitled thereto. Such notice shall describe the basis for the Secretary's determination, the applicable time limits for judicial review of the determination, and the process whereby such compensation will be distributed. The Secretary shall proceed to make such heirship determinations as may be necessary to provide the notice required by this section: *Provided*, That the Secretary shall accept as conclusive evidence of heirship any determination of the courts of the State of Minnesota as provided in section 5(a) of this Act: *Provided further*, That the Secretary shall give written notice only to those allottees or heirs whose addresses can be ascertained by reasonable and diligent efforts; otherwise such notice shall be given by publication in the Federal Register.

''(d) The Secretary's administrative determination of the appropriate amount of compensation computed pursuant to the provisions of this Act may be judicially reviewed pursuant to the Administrative Procedure Act [5 U.S.C. 701 et seq.] not later than one hundred and eighty days after the issuance of notice as aforesaid; after such time the Secretary's determination shall be conclusive and all judicial review shall be barred. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the District of Minnesota.

''(e) Once a compensation determination has become conclusive according to the provisions of subsection (d), the Secretary shall certify such determination to the Secretary of the Treasury and such conclusive determination shall be treated as a final judgment, award or, compromise settlement under the provisions of title 31, United States Code, section 1304. The Secretary of

the Treasury is authorized and directed to pay out of the funds in the Treasury into a separate interest bearing White Earth Settlement Fund account the amount certified by the Secretary of the Interior in each case. The Secretary of the Interior shall then make a diligent effort to locate each allottee or heir; however, if, after two years from the date on which a determination becomes conclusive an allottee or heir cannot be located, the Secretary of the Interior shall declare the amount owing to such allottee or heir forfeited.

''(f) Any and all amounts forfeited pursuant to subsection (e) together with the interest accumulated thereon, pursuant to section 8 shall be transferred annually to the fund established under section 12 for the White Earth Band.

''SEC. 9. The Secretary shall determine the heirs, if heretofore undetermined, or modify the inventory of an existing heirship determination of any full or mixed blood or Indian enrolled in any other federally recognized Indian tribe, band, or community, where appropriate for the purposes of this Act: *Provided*, That the Secretary shall accept any determination of heirship by the courts of the State of Minnesota as provided in section 5(a) of this Act.

''SEC. 10. (a) The provisions of section 6 of this Act shall take effect upon the publication in the Federal Register by the Secretary of certification that the following conditions have been satisfied:

''(1) The State of Minnesota, in accordance with Laws of Minnesota 1984, chapter 539, has entered into an agreement with the Secretary providing for the transfer of ten thousand acres of land within the exterior boundaries of the White Earth Reservation to the United States to hold in trust for the White Earth Band of Chippewa Indians as the State's contribution to the settlement provided for by this Act. The Secretary shall not enter into such an agreement until the Secretary determines, or the authorized governing body of the band certifies to the Secretary in writing, that the agreement will result in the transfer of ten thousand acres which possess reasonable value for the White Earth Band, including but not limited to value for agricultural, recreational, forestry, commercial, residential, industrial, or general land consolidation purposes. The land transferred pursuant to this subsection shall be accepted by the United States subject to all existing accesses, roads, easements, rights of way, or similar uses unless the Governor and Attorney General of the State of Minnesota certify in writing to the Secretary the State's intent to abandon such uses on a particular parcel.

''(2) The State, in accordance with the Laws of Minnesota 1984, chapter 539, has appropriated $500,000 for the purpose of providing the United States with technical and computer assistance for implementing the settlement provided for in this Act.

''(3) The United States has appropriated $6,600,000 for economic development for the benefit of the White Earth Band of Chippewa Indians.

''(b) Upon final acceptance by the Secretary, the land referred to in subsection (a)(1) shall be deemed to have been reserved as of the date of the establishment of the White Earth Reservation and to be part of the trust land of the White Earth Reservation for all purposes.

''SEC. 11. Nothing in this Act is intended to alter the jurisdiction currently possessed by the White Earth Band of Chippewa Indians, the State of Minnesota, or the United States over Indians or non-Indians within the exterior boundaries of the White Earth Reservation.

''SEC. 12. (a) There is established in the Treasury of the United States a fund to be known as the White Earth Economic Development and Tribal Government Fund. Money in this Fund shall be held in trust by the United States for the White Earth Band of Chippewa Indians, and shall be invested and managed by the Secretary in the same manner as tribal trust funds pursuant to the Act of June 24, 1938 (25 U.S.C. 162a).

''(b) The White Earth Economic Development and Tribal Government Fund shall consist of—

''(1) money received by the White Earth Band as compensation pursuant to section 8; and

''(2) money received by the White Earth Band as a result of amounts forfeited pursuant to section 8(f); and

''(3) money received as an appropriation pursuant to section 15; and

''(4) income accruing on such sums.

Income accruing to the White Earth Economic Development and Tribal Government Fund shall, without further appropriation, be available for expenditure as provided in subsection (c).

''(c) Income from the fund may be used by the authorized governing body of the band for band administration. Principal and income may be used by the authorized governing body of the band for economic development, land acquisition, and investments: *Provided, however*, That under no circumstances shall any portion of the moneys described in subsection (b) be used for per capita payments to any members of the band: *Provided further*, That none of the funds described in subsection (b) shall be expended by the governing body of the band until—

''(1) such body has adopted a band financial ordinance and investment plan for the use of such funds; and

''(2) such body has submitted to the Secretary a waiver of liability on the part of the United States for any loss resulting from the use of such funds; and

''(3) the Secretary has approved the band financial ordinance and investment plan. The Secretary shall approve or reject in writing such ordinance and plan within sixty days of the date it is mailed or otherwise submitted to him: *Provided*, That such ordinance and plan shall be deemed approved if, sixty days after submission, the Secretary has not so approved or rejected it. The Secretary shall approve the ordinance and plan if it adequately contains the element specified in this subsection.

''SEC. 13. Notwithstanding any other law to the contrary, the United States grants its permission to the State of Minnesota to transfer land to the White Earth Band as described in section 10(a)(1) which prior to the date of enactment of this Act [Mar. 24, 1986] may have been obtained by the State pursuant to other Federal law or with Federal assistance. Any restrictions or conditions imposed by any other Federal law or regulation on the transfer of such land are hereby waived and removed.

''SEC. 14. Not later than five years, or as soon as possible, after the date of enactment of this Act [Mar. 24, 1986], the Secretary shall make all determinations, provide all notices, and complete the administrative work necessary to accomplish the objectives of this Act. The Secretary shall give priority in making compensation determinations and payments under this Act to original allottees and elderly heirs. The Secretary shall submit a report by January 1 of each year to the chairman of the House of Representatives Committee on Interior and Insular Affairs [now Committee on Natural Resources] and the chairman of the Senate Committee on Indian Affairs, which report shall summarize the administrative progress to date and shall estimate the amount and nature of work left to be done.

''SEC. 15. There are hereby authorized to be appropriated to the White Earth Band $6,600,000 as a grant to be expended as provided in section 12.

''SEC. 16. None of the moneys which are distributed under this Act shall be subject to Federal or State income taxes or be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act [42 U.S.C. 301 et seq.] or any other federally assisted program.

''SEC. 17. The Secretary is authorized, if so requested by the authorized governing body of the White Earth Band, to exchange any of the land which is transferred to the United States as described in section 10(a)(1) for any other land within the exterior boundaries of the White Earth Reservation which is owned by the United States, the State of Minnesota, or any of the State's

political subdivisions. Nothing in this section shall be deemed to require an exchange not agreed to by all parties to the exchange.

''SEC. 18. Any lands acquired by the White Earth Band within the exterior boundaries of the White Earth Reservation with funds referred to in section 12, or by the Secretary pursuant to section 17, shall be held in trust by the United States. Such lands shall be deemed to have been reserved from the date of the establishment of said reservation and to be part of the trust land of the White Earth Band for all purposes.''

WINNEBAGO RESERVATION, NEBRASKA

Act Mar. 3, 1925, ch. 431, 43 Stat. 1114, provided: ''That the Secretary of the Interior be, and he is hereby, authorized in his discretion, to cancel any restricted fee patents that have been issued to Indians of the Winnebago Reservation in Nebraska, under the provisions of the Act of Congress of February 21, 1863 (Twelfth Statutes at Large, page 658), and to issue in lieu thereof, to the original allottees, or heirs, trust patents of the form and subject to all the provisions set out in the general allotment act of February 8, 1887 (Twenty-fourth Statutes at Large, page 388), as amended: *Provided*, That the trust period shall be ten years from the date of issuance of the lieu trust patents.''

§§ 332, 333. Repealed. Pub. L. 106–462, title I, § 106(a)(1), Nov. 7, 2000, 114 Stat. 2007

Section 332, act Feb. 8, 1887, ch. 119, § 2, 24 Stat. 388, related to selection of allotments.

Section 333, acts Feb. 8, 1887, ch. 119, § 3, 24 Stat. 389; June 25, 1910, ch. 431, § 9, 36 Stat. 858; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, related to making of allotments by agents.

§ 334. Allotments to Indians not residing on reservations

Where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as provided in sections 348 and 349 of this title. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Secretary of the Interior or such officer as he may designate, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

(Feb. 8, 1887, ch. 119, § 4, 24 Stat. 389; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

REFERENCES IN TEXT

This act, referred to in text, is act Feb. 8, 1887, ch. 119, 24 Stat. 388, as amended, and is popularly known as the Indian General Allotment Act. For classification of this act to the Code, see Short Title note set out under section 331 of this title and Tables.

The words ''provided in sections 348 and 349 of this title'', referred to in text, were in the original ''as herein provided''.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

''Secretary of the Interior or such officer as he may designate'' substituted in text for ''Commissioner of the General Land Office'' on authority of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5.

PERMANENT APPROPRIATION; REPEALS

Effective July 1, 1935, the permanent appropriation provided for in the last sentence of this section was repealed by act June 26, 1934, ch. 756, § 1, 48 Stat. 1225.

§ 335. Extension of provisions as to allotments

Unless otherwise specifically provided, the provisions of the Act of February 8, 1887 (Twenty-fourth Statutes at Large, page 388), as amended, are extended to all lands heretofore purchased or which may be purchased by authority of Congress for the use or benefit of any individual Indian or band or tribe of Indians.

(Feb. 14, 1923, ch. 76, 42 Stat. 1246.)

REFERENCES IN TEXT

Act of February 8, 1887, referred to in text, is popularly known as the Indian General Allotment Act. For classification of this Act to the Code, see Short Title note set out under section 331 of this title and Tables.

§ 336. Allotments to Indians making settlement

Where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and such allotments to Indians on the public domain as herein provided shall be made in such areas as the President may deem proper, not to exceed, however, forty acres of irrigable land or eighty acres of nonirrigable agricultural land or one hundred sixty acres of nonirrigable grazing land to any one Indian; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto, and patent shall be issued to them for such lands in the manner and with the restrictions provided in sections 348 and 349 of this title. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Secretary of the Interior or such officer as he may designate, and a certifi-

cation of such account to the Secretary of the Treasury by the Secretary of the Interior.

(Feb. 28, 1891, ch. 383, §4, 26 Stat. 795; June 25, 1910, ch. 431, §17, 36 Stat. 860; 1946 Reorg. Plan No. 3, §403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

REFERENCES IN TEXT

Words "restrictions provided in sections 348 and 349 of this title", referred to in text, were in the original "restrictions provided in the Act of which this is amendatory". That Act is act Feb. 8, 1887 (24 Stat. 388), popularly known as the Indian General Allotment Act. For classification of that Act to the Code, see Short Title note set out under section 331 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

"Secretary of the Interior or such officer as he may designate" substituted in text for "Commissioner of the General Land Office" on authority of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5.

PERMANENT APPROPRIATION; REPEALS

Effective July 1, 1935, the permanent appropriation provided for in the last sentence of this section was repealed by act June 26, 1934, ch. 756, §1, 48 Stat. 1225.

§337. Allotments in national forests

The Secretary of the Interior is authorized, in his discretion, to make allotments within the national forests in conformity with the general allotment laws, to any Indian occupying, living on, or having improvements on land included within any such national forest who is not entitled to an allotment on any existing Indian reservation, or for whose tribe no reservation has been provided, or whose reservation was not sufficient to afford an allotment to each member thereof. All applications for allotments under the provisions of this section shall be submitted to the Secretary of Agriculture who shall determine whether the lands applied for are more valuable for agricultural or grazing purposes than for the timber found thereon; and if it be found that the lands applied for are more valuable for agricultural or grazing purposes, then the Secretary of the Interior shall cause allotment to be made as herein provided.

(June 25, 1910, ch. 431, §31, 36 Stat. 863.)

§337a. Repealed. Pub. L. 94–579, title VII, §702, Oct. 21, 1976, 90 Stat. 2787

Section, act Mar. 1, 1933, ch. 160, §1, 47 Stat. 1418, related to Indian allotments in San Juan County, Utah.

EFFECTIVE DATE OF REPEAL

Section 702 of Pub. L. 94–579 provided that this section is repealed effective on and after Oct. 21, 1976, except such effective date to be on and after the tenth anniversary of the date of approval of this Act, Oct. 21, 1976, insofar as the homestead laws apply to public lands in Alaska.

SAVINGS PROVISION

Repeal by Pub. L. 94–579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94–579, title VII, Oct. 21, 1976, 90 Stat. 2786, set out as a note under section 1701 of Title 43, Public Lands.

§338. Repealed. May 29, 1928, ch. 901, §1(64), 45 Stat. 991

Section, act Apr. 4, 1910, ch. 140, §1, 36 Stat. 270, required Secretary of the Interior to submit to Congress a cost account of survey and allotment work.

§339. Tribes excepted from certain provisions

The provisions of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in Oklahoma, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by Executive order.

(Feb. 8, 1887, ch. 119, §8, 24 Stat. 391.)

REFERENCES IN TEXT

This act, referred to in text, is act Feb. 8, 1887, ch. 119, 24 Stat. 388, as amended, and is popularly known as the Indian General Allotment Act. For classification of this act to the Code, see Short Title note set out under section 331 of this title and Tables.

SACS AND FOXES; MISSOURI INDIANS

No allotment of lands was to be made or annuities of money to be paid to any of the Sacs and Foxes of the Missouri Indians who were not enrolled as members of the tribe on Jan. 1, 1890, by a proviso annexed to act Feb. 28, 1891, ch. 383, §5, 26 Stat. 796.

§340. Extension of certain provisions

The provisions of the Act of February 8, 1887, are declared to extend to and are made applicable to the Confederated Wea, Peoria, Kaskaskia, and Piankeshaw tribes of Indians, and the Western Miami tribe of Indians, located in the northeastern part of the former Indian Territory and to their reservation, in the same manner and to the same extent as if said tribes had not been excepted from the provisions of said act, except as to section 349 of this title, and as otherwise hereinafter provided.

(Mar. 2, 1889, ch. 422, §1, 25 Stat. 1013.)

REFERENCES IN TEXT

Act of February 8, 1887, referred to in text, was in the original "chapter One hundred and Nineteen of the acts of eighteen hundred and eighty seven, entitled 'An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes,' ". The Act appears in 24 Stat. 388, and is popularly known as the Indian General Allotment Act. For classification of this Act to the Code, see Short Title note set out under section 331 of this title and Tables.

§341. Power to grant rights-of-way not affected

Nothing in this act shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation.

(Feb. 8, 1887, ch. 119, §10, 24 Stat. 391.)

REFERENCES IN TEXT

This act, referred to in text, is act Feb. 8, 1887, ch. 119, 24 Stat. 388, as amended, and is popularly known as the Indian General Allotment Act. For classification of this act to the Code, see Short Title note set out under section 331 of this title and Tables.

§ 342. Removal of Southern Utes to new reservation

Nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe.

(Feb. 8, 1887, ch. 119, § 11, 24 Stat. 391.)

REFERENCES IN TEXT

This act, referred to in text, is act Feb. 8, 1887, ch. 119, 24 Stat. 388, as amended, and is popularly known as the Indian General Allotment Act. For classification of this act to the Code, see Short Title note set out under section 331 of this title and Tables.

§ 343. Correction of errors in allotments and patents

In all cases where it shall appear that a double allotment of land has been wrongfully or erroneously made by the Secretary of the Interior to any Indian by an assumed name or otherwise, or where a mistake has been made in the description of the land inserted in any patent, said Secretary is authorized and directed, during the time that the United States may hold the title to the land in trust for any such Indian, and for which a conditional patent may have been issued, to rectify and correct such mistakes and cancel any patent which may have been thus erroneously and wrongfully issued whenever in his opinion the same ought to be canceled for error in the issue thereof, and if possession of the original patent cannot be obtained, such cancellation shall be effective if made upon the records of the Bureau of Land Management; and no proclamation shall be necessary to open to settlement the lands to which such an erroneous allotment patent has been canceled, provided such lands would otherwise be subject to entry: *And provided*, That such lands shall not be open to settlement for sixty days after such cancellation: *And further provided*, That no conditional patent that has been or that may be executed in favor of any Indian allottee, excepting in cases hereinbefore authorized, and excepting in cases where the conditional patent is relinquished by the patentee or his heirs to take another allotment, shall be subject to cancellation without authority of Congress.

(Jan. 26, 1895, ch. 50, 28 Stat. 641; Apr. 23, 1904, ch. 1489, 33 Stat. 297; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

"Bureau of Land Management" substituted in text for "General Land Office" on authority of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5.

§ 344. Cancellation of allotment of unsuitable land

If any Indian of a tribe whose surplus lands have been ceded or opened to disposal has received an allotment embracing lands unsuitable for allotment purposes, such allotment may be canceled and other unappropriated, unoccupied, and unreserved land of equal area, within the ceded portions of the reservation upon which such Indian belongs, allotted to him upon the same terms and with the same restrictions as the original allotment, and lands described in any such canceled allotment shall be disposed of as other ceded lands of such reservation. This provision shall not apply to the lands formerly comprising Indian Territory. The Secretary of the Interior is authorized to prescribe rules and regulations to carry this law into effect.

(Mar. 3, 1909, ch. 263, 35 Stat. 784.)

§ 344a. Repealed. Act Nov. 24, 1942, ch. 640, § 4, 56 Stat. 1022

Section, act June 25, 1910, ch. 431, § 12, 36 Stat. 858, authorized Secretary of the Interior to investigate the allotment in the name of a deceased Indian and to recommend to Congress the cancellation of such Indian's patent if he died without heirs.

§ 345. Actions for allotments

All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands now held by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: *Provided*, That the right of appeal shall be allowed to either party as in other cases.

(Aug. 15, 1894, ch. 290, § 1, 28 Stat. 305; Feb. 6, 1901, ch. 217, § 1, 31 Stat. 760; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

REPEAL OF SECTION AS TO OSAGE INDIANS

Act June 28, 1906, ch. 3572, § 1, 34 Stat. 540, provided in part that: "the provisions of the Act of Congress of August fifteenth, eighteen hundred and ninety-four, Twenty-eighth Statutes

at Large, page three hundred and five [this section], granting persons of Indian blood who have been denied allotments the right to appeal to the courts, are hereby repealed as far as the same relate to the Osage Indians; and the tribal lands and tribal funds of said tribe shall be equally divided among the members of said tribe as hereinafter provided.''

CODIFICATION

Act Mar. 3, 1911, conferred the powers and duties of the former circuit courts upon the district courts.

§ 346. Proceedings in actions for allotments

The plaintiff shall cause a copy of his petition filed under section 345 of this title, to be served upon the United States attorney in the district wherein suit is brought, and shall mail a copy of same, by registered letter, to the Attorney General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the United States attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file a plea, answer, or demurrer on the part of the Government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises: *Provided*, That should the United States attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court.

(Feb. 6, 1901, ch. 217, § 2, 31 Stat. 760; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

CHANGE OF NAME

''United States attorney'' substituted in text for ''district attorney of the United States'' on authority of act June 25, 1948. See section 541 of Title 28, Judiciary and Judicial Procedure.

§ 347. Limitations of actions for lands patented in severalty under treaties

In all actions brought in any State court or United States court by any patentee, his heirs, grantees, or any person claiming under such patentee, for the possession or rents or profits of lands patented in severalty to the members of any tribe of Indians under any treaty between it and the United States of America, where a deed has been approved by the Secretary of the Interior to the land sought to be recovered, the statutes of limitations of the States in which said land is situate shall be held to apply, and it shall be a complete defense to such action that the same has not been brought within the time prescribed by the statutes of said State the same as if such action had been brought for the recovery of land patented to others than members of any tribe of Indians.

(May 31, 1902, ch. 946, § 1, 32 Stat. 284.)

§ 348. Patents to be held in trust; descent and partition

Upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That, subject to section 8(b) of the American Indian Probate Reform Act of 2004 (Public Law 108–374; 118 Stat. 1810), the rules of intestate succession under the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act) shall apply to that land for which patents have been executed and delivered: *And provided further*, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress: *Provided, however*, That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years' occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the

United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at 3 per centum per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the Bureau of Land Management, and afterwards delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization was occupying on February 8, 1887, any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And in the employment of Indian police, or any other employees in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

Provided further, That whenever the Secretary of the Interior shall be satisfied that any of the Indians of the Siletz Indian Reservation, in the State of Oregon, fully capable of managing their own business affairs, and being of the age of twenty-one years or upward, shall, through inheritance or otherwise, become the owner of more than eighty acres of land upon said reservation, he shall cause patents to be issued to such Indian or Indians for all of such lands over and above the eighty acres thereof. Said patent or patents shall be issued for the least valuable portions of said lands, and the same shall be discharged of any trust and free of all charge, incumbrance, or restriction whatsoever; and the Secretary of the Interior is authorized and directed to ascertain, as soon as shall be practicable, whether any of said Indians of the Siletz Reservation should receive patents conveying in fee lands to them under the provisions of this Act.

(Feb. 8, 1887, ch. 119, § 5, 24 Stat. 389; Mar. 3, 1901, ch. 832, § 9, 31 Stat. 1085; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100; Pub. L. 106–462, title I, § 106(a)(2), Nov. 7, 2000, 114 Stat. 2007; Pub. L. 108–374, § 6(c), Oct. 27, 2004, 118 Stat. 1805; Pub. L. 109–221, title V, § 501(b)(2), May 12, 2006, 120 Stat. 344.)

REFERENCES IN TEXT

This act, referred to in text, is act Feb. 8, 1887, ch. 119, 24 Stat. 388, and is popularly known as the Indian General Allotment Act. For classification of this act to the Code, see Short Title note set out under section 331 of this title and Tables.

Section 8(b) of the American Indian Probate Reform Act of 2004, referred to in text, is section 8(b) of Pub. L. 108–374, which is set out as a note under section 2201 of this title.

The Indian Land Consolidation Act, referred to in text, is title II of Pub. L. 97–459, Jan. 12, 1983, 96 Stat. 2517, which is classified generally to chapter 24 (§ 2201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

AMENDMENTS

2006—Pub. L. 109–221 inserted in second proviso of first par. ‘‘, subject to section 8(b) of the American Indian Probate Reform Act of 2004 (Public Law 108–374; 118 Stat. 1810),’’ after ‘‘That’’.

2004—Pub. L. 108–374 inserted second proviso of first par. and struck out former second proviso which read as follows: ‘‘*Provided*, That the law of descent in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as provided by the Indian Land Consolidation Act or a tribal probate code approved under such Act and except as herein otherwise provided:’’.

2000—Pub. L. 106–462, in second proviso of first par., struck out ‘‘and partition’’ after ‘‘law of descent’’ and substituted ‘‘except as provided by the Indian Land Consolidation Act or a tribal probate code approved under such Act and except as herein otherwise provided:’’ for ‘‘except as herein otherwise provided:’’.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–221, title V, § 501(c), May 12, 2006, 120 Stat. 344, provided that: ‘‘The amendments made by subsection (b) [amending this section, section 464 of this title, and provisions set out as a note under section 2201 of this title] shall take effect as if included in the enactment of the American Indian Probate Reform Act of 2004 (Public Law 108–374; 118 Stat. 1773).’’

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–374 applicable on and after the date that is 1 year after June 20, 2005, see section 8(b) of Pub. L. 108–374, set out as a Notice; Effective Date of 2004 Amendment note under section 2201 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

‘‘Bureau of Land Management’’ substituted in text for ‘‘General Land Office’’ on authority of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5.

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Interior of authority vested in President by this section, see Ex. Ord. No. 10250, June 5, 1951, 16 F.R. 5385, set out as a note under section 301 of Title 3, The President.

EXTENSION OF TRUST PERIODS

The periods of trust applying to Indian lands, whether of a tribal or individual status, which would expire during the years 1943 to 1950, were extended for a further period of twenty-five years, respectively, by Ex. Ord. No. 9272, Nov. 17, 1942, 7 F.R. 9475; Ex. Ord. No. 9398, Nov. 25, 1943, 8 F.R. 16269; Ex. Ord. No. 9500, Nov. 14, 1944, 9 F.R. 13699; Ex. Ord. No. 9659, Nov. 21, 1945, 10 F.R. 14353; Ex. Ord. No. 9811, Dec. 17, 1946, 11 F.R. 14483; Ex. Ord. No. 9920, Jan. 8, 1948, 13 F.R. 143; Ex. Ord. No. 10027, Jan. 7, 1949, 14 F.R. 107; Ex. Ord. No 10091, Dec. 11, 1949, 14 F.R. 7513.

EX. ORD. NO. 10191. EXTENSION OF TRUST PERIODS ON INDIAN LANDS EXPIRING DURING 1951

Ex. Ord. No. 10191, Dec. 13, 1950, 15 F.R. 8889, provided:

By virtue of and pursuant to the authority vested in me by section 5 of the act of February 8, 1887, 24 Stat.

388, 389 [this section], by the act of June 21, 1906, 34 Stat. 325, 326, and by the act of March 2, 1917, 39 Stat. 969, 976, and other applicable provisions of law, it is hereby ordered that the periods of trust or other restrictions against alienation contained in any patent applying to Indian lands, whether of a tribal or individual status, which, unless extended, will expire during the calendar year 1951, be, and they are hereby, extended for a further period of twenty-five years from the date on which any such trust would otherwise expire.

This order is not intended to apply to any case in which the Congress has specifically reserved to itself authority to extend the period of trust on tribal or individual Indian lands.

HARRY S TRUMAN.

§ 348a. Extension of trust period for Indians of Klamath River Reservation

The period of trust on lands allotted to Indians of the Klamath River Reservation, California, which expired July 31, 1919, and the legal title to which is still in the United States, is reimposed and extended for a period of twenty-five years from July 31, 1919: *Provided*, That further extension of the period of trust may be made by the President, in his discretion, as provided by section 348 and section 391 of this title.

(Dec. 24, 1942, ch. 814, 56 Stat. 1081.)

§ 349. Patents in fee to allottees

At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section 348 of this title, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law: *Provided*, That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: *Provided further*, That until the issuance of fee-simple patents all allottees to whom trust patents shall be issued shall be subject to the exclusive jurisdiction of the United States: *And provided further*, That the provisions of this Act shall not extend to any Indians in the former Indian Territory.

(Feb. 8, 1887, ch. 119, § 6, 24 Stat. 390; May 8, 1906, ch. 2348, 34 Stat. 182.)

REFERENCES IN TEXT

This Act, referred to in text, is act Feb. 8, 1887, ch. 119, 24 Stat. 388, as amended, and is popularly known as the Indian General Allotment Act. For classification of this Act to the Code, see Short Title note set out under section 331 of this title and Tables.

CODIFICATION

Provisions relating to the grant of citizenship to certain Indians born within the territorial limits of the United States were omitted in view of act June 2, 1924, ch. 233, 43 Stat. 253, which granted citizenship to all non-citizen Indians born within the territorial limits of the United States. See section 1401 of Title 8, Aliens and Nationality.

§ 350. Surrender of patent, and selection of other land

The Secretary of the Interior is authorized, in his discretion, and whenever for good and sufficient reason he shall consider it to be for the best interest of the Indians, in making allotments under the act of February 8, 1887, to permit any Indian to whom a patent has been issued for land on the reservation to which such Indian belongs, under treaty or existing law, to surrender such patent with formal relinquishment by such Indian to the United States of all his or her right, title, and interest in the land conveyed thereby, properly indorsed thereon, and to cancel such surrendered patent: *Provided*, That the Indian so surrendering the same shall make a selection, in lieu thereof, of other land and receive patent therefor, under the provisions of the act of February 8, 1887.

(Oct. 19, 1888, ch. 1214, § 2, 25 Stat. 612.)

REFERENCES IN TEXT

Act of February 8, 1887, referred to in text, was in the original "the statute aforesaid" and "the act of February eighth, eighteen hundred and eighty-seven", respectively. The act appears in 24 Stat. 388, and is popularly known as the Indian General Allotment Act. For classification of this act to the Code, see Short Title note set out under section 331 of this title and Tables.

§ 351. Patents with restrictions for lots in villages in Washington

The Secretary of the Interior is authorized, whenever in his opinion it shall be conducive to the best welfare and interest of the Indians living within any Indian village on any of the Indian reservations in the State of Washington to issue a patent to each of said Indians for the village or town lot occupied by him, which patent shall contain restrictions against the alienation of the lot described therein to persons other than members of the tribe, except on approval of the Secretary of the Interior; and if any such Indian shall die subsequent to June 25, 1910, and before receiving patent to the lot occupied by him, the lot to which such Indian would have been entitled if living shall be patented in his name and shall be disposed of as provided for in section 372 of this title.

(June 25, 1910, ch. 431, § 10, 36 Stat. 858.)

§ 352. Cancellation of trust patents within power or reservoir sites

The Secretary of the Interior, after notice and hearing, is authorized to cancel trust patents issued to Indian allottees for allotments within any power or reservoir site and for allotments or such portions of allotments as are located upon or include lands set aside, reserved, or required within any Indian reservation for irrigation purposes under authority of Congress: *Provided*, That any Indian allottee whose allotment shall be so canceled shall be reimbursed for all improvements on his canceled allotment, out of any moneys available for the construction of the irrigation project for which the said power or

reservoir site may be set aside: *Provided further*, That any Indian allottee whose allotment, or part thereof, is so canceled shall be allotted land of equal value within the area subject to irrigation by any such project.

(June 25, 1910, ch. 431, § 14, 36 Stat. 859.)

§ 352a. Cancellation of patents in fee simple for allotments held in trust

The Secretary of the Interior is authorized, in his discretion, to cancel any patent in fee simple issued to an Indian allottee or to his heirs before the end of the period of trust described in the original or trust patent issued to such allottee, or before the expiration of any extension of such period of trust by the President, where such patent in fee simple was issued without the consent or an application therefor by the allottee or by his heirs: *Provided*, That the patentee has not mortgaged or sold any part of the land described in such patent: *Provided also*, That upon cancellation of such patent in fee simple the land shall have the same status as though such fee patent had never been issued.

(Feb. 26, 1927, ch. 215, § 1, 44 Stat. 1247.)

§ 352b. Partial cancellation; issuance of new trust patents

Where patents in fee have been issued for Indian allotments, during the trust period, without application by or consent of the patentees, and such patentees or Indian heirs have sold a part of the land included in the patents, or have mortgaged the lands or any part thereof and such mortgages have been satisfied, such lands remaining undisposed of and without incumbrance by the patentees, or Indian heirs, may be given a trust patent status and the Secretary of the Interior is, on application of the allottee or his or her Indian heirs, hereby authorized, in his discretion, to cancel patents in fee so far as they cover such unsold lands not encumbered by mortgage, and to cause new trust patents to be issued therefor, to the allottees or their Indian heirs, of the form and legal effect as provided by the Act of February 8, 1887 (24 Stat. 388), such patents to be effective from the date of the original trust patents, and the land shall be subject to any extensions of the trust made by Executive order on other allotments of members of the same tribe, and such lands shall have the same status as though such fee patents had never been issued: *Provided*, That this section and section 352a of this title shall not apply where any such lands have been sold for unpaid taxes assessed after the date of a mortgage or deed executed by the patentee or his heirs, or sold in execution of a judgment for debt incurred after date of such mortgage or deed, and the period of redemption has expired.

(Feb. 26, 1927, ch. 215, § 2, as added Feb. 21, 1931, ch. 271, 46 Stat. 1205.)

REFERENCES IN TEXT

Act of February 8, 1887, referred to in text, is popularly known as the Indian General Allotment Act. For classification of this Act to the Code, see Short Title note set out under section 331 of this title and Tables.

§ 352c. Reimbursement of allottees or heirs for taxes paid on lands patented in fee before end of trust

The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to reimburse Indian allottees, or Indian heirs or Indian devisees of allottees, for all taxes paid, including penalties and interest, on so much of their allotted lands as have been patented in fee prior to the expiration of the period of trust without application by or consent of the patentee: *Provided*, That if the Indian allottee, or his or her Indian heirs or Indian devisees, have by their own act accepted such patent, no reimbursement shall be made for taxes paid, including penalties and interest, subsequent to acceptance of the patent: *Provided further*, That the fact of such acceptance shall be determined by the Secretary of the Interior.

In any case in which a claim against a State, county, or political subdivision thereof, for taxes collected upon such lands during the trust period has been reduced to judgment and such judgment remains unsatisfied in whole or in part, the Secretary of the Interior is authorized, upon reimbursement by him to the Indian of the amount of taxes including penalties and interest paid thereon, and upon payment by the judgment debtor of the costs of the suit, to cause such judgment to be released: *Provided further*, That in any case, upon submission of adequate proof, the claims for taxes paid by or on behalf of the patentee or his Indian heirs or Indian devisees have been satisfied, in whole or in part, by the State, county, or political subdivision thereof, the Secretary of the Interior is authorized to reimburse the State, county, or political subdivision for such amounts as may have been paid by them.

(June 11, 1940, ch. 315, § 1, 54 Stat. 298; Feb. 10, 1942, ch. 56, § 1, 56 Stat. 87.)

AMENDMENTS

1942—Act Feb. 10, 1942, inserted two provisos to first par., substituted in first par. ''Indian allottees, or Indian heirs or Indian devisees of allottees'' and ''have been patented'' for ''Indian allottees and Indian heirs of allottees'' and ''having been patented'', struck out from first par. '', has been or may be restored to trust status through cancellation of the fee patent by the Secretary of the Interior'' after ''consent of the patentee'', designated as second par, the two provisos of original par., inserted in second par. ''in whole or in part'' after ''remains unsatisfied'' and substituted in second par. ''during the trust period'' and ''by the judgment debtor'' for ''while the patent in fee was outstanding'' and ''by the State, county, or political subdivision thereof'' and in proviso '', upon submission of adequate proof, the claims for taxes paid by or on behalf of the patentee or his Indian heirs or Indian devisees have been satisfied, in whole or in part, by the State, county, or political subdivision thereof, the Secretary of the Interior is authorized to reimburse the State, county, or political subdivision for such amounts as may have been paid by them'' for ''in which a claim has been reduced to judgment and such judgment has been satisfied, the Secretary of the Interior is authorized, upon proof of satisfaction thereof, to reimburse the State, county, or political subdivision thereof, for the actual amount of the judgment, exclusive of the costs of litigation''.

APPROPRIATIONS

Section 2 of act Feb. 10, 1942, authorized appropriations to remain available until expended.

§ 353. Sections inapplicable to certain tribes

The provisions of this Act shall not apply to the Osage Indians, nor to the Five Civilized Tribes, in Oklahoma. Where deeds to tribal lands in the Five Civilized Tribes have been or may be issued, in pursuance of any tribal agreement or Act of Congress, to a person who had died, or who dies before the approval of such deed, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assigns of such deceased grantee as if the deed had issued to the deceased grantee during life.

(June 25, 1910, ch. 431, §§ 32, 33, 36 Stat. 863.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 25, 1910, ch. 431, 36 Stat. 855, as amended, which enacted sections 47, 93, 151, 202, 337, 344a, 351, 352, 353, 372, 403, 406, 407, and 408 of this title, sections 6a–1 and 16a of Title 41, Public Contracts, and section 148 of Title 43, Public Lands, and amended sections 191, 312, 331, 333, and 336 of this title and sections 104 and 107 of former Title 18, Criminal Code and Criminal Procedure. Sections 104 and 107 of former Title 18 were repealed and reenacted as sections 1853 and 1856 of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, 62 Stat. 683. For complete classification of this Act to the Code, see Tables.

CODIFICATION

The first and second sentences are from sections 33 and 32, respectively of act June 25, 1910.

§ 354. Lands not liable for debts prior to final patent

No lands acquired under the provisions of this Act shall, in any event, become liable to the satisfaction of any debt contracted prior to the issuing of the final patent in fee therefor.

(Feb. 8, 1887, ch. 119, as added June 21, 1906, ch. 3504, 34 Stat. 327.)

REFERENCES IN TEXT

This Act, referred to in text, is act Feb. 8, 1887, ch. 119, 24 Stat. 388, as amended, and is popularly known as the Indian General Allotment Act. For classification of this Act to the Code, see Short Title note set out under section 331 of this title and Tables.

§ 355. Laws applicable to lands of full-blooded members of Five Civilized Tribes

The lands of full-blooded members of any of the Five Civilized Tribes are made subject to the laws of the State of Oklahoma, providing for the partition of real estate. Any land allotted in such proceedings to a full-blood Indian, or conveyed to him upon his election to take the same at the appraisement, shall remain subject to all restrictions upon alienation and taxation obtaining prior to such partition. In case of a sale under any decree, or partition, the conveyance thereunder shall operate to relieve the land described of all restrictions of every character.

(June 14, 1918, ch. 101, § 2, 40 Stat. 606.)

CHOCTAW TRIBE; SALE OF LANDS AND INTERESTS THEREIN; TRANSFER TO TRIBAL CORPORATION OR FOUNDATION; PER CAPITA DISTRIBUTION

Pub. L. 91–386, § 1, Aug. 24, 1970, 84 Stat. 828, repealed Pub. L. 86–192, §§ 1–12, Aug. 25, 1959, 73 Stat. 420, as amended by Pub. L. 87–609, §§ 1, 2, Aug. 24, 1962, 76 Stat. 405; Pub. L. 89–107, Aug. 4, 1965, 79 Stat. 432; Pub. L. 90–476, Aug. 11, 1968, 82 Stat. 703, which provided for termination of Federal supervision over affairs of the Choctaw Tribe, including termination of eligibility of individual Choctaw members for certain Federal services and benefits provided Indians because of their status as Indians; authority to establish a trustee, corporation, or other legal entity under State law as a successor in interest to the tribal entity; and authority for Secretary of the Interior to sell land and interest in land owned by the Choctaw Tribe for benefit of the tribe, to convey to the successor entity certain lands and mineral interests of the Choctaw Tribe, and to distribute per capita funds held by the United States for benefit of the Choctaw Tribe.

Section 2 of Pub. L. 91–386 provided that: ''Repeal of the Act of August 25, 1959 [see note above] shall not be construed to abrogate, impair, annul, or otherwise affect any right or interest which may have vested under the provisions of said Act nor shall repeal affect any legal action pending on the date of enactment of this Act [Aug. 24, 1970].''

EXTENSION OF PERIOD OF RESTRICTIONS ON LANDS

Act Aug. 11, 1955, ch. 786, 69 Stat. 666, extended for the lives of the Indians who own lands the period of restrictions against alienation, lease, mortgage, or other encumbrance of land; provided for application to Secretary of the Interior for removal of restrictions; authorized the Secretary, without application, to remove restrictions on lands of Indians who are able to manage their own affairs; permitted proceeding in county court where Secretary disapproved or failed to either approve or disapprove the application for removal; granted right of appeal; required Secretary to turn over full ownership and control of any money and property held in trust when an order removing restrictions becomes effective; and, continued existing exemptions from taxation that constitute a vested property right.

REMOVAL OF LAND RESTRICTION AT DEATH; APPROVAL OF CONVEYANCE; JURISDICTION OF OKLAHOMA STATE COURTS; TAX EXEMPTION

Act Aug. 4, 1947, ch. 458, 61 Stat. 731, provided that death removed restrictions on land; clarified the laws relating to the approval of conveyances of restricted lands; defined the jurisdiction of Oklahoma State courts over certain classes of Indian litigation; set out the procedure governing the removal of cases to the Federal courts and authorized appeals from orders of remand; and limited the tax-exempt acreage of restricted Indian lands.

Section 6(e) of act Aug. 4, 1947, was amended by act Aug. 12, 1953, ch. 409, § 2, 67 Stat. 558, by permitting the filing of a list of nontaxable lands that have been sold during the preceding year, instead of cumulative lists showing all restricted lands of the Five Civilized Tribes that are tax exempt.

VALIDATION OF LAND TITLES AND COURT JUDGMENTS

Act July 2, 1945, ch. 223, 59 Stat. 313, validated titles to certain lands conveyed by the Indians of the Five Civilized Tribes on and after April 26, 1931, and prior to July 2, 1945; amended act Jan. 27, 1933, ch. 23, 47 Stat. 777, by limiting restrictions on the alienation of lands or interests in lands acquired by inheritance, devise, or in any other manner where such lands or interests were not restricted against alienation at the time of acquisition, and all conveyances executed after Jan. 27, 1937, and prior to July 2, 1945; and validated State court judgments in Oklahoma and judgments of the United States District Courts of the State of Oklahoma.

CREATION OF TRUSTS

Act Jan. 27, 1933, ch. 23, 47 Stat. 777, as amended by act Aug. 4, 1947, ch. 458, § 12, 61 Stat. 734, provided for the creation of trusts by Indians; authorized transfers to trustees; denied release of trust agreement restrictions and alienation of corpus and income; made ap-

proved contracts irrevocable; provided remedy for illegally procured trusts by cancellation proceedings; and delegated administration of act to Secretary of the Interior.

REMOVAL OF RESTRICTIONS FROM PART OF ALLOTTED LANDS; LEASES; TAXATION; APPOINTMENT OF LOCAL AGENTS

Act May 27, 1908, ch. 199, 35 Stat. 312, as amended by act Apr. 12, 1926, ch. 115, § 1, 44 Stat. 239, provided in part for the removal of restrictions from part of the lands of allottees; authorized leases of allotted lands; made unrestricted lands subject to taxation; voided alienation or incumbrance of restricted lands; and authorized appointment of local agents to investigate estates of minors and to advise and represent allottees.

FINAL DISPOSITION OF AFFAIRS OF THE FIVE CIVILIZED TRIBES

Act Apr. 26, 1906, ch. 1876, 34 Stat. 137, provided in part for membership and enrollment rules; required patents to issue in name of allottee and to be recorded; transferred records of land offices to the clerk of the United States district court; transferred control of tribal schools to Secretary of the Interior; abolished tribal taxes; extended restrictions on alienation of allotted lands; authorized conveyances of inherited lands; authorized disposal of property by will; provided that lands upon dissolution of the tribes be held in trust by the United States; and continued tribal governments.

§ 356. Allowance of undisputed claims of restricted allottees of Five Civilized Tribes

No undisputed claims to be paid from individual moneys of restricted allottees, or their heirs, or uncontested agricultural and mineral leases (excluding oil and gas leases) made by individual restricted Indian allottees, or their heirs, shall be forwarded to the Secretary of the Interior for approval, but all such undisputed claims or uncontested leases (except oil and gas leases) shall be paid, approved, rejected, or disapproved by the Superintendent for the Five Civilized Tribes of Oklahoma: *Provided, however*, That any party aggrieved by any decision or order of the Superintendent for the Five Civilized Tribes of Oklahoma may appeal from the same to the Secretary of the Interior within thirty days from the date of said decision or order.

(Feb. 14, 1920, ch. 75, § 18, 41 Stat. 426.)

CODIFICATION

The clause ''heretofore required to be approved under existing law by the Secretary of the Interior'' after the words ''but all such undisputed claims or uncontested leases (except oil and gas leases)'' omitted from text as superfluous.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 357. Condemnation of lands under laws of States

Lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee.

(Mar. 3, 1901, ch. 832, § 3, 31 Stat. 1084.)

CODIFICATION

Section is comprised of the second paragraph of section 3 of act Mar. 3, 1901. The first paragraph of such section 3 is classified to section 319 of this title.

§ 358. Repeal of statutory provisions relating to survey, classification, and allotments which provide for repayment out of Indian moneys

Any and all provisions contained in any Act passed prior to March 7, 1928, for the survey, resurvey, classification, and allotment of lands in severalty under the provisions of the Act of February 8, 1887 (24 Stat. 388), which provide for the repayment of funds appropriated proportionately out of any Indian moneys held in trust or otherwise by the United States and available by law for such reimbursable purposes, are repealed: *Provided further*, That the repeal shall not affect any funds authorized to be reimbursed by any special Act of Congress wherein a particular or special fund is mentioned from which reimbursement shall be made.

(Mar. 7, 1928, ch. 137, § 1, 45 Stat. 206.)

REFERENCES IN TEXT

Act of February 7, 1887, referred to in text, is popularly known as the Indian General Allotment Act. For classification of this Act to the Code, see Short Title note set out under section 331 of this title and Tables.

CHAPTER 10—DESCENT AND DISTRIBUTION; HEIRS OF ALLOTTEE

Sec.
371. Descent of land.
372. Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys.
372–1. Repealed.
372a. Heirs by adoption.
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§ 371. Descent of land

For the purpose of determining the descent of land to the heirs of any deceased Indian under

the provisions of section 348 of this title, whenever any male and female Indian shall have cohabited together as husband and wife according to the custom and manner of Indian life the issue of such cohabitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father of such child: *Provided*, That the provisions of this Act shall not be held or construed as to apply to the lands commonly called and known as the ''Cherokee Outlet.''

(Feb. 28, 1891, ch. 383, § 5, 26 Stat. 795.)

REFERENCES IN TEXT

This Act, referred to in text, is act Feb. 28, 1891, ch. 383, 26 Stat. 794, as amended, which enacted sections 336, 371, and 397 of this title and amended section 331 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

A further provision of section 5 of act Feb. 28, 1891, ''that no allotment of lands shall be made or annuities of money paid to any of the Sac and Fox of the Missouri Indians who were not enrolled as members of said tribe on January first, eighteen hundred and ninety; but this shall not be held to impair or otherwise affect the rights or equities of any person whose claim to membership in said tribe is now pending and being investigated,'' was repealed by a provision of the Indian Appropriation Act of Mar. 2, 1895, ch. 188, § 1, 28 Stat. 902.

§ 372. Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys

When any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under the Indian Land Consolidation Act [25 U.S.C. 2201 et seq.] or a tribal probate code approved under such Act and pursuant to such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decisions shall be subject to judicial review to the same extent as determinations rendered under section 373 of this title. If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent, he may, in his discretion, cause such lands to be sold: *Provided*, That if the Secretary of the Interior shall find that the lands of the decedent are capable of partition to the advantage of the heirs, he may cause the shares of such as are competent, upon their petition, to be set aside and patents in fee to be issued to them therefor. All sales of lands allotted to Indians authorized by this or any other Act shall be made under such rules and regulations and upon such terms as the Secretary of the Interior may prescribe, and he shall require a deposit of 10 per centum of the purchase price at the time of the sale. Should the purchaser fail to comply with the terms of sale prescribed by the Secretary of the Interior, the amount so paid shall be forfeited; in case the balance of the purchase price is to be paid on such deferred payments, all payments made, together with all interest paid on such deferred installments, shall be so forfeited for failure to comply with the terms of the sale. All forfeitures shall inure to the benefit of the allottee or his heirs. Upon payment of the purchase price in full, the Secretary of the Interior shall cause to be issued to the purchaser patent in fee for such land: *Provided*, That the proceeds of the sale of inherited lands shall be paid to such heir or heirs as may be competent and held in trust subject to use and expenditure during the trust period for such heir or heirs as may be incompetent as their respective interests shall appear: *Provided further*, That the Secretary of the Interior is authorized, in his discretion, to issue a certificate of competency, upon application therefor, to any Indian, or in case of his death to his heirs, to whom a patent in fee containing restrictions on alienation has been or may hereafter be issued, and such certificate shall have the effect of removing the restrictions on alienation contained in such patent: *Provided further*, That any United States Indian agent, superintendent, or other disbursing agent of the Indian Service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such bank or banks as he may select: *Provided*, That the bank or banks so selected by him shall first execute to the said disbursing agent a bond, with approved surety, in such amount as will properly safeguard the funds to be deposited. Such bonds shall be subject to the approval of the Secretary of the Interior.

(June 25, 1910, ch. 431, § 1, 36 Stat. 855; Mar. 3, 1928, ch. 122, 45 Stat. 161; Apr. 30, 1934, ch. 169, 48 Stat. 647; Pub. L. 101–301, § 12(c), May 24, 1990, 104 Stat. 211; Pub. L. 106–462, title I, § 106(b)(1), Nov. 7, 2000, 114 Stat. 2007.)

REFERENCES IN TEXT

The Indian Land Consolidation Act, referred to in text, is title II of Pub. L. 97–459, Jan. 12, 1983, 96 Stat. 2517, as amended, which is classified generally to chapter 24 (§ 2201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

This Act, referred to in text, is act June 25, 1910, ch. 431, 36 Stat. 855, as amended, which enacted sections 47, 93, 151, 202, 337, 344a, 351, 352, 353, 372, 403, 406, 407, and 408 of this title, sections 6a–1 and 16a of Title 41, Public Contracts, and section 148 of Title 43, Public Lands, and amended sections 191, 312, 331, 333, and 336 of this title and sections 104 and 107 of former Title 18, Criminal Code and Criminal Procedure. Sections 104 and 107 of former title 18 were repealed and reenacted as sections 1853 and 1856 of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, 62 Stat. 683. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2000—Pub. L. 106–462 substituted ''under the Indian Land Consolidation Act or a tribal probate code approved under such Act and pursuant to such rules'' for ''under such rules'' in first sentence.

1990—Pub. L. 101–301 substituted ''his decisions shall be subject to judicial review to the same extent as determinations rendered under section 373 of this title'' for ''his decision thereon shall be final and conclusive''.

1934—Act Apr. 30, 1934, substituted ‘‘, all payments made, together with all interest paid on such deferred installments, shall be so forfeited’’ for ‘‘a further amount, not exceeding 15 per centum of the purchase price together with all interest paid on such deferred installments may be so forfeited’’, inserted ‘‘allottee or his’’ in sentence beginning ‘‘All forfeitures shall inure’’ and struck out ‘‘hereafter’’ from last proviso.

1928—Act Mar. 3, 1928, inserted in introductory text ‘‘or may hereafter be made,’’ after ‘‘has been made,’’, ‘‘together with all interest paid on such deferred installments’’ after ‘‘purchase price’’, ‘‘or may hereafter be’’ after ‘‘restrictions on alienation has been’’, and ‘‘hereafter’’ in last proviso, and substituted ‘‘by this or any other Act’’ for ‘‘by any Act’’.

§ 372–1. Repealed. Pub. L. 101–301, § 12(a), May 24, 1990, 104 Stat. 211

Section, Pub. L. 90–28, title I, June 24, 1967, 81 Stat. 69, provided that, on and after June 24, 1967, hearing officers appointed for Indian probate work did not have to be appointed pursuant to the Administrative Procedure Act, as amended. Similar provisions were contained in the following prior appropriation acts:

May 31, 1966, Pub. L. 89–435, title I, 80 Stat. 181.
June 28, 1965, Pub. L. 89–52, title I, 79 Stat. 185.
July 7, 1964, Pub. L. 88–356, title I, 78 Stat. 284.
July 26, 1963, Pub. L. 88–79, title I, 77 Stat. 107.
Aug. 9, 1962, Pub. L. 87–578, title I, 76 Stat. 345.
Aug. 3, 1961, Pub. L. 87–122, title I, 75 Stat. 256.
May 13, 1960, Pub. L. 86–455, title I, 74 Stat. 104.
June 23, 1959, Pub. L. 86–60, title I, 73 Stat. 92.
June 4, 1958, Pub. L. 85–439, title I, 72 Stat. 155.
July 1, 1957, Pub. L. 85–77, title I, 71 Stat. 257.
June 13, 1956, ch. 380, title I, 70 Stat. 257.
June 16, 1955, ch. 147, title I, 69 Stat. 141.
Aug. 26, 1954, ch. 935, Ch. VII, 68 Stat. 813.

SAVINGS PROVISION

Section 12(b) of Pub. L. 101–301 provided that: ‘‘Hearing officers heretofore appointed to preside over Indian probate proceedings pursuant to the proviso repealed by subsection (a) [25 U.S.C. 372–1], having met the qualifications required for appointment pursuant to section 3105 of title 5, United States Code, shall be deemed to have been appointed pursuant to that section.’’

§ 372a. Heirs by adoption

In probate matters under the exclusive jurisdiction of the Secretary of the Interior, no person shall be recognized as an heir of a deceased Indian by virtue of an adoption—

(1) Unless such adoption shall have been—

(a) by a judgment or decree of a State court;

(b) by a judgment or decree of an Indian court;

(c) by a written adoption approved by the superintendent of the agency having jurisdiction over the tribe of which either the adopted child or the adoptive parent is a member, and duly recorded in a book kept by the superintendent for that purpose; or

(d) by an adoption in accordance with a procedure established by the tribal authority, recognized by the Department of the Interior, of the tribe either of the adopted child or the adoptive parent, and duly recorded in a book kept by the tribe for that purpose; or

(2) Unless such adoption shall have been recognized by the Department of the Interior prior to the effective date of this section or in the distribution of the estate of an Indian who has died prior to that date: *Provided*, That an adoption by Indian custom made prior to the effective date of this section may be made valid by recordation with the superintendent if both the adopted child and the adoptive parent are still living, if the adoptive parent requests that the adoption be recorded, and if the adopted child is an adult and makes such a request or the superintendent on behalf of a minor child approves of the recordation.

This section shall not apply with respect to the distribution of the estates of Indians of the Five Civilized Tribes or the Osage Tribe in the State of Oklahoma, or with respect to the distribution of estates of Indians who have died prior to the effective date of this section.

(July 8, 1940, ch. 555, §§ 1, 2, 54 Stat. 746.)

REFERENCES IN TEXT

For effective date of this section, referred to in text, see Effective Date note set out below.

CODIFICATION

First and second paragraphs of this section are from sections 1 and 2, respectively, of act July 8, 1940.

EFFECTIVE DATE

Section 3 of act July 8, 1940, provided that: ‘‘This Act shall become effective six months after the date of its approval [July 8, 1940].’’

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 373. Disposal by will of allotments held under trust

Any persons of the age of eighteen years or older having any right, title, or interest in any allotment held under trust or other patent containing restrictions on alienation or individual Indian moneys or other property held in trust by the United States shall have the right prior to the expiration of the trust or restrictive period, and before the issuance of a fee simple patent or the removal of restrictions, to dispose of such property by will, in accordance with the Indian Land Consolidation Act [25 U.S.C. 2201 et seq.] or a tribal probate code approved under such Act and regulations to be prescribed by the Secretary of the Interior: *Provided, however*, That no will so executed shall be valid or have any force or effect unless and until it shall have been approved by the Secretary of the Interior: *Provided further*, That the Secretary of the Interior may approve or disapprove the will either before or after the death of the testator, and in case where a will has been approved and it is subsequently discovered that there has been fraud in connection with the execution or procurement of the will the Secretary of the Interior is authorized within one year after the death of the testator to cancel the approval of the will, and the property of the testator shall thereupon descend or be distributed in accordance with the

laws of the State wherein the property is located: *Provided further*, That the approval of the will and the death of the testator shall not operate to terminate the trust or restrictive period, but the Secretary of the Interior may, in his discretion, cause the lands to be sold and the money derived therefrom, or so much thereof as may be necessary, used for the benefit of the heir or heirs entitled thereto, remove the restrictions, or cause patent in fee to be issued to the devisee or devisees, and pay the moneys to the legatee or legatees either in whole or in part from time to time as he may deem advisable, or use it for their benefit: *Provided also*, That this section and section 372 of this title shall not apply to the Five Civilized Tribes or the Osage Indians.

(June 25, 1910, ch. 431, § 2, 36 Stat. 856; Feb. 14, 1913, ch. 55, 37 Stat. 678; Pub. L. 100–153, § 2, Nov. 5, 1987, 101 Stat. 886; Pub. L. 106–462, title I, § 106(b)(2), Nov. 7, 2000, 114 Stat. 2007.)

REFERENCES IN TEXT

The Indian Land Consolidation Act, referred to in text, is title II of Pub. L. 97–459, Jan. 12, 1983, 96 Stat. 2517, as amended, which is classified generally to chapter 24 (§ 2201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106–462 substituted ''with the Indian Land Consolidation Act or a tribal probate code approved under such Act and regulations to be prescribed by the Secretary of the Interior:'' for ''with regulations to be prescribed by the Secretary of the Interior:''.

1987—Pub. L. 100–153 which directed amendment of this section by substituting ''the age of eighteen years or older'' for ''the age of twenty-one years, or over'' was executed by substituting the new language for ''the age of twenty-one years'' as the probable intent of Congress because the words '', or over'' did not appear.

1913—Act Feb. 14, 1913, amended section generally.

§ 373a. Disposition of trust or restricted estate of intestate without heirs; successor tribe; sale of land

Upon final determination by the Secretary of the Interior that the Indian holder of a trust or restricted allotment of lands or an interest therein has died intestate without heirs, the lands or interest so owned, together with all accumulated rents, issues, and profits therefrom held in trust for the decedent, shall escheat to the tribe owning the land at the time of allotment subject to the payment of such creditors' claims as the Secretary of the Interior may find proper to be paid from the cash on hand or income accruing to said estate and subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder.

If the tribe which owned the land at the time of allotment has been reorganized or reconstituted by reason of amalgamation with another tribe or group of Indians or of subdivision within the tribe or otherwise, the land shall escheat to the tribe or group which has succeeded to the jurisdiction of the original tribe over the area in question. If neither the tribe which owned the land at the time of allotment nor a successor tribe or group exists, the land or interest therein shall be held in trust for such Indians as the Secretary may designate within the State or States wherein the land is situated or, if the Secretary determines that the land cannot appropriately be used by or for such Indians, it shall be sold, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder, and the proceeds of such sale shall be held in trust for such Indians as the Secretary may designate, within the State or States wherein the land is situated.

(Nov. 24, 1942, ch. 640, § 1, 56 Stat. 1021.)

§ 373b. Restricted estate or homestead on the public domain

If an Indian found to have died intestate without heirs was the holder of a restricted allotment or homestead or interest therein on the public domain, the land or interest therein and all accumulated rents, issues, and profits therefrom shall escheat to the United States, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder, and the land shall become part of the public domain subject to the payment of such creditors' claims as the Secretary of the Interior may find proper to be paid from the cash on hand or income accruing to said estate: *Provided*, That if the Secretary determines that the land involved lies within or adjacent to an Indian community and may be advantageously used for Indian purposes, the land or interest therein shall escheat to the United States to be held in trust for such needy Indians as the Secretary of the Interior may designate, where the value of the estate does not exceed $50,000, and in case of estates exceeding said sum, such estates shall be held in trust by the United States for such Indians as the Congress may on and after November 24, 1942 designate, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder[1] *Provided further*, That interests in all Burns public domain allotments located in Harney County, Oregon, belonging to Indians who die intestate without heirs shall be held in trust by the United States for the Burns Paiute Indian Colony of Oregon and shall be part of the Burns Paiute Indian Reservation.

(Nov. 24, 1942, ch. 640, § 2, 56 Stat. 1022; Pub. L. 98–25, §§ 2, 3, May 2, 1983, 97 Stat. 185.)

AMENDMENTS

1983—Pub. L. 98–25, § 2, inserted proviso that interests in all Burns public domain allotments located in Harney County, Oregon, belonging to Indians who die intestate without heirs shall be held in trust by the United States for the Burns Paiute Indian Colony of Oregon and shall be part of the Burns Paiute Indian Reservation.

Pub. L. 98–25, § 3, substituted ''$50,000'' for ''$2,000''.

NON-INDIAN LANDS IN HARNEY COUNTY, OREGON

Section 2 of Pub. L. 98–25 provided in part that no non-Indian lands in Harney County, Oregon, shall be considered Indian country as defined in section 1151 of Title 18, Crimes and Criminal Procedure.

[1] So in original. Probably should be followed by a colon.

§ 373c. Sections 373a and 373b as inapplicable to certain Indians

The provisions of sections 373a and 373b of this title shall not apply to the Indians of the Five Civilized Tribes or the Osage Reservation, in Oklahoma.

(Nov. 24, 1942, ch. 640, § 3, 56 Stat. 1022.)

§ 374. Attendance of witnesses

The authority delegated to judges of the United States courts by section 24 of title 35 is conferred upon the Secretary of the Interior to require the attendance of witnesses at hearings, upon proper showing by any of the parties to determine the heirs of decedents, held in accordance with sections 372 and 373 of this title, under such rules and regulations as he may prescribe.

(Aug. 1, 1914, ch. 222, § 1, 38 Stat. 586.)

CODIFICATION

"Section 24 of title 35" substituted in text for "section 56 of title 35" on authority of act July 19, 1952, ch. 950, 66 Stat. 792, section 1 of which enacted Title 35, Patents.

§ 375. Determination of heirship of deceased members of Five Civilized Tribes

A determination of the question of fact as to who are the heirs of any deceased citizen allottee of the Five Civilized Tribes of Indians who may die or may have heretofore died, leaving restricted heirs, by the probate court of the State of Oklahoma having jurisdiction to settle the estate of said deceased, conducted in the manner provided by the laws of said State for the determination of heirship in closing up the estates of deceased persons, shall be conclusive of said question: *Provided*, That an appeal may be taken in the manner and to the court provided by law, in cases of appeal in probate matters generally: *Provided further*, That where the time limited by the laws of said State for the institution of administration proceedings has elapsed without their institution, as well as in cases where there exists no lawful ground for the institution of administration proceedings in said courts, a petition may be filed therein having for its object a determination of such heirship and the case shall proceed in all respects as if administration proceedings upon other proper grounds had been regularly begun, but this proviso shall not be construed to reopen the question of the determination of an heirship already ascertained by competent legal authority under existing laws: *Provided further*, That said petition shall be verified, and in all cases arising hereunder service by publication may be had on all unknown heirs, the service to be in accordance with the method of serving nonresident defendants in civil suits in the district courts of said State; and if any person so served by publication does not appear and move to be heard within six months from the date of the final order, he shall be concluded equally with parties personally served or voluntarily appearing.

(June 14, 1918, ch. 101, § 1, 40 Stat. 606.)

ADMINISTRATION EXPENSES; COMPENSATION; RESTRICTION ON USE OF FUNDS; APPEAL

Act June 30, 1919, ch. 4, § 18, 41 Stat. 21, appropriated $205,000 for expenses of administration of the affairs of the Five Civilized Tribes, Oklahoma, and the compensation of employees, prohibited any part of the appropriation from being used in forwarding the undisputed claims to be paid from individual moneys of restricted allottees, or their heirs, or in forwarding uncontested agricultural and mineral leases (excluding oil and gas leases) made by individual restricted Indian allottees, or their heirs, to the Secretary of the Interior for approval, provided that all such undisputed claims or uncontested leases (except oil and gas leases) required to be approved under existing law by the Secretary of the Interior shall be paid, approved, rejected or disapproved by the Superintendent for the Five Civilized Tribes of Oklahoma and authorized an appeal within thirty days by party aggrieved by any decision or order of the Superintendent for the Five Civilized Tribes of Oklahoma to the Secretary of the Interior.

§ 375a. Jurisdiction of Secretary of the Interior over probate and distribution of estates not exceeding $2,500

Exclusive jurisdiction is hereby conferred on the Secretary of the Interior to determine the heirs after notice and hearing under such rules and regulations as he may prescribe, and to probate the estate of any deceased restricted Indian, enrolled or unenrolled, of the Five Civilized Tribes of Oklahoma, whenever the restricted estate consists only of funds or securities under the control of the Department of the Interior of an aggregate value not exceeding $2,500: *Provided*, That where such decedent died prior to December 24, 1942, the distribution of such funds and securities, including the decedent's share of any tribal funds, shall be made in accordance with the statute of descent and distribution applicable at the date of death: *And provided further*, That where the decedent dies subsequently to December 24, 1942 distribution of all such funds and securities, including tribal funds aforesaid, shall be effected in accordance with the statute of descent and distribution of the State of Oklahoma.

(Dec. 24, 1942, ch. 813, § 1, 56 Stat. 1080.)

§ 375b. Repealed. Pub. L. 96–363, § 2(a), Sept. 26, 1980, 94 Stat. 1207

Section, act Dec. 24, 1942, ch. 813, § 2, 56 Stat. 1081, set forth schedule of fees collectible by Secretary prior to distribution of estate to individuals entitled under provisions of section 375a of this title.

CANCELLATION OF ASSESSED UNPAID FEES

Authority of Secretary of the Interior to cancel unpaid fees assessed under this section prior to the repeal, see section 2(b) of Pub. L. 96–363, set out as a note under section 377 of this title.

§ 375c. Disbursement of sums not exceeding $500 to heirs or legatees

The Secretary of the Interior is granted authority to disburse to the heirs or legatees of deceased members of the Five Civilized Tribes any sum of money on deposit to the credit of such deceased Indian or Indians, not exceeding $500, where said decedent died seized of no lands or the lands have since been lawfully alienated. Said funds shall be disbursed on proof of death and heirship or bequest satisfactory to the Secretary of the Interior and his finding thereon shall be final and conclusive: *Provided*, That such transfer of funds so disbursed shall not be taxable.

(Aug. 12, 1953, ch. 409, § 1, 67 Stat. 558.)

§ 375d. Disposition of estates of intestate members of Cherokee, Chickasaw, Choctaw, and Seminole Nations of Oklahoma dying without heirs

Upon the final determination of a court having jurisdiction or by decision of the Secretary of the Interior after a period of five years from the death of the decedent, it is determined that a member of the Cherokee, Chickasaw, Choctaw, or Seminole Nations or Tribes of Oklahoma or a person of the blood of said tribes has died intestate without heirs, owning trust or restricted Indian lands in Oklahoma or an interest therein or rents or profits therefrom, such lands, interests, or profits shall escheat to the Nation or tribe from which title to the trust or restricted Indian lands or interest therein was derived and shall be held thereafter in trust by the United States for said nation or tribe.

(Pub. L. 91–240, May 7, 1970, 84 Stat. 203.)

§ 376. Oaths in investigations

After August 1, 1914, any officer or employee appointed or designated by the Secretary of the Interior or the Commissioner of Indian Affairs as special examiner in heirship cases shall be authorized to administer oaths in investigations committed to him: *Provided further*, That the provisions of this paragraph shall not apply to the Osage Indians nor to the Five Civilized Tribes of Indians in Oklahoma.

(Aug. 1, 1914, ch. 222, § 1, 38 Stat. 586.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 377. Repealed. Pub. L. 96–363, § 2(a), Sept. 26, 1980, 94 Stat. 1207

Section, acts Jan. 24, 1923, ch. 42, 42 Stat. 1185; May 29, 1928, ch. 901, § 1(84), 45 Stat. 992, related to payment or deduction from trust funds, etc., of cost of determining heirs, and set forth a schedule of fees.

CANCELLATION OF ASSESSED UNPAID FEES

Section 2(b) of Pub. L. 96–363 provided that: ''The Secretary of the Interior may cancel any unpaid fees assessed under the provisions repealed by this section [sections 375b and 377 of this title].''

§ 378. Partition of allotment among heirs; patents

If the Secretary of the Interior shall find that any inherited trust allotment or allotments are capable of partition to the advantage of the heirs, he may cause such lands to be partitioned among them, regardless of their competency, patents in fee to be issued to the competent heirs for their shares and trust patents to be issued to the incompetent heirs for the lands respectively or jointly set apart to them, the trust period to terminate in accordance with the terms of the original patent or order of extension of the trust period set out in said patent.

(May 18, 1916, ch. 125, § 1, 39 Stat. 127.)

§ 379. Sale of allotted lands by heirs

The adult heirs of any deceased Indian to whom a trust or other patent containing restrictions upon alienation has been or shall be issued for lands allotted to him may sell and convey the lands inherited from such decedent, but in case of minor heirs their interests shall be sold only by a guardian duly appointed by the proper court upon the order of such court, made upon petition filed by the guardian, but all such conveyances shall be subject to the approval of the Secretary of the Interior, and when so approved shall convey a full title to the purchaser, the same as if a final patent without restriction upon the alienation had been issued to the allottee. All allotted land so alienated by the heirs of an Indian allottee and all land so patented to a white allottee shall thereupon be subject to taxation under the laws of the State or Territory where the same is situate: *Provided*, That the sale herein provided for shall not apply to the homestead during the life of the father, mother or the minority of any child or children.

(May 27, 1902, ch. 888, § 7, 32 Stat. 275.)

§ 380. Lease of inherited allotments by superintendent

Restricted allotments of deceased Indians may be leased, except for oil and gas mining purposes, by the superintendents of the reservation within which the lands are located (1) when the heirs or devisees of such decedents have not been determined and (2) when the heirs or devisees of the decedents have been determined, and such lands are not in use by any of the heirs and the heirs have not been able during a three-months' period to agree upon a lease by reason of the number of the heirs, their absence from the reservation, or for other cause, under such rules and regulations as the Secretary of the Interior may prescribe. The proceeds derived from such leases shall be credited to the estates or other accounts of the individuals entitled thereto in accordance with their respective interests.

(July 8, 1940, ch. 554, 54 Stat. 745.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 11—IRRIGATION OF ALLOTTED LANDS

Sec.
381. Irrigation lands; regulation of use of water.
382. Irrigation projects under Reclamation Act.
383. Repealed.
384. Employment of superintendents of irrigation.
385. Maintenance charges; reimbursement of construction costs; apportionment of cost.
385a. Irrigation projects; deposit of assessments as trust fund; disposition of fund.
385b. Amounts creditable to fund.
385c. Appropriation and disposition of power revenues.

Sec.
386. Reimbursement of construction charges.
386a. Adjustment of reimbursable debts; construction charges.
387. Omitted.
388. Claims for damages; settlement by agreement.
389. Investigation and adjustment of irrigation charges on lands within projects on Indian reservations.
389a. Declaring lands to be temporarily nonirrigable.
389b. Elimination to permanently nonirrigable lands.
389c. Cancellation of charges in absence of lien or contract for payment.
389d. Rules and regulations.
389e. Actions taken to be included in report to Congress.
390. Concessions on reservoir sites and other lands in Indian irrigation projects; leases for agricultural, grazing, and other purposes.

§ 381. Irrigation lands; regulation of use of water

In cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior is authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

(Feb. 8, 1887, ch. 119, § 7, 24 Stat. 390.)

§ 382. Irrigation projects under Reclamation Act

In carrying out any irrigation project which may be undertaken under the provisions of the Act of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), known as ''The Reclamation Act,'' and which may make possible, and provide for in connection with the reclamation of other lands, the irrigation of all or any part of the irrigable lands heretofore included in allotments made to Indians under section 334 of this title, the Secretary of the Interior is authorized to make such arrangement and agreement in reference thereto as said Secretary deems for the best interest of the Indians: *Provided*, That no lien or charge for construction, operation, or maintenance shall thereby be created against any such lands.

(Mar. 3, 1909, ch. 263, 35 Stat. 798.)

REFERENCES IN TEXT

Act of June seventeenth, nineteen hundred and two, referred to in text, is act June 17, 1902, ch. 1093, 32 Stat. 388, popularly known as the Reclamation Act, which is classified generally to chapter 12 (§ 371 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 371 of Title 43 and Tables.

CODIFICATION

A further proviso authorized the expenditure of a limited amount from the appropriation in the act for irrigation, to meet the cost of carrying out this section, and was omitted as temporary.

SIMILAR PROVISIONS

Similar provisions were contained in act Apr. 30, 1908, ch. 153, 35 Stat. 85.

§ 383. Repealed. Pub. L. 97–293, title II, § 224(f), Oct. 12, 1982, 96 Stat. 1273

Section, act Aug. 4, 1910, ch. 140, § 1, 36 Stat. 270, provided that no new irrigation project on any Indian reservation, allotments, or lands, could be undertaken until it had been estimated for and a maximum limit of cost ascertained from surveys, plans, and reports submitted by chief irrigation engineer in Indian Service and approved by Commissioner of Indian Affairs and Secretary of the Interior, that such limit of cost could in no case be exceeded without express authorization of Congress, and that no project to cost in the aggregate to exceed $35,000 could be undertaken on any Indian reservation or allotment, without specific authority of Congress.

§ 384. Employment of superintendents of irrigation

The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, may employ superintendents of irrigation who shall be skilled irrigation engineers, not to exceed seven in number.

(Apr. 4, 1910, ch. 140, § 1, 36 Stat. 271.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 385. Maintenance charges; reimbursement of construction costs; apportionment of cost

For lands irrigable under any irrigation system or reclamation project the Secretary of the Interior may fix maintenance charges which shall be paid as he may direct, such payments to be available for use in maintaining the project or system for which collected: *Provided further*, That all moneys expended under this provision shall be reimbursable where the Indians have adequate funds to repay the Government, such reimbursements to be made under such rules and regulations as the Secretary of the Interior may prescribe: *Provided further*, That the Secretary of the Interior is authorized and directed to apportion the cost of any irrigation project constructed for Indians and made reimbursable out of tribal funds of said Indians in accordance with the benefits received by each individual Indian so far as practicable from said irrigation project, said cost to be apportioned against such individual Indian under such rules, regulations, and conditions as the Secretary of the Interior may prescribe.

(Apr. 4, 1910, ch. 140, §§ 1, 3, 36 Stat. 270, 272; Aug. 1, 1914, ch. 222, § 1, 38 Stat. 583; Aug. 7, 1946, ch. 770, § 1(8), 60 Stat. 867; Pub. L. 97–293, title II, § 224(f), Oct. 12, 1982, 96 Stat. 1273.)

CODIFICATION

Section is based on sections 1 and 3 of act Apr. 4, 1910, and section 1 of act Aug. 1, 1914.

A provision in act Aug. 1, 1914, appropriated a specific sum for the construction, repair, etc., of ditches, reservoirs, etc., and for the pay of designated officials and employees.

AMENDMENTS

1982—Pub. L. 98–293 struck out provisions requiring Secretary of the Interior to transmit annual cost ac-

counts to Congress of all moneys expended on each irrigation project.

1946—Act Aug. 7, 1946, discontinued provisions requiring Secretary of the Interior to transmit annual cost accounts to Congress of all moneys expended on each irrigation project.

§ 385a. Irrigation projects; deposit of assessments as trust fund; disposition of fund

Effective August 7, 1946, collections made from water users on each Indian irrigation project on account of assessments levied to meet the cost of operating and maintaining such project shall be deposited into the Treasury for credit to a trust-fund account pursuant to section 1321 of title 31, and shall be available for expenditure in carrying out the purposes for which collected.

(Aug. 7, 1946, ch. 802, § 1, 60 Stat. 895.)

CODIFICATION

''Section 1321 of title 31'' substituted in text for ''section 20 of the Permanent Appropriation Repeal Act, 1934 (48 Stat. 1227) [31 U.S.C. 725s]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 725s–1 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97–258, § 1, Sept. 13, 1982, 96 Stat. 877.

§ 385b. Amounts creditable to fund

There shall be credited to each trust-fund account established under section 385a of this title the excess, if any, of (1) the unexpended balance of any repealed special fund appropriation to which operation and maintenance collections were credited prior to July 1, 1935, and (2) the amount of receipts covered into the Treasury pursuant to section 4 of the Permanent Appropriation Repeal Act, 1934 (48 Stat. 1227), over expenditures from appropriations provided for the operation and maintenance of the irrigation project from which such unexpended balance or receipts were derived, and the amount so credited shall be subject to expenditure as prescribed in section 385a of this title.

(Aug. 7, 1946, ch. 802, § 2, 60 Stat. 895.)

REFERENCES IN TEXT

Section 4 of the Permanent Appropriation Repeal Act, 1934, referred to in text, is section 4 of act June 26, 1934, ch. 756, 48 Stat. 1227, which was classified to section 725c of former Title 31, and was omitted from the Code in the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 877.

CODIFICATION

Section was formerly classified to section 725s–2 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97–258, § 1, Sept. 13, 1982, 96 Stat. 877.

§ 385c. Appropriation and disposition of power revenues

Revenues collected after August 7, 1946, from power operations on each Indian irrigation project and deposited into the Treasury for credit to miscellaneous receipts pursuant to section 4 of the Permanent Appropriation Repeal Act, 1934 (48 Stat. 1227), or pursuant to other provisions of law, are authorized to be appropriated annually, in specific or in indefinite amounts, equal to the collections so credited, for the following purposes in connection with the respective projects from which such revenues are derived: (1) Payment of the expenses of operating and maintaining the power system; (2) creation and maintenance of reserve funds to be available for making repairs and replacements to, defraying emergency expenses for, and insuring continuous operation of the power system, the fund for each project to be maintained at such level, within limits set by the Director of the Office of Management and Budget, as may from time to time be prescribed by the Secretary of the Interior; (3) amortization, in accordance with the repayment provisions of the applicable statutes or contracts, of construction costs allocated to be returned from power revenues; and (4) payment of other expenses and obligations chargeable to power revenues to the extent required or permitted by law.

(Aug. 7, 1946, ch. 802, § 3, 60 Stat. 895; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

REFERENCES IN TEXT

Section 4 of the Permanent Appropriation Repeal Act, 1934, referred to in text, is section 4 of act June 26, 1934, ch. 756, 48 Stat. 1227, which was classified to section 725c of former Title 31, and was omitted from the Code in the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 877.

CODIFICATION

Section was formerly classified to section 725s–3 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97–258, § 1, Sept. 13, 1982, 96 Stat. 877.

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085. Section 102 of Reorg. Plan No. 2 of 1970, redesignated Bureau of the Budget as Office of Management and Budget.

§ 386. Reimbursement of construction charges

The Secretary of the Interior is authorized and directed to require the owners of irrigable land under any irrigation system constructed for the benefit of Indians and to which water for irrigation purposes can be delivered to begin partial reimbursement of the construction charges, where reimbursement is required by law, at such times and in such amounts as he may deem best; all payments hereunder to be credited on a per acre basis in favor of the land in behalf of which such payments shall have been made and to be deducted from the total per acre charge assessable against said land.

(Feb. 14, 1920, ch. 75, § 1, 41 Stat. 409.)

§ 386a. Adjustment of reimbursable debts; construction charges

The Secretary of the Interior is hereby authorized and directed to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individ-

ual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made: *Provided*, That the collection of all construction costs against any Indian-owned lands within any Government irrigation project is hereby deferred, and no assessments shall be made on behalf of such charges against such lands until the Indian title thereto shall have been extinguished, and any construction assessments heretofore levied against such lands in accordance with the provisions of section 386 of this title, and uncollected, are hereby canceled: *Provided further*, That the Secretary shall report such adjustments and eliminations to the Congress not later than sixty calendar days following the end of the fiscal year in which they are made: *Provided further*, That any proceedings hereunder shall not be effective until approved by Congress unless Congress shall have failed to act favorably or unfavorably thereon by concurrent resolution within ninety calendar days after the filing of said report, in which case they shall become effective at the termination of the said ninety calendar days: *Provided further*, That the Secretary shall adjust or eliminate charges, defer collection of construction costs, and make no assessment on behalf of such charges for beneficiaries that hold leases on Hawaiian home lands, to the same extent as is permitted for individual Indians or tribes of Indians under this section.

(July 1, 1932, ch. 369, 47 Stat. 564; Pub. L. 97–375, title II, § 208(a), Dec. 21, 1982, 96 Stat. 1824; Pub. L. 104–42, title II, § 207, Nov. 2, 1995, 109 Stat. 364.)

AMENDMENTS

1995—Pub. L. 104–42 inserted before period at end ": *Provided further*, That the Secretary shall adjust or eliminate charges, defer collection of construction costs, and make no assessment on behalf of such charges for beneficiaries that hold leases on Hawaiian home lands, to the same extent as is permitted for individual Indians or tribes of Indians under this section".

1982—Pub. L. 97–375, § 208(a)(1), substituted "That the Secretary shall report such adjustments and eliminations to the Congress not later than sixty calendar days following the end of the fiscal year in which they are made" for "That a report shall be made to Congress annually, on the first Monday in December, showing adjustments so made during the preceding fiscal year" in second proviso.

Pub. L. 97–375, § 208(a)(2), substituted "ninety calendar days" for "sixty legislative days" wherever appearing.

§ 387. Omitted

CODIFICATION

Section, which related to basis of apportionment of costs of irrigation projects was from the Interior Department Appropriation Act, 1946, July 3, 1945, ch. 262, 59 Stat. 328, and was not repeated in the Interior Department Appropriation Act of 1947, act July 1, 1946, ch. 529, 60 Stat. 348. Similar provisions were contained in the following prior appropriation acts:

June 28, 1944, ch. 298, 58 Stat. 474.
July 12, 1943, ch. 219, 57 Stat. 461.
July 2, 1942, ch. 473, 56 Stat. 518.
June 28, 1941, ch. 259, 55 Stat. 317.
June 18, 1940, ch. 395, 54 Stat. 419.
May 10, 1939, ch. 119, 53 Stat. 700.
May 9, 1938, ch. 187, 52 Stat. 304.
Aug. 9, 1937, ch. 570, 50 Stat. 577.
June 22, 1936, ch. 691, 49 Stat. 1769.
May 9, 1935, ch. 101, 49 Stat. 186.
Mar. 2, 1934, ch. 38, 48 Stat. 370.
Feb. 17, 1933, ch. 98, 47 Stat. 829.
Apr. 22, 1932, ch. 125, 47 Stat. 100.
Feb. 14, 1931, ch. 187, 46 Stat. 1126.
May 14, 1930, ch. 273, 46 Stat. 290.
Mar. 4, 1929, ch. 705, 45 Stat. 1573.
Mar. 7, 1928, ch. 137, 45 Stat. 210.

§ 388. Claims for damages; settlement by agreement

The Secretary of the Interior is authorized to pay out of funds available for the Indian irrigation projects for damages caused to owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of irrigation works of such projects and which may be compromised by agreement between the claimant and the Secretary of the Interior or such officers as he may designate: *Provided*, That the total of any such claims authorized to be settled as herein contemplated shall not exceed 5 per centum of the funds available for the project under which such claims arise during any one fiscal year.

(Feb. 20, 1929, ch. 279, 45 Stat. 1252.)

§ 389. Investigation and adjustment of irrigation charges on lands within projects on Indian reservations

The Secretary of the Interior is authorized and directed to cause an investigation to be made to determine whether the owners of non-Indian lands under Indian irrigation projects and under projects where the United States has purchased water rights for Indians are unable to pay irrigation charges, including construction, maintenance, and operating charges, because of inability to operate such lands profitably by reason of lack of fertility of the soil, inadequacy of water supply, defects of irrigation works, or for any other causes. Where the Secretary finds that said landowners are unable to make payment due to the existence of such causes, he may adjust, defer, or cancel such charges, in whole or in part, as the facts and conditions warrant. In adjusting or deferring any such charges the Secretary may enter into contracts with said land owners for the payment of past due charges, but such contracts shall not extend the payment of such charges over a period in excess of ten years.

(June 22, 1936, ch. 692, § 1, 49 Stat. 1803.)

FLATHEAD INDIAN IRRIGATION PROJECT

Act July 26, 1947, ch. 340, 61 Stat. 494, provided that notwithstanding any provisions of sections 389 to 389e of this title, the Secretary of the Interior could defer the collection of irrigation construction charges on the Flathead Indian Irrigation Project until January 1, 1949.

FORT PECK INDIAN IRRIGATION PROJECT

In accordance with sections 389 to 389e of this title, the order of the Secretary of the Interior canceling delinquent irrigation operation and maintenance charges of $461.40 and accrued interest thereon for certain lands adjacent to but outside the Fort Peck Indian irrigation project, $206,902.21 against lands within the Fort Peck

project, and $118,266.64 of unassessed construction costs allocable against both Indian and non-Indian owned lands in the Fraiser-Wolf Point unit of the Fort Peck project, was approved by Pub. L. 90–143, Nov. 16, 1967, 81 Stat. 465.

KLAMATH INDIAN IRRIGATION PROJECT

In accordance with sections 389 to 389e of this title, the order of the Secretary of the Interior canceling $401,440.55 of reimbursable irrigation costs and any accrued interest thereon chargeable to lands in the Klamath Indian irrigation project, was approved by Pub. L. 88–456, Aug. 20, 1964, 78 Stat. 554.

OROVILLE-TONASKET IRRIGATION DISTRICT

Action of the Secretary of the Interior taken on May 19, 1942, pursuant to authority contained in sections 389 to 389e of this title with respect to lands within the Oroville-Tonasket Irrigation District was confirmed by Congress in act Dec. 24, 1942, ch. 816, 56 Stat. 1082.

UINTAH INDIAN IRRIGATION PROJECT

Pub. L. 91–403, §§1–5, Sept. 18, 1970, 84 Stat. 843, 844, authorized the Secretary of the Interior to reimburse the Ute Tribe of the Uintah and Ouray Reservation for tribal funds that were used to construct, operate, and maintain the Uintah Indian irrigation project, Utah.

Action of Secretary of the Interior taken pursuant to authority contained in sections 389 to 389e of this title with respect to lands within the Uintah Indian Irrigation Project was confirmed by Congress in act May 28, 1941, ch. 142, 55 Stat. 209.

WAPATO INDIAN IRRIGATION PROJECT

In accordance with sections 389 to 389e of this title, order of Secretary of the Interior dated Sept. 12, 1962, canceling $4,494.58 of delinquent irrigation charges, providing for the deferred payment of $10,356.03, and providing for the removal of 78.12 acres of assessable land from the Wapato Indian irrigation project, was approved by Pub. L. 88–159, Oct. 28, 1963, 77 Stat. 278.

In accordance with sections 389 to 389e of this title, order of Secretary of the Interior canceling $35,700.72 of delinquent irrigation charges, providing for the deferred payment of $13,851.98, and providing for the removal of two hundred thirty-two and fifty-six one hundredths acres of assessable land from the Wapato Indian irrigation project, was approved by Pub. L. 86–281, Sept. 16, 1959, 73 Stat. 564.

Action by the Secretary of the Interior taken Sept. 9, 1942, pursuant to authority contained in sections 389 to 389e of this title with respect to lands within the Wapato Indian irrigation project was confirmed in act Dec. 24, 1942, ch. 815, 56 Stat. 1081.

WIND RIVER INDIAN IRRIGATION PROJECT

In accordance with sections 389 to 389e of this title, the order of the Secretary of the Interior, canceling delinquent operation and maintenance irrigation charges of $1,134.99 and accrued interest thereon, against lands on the Wind River Indian irrigation project, and a contract for the deferred payment of delinquent charges in the amount of $2,331.59, was approved by Pub. L. 88–116, Sept. 6, 1963, 77 Stat. 151.

In accordance with sections 389 to 389e of this title, the order of the Secretary of the Interior, canceling delinquent irrigation charges of $36,439.70 and accrued interest therein, and providing for a deferred payment of $8,706.27, as shown in schedules A, B, and C of such order, was approved by Pub. L. 87–516, July 2, 1962, 76 Stat. 128, provided that the cancellation under schedule B not become effective until the landowners agree to pay the balance of such delinquent charges amounting to $1,556.40.

§ 389a. Declaring lands to be temporarily nonirrigable

Where the Secretary finds that any such lands cannot be cultivated profitably due to a present lack of water supply, proper drainage facilities, or need of additional construction work, he shall declare such lands temporarily nonirrigable for periods not to exceed five years and no charges shall be assessed against such lands during such periods.

(June 22, 1936, ch. 692, § 2, 49 Stat. 1804.)

§ 389b. Elimination to permanently nonirrigable lands

Where the Secretary finds that any such lands are permanently nonirrigable he may, with the consent of the landowner, eliminate such lands from the project.

(June 22, 1936, ch. 692, § 3, 49 Stat. 1804.)

§ 389c. Cancellation of charges in absence of lien or contract for payment

Where irrigation assessments against any such lands remained unpaid at the time the Indian title to such lands became extinguished and no lien existed and attached to such lands for the payment of charges so assessed and no contract for the payment of such charges was entered into, the Secretary shall cancel all such charges.

(June 22, 1936, ch. 692, § 4, 49 Stat. 1804.)

§ 389d. Rules and regulations

The Secretary shall have power to make such rules and regulations as may be necessary to carry out the provisions of sections 389 to 389e of this title.

(June 22, 1936, ch. 692, § 5, 49 Stat. 1804.)

§ 389e. Actions taken to be included in report to Congress

The Secretary shall include in the report to Congress required pursuant to section 389a[1] of this title, a description of actions taken under the provisions of sections 389 to 389e of this title during the preceding fiscal year. No proceedings under such sections shall become effective until approved by the Congress.

(June 22, 1936, ch. 692, § 6, 49 Stat. 1804; Pub. L. 96–470, title II, § 206(b), Oct. 19, 1980, 94 Stat. 2244.)

AMENDMENTS

1980—Pub. L. 96–470 substituted provision requiring the Secretary to include in the report to Congress required pursuant to section 389a of this title a description of the actions taken under sections 389 to 389e of this title during the preceding fiscal year for provision requiring the Secretary to make reports to Congress on the first Monday of each regular session, and from time to time thereafter, showing actions taken under sections 389 to 389e of this title during the preceding fiscal year.

APPROVAL OF SECRETARY'S ACTION

The action of the Secretary of the Interior in deferring the collection of certain irrigation charges against lands under the Blackfeet Indian irrigation project in Montana was approved by Joint Res. Apr. 11, 1940, ch. 78, 54 Stat. 105.

[1] So in original. Probably should refer to section 386a.

§ 390. Concessions on reservoir sites and other lands in Indian irrigation projects; leases for agricultural, grazing, and other purposes

The Secretary of the Interior be, and he is hereby, authorized, in his discretion, to grant concessions on reservoir sites, reserves for canals or flowage areas, and other lands under his jurisdiction which have been withdrawn or otherwise acquired in connection with the San Carlos, Fort Hall, Flathead, and Duck Valley or Western Shoshone irrigation projects for the benefit in whole or in part of Indians, and to lease such lands for agricultural, grazing, or other purposes: *Provided*, That no lands so leased shall be eligible for benefit payments under the crop control program, or the soil conservation act: *Provided further*, That such concessions may be granted or lands leased by the Secretary of the Interior under such rules, regulations, and laws as govern his administration of the public domain as far as applicable, for such considerations, monetary or otherwise, and for such periods of time as he may deem proper, the term of no concession to exceed a period of ten years: *Provided further*, That the funds derived from such concessions or leases, except funds so derived from Indian tribal property withdrawn for irrigation purposes and for which the tribe has not been compensated, shall be available for expenditure in accordance with the existing laws in the operation and maintenance of the irrigation projects with which they are connected. Any funds derived from reserves for which the tribe has not been compensated shall be deposited to the credit of the proper tribe: *Provided further*, That where tribal lands of any Indian tribe organized under section 476 of this title, have been withdrawn or reserved for the purposes hereinbefore mentioned, such lands may be leased or concessions may be granted thereon only by the proper tribal authorities, upon such conditions and subject to such limitations as may be set forth in the constitution and bylaws or charter of the respective tribes: *Provided further*, That concessions for recreation and fish and wildlife purposes on San Carlos Lake may be granted only by the governing body of the San Carlos Apache Tribe upon such conditions and subject to such limitations as may be set forth in the constitution and bylaws of such Tribe.

(Apr. 4, 1938, ch. 63, 52 Stat. 193; Pub. L. 102–575, title XXXVII, § 3710(e), Oct. 30, 1992, 106 Stat. 4750.)

AMENDMENTS

1992—Pub. L. 102–575 inserted before period at end ": *Provided further*, That concessions for recreation and fish and wildlife purposes on San Carlos Lake may be granted only by the governing body of the San Carlos Apache Tribe upon such conditions and subject to such limitations as may be set forth in the constitution and bylaws of such Tribe".

EFFECTIVE AND TERMINATION DATES OF 1992 AMENDMENT

Section 3711(a)–(c) of title XXXVII of Pub. L. 102–575, as amended by Pub. L. 103–435, § 13, Nov. 2, 1994, 108 Stat. 4572; Pub. L. 104–91, title II, § 202(a), Jan. 6, 1996, 110 Stat. 14; Pub. L. 104–261, § 3, Oct. 9, 1996, 110 Stat. 3176; Pub. L. 105–18, title II, § 5003(a), (b), June 12, 1997, 111 Stat. 181, provided that:

"(a) EFFECTIVE DATE OF AUTHORIZATION.—The authorization contained in section 3708(b) of this title [106 Stat. 4748] shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings [The statement was published in the Federal Register on Dec. 28, 1999, 64 F.R. 72674.] that—

"(1) the Secretary has fulfilled the requirements of sections 3704 and 3706 [106 Stat. 4742, 4745];

"(2) the Roosevelt Water Conservation District subcontract for agricultural water service from CAP has been revised and executed as provided in section 3705(b) [106 Stat. 4744];

"(3) the funds authorized by section 3707(c) [106 Stat. 4748] have been appropriated and deposited into the Fund;

"(4) the contract referred to in section 3707(a)(2) [106 Stat. 4747] has been amended;

"(5) the State of Arizona has appropriated and deposited into the Fund $3,000,000 as required by the Agreement;

"(6) the stipulations attached to the Agreement as Exhibits 'D' and 'E' have been approved; and

"(7) the Agreement has been modified, to the extent it is in conflict with this title [amending this section and section 1524 of Title 43, Public Lands, and enacting provisions set out as a note under section 1524 of Title 43], and has been executed by the Secretary.

"(b) CONDITIONS.—(1) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), and (7) of subsection (a) of this section have not occurred by March 31, 1999, subsections (c) and (d) of section 3704 [106 Stat. 4743], subsections (a) and (b) of section 3705 [106 Stat. 4744], section 3706 [106 Stat. 4745], subsections (a)(2), (c), (d), and (f) of section 3707 [106 Stat. 4747], subsections (b) and (c) of section 3708 [106 Stat. 4748], and subsections (a), (b), (c), (d), (e), (g), (h), (j), and (*l*) of section 3710 of this title [106 Stat. 4750, subsec. (e) amends this section], together with any contracts entered into pursuant to any such section or subsection, shall not be effective on and after the date of enactment of this title [Oct. 30, 1992], and any funds appropriated pursuant to section 3707(c) [106 Stat. 4748], and remaining unobligated and unexpended on the date of the enactment of this title, shall immediately revert to the Treasury, as general revenues, and any funds appropriated by the State of Arizona pursuant to the Agreement, and remaining unobligated and unexpended on the date of the enactment of this title, shall immediately revert to the State of Arizona.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, if the provisions of subsections (a) and (b) of section 3705 of this title have been otherwise accomplished pursuant to provisions of the Act of October 20, 1988 [Pub. L. 100–512, 102 Stat. 2549], the provisions of paragraph (1) of this subsection shall not be construed as affecting such subsections.

"(c) EXTENSION FOR RIVER SYSTEM GENERAL ADJUDICATION.—If, at any time prior to March 31, 1999, the Secretary notifies the Committee on Indian Affairs of the United States Senate or the Committee on Resources in the United States House of Representatives that the Settlement Agreement, as executed by the Secretary, has been submitted to the Superior Court of the State of Arizona in and for Maricopa County for consideration and approval as part of the General Adjudication of the Gila River System and Source, the [sic] March 31, 1999, referred to in subsection (b)(1) shall be deemed to be changed to December 31, 1999. [The Secretary notified the Committees on Mar. 30, 1999.]"

[For definitions of terms used in section 3711(a)–(c) of Pub. L. 102–575, set out above, see section 3703 of Pub. L. 102–575, title XXXVII, Oct. 30, 1992, 106 Stat. 4741, as amended.]

[Pub. L. 104–91, title II, § 202(b), Jan. 6, 1996, 110 Stat. 14, provided that:

["(1) IN GENERAL.—The amendment made by subsection (a) [amending section 3711 of Pub. L. 102–575, set out above] shall take effect as of December 31, 1995.

["(2) LAPSED PROVISIONS OF LAW AND CONTRACTS.—The provisions of subsections (c) and (d) of section 3704 [106

Stat. 4743], subsections (a) and (b) of section 3705 [106 Stat. 4744], section 3706 [106 Stat. 4745], subsections (a)(2), (c), (d), and (f) of section 3707 [106 Stat. 4747], subsections (b) and (c) of section 3708 [106 Stat. 4748], and subsections (a), (b), (c), (d), (e), (g), (h), (j), and (*l*) of section 3710 of such Act [106 Stat. 4750, subsec. (e) amends this section], together with each contract entered into pursuant to any such section or subsection (with the consent of the non-Federal parties thereto), shall be effective on and after the date of enactment of this Act [Jan. 6, 1996], subject to the December 31, 1996, deadline specified in such section 3711(b)(1), as amended by subsection (a) of this section [section 3711(b)(1) of Pub. L. 102–575, set out above].'']

CHAPTER 12—LEASE, SALE, OR SURRENDER OF ALLOTTED OR UNALLOTTED LANDS

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416a. Lease provisions.
416b. Development pursuant to lease.
416c. Lease of lands of deceased Indians for benefit of heirs or devisees.
416d. Advance payment of rent or other consideration.
416e. Approval of leases.
416f. Dedication of land for public purposes.
416g. Contract for water, sewerage, law enforcement, or other public services.
416h. Zoning, building, and sanitary regulations.
416i. Restrictions.
416j. Mission San Xavier del Bac.

§ 391. Continuance of restrictions on alienation in patent

Prior to the expiration of the trust period of any Indian allottee to whom a trust or other patent containing restrictions upon alienation has been or shall be issued under any law or treaty the President may, in his discretion, continue such restrictions on alienation for such period as he may deem best: *Provided*, *however*, That this shall not apply to lands in the former Indian Territory.

(June 21, 1906, ch. 3504, 34 Stat. 326.)

§ 391a. Sale for town site; removal of restriction

For the purpose of allowing any Indian allottee to sell for townsite purposes any portion of the lands allotted to him, the Secretary of the Interior may, by order, remove restrictions upon the alienation of such lands and issue fee-simple patents therefor under such rules and regulations as he may prescribe.

(June 21, 1906, ch. 3504, 34 Stat. 373.)

§ 392. Consent to or approval of alienation of allotments by Secretary of the Interior

Whenever, in any law or treaty or in any patent issued to Indian allottees for lands in severalty pursuant to such law or treaty, there appears a provision to the effect that the lands so allotted cannot be alienated without the consent of the President of the United States, the Secretary of the Interior shall have full power and authority to consent to or approve of the alienation of such allotments, in whole or in part, in his discretion, by deed, will, lease, or any other form of conveyance, and such consent or approval by the Secretary of the Interior on and after September 21, 1922, had in all such cases shall have the same force and legal effect as though the consent or approval of the President had previously been obtained: *Provided, however*, That the approval by the Secretary of the Interior of wills by Indian allottees or their heirs involving lands held under such patents shall not operate to remove the restrictions against alienation unless such order of approval by said Secretary shall specifically so direct.

(Sept. 21, 1922, ch. 367, § 6, 42 Stat. 995.)

§ 393. Leases of restricted allotments

The restricted allotment of any Indian may be leased for farming and grazing purposes by the allottee or his heirs, subject only to the approval of the superintendent or other officer in charge of the reservation where the land is located, under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That this provision shall not apply to the Five Civilized Tribes.

(Mar. 3, 1921, ch. 119, 41 Stat. 1232.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 393a. Lands of Five Civilized Tribes

From and after thirty days from February 11, 1936 the restricted lands belonging to Indians of the Five Civilized Tribes in Oklahoma of one-half or more Indian blood, enrolled or unenrolled, may be leased for periods of not to exceed five years for farming and grazing purposes, under such rules and regulations as the Secretary of the Interior may prescribe and not otherwise. Such leases shall be made by the owner or owners of such lands, if adults, subject to approval by the superintendent or other official in charge of the Five Civilized Tribes Agency, and by such superintendent or other official in charge of said agency in cases of minors and of Indians who are non compos mentis.

(Feb. 11, 1936, ch. 50, 49 Stat. 1135.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 394. Leases of arid allotted lands

Whenever it shall appear to the satisfaction of the Secretary of the Interior that the allotted lands of any Indian are arid but susceptible of irrigation and that the allottee, by reason of old age or other disability, cannot personally occupy or improve his allotment or any portion thereof, such lands, or such portion thereof, may be leased for a period not exceeding ten years, under such terms, rules, and regulations as may be prescribed by the Secretary of the Interior.

(May 18, 1916, ch. 125, § 1, 39 Stat. 128.)

§ 395. Leases of allotted lands where allottee is incapacitated

Whenever it shall be made to appear to the Secretary of the Interior that, by reason of age, disability, or inability, any allottee of Indian lands cannot personally, and with benefit to himself, occupy or improve his allotment or any part thereof, the same may be leased upon such terms, regulations, and conditions as shall be prescribed by the Secretary for a term not exceeding five years, for farming purposes only.

(May 31, 1900, ch. 598, 31 Stat. 229.)

CODIFICATION

Act May 31, 1900, is applicable to "any allottee of Indian lands" and authorizes leases "for a term not exceeding five years, for farming purposes only" and supersedes the following prior provisions:

Act June 7, 1897, ch. 3, 30 Stat. 85.
Act June 10, 1896, ch. 398, 29 Stat. 340.
Act Mar. 2, 1895, ch. 188, 28 Stat. 900.
Act Aug. 15, 1894, ch. 290, 28 Stat. 305.

OTHER LEASING PROVISIONS

Special provisions for leasing allotted lands on certain reservations named in Utah and in Wyoming, for cultivation under irrigation, were made by act Apr. 30, 1908, ch. 153, 35 Stat. 95, 97.

Special provisions permitting Indians to whom lands have been allotted on the Yakima Indian reservation in the State of Washington, to lease such lands for agricultural purposes for a term not exceeding 5 years, or unimproved lands for a term not exceeding 10 years were made by acts May 31, 1900, ch. 598, 31 Stat. 246; Mar. 1, 1899, ch. 324, 30 Stat. 941.

§ 396. Leases of allotted lands for mining purposes

All lands allotted to Indians in severalty, except allotments made to members of the Five Civilized Tribes and Osage Indians in Oklahoma, may by said allottee be leased for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior; and the Secretary of the Interior is authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provisions of this section into full force and effect: *Provided*, That if the said allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or, if determined, some or all of them cannot be located, the Secretary of the Interior may offer for sale leases for mining purposes to the highest responsible qualified bidder,

at public auction, or on sealed bids, after notice and advertisement, upon such terms and conditions as the Secretary of the Interior may prescribe. The Secretary of the Interior shall have the right to reject all bids whenever in his judgment the interests of the Indians will be served by so doing, and to readvertise such lease for sale.

(Mar. 3, 1909, ch. 263, 35 Stat. 783; Aug. 9, 1955, ch. 615, § 3, 69 Stat. 540.)

AMENDMENTS

1955—Act Aug. 9, 1955, authorized Secretary of the Interior to lease allotted lands for mining purposes where the allottee is deceased and the heirs to or devisees of any interest in the allotment either have not been determined or cannot be located.

LEASES OF CERTAIN ALLOTTED LANDS

Pub. L. 106–462, title II, § 201, Nov. 7, 2000, 114 Stat. 2007, authorized the Secretary of the Interior to approve oil or gas leases affecting individually owned Navajo Indian allotted lands in certain circumstances and defined pertinent terms with respect to such leases.

Pub. L. 105–188, § 1, July 7, 1998, 112 Stat. 620, as amended by Pub. L. 106–67, § 1(2), Oct. 6, 1999, 113 Stat. 979, authorized Secretary of the Interior to approve any mineral lease or agreement that affects individually owned land located within Fort Berthold Indian Reservation in North Dakota or certain former Indian reservations located in Oklahoma upon consent of majority interest and best interest determination.

§ 396a. Leases of unallotted lands for mining purposes; duration of leases

On and after May 11, 1938, unallotted lands within any Indian reservation or lands owned by any tribe, group, or band of Indians under Federal jurisdiction, except those specifically excepted from the provisions of sections 396a to 396g of this title, may, with the approval of the Secretary of the Interior, be leased for mining purposes, by authority of the tribal council or other authorized spokesmen for such Indians, for terms not to exceed ten years and as long thereafter as minerals are produced in paying quantities.

(May 11, 1938, ch. 198, § 1, 52 Stat. 347.)

REPEAL OF INCONSISTENT ACTS

Section 7 of act May 11, 1938, provided that: ''All Act [Acts] or parts of Acts inconsistent herewith are hereby repealed.''

§ 396b. Public auction of oil and gas leases; requirements

Leases for oil- and/or gas-mining purposes covering such unallotted lands shall be offered for sale to the highest responsible qualified bidder, at public auction or on sealed bids, after notice and advertisement, upon such terms and subject to such conditions as the Secretary of the Interior may prescribe. Such advertisement shall reserve to the Secretary of the Interior the right to reject all bids whenever in his judgment the interest of the Indians will be served by so doing, and if no satisfactory bid is received, or the accepted bidder fails to complete the lease, or the Secretary of the Interior shall determine that it is unwise in the interest of the Indians to accept the highest bid, said Secretary may readvertise such lease for sale, or with the consent of the tribal council or other governing tribal authorities, a lease may be made by private negotiations: *Provided*, That the foregoing provisions shall in no manner restrict the right of tribes organized and incorporated under sections 16 and 17 of the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 476, 477], to lease lands for mining purposes as therein provided and in accordance with the provisions of any constitution and charter adopted by any Indian tribe pursuant to the Act of June 18, 1934 [25 U.S.C. 461 et seq.].

(May 11, 1938, ch. 198, § 2, 52 Stat. 347.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

REPEAL OF INCONSISTENT ACTS

For repeal of inconsistent acts, see section 7 of act May 11, 1938, set out as a note under section 396a of this title.

§ 396c. Lessees of restricted lands to furnish bonds for performance

On and after May 11, 1938, lessees of restricted Indian lands, tribal or allotted, for mining purposes, including oil and gas, shall furnish corporate surety bonds, in amounts satisfactory to the Secretary of the Interior, guaranteeing compliance with the terms of their leases: *Provided*, That personal surety bonds may be accepted where the sureties deposit as collateral with the said Secretary of the Interior any public-debt obligations of the United States guaranteed as to principal and interest by the United States equal to the full amount of such bonds, or other collateral satisfactory to the Secretary of the Interior, or show ownership to unencumbered real estate of a value equal to twice the amount of the bonds.

(May 11, 1938, ch. 198, § 3, 52 Stat. 348.)

REPEAL OF INCONSISTENT ACTS

For repeal of inconsistent acts, see section 7 of act May 11, 1938, set out as a note under section 396a of this title.

§ 396d. Rules and regulations governing operations; limitations on oil or gas leases

All operations under any oil, gas, or other mineral lease issued pursuant to the terms of sections 396a to 396g of this title or any other Act affecting restricted Indian lands shall be subject to the rules and regulations promulgated by the Secretary of the Interior. In the discretion of the said Secretary, any lease for oil or gas issued under the provisions of sections 396a to 396g of this title shall be made subject to the terms of any reasonable cooperative unit or other plan approved or prescribed by said Secretary prior or subsequent to the issuance of any such lease which involves the development or production of oil or gas from land covered by such lease.

(May 11, 1938, ch. 198, § 4, 52 Stat. 348.)

REPEAL OF INCONSISTENT ACTS

For repeal of inconsistent acts, see section 7 of act May 11, 1938, set out as a note under section 396a of this title.

§ 396e. Officials authorized to approve leases

The Secretary of the Interior may, in his discretion, authorize superintendents or other officials in the Indian Service to approve leases for oil, gas, or other mining purposes covering any restricted Indian lands, tribal or allotted.

(May 11, 1938, ch. 198, § 5, 52 Stat. 348.)

REPEAL OF INCONSISTENT ACTS

For repeal of inconsistent acts, see section 7 of act May 11, 1938, set out as a note under section 396a of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 396f. Lands excepted from leasing provisions

Sections 396a, 396b, 396c, and 396d of this title shall not apply to the Crow Reservation in Montana, the ceded lands of the Shoshone Reservation in Wyoming, the Osage Reservation in Oklahoma, nor to the coal and asphalt lands of the Choctaw and Chickasaw Tribes in Oklahoma.

(May 11, 1938, ch. 198, § 6, 52 Stat. 348; May 27, 1955, ch. 106, § 2, 69 Stat. 68.)

AMENDMENTS

1955—Act May 27, 1955, struck out ''the Papago Indian Reservation in Arizona,'' after ''shall not apply to''.

REPEAL OF INCONSISTENT ACTS

For repeal of inconsistent acts, see section 7 of act May 11, 1938, set out as a note under section 396a of this title.

PAPAGO INDIAN RESERVATION

Section 1 of act May 27, 1955, authorized the leasing of minerals for mining purposes. See note under section 463 of this title.

§ 396g. Subsurface storage of oil or gas

The Secretary of the Interior, to avoid waste or to promote the conservation of natural resources or the welfare of the Indians, is authorized in his discretion to approve leases of lands that are subject to lease under section 396 or 396a of this title, for the subsurface storage of oil and gas, irrespective of the lands from which initially produced, and the Secretary is authorized, in order to provide for the subsurface storage of oil or gas, to approve modifications, amendments, or extensions of the oil and gas or other mining lease(s), if any, in effect as to restricted Indian lands, tribal or allotted, and may promulgate rules and regulations consistent with such leases, modifications, amendments, and extensions, relating to the storage of oil or gas thereunder. Any such leases may provide for the payment of a storage fee or rental on such stored oil or gas or, in lieu of such fee or rental, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. It may be provided that any oil and gas lease under which storage of oil or gas is so authorized shall be continued in effect at least for the period of such storage use and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(May 11, 1938, ch. 198, § 8, as added Aug. 1, 1956, ch. 808, 70 Stat. 774.)

REPEAL OF INCONSISTENT ACTS

For repeal of inconsistent acts, see section 7 of act May 11, 1938, set out as a note under section 396a of this title.

§ 397. Leases of lands for grazing or mining

Where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming or agricultural purposes, and are not desired for individual allotments, the same may be leased by authority of the council speaking for such Indians, for a period not to exceed five years for grazing, or ten years for mining purposes in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior.

(Feb. 28, 1891, ch. 383, § 3, 26 Stat. 795.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 398. Leases of unallotted lands for oil and gas mining purposes

Unallotted land on Indian reservations other than lands of the Five Civilized Tribes and the Osage Reservation subject to lease for mining purposes for a period of ten years under section 397 of this title may be leased at public auction by the Secretary of the Interior, with the consent of the council speaking for such Indians, for oil and gas mining purposes for a period of not to exceed ten years, and as much longer as oil or gas shall be found in paying quantities, and the terms of any existing oil and gas mining lease may in like manner be amended by extending the term thereof for as long as oil or gas shall be found in paying quantities: *Provided*, That the production of oil and gas and other minerals on such lands may be taxed by the State in which said lands are located in all respects the same as production on unrestricted lands, and the Secretary of the Interior is authorized and directed to cause to be paid the tax so assessed against the royalty interests on said lands: *Provided, however*, That such tax shall not become a lien or charge of any kind or character against the land or the property of the Indian owner.

(May 29, 1924, ch. 210, 43 Stat. 244.)

§ 398a. Leases of unallotted lands for oil and gas mining purposes within Executive order Indian reservations

Unallotted lands within the limits of any reservation or withdrawal created by Executive order for Indian purposes or for the use or occupancy of any Indians or tribe may be leased for oil and gas mining purposes in accordance with the provisions contained in section 398 of this title.

(Mar. 3, 1927, ch. 299, § 1, 44 Stat. 1347.)

§ 398b. Proceeds from rentals, royalties, and bonuses; disposition

The proceeds from rentals, royalties, or bonuses of oil and gas leases upon lands within Executive order Indian reservations or withdrawals shall be deposited in the Treasury of the United States to the credit of the tribe of Indians for whose benefit the reservation or withdrawal was created or who are using and occupying the land, and shall draw interest at the rate of 4 per centum per annum and be available for appropriation by Congress for expenses in connection with the supervision of the development and operation of the oil and gas industry and for the use and benefit of such Indians: *Provided*, That said Indians, or their tribal council, shall be consulted in regard to the expenditure of such money, but no per capita payment shall be made except by Act of Congress.

(Mar. 3, 1927, ch. 299, § 2, 44 Stat. 1347.)

§ 398c. Taxes

Taxes may be levied and collected by the State or local authority upon improvements, output of mines or oil and gas wells, or other rights, property, or assets of any lessee upon lands within Executive order Indian reservations in the same manner as such taxes are otherwise levied and collected, and such taxes may be levied against the share obtained for the Indians as bonuses, rentals, and royalties, and the Secretary of the Interior is hereby authorized and directed to cause such taxes to be paid out of the tribal funds in the Treasury: *Provided*, That such taxes shall not become a lien or charge of any kind against the land or other property of such Indians.

(Mar. 3, 1927, ch. 299, § 3, 44 Stat. 1347.)

§ 398d. Changes in boundaries of Executive order reservations

Changes in the boundaries of reservations created by Executive order, proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress.

(Mar. 3, 1927, ch. 299, § 4, 44 Stat. 1347; Pub. L. 94–579, title VII, § 704(a), Oct. 21, 1976, 90 Stat. 2792.)

AMENDMENTS

1976—Pub. L. 94–579 struck out proviso relating to nonapplicability of provisions to temporary withdrawals by Secretary of the Interior.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 704(a) of Pub. L. 94–579 provided that the amendment made by that section is effective on and after Oct. 21, 1976.

SAVINGS PROVISION

Amendment by Pub. L. 94–579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see Savings Provision note set out under section 1701 of Title 43, Public Lands.

§ 398e. Applications for permits to prospect for oil and gas filed under other statutes; disposition

The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to allow any person who prior to May 27, 1924, filed an application for a permit in accordance with the provisions of the Act of February 25, 1920, to prospect for oil and gas upon lands within an Indian reservation or withdrawal created by Executive order who shall show to the satisfaction of the Secretary of the Interior that he, or the party with whom he has contracted, has done prior to January 1, 1926, any or all of the following things, to wit, expended money or labor in geologically surveying the lands covered by such application, has built a road for the benefit of such lands, or has drilled or contributed toward the drilling of the geologic structure upon which such lands are located, or who in good faith has either filed a motion for reinstatement or rehearing; or performed any other act which in the judgment of the Secretary of the Interior entitles him to equitable relief, to prospect for a period of two years from March 3, 1927, or for such further time as the Secretary of the Interior may deem reasonable or necessary for the full exploration of the land described in his application under the terms and conditions therein set out, and a substantial contribution toward the drilling of the geologic structure thereon by such applicant for a permit thereon may be considered as prospecting under the provisions hereof; and upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil and gas have been discovered within the limits of the land embraced in any such application, he shall be entitled to a lease for one-fourth of the land embraced in the application: *Provided*, That the applicant shall be granted a lease for as much as one hundred and sixty acres of said lands if there be that number of acres within the application. The area to be selected by the applicant shall be in compact form and, if surveyed, to be described by the legal subdivisions of the public land surveyed; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposit made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of $1 per acre, the rental paid for any one year to be credited against the royalties as they may accrue for that year, with the preferential right in the lessee to renew the same for successive periods of

ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior. The applicant shall also be entitled to a preference right to a lease for the remainder of the land in his application at a royalty of not less than 12½ per centum in amount or value of the production, the royalty to be determined by competitive bidding or fixed by such other methods as the Secretary of the Interior may by regulations prescribe: *Provided further*, That the Secretary of the Interior shall have the right to reject any or all bids.

(Mar. 3, 1927, ch. 299, § 5, 44 Stat. 1347.)

REFERENCES IN TEXT

Act of February 25, 1920, referred to in text, probably means act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, known as the Mineral Leasing Act, which is classified generally to chapter 3A (§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

§ 399. Leases of unallotted mineral lands withdrawn from entry under mining laws

Authority of Secretary of the Interior to lease—The Secretary of the Interior is authorized and empowered, under general regulations to be fixed by him and under such terms and conditions as he may prescribe, not inconsistent with the terms of this section, to lease to citizens of the United States, or to any association of such persons, or to any corporation organized under the laws of the United States or of any State or Territory thereof, any part of the unallotted lands within any Indian reservation within the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Washington, or Wyoming withdrawn prior to June 30, 1919, from entry under the mining laws for the purpose of mining for deposits of gold, silver, copper, and other valuable metalliferous minerals, and nonmetalliferous minerals, not including oil and gas, which leases shall be irrevocable, except as herein provided, but which may be declared null and void upon breach of any of their terms.

Location of mining claims—Unallotted lands, or such portion thereof as the Secretary of the Interior shall determine, within Indian reservations withheld prior to June 30, 1919, from disposition under the mining laws may be declared by the Secretary of the Interior to be subject to exploration for the discovery of deposits of gold, silver, copper, and other valuable metalliferous minerals and nonmetalliferous minerals, not including oil and gas, by citizens of the United States, and after such declaration mining claims may be located by such citizens in the same manner as mining claims are located under the mining laws of the United States.

Preference right of locators of claims to lease of lands—The locators of all such mining claims, or their heirs, successors, or assigns, shall have a preference right to apply to the Secretary of the Interior for a lease, under the terms and conditions of this section, within one year after the date of the location of any mining claim, and any such locator who shall fail to apply for a lease within one year from the date of location shall forfeit all rights to such mining claim.

Filing copies of location notices—Duplicate copies of the location notice shall be filed within sixty days with the superintendent in charge of the reservation on which the mining claim is located, and application for a lease under this section may be filed with such superintendent for transmission, through official channels, to the Secretary of the Interior.

Lands excepted from entry as mining claims—Lands containing springs, water holes, or other bodies of water needed or used by the Indians for watering livestock, irrigation, or water-power purposes shall not be designated by the Secretary of the Interior as subject to entry under this section.

Term of lease; renewal—Leases under this section shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years, upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods.

Relinquishment of rights by lessee—The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease and upon acceptance thereof be thereby relieved of all future obligations under said lease.

Lease of additional land for camp sites and other purposes—In addition to areas of mineral land to be included in leases under this section the Secretary of the Interior, in his discretion, may grant to the lessee the right to use, during the life of the lease, subject to the payment of an annual rental of not less than $1 per acre, a tract of unoccupied land, not exceeding forty acres in area, for camp sites, milling, smelting, and refining works, and for other purposes connected with and necessary to the proper development and use of the deposits covered by the lease.

Reservation of surface of leased land to United States; easements—The Secretary of the Interior, in his discretion, in making any lease under this section, may reserve to the United States the right to lease for a term not exceeding that of the mineral lease, the surface of the lands embraced within such lease under existing law or laws hereafter enacted, insofar as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided*, That the said Secretary, during the life of the lease, is hereby authorized to issue such permits for easements herein provided to be reserved.

Rights and duties of successors to lessees—Any successor in interest or assignee of any lease granted under this section, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the conditions of the lease under which such rights are held and also subject to all the provisions and conditions of this section to the same extent as though such successor or assign were the original lessee hereunder.

Forfeiture of leases; notice—Any lease granted under this section may be forfeited and canceled by appropriate proceedings in the United States district court for the district in which said property or some part thereof is situated whenever the lessee, after reasonable notice in writing, as prescribed in the lease, shall fail to comply with the terms of this section or with such conditions

not inconsistent herewith as may be specifically recited in the lease.

Royalties payable by lessees—For the privilege of mining or extracting the mineral deposits in the ground covered by the lease the lessee shall pay to the United States, for the benefit of the Indians, a royalty which shall not be less than 5 per centum of the net value of the output of the minerals at the mine, due and payable at the end of each month succeeding that of the extraction of the minerals from the mine, and an annual rental, payable at the date of such lease and annually thereafter on the area covered by such lease, at the rate of not less than 25 cents per acre for the first calendar year thereafter; not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively; and not less than $1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year.

Development work by locators or lessees; damage to land—In addition to the payment of the royalties and rentals as herein provided the lessee shall expend annually not less than $100 in development work for each mining claim located or leased in the same manner as an annual expenditure for labor or improvements is required to be made under the mining laws of the United States: *Provided*, That the lessee shall also agree to pay all damages occasioned by reason of his mining operations to the land or allotment of any Indian or to the crops or improvements thereon.

Cutting timber by lessees—No timber shall be cut upon the reservation by the lessee except for mining purposes and then only after first obtaining a permit from the superintendent of the reservation and upon payment of the fair value thereof.

Examination of books and accounts of lessees—The Secretary of the Interior is authorized to examine the books and accounts of lessees, and to require them to submit statements, representations, or reports, including information as to cost of mining, all of which statements, representations, or reports so required shall be upon oath, unless otherwise specified, and in such form and upon such blanks as the Secretary of the Interior may require; and any person making any false statement, representation, or report under oath or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28 shall be subject to punishment as for perjury.

Disposition of rentals and royalties—All moneys received from royalties and rentals under the provisions of this section shall be deposited in the Treasury of the United States to the credit of the Indians belonging and having tribal rights on the reservation where the leased land is located, which moneys shall be at all times subject to appropriation by Congress for their benefit, unless otherwise provided by treaty or agreement ratified by Congress: *Provided*, That such moneys shall be subject to the laws authorizing the pro rata distribution of Indian tribal funds.

Protection of interests of Indians—The Secretary of the Interior is authorized to perform any and all acts and to make such rules and regulations not inconsistent with this section as may be necessary and proper for the protection of the interests of the Indians and for the purpose of carrying the provisions of this section into full force and effect: *Provided*, That nothing in this section shall be construed or held to affect the right of the States or other local authority to exercise any rights which they may have to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee.

Mining locations by and leases to Indians declared competent—Mining locations, under the terms of this section, may be made on unallotted lands within Indian reservations by Indians who have heretofore or may hereafter be declared by the Secretary of the Interior to be competent to manage their own affairs; and the said Secretary is authorized and empowered to lease such lands to such Indians in accordance with the provisions of this section.

Mining locations by and leases to other Indians—The Secretary of the Interior is authorized to permit other Indians to make locations and obtain leases under the provisions of this section, under such rules and regulations as he may prescribe in regard to the working, developing, disposition, and selling of the products, and the disposition of the proceeds thereof of any such mine by such Indians.

''Metalliferous'' defined—Wherever the term ''metalliferous'' is used in this section it shall be defined and construed by the Secretary of the Interior to include magnesite, gypsum, limestone, and asbestos.

(June 30, 1919, ch. 4, § 26, 41 Stat. 31; Mar. 3, 1921, ch. 119, 41 Stat. 1231; Dec. 16, 1926, ch. 12, 44 Stat. 922; Pub. L. 94–550, § 10, Oct. 18, 1976, 90 Stat. 2536.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to Title 30, Mineral Lands and Mining.

CODIFICATION

Act Mar. 3, 1921, defined the term ''metalliferous''.

AMENDMENTS

1976—Pub. L. 94–550 inserted ''or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28'' after ''under oath'' in paragraph authorizing Secretary of the Interior to examine books and accounts of lessees.

1926—Act Dec. 16, 1926, inserted ''and nonmetalliferous minerals, not including oil and gas'' after ''metalliferous minerals'' in first and second paragraphs and reenacted third, fourth, and fifth paragraphs without change.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1,2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 400. Leases for mining purposes of reserved and unallotted lands in Fort Peck and Blackfeet Indian Reservations

Lands reserved for school and agency purposes and all other unallotted lands on the Fort Peck and Blackfeet Indian Reservations, in the State of Montana, reserved from allotment or other disposition, may be leased for mining purposes under regulations prescribed by the Secretary of the Interior.

(Sept. 20, 1922, ch. 347, 42 Stat. 857.)

§ 400a. Lease for mining purposes of land reserved for agency or school; disposition of proceeds; royalty

The Secretary of the Interior is authorized under such rules and regulations as he may prescribe, to lease at public auction upon not less than thirty days' public notice for mining purposes land on any Indian reservation reserved for Indian agency or school purposes, in accordance with existing law applicable to other lands in such reservation, and the proceeds arising therefrom shall be deposited in the Treasury of the United States to the credit of the Indians for whose benefit the lands are reserved subject to appropriation by Congress for educational work among the Indians or in paying expenses of administration of agencies: *Provided*, That a royalty of at least one-eighth shall be reserved in all leases.

(Apr. 17, 1926, ch. 156, 44 Stat. 300.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1,2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 401. Leases for mining purposes of unallotted lands in Kaw Reservation

The Secretary of the Interior is authorized to lease for mining purposes lands reserved from allotment to be used as a cemetery and not needed for that purpose, and lands reserved for school and agency purposes in the Kaw Reservation in the State of Oklahoma, and for the use and benefit of the members of the Kansas or Kaw Tribe of Indians, at public auction, upon such terms and conditions and under such rules and regulations as he may prescribe: *Provided*, That the production of oil and gas and other minerals on such lands may be taxed by the State in which said lands are located in all respects the same as production on unrestricted lands, and the Secretary of the Interior is hereby authorized and directed to cause to be paid the tax so assessed against the royalty interests on said lands: *Provided, however*, That such tax shall not become a lien or charge of any kind or character against the land or the property of the Indian owner.

(Apr. 28, 1924, ch. 135, 43 Stat. 111.)

§ 402. Leases of surplus lands

The surplus lands of any tribe may be leased for farming purposes by the council of such tribe under the same rules and regulations and for the same term of years as was on August 15, 1894, allowed in the case of leases for grazing purposes.

(Aug. 15, 1894, ch. 290, § 1, 28 Stat. 305.)

§ 402a. Lease of unallotted irrigable lands for farming purposes

The unallotted irrigable lands on any Indian reservation may be leased for farming purposes for not to exceed ten years with the consent of the tribal council, business committee, or other authorized body representative of the Indians, under such rules and regulations as the Secretary of the Interior may prescribe.

(July 3, 1926, ch. 787, 44 Stat. 894.)

§ 403. Leases of lands held in trust

Any Indian allotment held under a trust patent may be leased by the allottee for a period not to exceed five years, subject to and in conformity with such rules and regulations as the Secretary of the Interior may prescribe, and the proceeds of any such lease shall be paid to the allottee or his heirs, or expended for his or their benefit, in the discretion of the Secretary of the Interior.

(June 25, 1910, ch. 431, § 4, 36 Stat. 856.)

§ 403a. Lease of lands on Port Madison and Snohomish or Tulalip Indian Reservations in Washington

Notwithstanding any other provision of law, any Indian lands on the Port Madison and Snohomish or Tulalip Indian Reservations in the State of Washington, may be leased by the Indians with the approval of the Secretary of the Interior, and upon such terms and conditions as he may prescribe, for a term not exceeding twenty-five years: *Provided, however*, That such leases may provide for renewal for an additional term not exceeding twenty-five years, and the Secretary of the Interior is hereby authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of this section.

(Oct. 9, 1940, ch. 781, 54 Stat. 1057.)

§ 403a–1. Sale or partition by owners of interests in allotted lands in the Tulalip Reservation; termination of Federal title, trust, and restrictions

Any owner of an interest in any tract of land in the Tulalip Reservation, Washington, in which any undivided interest is now or hereafter held in trust by the United States for an Indian, or is now or hereafter owned by an Indian subject to restrictions against alienation or taxation imposed by the United States, may commence in a State court of competent jurisdiction an action for the partition in kind or for the sale of such land in accordance with the laws of the State. For the purpose of any such action the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceeding, and any partition or conveyance of the land pursuant to the proceedings shall divest the United States of

title to the land, terminate the Federal trust, and terminate all restrictions against alienation or taxation of the land imposed by the United States.

(June 18, 1956, ch. 400, § 1, 70 Stat. 290.)

§ 403a–2. Acquisition, management, and disposal of lands by Tulalip Tribe

(a) Termination of Federal trust and restrictions on alienation

Notwithstanding the provisions of the constitution and charter of the Tulalip Tribes of the Tulalip Reservation, any lands that are held by the United States in trust for the Tulalip Tribes, or that are subject to a restriction against alienation or taxation imposed by the United States, or that are on and after June 18, 1956, acquired by the Tulalip Tribes, may be sold by the Tulalip Tribes, with the consent of the Secretary of the Interior, on such terms and conditions as the Tulalip board of directors may prescribe, and such sale shall terminate the Federal trust or restrictions against alienation or taxation of the land; except that the trust or restricted status of said lands may be retained, upon approval of the Secretary of the Interior, in any sale thereof to any member of the Tulalip Tribes.

(b) Lands in trust

The Secretary of the Interior may accept any transfer of title from the Tulalip Tribes for any land or fractional interest in land within the boundaries of the Tulalip Reservation, and take title to such land in the name of the United States in trust for the Tulalip Tribes, and such lands shall not be subject to taxation.

(c) Mortgages

The Tulalip Tribes may, with the approval of the Secretary of the Interior, execute mortgages or deeds of trust to land, the title to which is held by the Tulalip Tribes or by the United States in trust for the Tulalip Tribes. Such land shall be subject to foreclosure and sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the State of Washington. For the purpose of any foreclosure or sale proceeding, the Tulalip Tribes shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the foreclosure or sale proceeding, and any conveyance of the land pursuant to the foreclosure or sale proceeding shall divest the United States of title to the land. Title to any land redeemed or acquired by the Tulalip Tribes at such foreclosure or sale proceeding shall be taken in the name of the United States in trust for the tribes. Title to any land purchased by an individual Indian member of the Tulalip Tribes at such foreclosure sale or proceeding may, with the consent of the Secretary of the Interior, be taken in the name of the United States in trust for the individual Indian purchaser.

(d) Moneys or credits

Any moneys or credits received or credited to the Tulalip Tribes from the sale, exchange, mortgage, or granting of any security interest in any tribal land may be used for any tribal purpose.

(June 18, 1956, ch. 400, § 2, 70 Stat. 290; Pub. L. 91–274, § 1, June 2, 1970, 84 Stat. 301.)

AMENDMENTS

1970—Pub. L. 91–274 designated existing provisions as subsec. (a), substituted the Tulalip Tribes for the Tulalip Board of Directors as the agency authorized to sell tribal lands, provided for the continuance of the trust or restricted status of such lands where the purchaser thereof is any member of the Tulalip Tribes, and struck out proviso that the proceeds from the sale of tribal lands acquired otherwise than by purchase be deposited in the U.S. Treasury to the credit of the Tulalip Tribes, and added subsecs. (b) to (d).

§ 403b. Lease of restricted lands in State of Washington

Notwithstanding any other provisions of law, with the consent in writing of the individual Indian, association of Indians, or Indian tribe concerned, any restricted Indian lands situated within the State of Washington may be leased for religious, educational, recreational, business, or public purposes, including, but not limited to, airports, experimental station, stockyards, warehouses, and grain elevators, for periods not to exceed twenty-five years under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That nothing in this section or section 403c of this title shall be deemed to authorize such leases for the exploitation of any natural resources.

(Aug. 9, 1946, ch. 929, § 1, 60 Stat. 962.)

§ 403c. Identity of lessor; period of lease

Such leases may be made only by the individual Indian owner of the land or by the authorized representatives of the tribe or group of Indians to whom the land belongs, subject to the approval of the Secretary of the Interior or his authorized representative. Restricted allotments of deceased Indians, when the heirs or devisees cannot agree on a lease, may be leased for them in the manner prescribed by section 380 of this title. No lease shall be made by or on behalf of any tribe for a longer period than is or may be authorized by the tribal constitution, charter, or ordinances. Nothing contained in this section or section 403b of this title shall be construed to repeal any authority to lease restricted lands which any Indian, Indian tribe, or official of the Department of the Interior would have in the absence of such sections.

(Aug. 9, 1946, ch. 929, § 2, 60 Stat. 962.)

§ 404. Sale on petition of allottee or heirs

The lands, or any part thereof, allotted to any Indian, or any inherited interest therein, which can be sold under existing law by authority of the Secretary of the Interior, except the lands in Oklahoma and the States of Minnesota and South Dakota, may be sold on the petition of the allottee, or his heirs, on such terms and conditions and under such regulations as the Secretary of the Interior may prescribe; and the lands of a minor, or of a person deemed incompetent by the Secretary of the Interior to petition for himself, may be sold in the same manner, on the petition of the natural guardian in the case of infants, and in the case of Indians

deemed incompetent as aforesaid, and of orphans without a natural guardian, on petition of a person designated for the purpose by the Secretary of the Interior. When any Indian who has received an allotment of land dies before the expiration of the trust period, the Secretary of the Interior shall ascertain the legal heirs of such Indian, and if satisfied of their ability to manage their own affairs shall cause to be issued in their names a patent in fee simple for said lands; but if he finds them incapable of managing their own affairs, the land may be sold as hereinbefore provided: *Provided*, That the proceeds derived from all sales hereunder shall be used, during the trust period, for the benefit of the allottee, or heir, so disposing of his interest, under the supervision of the Commissioner of Indian Affairs: *And provided further*, That upon the approval of any sale hereunder by the Secretary of the Interior, he shall cause a patent in fee to issue in the name of the purchaser for the lands so sold: *And provided further*, That nothing in this section shall apply to the States of Minnesota and South Dakota.

(May 29, 1908, ch. 216, § 1, 35 Stat. 444.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

YAKIMA INDIAN RESERVATION, WASHINGTON

Special provisions for sale of interests of Indian minors in lands of the Yakima Indian reservation, in the State of Washington, whether by direct allotment or by inheritance, were made by act Mar. 27, 1908, ch. 107, 35 Stat. 49.

§ 405. Sale of allotment of noncompetent Indian

Any noncompetent Indian to whom a patent containing restrictions against alienation has been issued for an allotment of land in severalty, under any law or treaty, or who may have an interest in any allotment by inheritance, may sell or convey all or any part of such allotment or such inherited interest on such terms and conditions and under such rules and regulations as the Secretary of the Interior may prescribe, and the proceeds derived therefrom shall be used for the benefit of the allottee or heir so disposing of his land or interest, under the supervision of the Commissioner of Indian Affairs; and any conveyance made hereunder and approved by the Secretary of the Interior shall convey full title to the land or interest so sold, the same as if fee-simple patent had been issued to the allottee.

(Mar. 1, 1907, ch. 2285, 34 Stat. 1018.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 406. Sale of timber on lands held under trust

(a) Deductions for administrative expenses; standards guiding sales

The timber on any Indian land held under a trust or other patent containing restrictions on alienations may be sold by the owner or owners with the consent of the Secretary of the Interior, and the proceeds from such sales, after deductions for administrative expenses to the extent permissible under section 413 of this title, shall be paid to the owner or owners or disposed of for their benefit under regulations to be prescribed by the Secretary of the Interior. It is the intention of Congress that a deduction for administrative expenses may be made in any case unless the deduction would violate a treaty obligation or amount to a taking of private property for public use without just compensation in violation of the fifth amendment to the Constitution. Sales of timber under this subsection shall be based upon a consideration of the needs and best interests of the Indian owner and his heirs. The Secretary shall take into consideration, among other things, (1) the state of growth of the timber and the need for maintaining the productive capacity of the land for the benefit of the owner and his heirs, (2) the highest and best use of the land, including the advisability and practicality of devoting it to other uses for the benefit of the owner and his heirs, and (3) the present and future financial needs of the owner and his heirs.

(b) Undivided interests

Upon the request of the owners of a majority Indian interest in land in which any undivided interest is held under a trust or other patent containing restrictions on alienations, the Secretary of the Interior is authorized to sell all undivided Indian trust or restricted interests in any part of the timber on such land.

(c) Unrestricted interests

Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary of the Interior is authorized to include such unrestricted interest in a sale of the trust or restricted Indian interests in timber sold pursuant to this section, and to perform any functions required of him by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the deduction from such payments of sums in lieu of administrative expenses.

(d) Representation of minors and others

For the purposes of this Act, the Secretary of the Interior is authorized to represent any Indian owner (1) who is a minor, (2) who has been adjudicated non compos mentis, (3) whose ownership interest in a decedent's estate has not been determined, or (4) who cannot be located by the Secretary after a reasonable and diligent search and the giving of notice by publication.

(e) Emergency sales

The timber on any Indian land held under a trust or other patent containing restrictions on alienations may be sold by the Secretary of the

Interior without the consent of the owners when in his judgment such action is necessary to prevent loss of values resulting from fire, insects, disease, windthrow, or other natural catastrophes.

(f) Change in status without affecting contractual obligations

A change from a trust or restricted status to an unrestricted status of any interest in timber that has been sold pursuant to this section shall not affect the obligations of the Secretary of the Interior under any contract of sale that is in effect at the time such change in status occurs.

(June 25, 1910, ch. 431, § 8, 36 Stat. 857; Pub. L. 88–301, Apr. 30, 1964, 78 Stat. 187.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d), is act June 25, 1910, ch. 431, 36 Stat. 855, as amended, which enacted sections 47, 93, 151, 202, 337, 344a, 351, 352, 353, 372, 403, 406, 407, and 408 of this title, sections 6a–1 and 16a of Title 41, Public Contracts, and section 148 of Title 43, Public Lands, and amended sections 191, 312, 331, 333, and 336 of this title and sections 104 and 107 of former Title 18, Criminal Code and Criminal Procedure. Sections 104 and 107 of former Title 18 were repealed and reenacted as sections 1853 and 1856 of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, 62 Stat. 683. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1964—Pub. L. 88–301 designated existing provisions as subsec. (a), substituted ''land'' for ''allotment'', ''owner or owners'' for ''allottee'' in two places, and ''their benefit'' for ''his benefit'', and provided for deductions for administrative expenses from proceeds of sales without violation of treaty obligations or Constitutional compensation provision, for consideration of needs and best interests of owners and heirs, and for standards guiding sales, and added subsecs. (b) to (f).

§ 407. Sale of timber on unallotted lands

Under regulations prescribed by the Secretary of the Interior, the timber on unallotted trust land in Indian reservations or on other land held in trust for tribes may be sold in accordance with the principles of sustained-yield management or to convert the land to a more desirable use. After deduction, if any, for administrative expenses under section 413 of this title, the proceeds of the sale shall be used—

(1) as determined by the governing bodies of the tribes concerned and approved by the Secretary, or

(2) in the absence of such a governing body, as determined by the Secretary for the tribe concerned.

(June 25, 1910, ch. 431, § 7, 36 Stat. 857; Pub. L. 88–301, Apr. 30, 1964, 78 Stat. 186; Pub. L. 100–580, § 13, Oct. 31, 1988, 102 Stat. 2936.)

AMENDMENTS

1988—Pub. L. 100–580 amended section generally. Prior to amendment, section read as follows: ''The timber on unallotted lands of any Indian reservation may be sold in accordance with the principles of sustained yield, or in order to convert the land to a more desirable use, under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales, after deductions for administrative expenses pursuant to section 413 of this title, shall be used for the benefit of the Indians who are members of the tribe or tribes concerned in such manner as he may direct.''

1964—Pub. L. 88–301 substituted ''timber'' for ''mature living and dead and down timber'', provided for sale of timber in accordance with principles of sustained yield or in order to convert the land to a more desirable use, provided for deductions for administrative expenses from proceeds of sales, made the Indians who were tribal members the beneficiaries instead of the Indians of the reservation, and struck out proviso which made section inapplicable to Minnesota and Wisconsin.

§§ 407a to 407c. Omitted

CODIFICATION

Section 407a, acts Mar. 4, 1933, ch. 275, § 1, 47 Stat. 1568; June 16, 1933, ch. 104, 48 Stat. 311; Mar. 5, 1934, ch. 46, 48 Stat. 397; May 6, 1936, ch. 340, 49 Stat. 1266, which related to modification of existing contracts for sale of tribal timber, was omitted on authority of act May 6, 1936, which provided that authority to modify existing contracts for sale of tribal timber expire on Sept. 4, 1936.

Section 407b, act Mar. 4, 1933, ch. 275, § 2, 47 Stat. 1569, which related to modification of contracts for sale of timber to individual allottee, was omitted in view of the expiration of section 407a of this title.

Section 407c, act Mar. 4, 1933, ch. 275, § 3, 47 Stat. 1569, which related to preference to indian labor in modified contracts, was omitted in view of the expiration of section 407a of this title.

§ 407d. Charges for special services to purchasers of timber

The Secretary of the Interior is authorized to charge purchasers of timber on Indian lands that are held by the United States in trust, or that are subject to restrictions against alienation or encumbrance imposed by the United States, for special services requested by the purchasers in connection with scaling, timber marking, or other activities under the contract of purchase that are in addition to the services otherwise provided by the Secretary, and the proceeds derived therefrom shall be deposited to the credit of the appropriation from which the special services were or will be provided.

(July 30, 1956, ch. 781, 70 Stat. 721.)

§ 408. Surrender of allotments by relinquishment for benefit of children

In any case where an Indian has an allotment of land, or any right, title, or interest in such an allotment, the Secretary of the Interior, in his discretion, may permit such Indian to surrender such allotment, or any right, title, or interest therein, by such formal relinquishment as may be prescribed by the Secretary of the Interior, for the benefit of any of his or her children to whom no allotment of land shall have been made; and thereupon the Secretary of the Interior shall cause the estate so relinquished to be allotted to such child or children subject to all conditions which attached to it before such relinquishment.

(June 25, 1910, ch. 431, § 3, 36 Stat. 856.)

§ 409. Sale of lands within reclamation projects

Any Indian allotted lands under any law or treaty without the power of alienation, and within a reclamation project approved by the Secretary of the Interior, may sell and convey any part thereof, under rules and regulations prescribed by the Secretary of the Interior, but

such conveyance shall be subject to his approval, and when so approved shall convey full title to the purchaser the same as if final patent without restrictions had been issued to the allottee: *Provided*, That the consideration shall be placed in the Treasury of the United States, and used by the Commissioner of Indian Affairs to pay the construction charges that may be assessed against the unsold part of the allotment, and to pay the maintenance charges thereon during the trust period, and any surplus shall be a benefit running with the water right to be paid to the holder thereof.

(June 21, 1906, ch. 3504, 34 Stat. 327.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 409a. Sale of restricted lands; reinvestment in other restricted lands

Whenever any nontaxable land of a restricted Indian of the Five Civilized Tribes or of any other Indian tribe is sold to any State, county, or municipality for public-improvement purposes, or is acquired, under existing law, by any State, county, or municipality by condemnation or other proceedings for such public purposes, or is sold under existing law to any other person or corporation for other purposes, the money received for said land may, in the discretion and with the approval of the Secretary of the Interior, be reinvested in other lands selected by said Indian, and such land so selected and purchased shall be restricted as to alienation, lease, or incumbrance, and nontaxable in the same quantity and upon the same terms and conditions as the nontaxable lands from which the reinvested funds were derived, and such restrictions shall appear in the conveyance.

(Mar. 2, 1931, ch. 374, 46 Stat. 1471; June 30, 1932, ch. 333, 47 Stat. 474.)

AMENDMENTS

1932—Act June 30, 1932, made section applicable to lands of any restricted Indian of any other Indian tribe, and provided for sale of lands to any State and acquisition by any State instead of only to and by the State of Oklahoma.

§ 410. Moneys from lease or sale of trust lands not liable for certain debts

No money accruing from any lease or sale of lands held in trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, or, in case of a minor, during his minority, except with the approval and consent of the Secretary of the Interior.

(June 21, 1906, ch. 3504, 34 Stat. 327.)

§ 411. Interest on moneys from proceeds of sale

The shares of money due minor Indians as their proportion of the proceeds from the sale of ceded or tribal Indian lands, whenever such shares have been withheld from their parents, legal guardians, or others, and retained in the United States Treasury by direction of the Secretary of the Interior, shall draw interest at the rate of 3 per centum per annum, unless otherwise provided for, from the period when such proceeds have been or shall be distributed per capita among the members of the tribe of which such minor is a member; and the Secretary of the Treasury is authorized and directed to allow interest on such unpaid amounts belonging to said minors as shall be certified by the Secretary of the Interior as entitled to draw interest under this section.

(June 21, 1906, ch. 3504, 34 Stat. 327.)

§ 412. Payment of taxes from share of allottee in tribal funds

In any case where the restrictions as to alienation have been removed with respect to any Indian allottee, or as to any portion of the lands of any Indian allottee, and such allottee as an individual, or as a member of any tribe, has an interest in any fund held by the United States beyond the amount by law chargeable to such Indian or tribe on account of advances, the Commissioner of Indian Affairs is authorized, prior to the date at which any penalties for the nonpayment of taxes would accrue under the laws of the State or Territory in which such land is situated, to pay such taxes and charge the amount thereof to such allottee, to be deducted from the share of such allottee in the final distribution or payment to him from such fund: *Provided*, That no such payment shall be made by said Commissioner where it is in excess of the amount which will ultimately be due said allottee.

(Mar. 1, 1907, ch. 2285, 34 Stat. 1016.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 412a. Exemption from taxation of lands subject to restrictions against alienation; determination of homestead

All homesteads, heretofore purchased out of the trust or restricted funds of individual Indians, are hereby declared to be instrumentalities of the Federal Government and shall be nontaxable until otherwise directed by Congress: *Provided*, That the title to such homesteads shall be held subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior: *And provided further*, That the Indian owner or owners shall select, with the approval of the Secretary of the Interior, either the agricultural and grazing lands, not exceeding a total of one hundred and sixty acres, or the village, town, or city property, not exceeding in cost $5,000, to be designated as a homestead.

(June 20, 1936, ch. 622, §2, 49 Stat. 1542; May 19, 1937, ch. 227, 50 Stat. 188.)

AMENDMENTS

1937—Act May 19, 1937, substituted ''All homesteads'' and ''individual Indians'' for ''All lands the title to which is now held by an Indian subject to restrictions against alienation or encumbrance except with the consent or approval of the Secretary of the Interior'' and ''said Indian'', respectively, and inserted two provisos.

§ 413. Fees to cover cost of work performed for Indians

The Secretary of the Interior is hereby authorized, in his discretion, and under such rules and regulations as he may prescribe, to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or for individual Indians, to be paid by vendees, lessees, or assignees, or deducted from the proceeds of sale, leases, or other sources of revenue: *Provided*, That the amounts so collected shall be covered into the Treasury as miscellaneous receipts, except when the expenses of the work are paid from Indian tribal funds, in which event they shall be credited to such funds.

(Feb. 14, 1920, ch. 75, § 1, 41 Stat. 415; Mar. 1, 1933, ch. 158, 47 Stat. 1417.)

AMENDMENTS

1933—Act Mar. 1, 1933, substituted ''to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or individual Indians'' for ''to charge a reasonable fee for the work incident to the sale, leasing, or assigning of such lands, or in the sale of the timber, or in the administration of Indian forests'' and ''deducted from the proceeds of sale, leases, or other sources of revenue'' for ''from the proceeds of sales'', struck out introductory text ''In the sale of all Indian allotments, or in leases, or assignment of leases covering, tribal or allotted lands for mineral, farming, grazing, business or other purposes, or in the sale of timber thereon'' and provided for the use of discretion and the crediting of Indian tribal funds.

§ 414. Reservation of minerals in sale of Choctaw-Chickasaw lands

On and after August 25, 1937, in all sales of tribal lands of the Choctaw and Chickasaw Indians in Oklahoma provided for by existing law, the Secretary of the Interior is hereby authorized to offer such lands for sale subject to a reservation of the mineral rights therein, including oil and gas, for the benefit of said Indians, whenever in his judgment the interests of the Indians will best be served thereby.

(Aug. 25, 1937, ch. 778, 50 Stat. 810.)

§ 415. Leases of restricted lands

(a) Authorized purposes; term; approval by Secretary

Any restricted Indian lands, whether tribally, or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Pueblo of Santa Ana (with the exception of the lands known as the ''Santa Ana Pueblo Spanish Grant''), the reservation of the Confederated Tribes of the Warm Springs Reservation of Oregon, the Moapa Indian Reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Burns Paiute Reservation, the Coeur d'Alene Indian Reservation, the Kalispel Indian Reservation, the pueblo of Cochiti, the pueblo of Pojoaque, the pueblo of Tesuque, the pueblo of Zuni, the Hualapai Reservation, the Spokane Reservation, the San Carlos Apache Reservation, the Yavapai-Prescott Community Reservation, the Pyramid Lake Reservation, the Gila River Reservation, the Soboba Indian Reservation, the Viejas Indian Reservation, the Tulalip Indian Reservation, the Navajo Reservation, the Cabazon Indian Reservation, the Muckleshoot Indian Reservation and land held in trust for the Muckleshoot Indian Tribe, the Mille Lacs Indian Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society, leases of the the[1] lands comprising the Moses Allotment Numbered 8 and the Moses Allotment Numbered 10, Chelan County, Washington, and lands held in trust for the Las Vegas Paiute Tribe of Indians, and lands held in trust for the Twenty-nine Palms Band of Luiseno Mission Indians, and lands held in trust for the Reno Sparks Indian Colony, lands held in trust for the Torres Martinez Desert Cahuilla Indians, lands held in trust for the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria, lands held in trust for the Confederated Tribes of the Umatilla Indian Reservation, lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon, and lands held in trust for the Cow Creek Band of Umpqua Tribe of Indians, land held in trust for the Prairie Band Potawatomi Nation, lands held in trust for the Cherokee Nation of Oklahoma, land held in trust for the Fallon Paiute Shoshone Tribes, lands held in trust for the Pueblo of Santa Clara, land held in trust for the Yurok Tribe, land held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria, lands held in trust for the Yurok Tribe, lands held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria, lands held in trust for the Confederated Tribes of the Colville Reservation, lands held in trust for the Cahuilla Band of Indians of California, lands held in trust for the Confederated Tribes of the Grand Ronde Community of Oregon, and the lands held in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation, which may be for a term of not to exceed ninety-nine years, and except leases of land held in trust for the Morongo

[1] So in original.

Band of Mission Indians which may be for a term of not to exceed 50 years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years. Leases for public, religious, educational, recreational, residential, or business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. Prior to approval of any lease or extension of an existing lease pursuant to this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

(b) Leases involving Tulalip Tribes

Any lease by the Tulalip Tribes under subsection (a) of this section, except a lease for the exploitation of any natural resource, shall not require the approval of the Secretary of the Interior (1) if the term of the lease does not exceed fifteen years, with no option to renew, (2) if the term of the lease does not exceed thirty years, with no option to renew, and the lease is executed pursuant to tribal regulations previously approved by the Secretary of the Interior, or (3) if the term does not exceed seventy-five years (including options to renew), and the lease is executed under tribal regulations approved by the Secretary under this clause (3).

(c) Leases involving Hopi Tribe and Hopi Partitioned Lands Accommodation Agreement

Notwithstanding subsection (a) of this section, a lease of land by the Hopi Tribe to Navajo Indians on the Hopi Partitioned Lands may be for a term of 75 years, and may be extended at the conclusion of the term of the lease.

(d) Definitions

For purposes of this section—

(1) the term ''Hopi Partitioned Lands'' means lands located in the Hopi Partitioned Area, as defined in section 168.1(g) of title 25, Code of Federal Regulations (as in effect on October 11, 1996);

(2) the term ''Navajo Indians'' means members of the Navajo Tribe;

(3) the term ''individually owned Navajo Indian allotted land'' means a single parcel of land that—

(A) is located within the jurisdiction of the Navajo Nation;

(B) is held in trust or restricted status by the United States for the benefit of Navajo Indians or members of another Indian tribe; and

(C) was—

(i) allotted to a Navajo Indian; or

(ii) taken into trust or restricted status by the United States for an individual Indian;

(4) the term ''interested party'' means an Indian or non-Indian individual or corporation, or tribal or non-tribal government whose interests could be adversely affected by a tribal trust land leasing decision made by the Navajo Nation;

(5) the term ''Navajo Nation'' means the Navajo Nation government that is in existence on August 9, 1955, or its successor;

(6) the term ''petition'' means a written request submitted to the Secretary for the review of an action (or inaction) of the Navajo Nation that is claimed to be in violation of the approved tribal leasing regulations;

(7) the term ''Secretary'' means the Secretary of the Interior; and

(8) the term ''tribal regulations'' means the Navajo Nation regulations enacted in accordance with Navajo Nation law and approved by the Secretary.

(e) Leases of restricted lands for the Navajo Nation

(1) Any leases by the Navajo Nation for purposes authorized under subsection (a) of this section, and any amendments thereto, except a lease for the exploration, development, or extraction of any mineral resources, shall not require the approval of the Secretary if the lease is executed under the tribal regulations approved by the Secretary under this subsection and the term of the lease does not exceed—

(A) in the case of a business or agricultural lease, 25 years, except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years; and

(B) in the case of a lease for public, religious, educational, recreational, or residential purposes, 75 years if such a term is provided for by the Navajo Nation through the promulgation of regulations.

(2) Paragraph (1) shall not apply to individually owned Navajo Indian allotted land.

(3) The Secretary shall have the authority to approve or disapprove tribal regulations referred to under paragraph (1). The Secretary shall approve such tribal regulations if such regulations are consistent with the regulations of the Secretary under subsection (a) of this section, and any amendments thereto, and provide for an environmental review process. The Secretary shall review and approve or disapprove the regulations of the Navajo Nation within 120 days of the submission of such regulations to the Secretary. Any disapproval of such regulations by the Secretary shall be accompanied by written documentation that sets forth the basis for the disapproval. Such 120-day period may be extended by the Secretary after consultation with the Navajo Nation.

(4) If the Navajo Nation has executed a lease pursuant to tribal regulations under paragraph (1), the Navajo Nation shall provide the Secretary with—

(A) a copy of the lease and all amendments and renewals thereto; and

(B) in the case of regulations or a lease that permits payment to be made directly to the Navajo Nation, documentation of the lease payments sufficient to enable the Secretary to discharge the trust responsibility of the United States under paragraph (5).

(5) The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1), including the Navajo Nation. Nothing in this paragraph shall be construed to diminish the authority of the Secretary to take appropriate actions, including the cancellation of a lease, in furtherance of the trust obligation of the United States to the Navajo Nation.

(6)(A) An interested party may, after exhaustion of tribal remedies, submit, in a timely manner, a petition to the Secretary to review the compliance of the Navajo Nation with any regulations approved under this subsection. If upon such review the Secretary determines that the regulations were violated, the Secretary may take such action as may be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming responsibility for the approval of leases for Navajo Nation tribal trust lands.

(B) If the Secretary seeks to remedy a violation described in subparagraph (A), the Secretary shall—

(i) make a written determination with respect to the regulations that have been violated;

(ii) provide the Navajo Nation with a written notice of the alleged violation together with such written determination; and

(iii) prior to the exercise of any remedy or the rescission of the approval of the regulation involved and the reassumption of the lease approval responsibility, provide the Navajo Nation with a hearing on the record and a reasonable opportunity to cure the alleged violation.

(f) Leases involving Gila River Indian Community Reservation; arbitration of disputes

Any contract, including a lease or construction contract, affecting land within the Gila River Indian Community Reservation may contain a provision for the binding arbitration of disputes arising out of such contract. Such contracts shall be considered within the meaning of ''commerce'' as defined and subject to the provisions of section 1 of title 9. Any refusal to submit to arbitration pursuant to a binding agreement for arbitration or the exercise of any right conferred by title 9 to abide by the outcome of arbitration pursuant to the provisions of chapter 1 of title 9, sections 1 through 14, shall be deemed to be a civil action arising under the Constitution, laws or treaties of the United States within the meaning of section 1331 of title 28.

(g) Lease of tribally-owned land by Assiniboine and Sioux Tribes of the Fort Peck Reservation

(1) In general

Notwithstanding subsection (a) of this section and any regulations under part 162 of title 25, Code of Federal Regulations (or any successor regulation), subject to paragraph (2), the Assiniboine and Sioux Tribes of the Fort Peck Reservation may lease to the Northern Border Pipeline Company tribally-owned land on the Fort Peck Indian Reservation for 1 or more interstate gas pipelines.

(2) Conditions

A lease entered into under paragraph (1)—

(A) shall commence during fiscal year 2011 for an initial term of 25 years;

(B) may be renewed for an additional term of 25 years; and

(C) shall specify in the terms of the lease an annual rental rate—

(i) which rate shall be increased by 3 percent per year on a cumulative basis for each 5-year period; and

(ii) the adjustment of which in accordance with clause (i) shall be considered to satisfy any review requirement under part 162 of title 25, Code of Federal Regulations (or any successor regulation).

(Aug. 9, 1955, ch. 615, §1, 69 Stat. 539; Pub. L. 86–326, Sept. 21, 1959, 73 Stat. 597; Pub. L. 86–505, §2, June 11, 1960, 74 Stat. 199; Pub. L. 87–375, Oct. 4, 1961, 75 Stat. 804; Pub. L. 87–785, Oct. 10, 1962, 76 Stat. 805; Pub. L. 88–167, Nov. 4, 1963, 77 Stat. 301; Pub. L. 89–408, Apr. 27, 1966, 80 Stat. 132; Pub. L. 90–182, Dec. 8, 1967, 81 Stat. 559; Pub. L. 90–184, Dec. 10, 1967, 81 Stat. 560; Pub. L. 90–335, §1(f), June 10, 1968, 82 Stat. 175; Pub. L. 90–355, June 20, 1968, 82 Stat. 242; Pub. L. 90–534, §6, Sept. 28, 1968, 82 Stat. 884; Pub. L. 90–570, Oct. 12, 1968, 82 Stat. 1003; Pub. L. 91–274, §§2, 3, June 2, 1970, 84 Stat. 302; Pub. L. 91–275, §§1, 2, June 2, 1970, 84 Stat. 303; Pub. L. 91–557, §8, Dec. 17, 1970, 84 Stat. 1468; Pub. L. 92–182, §6, Dec. 15, 1971, 85 Stat. 626; Pub. L. 92–431, Sept. 26, 1972, 86 Stat. 723; Pub. L. 92–472, §7, Oct. 9, 1972, 86 Stat. 788; Pub. L. 92–488, §4, Oct. 13, 1972, 86 Stat. 806; Pub. L. 96–216, Mar. 27, 1980, 94 Stat. 125; Pub. L. 96–491, §3, Dec. 2, 1980, 94 Stat. 2564; Pub. L. 97–459, title I, §107, Jan. 12, 1983, 96 Stat. 2516; Pub. L. 98–70, Aug. 8, 1983, 97 Stat. 401; Pub. L. 98–203, §1(c), Dec. 2, 1983, 97 Stat. 1384; Pub. L. 99–221, §2, Dec. 26, 1985, 99 Stat. 1735; Pub. L. 99–389, §3(a), Aug. 23, 1986, 100 Stat. 829; Pub. L. 99–500, §101(h) [title I, §122], Oct. 18, 1986, 100 Stat. 1783–242, 1783–267, and Pub. L. 99–591, §101(h) [title I, §122], Oct. 30, 1986, 100 Stat. 3341–242, 3341–267; Pub. L. 99–575, §5, Oct. 28, 1986, 100 Stat. 3246; Pub. L. 101–630, title II, §201, Nov. 28, 1990, 104 Stat. 4532; Pub. L. 102–497, §5, Oct. 24, 1992, 106 Stat. 3255; Pub. L. 103–435, §5, Nov. 2, 1994, 108 Stat. 4569; Pub. L. 104–301, §9, Oct. 11, 1996, 110 Stat. 3652; Pub. L. 105–256, §1, Oct. 14, 1998, 112 Stat. 1896; Pub. L. 106–216, §1(a), June 20, 2000, 114 Stat. 343; Pub. L. 106–568, title XII, §1203, Dec. 27, 2000, 114 Stat. 2934; Pub. L. 107–102, §1, Dec. 27, 2001, 115 Stat. 974; Pub. L. 107–159, Apr. 4, 2002, 116 Stat. 122; Pub. L. 107–331, title X, §1002(a), Dec. 13, 2002, 116 Stat. 2869; Pub. L. 108–199, div. H, §149, Jan. 23, 2004, 118 Stat. 446; Pub. L. 109–147, §1(a), Dec. 22, 2005, 119 Stat. 2679; Pub. L. 109–221, title II, §202(a), May 12, 2006, 120 Stat. 340; Pub. L. 110–453, title II, §§202, 204, 205(a), Dec. 2, 2008, 122 Stat. 5029.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–453, § 205(a), inserted ''and lands held in trust for the Cow Creek Band of Umpqua Tribe of Indians,'' after ''lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon,''.

Pub. L. 110–453, § 204, inserted ''and except leases of land held in trust for the Morongo Band of Mission Indians which may be for a term of not to exceed 50 years,'' after ''which may be for a term of not to exceed ninety-nine years,''.

Subsec. (f). Pub. L. 110–453, § 202, substituted ''lease or construction contract, affecting'' for ''lease, affecting''.

2006—Subsec. (a). Pub. L. 109–221, in second sentence, substituted ''Moapa Indian Reservation'' for ''Moapa Indian reservation'' and ''the lands comprising the Moses Allotment Numbered 8 and the Moses Allotment Numbered 10, Chelan County, Washington,'' for ''lands comprising the Moses Allotment Numbered 10, Chelan County, Washington,,'' and inserted ''the Confederated Tribes of the Umatilla Indian Reservation,'' before ''the Burns Paiute Reservation'', ''the'' before ''Yavapai-Prescott'', ''the Muckleshoot Indian Reservation and land held in trust for the Muckleshoot Indian Tribe,'' after ''the Cabazon Indian Reservation,'', ''land held in trust for the Prairie Band Potawatomi Nation,'' before ''lands held in trust for the Cherokee Nation of Oklahoma'', ''land held in trust for the Fallon Paiute Shoshone Tribes,'' before ''lands held in trust for the Pueblo of Santa Clara'', and ''land held in trust for the Yurok Tribe, land held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria,'' after ''Pueblo of Santa Clara,''.

2005—Subsec. (f). Pub. L. 109–147 substituted ''Any contract, including a lease, affecting land'' for ''Any lease entered into under sections 415 to 415d of this title, or any contract entered into under section 81 of this title, affecting land'', ''such contract'' for ''such lease or contract'', and ''Such contracts'' for ''Such leases or contracts entered into pursuant to such Acts''.

2004—Subsec. (g). Pub. L. 108–199 added subsec. (g).

2002—Subsec. (a). Pub. L. 107–331 inserted ''lands held in trust for the Yurok Tribe, lands held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria,'' after ''Pueblo of Santa Clara,''.

Subsec. (f). Pub. L. 107–159 added subsec. (f).

2001—Subsec. (a). Pub. L. 107–102 inserted '', the reservation of the Confederated Tribes of the Warm Springs Reservation of Oregon,'' after ''Spanish Grant')'' and ''lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon'' before '', lands held in trust for the Cherokee Nation of Oklahoma''.

2000—Subsec. (a). Pub. L. 106–216 inserted ''lands held in trust for the Torres Martinez Desert Cahuilla Indians, lands held in trust for the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria, lands held in trust for the Confederated Tribes of the Umatilla Indian Reservation'' after ''Sparks Indian Colony,''.

Subsec. (d)(3) to (8). Pub. L. 106–568, § 1203(1), added pars. (3) to (8).

Subsec. (e). Pub. L. 106–568, § 1203(2), added subsec. (e).

1998—Subsec. (a). Pub. L. 105–256, in second sentence, inserted ''the Cabazon Indian Reservation,'' after ''the Navajo Reservation,'' and ''lands held in trust for the Confederated Tribes of the Grand Ronde Community of Oregon,'' after ''lands held in trust for the Cahuilla Band of Indians of California,''.

1996—Subsecs. (c), (d). Pub. L. 104–301 added subsecs. (c) and (d).

1994—Subsec. (a). Pub. L. 103–435 inserted ''the Viejas Indian Reservation,'' after ''Soboba Indian Reservation,'' in second sentence.

1992—Subsec. (a). Pub. L. 102–497, in second sentence, inserted ''lands held in trust for the Pueblo of Santa Clara, lands held in trust for the Confederated Tribes of the Colville Reservation, lands held in trust for the Cahuilla Band of Indians of California,'' after ''Oklahoma,''.

1990—Subsec. (a). Pub. L. 101–630 inserted ''the Mille Lacs Indian Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society,'' after ''the Navajo Reservation,''.

1986—Subsec. (a). Pub. L. 99–575 inserted ''the Pueblo of Santa Ana (with the exception of the lands known as the 'Santa Ana Pueblo Spanish Grant')'' after ''the Dania Reservation,''.

Pub. L. 99–389 inserted '', and lands held in trust for the Reno Sparks Indian Colony,''.

Subsec. (b). Pub. L. 99–500 and Pub. L. 99–591 added cl. (3).

1985—Pub. L. 99–221 inserted '', lands held in trust for the Cherokee Nation of Oklahoma,''.

1983—Subsec. (a). Pub. L. 98–203 inserted '', and lands held in trust for the Las Vegas Paiute Tribe of Indians,''.

Pub. L. 98–70 inserted '', and lands held in trust for the Twenty-nine Palms Band of Luiseno Mission Indians, and the lands held in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana''.

Pub. L. 97–459 struck out ''and'' before ''leases of land on the Agua Caliente'' and authorized ninety-nine year leases of land on the Devils Lake Sioux Reservation to the Devils Lake Sioux Tribe or any organization of such tribe.

1980—Subsec. (a). Pub. L. 96–491 inserted ''the Moapa Indian reservation''.

Pub. L. 96–216 inserted provisions relating to lands comprising the Moses Allotment Numbered 10, Chelan County, Washington.

1972—Subsec. (a). Pub. L. 92–488 inserted ''the Burns Paiute Reservation,'' after ''the Fort Mojave Reservation,''.

Pub. L. 92–472 inserted ''the Coeur d'Alene Indian Reservation,'' after ''the Fort Mojave Reservation,''.

Pub. L. 92–431 inserted provision excepting leases of land located outside the boundaries of Indian reservations in State of New Mexico from the twenty-five year time limit.

1971—Subsec. (a). Pub. L. 92–182 inserted ''the Kalispel Indian Reservation'' after ''the Fort Mojave Reservation''.

1970—Subsec. (a). Pub. L. 91–557 inserted ''the Soboba Indian Reservation,'' after ''Gila River Reservation,''.

Pub. L. 91–275 inserted ''Yavapai-Prescott Community Reservation,'' after ''San Carlos Apache Reservation,'' and inserted list of factors that the Secretary must consider before approving a lease or an extension of an existing lease.

Pub. L. 91–274, §§ 2, 3, designated existing provisions as subsec. (a) and inserted ''the Tulalip Indian Reservation,'' after ''the Gila River Reservation,''.

Subsec. (b). Pub. L. 91–274, § 3, added subsec. (b).

1968—Pub. L. 90–570 inserted ''the pueblo of Cochiti, the pueblo of Pojoaque, the pueblo of Tesuque, the pueblo of Zuni,'' after ''Fort Mojava Reservation,''.

Pub. L. 90–534 inserted ''the Swinomish Indian Reservation,'' after ''Dania Reservation,''.

Pub. L. 90–355 inserted ''the Hualapai Reservation,'' after ''Fort Mojave Reservation,''.

Pub. L. 90–335 inserted ''the Spokane Reservation,'' after ''the Fort Mojave Reservation''.

1967—Pub. L. 90–184 inserted ''the San Carlos Apache Reservation'' after ''Fort Mojave Reservation''.

Pub. L. 90–182 inserted ''the Gila Reservation,'' after ''Pyramid Lake Reservation''.

1966—Pub. L. 89–408 inserted ''the Pyramid Lake Reservation'' after ''Fort Mojave Reservation,''.

1963—Pub. L. 88–167 inserted ''the Fort Mojave Reservation,'' after ''Southern Ute Reservation''.

1962—Pub. L. 87–785 authorized leases for not more than 99 years of lands on Southern Ute Reservation.

1961—Pub. L. 87–375 authorized longer term leases of Indian lands on Dania Reservation and excepted from renewal leases the initial term of which extends for more than 74 years.

1960—Pub. L. 86–505 authorized leases for not more than 99 years of lands on Navajo Reservation.

1959—Pub. L. 86–326 substituted ''except leases of land on the Agua Caliente (Palm Springs) Reservation which may be for a term of not to exceed ninety-nine years, and except leases of land for grazing purposes which may'' for ''excepting leases for grazing purposes, which shall'', in second sentence.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–453, title II, § 205(b), Dec. 2, 2008, 122 Stat. 5030, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any lease entered into or renewed after the date of the enactment of this Act [Dec. 2, 2008].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–221, title II, § 202(b), May 12, 2006, 120 Stat. 341, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any lease entered into or renewed after the date of enactment of this Act [May 12, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–147, § 1(b), Dec. 22, 2005, 119 Stat. 2679, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in Public Law 107–159 (116 Stat. 122).''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–331, title X, § 1002(b), Dec. 13, 2002, 116 Stat. 2870, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any lease entered into or renewed after the date of the enactment of this title [Dec. 13, 2002].''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–102, § 3, Dec. 27, 2001, 115 Stat. 975, provided that: ''This Act [amending this section] shall take effect as of April 12, 2000.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–216, § 1(b), June 20, 2000, 114 Stat. 343, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any lease entered into or renewed after the date of the enactment of this Act [June 20, 2000].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 6(a) of Pub. L. 99–575 provided in part that the amendment made by Pub. L. 99–575 is effective Oct. 28, 1986.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–568, title XII, § 1201, Dec. 27, 2000, 114 Stat. 2933, provided that: ''This title [amending this section and enacting provisions set out as a note under this section] may be cited as the 'Navajo Nation Trust Land Leasing Act of 2000'.''

SHORT TITLE OF 1985 AMENDMENT

Section 1 of Pub. L. 99–221 provided that: ''This Act [amending this section, section 450i of this title, section 3121 of Title 26, Internal Revenue Code, and section 410 of Title 42, The Public Health and Welfare, and enacting a provision set out as a note under section 410 of Title 42] may be cited as the 'Cherokee Leasing Act'.''

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES

Pub. L. 106–568, title XII, § 1202, Dec. 27, 2000, 114 Stat. 2933, provided that:

''(a) FINDINGS.—Recognizing the special relationship between the United States and the Navajo Nation and its members, and the Federal responsibility to the Navajo people, Congress finds that—

''(1) the third clause of section 8, Article I of the United States Constitution provides that 'The Congress shall have Power * * * to regulate Commerce * * * with Indian tribes', and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

''(2) Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

''(3) the United States has a trust obligation to guard and preserve the sovereignty of Indian tribes in order to foster strong tribal governments, Indian self-determination, and economic self-sufficiency;

''(4) pursuant to the first section of the Act of August 9, 1955 (25 U.S.C. 415), Congress conferred upon the Secretary of the Interior the power to promulgate regulations governing tribal leases and to approve tribal leases for tribes according to regulations promulgated by the Secretary;

''(5) the Secretary of the Interior has promulgated the regulations described in paragraph (4) at part 162 of title 25, Code of Federal Regulations;

''(6) the requirement that the Secretary approve leases for the development of Navajo trust lands has added a level of review and regulation that does not apply to the development of non-Indian land; and

''(7) in the global economy of the 21st Century, it is crucial that individual leases of Navajo trust lands not be subject to Secretarial approval and that the Navajo Nation be able to make immediate decisions over the use of Navajo trust lands.

''(b) PURPOSES.—The purposes of this title [see Short Title of 2000 Amendment note above] are as follows:

''(1) To establish a streamlined process for the Navajo Nation to lease trust lands without having to obtain the approval of the Secretary of the Interior for individual leases, except leases for exploration, development, or extraction of any mineral resources.

''(2) To authorize the Navajo Nation, pursuant to tribal regulations, which must be approved by the Secretary, to lease Navajo trust lands without the approval of the Secretary of the Interior for the individual leases, except leases for exploration, development, or extraction of any mineral resources.

''(3) To revitalize the distressed Navajo Reservation by promoting political self-determination, and encouraging economic self-sufficiency, including economic development that increases productivity and the standard of living for members of the Navajo Nation.

''(4) To maintain, strengthen, and protect the Navajo Nation's leasing power over Navajo trust lands.

''(5) To ensure that the United States is faithfully executing its trust obligation to the Navajo Nation by maintaining Federal supervision through oversight of and record keeping related to leases of Navajo Nation tribal trust lands.''

§ 415a. Lease of lands of deceased Indians for benefit of heirs or devisees

Restricted lands of deceased Indians may be leased under sections 415 to 415d of this title, for the benefit of their heirs or devisees, in the circumstances and by the persons prescribed in section 380 of this title: *Provided*, That if the authority of the Secretary under this section is delegated to any subordinate official, then any heir or devisee shall have the right to appeal the action of any such official to the Secretary under such rules and regulations as he may prescribe.

(Aug. 9, 1955, ch. 615, § 2, 69 Stat. 539.)

§ 415b. Advance payment of rent or other consideration

No rent or other consideration for the use of land leased under sections 415 to 415d of this title shall be paid or collected more than one year in advance, unless so provided in the lease.

(Aug. 9, 1955, ch. 615, § 4, 69 Stat. 540.)

§ 415c. Approval of leases

The Secretary of the Interior shall approve no lease pursuant to sections 415 to 415d of this title that contains any provision that will prevent or delay a termination of Federal trust responsibilities with respect to the land during the term of the lease.

(Aug. 9, 1955, ch. 615, § 5, 69 Stat. 540.)

§ 415d. Lease of restricted lands under other laws unaffected

Nothing contained in sections 415 to 415d of this title shall be construed to repeal any authority to lease restricted Indian lands conferred by or pursuant to any other provision of law.

(Aug. 9, 1955, ch. 615, § 6, 69 Stat. 540.)

§ 416. Leases of trust or restricted lands on San Xavier and Salt River Pima-Maricopa Indian Reservations for public, religious, educational, recreational, residential, business, farming or grazing purposes

Any trust or restricted Indian lands, whether tribally or individually owned, located on the San Xavier Indian Reservation and the Salt River Pima-Maricopa Indian Reservation, in the State of Arizona, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, business, farming or grazing purposes, including the development or utilization of natural resources in connection with operations under such leases, but no lease shall be executed under sections 416 to 416j of this title for purposes that are subject to the laws governing mining leases on Indian lands. The term of a grazing lease shall not exceed ten years, the term of a farming lease that does not require the making of a substantial investment in the improvement of the land shall not exceed ten years, and the term of a farming lease that requires the making of a substantial investment in the improvement of the land shall not exceed forty years. The term of any other lease shall not exceed ninety-nine years. No lease shall contain an option to renew which, if exercised, will extend the total term beyond the maximum term permitted by sections 416 to 416j of this title. The Secretary of the Interior shall not approve any lease with a term that is longer than is necessary in his judgment to obtain maximum economic benefits for the Indian owners.

(Pub. L. 89–715, § 1, Nov. 2, 1966, 80 Stat. 1112.)

§ 416a. Lease provisions

(a) Covenant not to cause waste, etc.

Every lease entered into under section 416 of this title shall contain a covenant on the part of the lessee that he will not commit or permit on the leased land any act which causes waste or a nuisance or which creates a hazard to health of persons or to property, wherever such persons or property may be.

(b) Judicial enforcement

The State of Arizona, or any political subdivision thereof contiguous with the San Xavier or Salt River Pima-Maricopa Indian Reservation, may bring suit, without regard to the amount in controversy, in the United States District Court for the District of Arizona to abate or enjoin any violation of the covenant required under subsection (a) of this section: *Provided*, That if, by reason of the citizenship of the parties and the law applicable to the cause of action, the District Court finds it lacks jurisdiction to hear and determine such suit, it may be brought in any court of competent jurisdiction of the State of Arizona.

(c) Binding arbitration of disputes

Any contract, including a lease, affecting land within the Salt River Pima-Maricopa Indian Reservation may contain a provision for the binding arbitration of disputes arising out of such contract. Such contracts shall be considered within the meaning of ''commerce'' as defined and subject to the provisions of section 1 of title 9. Any refusal to submit to arbitration pursuant to a binding agreement for arbitration or the exercise of any right conferred by title 9 to abide by the outcome of arbitration pursuant to the provisions of chapter 1 of title 9, sections 1 through 14, shall be deemed to be a civil action arising under the Constitution, laws or treaties of the United States within the meaning of section 1331 of title 28.

(Pub. L. 89–715, § 2, Nov. 2, 1966, 80 Stat. 1112; Pub. L. 98–163, Nov. 22, 1983, 97 Stat. 1016; Pub. L. 108–329, § 1(a), Oct. 16, 2004, 118 Stat. 1274.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–329, in first sentence, substituted ''Any contract, including a lease, affecting land'' for ''Any lease entered into under sections 416 to 416j or 415 to 415d of this title or any contract entered into under section 81 of this title, affecting land'' and ''such contract'' for ''such lease or contract'' and, in second sentence, substituted ''Such contracts'' for ''Such leases or contracts entered into pursuant to such sections''.

1983—Subsec. (c). Pub. L. 98–163 added subsec. (c).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–329, § 1(b), Oct. 16, 2004, 118 Stat. 1274, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the Indian Tribal Economic Development and Contract Encouragement Act of 2000 (Public Law 106–179).''

§ 416b. Development pursuant to lease

(a) Notice requirements prior to approval of lease

The Secretary of the Interior shall, before he approves any lease under sections 416 to 416j of this title for public, religious, educational, recreational, business, or residential purposes and if he determines that such lease will substantially affect the governmental interests of a municipality described hereunder, notify the appropriate authorities of any municipality contiguous to the San Xavier or Salt River Pima-Maricopa Reservation, as the case may be, of the pendency of the proposed lease and, in his discretion, furnish them with an outline of the major provisions of the lease which affect such governmental interests and shall consider any comments on the terms of the lease affecting the municipality, or on the absence of such

terms from the lease, that such authorities may offer within such reasonable period, but not more than thirty days, as the Secretary may prescribe in his notice to them.

(b) Development by non-Indian lessees

It is the intent of the Congress that the terms under which lands located on the San Xavier and Salt River Pima-Maricopa Reservations are developed by non-Indian lessees shall, to the extent reasonably possible, be similar to those applicable under State or local law to the development of non-Indian lands in the municipalities contiguous thereto.

(Pub. L. 89–715, § 3, Nov. 2, 1966, 80 Stat. 1112.)

§ 416c. Lease of lands of deceased Indians for benefit of heirs or devisees

Trust or restricted lands of deceased Indians located on the San Xavier and Salt River Pima-Maricopa Reservations may be leased under sections 416 to 416j of this title, for the benefit of their heirs or devisees, in the circumstances and by the persons prescribed in section 380 of this title: *Provided*, That if the authority of the Secretary under this section is delegated to a subordinate official, then any heir or devisee shall have the right to appeal the action of any such official to the Secretary under such rules and regulations as he may prescribe.

(Pub. L. 89–715, § 4, Nov. 2, 1966, 80 Stat. 1113.)

§ 416d. Advance payment of rent or other consideration

No rent or other consideration for the use of land leased under sections 416 to 416j of this title shall be paid or collected more than one year in advance, unless so provided in the lease.

(Pub. L. 89–715, § 5, Nov. 2, 1966, 80 Stat. 1113.)

§ 416e. Approval of leases

The Secretary of the Interior shall approve no lease pursuant to sections 416 to 416j of this title that contains any provision that will prevent or delay a termination of Federal trust responsibilities with respect to the land during the term of the lease.

(Pub. L. 89–715, § 6, Nov. 2, 1966, 80 Stat. 1113.)

§ 416f. Dedication of land for public purposes

Individual or tribal owners of trust or restricted Indian land on the San Xavier and Salt River Pima-Maricopa Reservations may, with the approval of the Secretary, dedicate land to the public for streets, alleys, or other public purposes under those laws of the State of Arizona that are applicable to the dedication of land for public purposes.

(Pub. L. 89–715, § 7, Nov. 2, 1966, 80 Stat. 1113.)

§ 416g. Contract for water, sewerage, law enforcement, or other public services

The Papago Council and the Salt River Pima-Maricopa Community Council, with the approval of the Secretary of the Interior, may contract with the State of Arizona or its political subdivisions for the furnishing of water, sewerage, law enforcement, or other public services on terms and conditions deemed advantageous to the tribe and individual Indian landowners.

(Pub. L. 89–715, § 8, Nov. 2, 1966, 80 Stat. 1113.)

§ 416h. Zoning, building, and sanitary regulations

The Papago Council and the Salt River Pima-Maricopa Community Council, with the consent of the Secretary of the Interior, are hereby authorized, for their respective reservations, to enact zoning, building, and sanitary regulations covering the lands on their reservations for which leasing authority is granted by sections 416 to 416j of this title in the absence of State civil and criminal jurisdiction over such particular lands, and said councils may contract with local municipalities for assistance in preparing such regulations.

(Pub. L. 89–715, § 9, Nov. 2, 1966, 80 Stat. 1113.)

§ 416i. Restrictions

Nothing contained in sections 416 to 416j of this title shall—

(a) authorize the alienation, encumbrance, or taxation of any interest in real or personal property, including water rights, held in trust by the United States or held by an individual Indian, the Papago Tribe or the Salt River Pima-Maricopa Community subject to a restriction against alienation imposed by the United States, or any income therefrom: *Provided*, That the foregoing shall not affect the power to lease as provided in section 416 of this title or the power to dedicate as provided in section 416f of this title and shall not affect or abridge any right of the State of Arizona or its political subdivisions to tax non-Indian leasehold and possessory interests, buildings, improvements and personal property located on the San Xavier and Salt River Pima-Maricopa Reservations and not owned by Papago or Pima-Maricopa Indians residing thereon;

(b) confer jurisdiction on the State of Arizona to adjudicate in probate proceedings or otherwise the ownership or right to possession of trust or restricted property or any interests therein;

(c) alter or abridge in any way the authority of public school districts to include areas within the San Xavier and Salt River Pima-Maricopa Reservation;

(d) be construed to repeal any authority to lease or mortgage trust or restricted Indian lands conferred by or pursuant to any other provision of law.

(Pub. L. 89–715, § 10, Nov. 2, 1966, 80 Stat. 1113.)

§ 416j. Mission San Xavier del Bac

Nothing in sections 416 to 416j of this title shall authorize the Secretary to approve any development which would detract from the scenic, historic, and religious values of the Mission San Xavier del Bac owned by the Franciscan Order of Friars Minor and located on the San Xavier Reservation.

(Pub. L. 89–715, § 11, Nov. 2, 1966, 80 Stat. 1114.)

CHAPTER 13—CEDED INDIAN LANDS

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CODIFICATION

Section 421, act May 17, 1900, ch. 479, § 1, 31 Stat. 179, which provided for free homesteads to settlers, commutation rights, and payments to Indians, was transferred to section 179 of Title 43, Public Lands.

Section 422, act Jan. 26, 1901, ch. 180, 31 Stat. 740, which related to right of settlers to commute entry, was transferred to section 180 of Title 43.

Section 423, act May 22, 1902, ch. 821, § 2, 32 Stat. 203, which related to second homestead entry by certain settlers, was transferred to section 187b of Title 43.

Section 424, act Mar. 3, 1901, ch. 832, § 1, 31 Stat. 1077, which related to negotiations for cession of lands, was transferred to section 1195 of Title 43.

Section 425, act June 6, 1912, ch. 155, 37 Stat. 125, which related to classification and appraisement of unallotted and unreserved lands, was transferred to section 1196 of Title 43.

Section 426, act Mar. 3, 1891, ch. 561, § 10, 26 Stat. 1099, which provided that act Mar. 3, 1891, ch. 561, not affect agreements with any Indian tribe to dispose of land, was transferred to section 1197 of Title 43.

Section 427, act Feb. 9, 1903, ch. 531, 32 Stat. 820, which extended town-site laws to ceded lands in Minnesota, was transferred to section 731 of Title 43.

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SUBCHAPTER I—GENERAL PROVISIONS

§ 441. Repealed. Pub. L. 96–277, § 2, June 17, 1980, 94 Stat. 545

Section, act June 19, 1939, ch. 210, 53 Stat. 840, recognized right of Indian employees of the Federal Government to Indian benefits available under Acts of Congress, and under regulations of the Secretary of the Interior, to be members of Indian tribes, corporations, or cooperative associations organized by Indians and recipients of benefits by reason of membership.

EFFECTIVE DATE OF REPEAL

Section repealed sixty days after June 17, 1980, see section 4 of Pub. L. 96–277, set out as a note under section 68 of this title.

§ 442. Livestock loans; cash settlements

All acceptances of cash settlements by the Commissioner of Indian Affairs for livestock

lent by the United States to any individual Indian, or to any tribe, association, corporation, or other group of Indians, and all sales and relending of livestock repaid in kind to the United States on account of such loans are authorized and ratified: *Provided*, That on and after May 24, 1950, the value of such livestock for the purposes of any such cash settlement shall be based on prevailing market prices in the area and shall be ascertained by a committee composed of three members, one of whom shall be selected by the superintendent of the particular agency, one of whom shall be selected by the chairman of the tribal council, and one of whom shall be selected by the other two members.

(May 24, 1950, ch. 197, § 1, 64 Stat. 190.)

§ 443. Disposition of cash settlements

Any moneys received on and after May 24, 1950, in settlement of such debts or from the sale of livestock so repaid to the United States shall be deposited in the revolving fund established pursuant to the Acts of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.], and June 26, 1936 (49 Stat. 1967) [25 U.S.C. 501 et seq.], as amended and supplemented.

(May 24, 1950, ch. 197, § 2, 64 Stat. 190.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables. Provisions of the Act establishing the revolving fund are set out in section 470 of this title.

Act of June 26, 1936, referred to in text, popularly known as the Oklahoma Welfare Act, is classified generally to subchapter VIII (§ 501 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 501 of this title and Tables. Provisions of the Act relating to the revolving fund appear in section 506 of this title.

Funds in the revolving fund authorized by these Acts, and certain other sums, to be administered after Apr. 12, 1974, as a single Indian Revolving Loan Fund, see section 1461 of this title.

§ 443a. Conveyance to Indian tribes of federally owned buildings, improvements, or facilities; disposition of property by Indians; forfeiture; "Indian" defined

The Secretary of the Interior at the request of any Indian tribe, band, or group is authorized to convey to such Indian tribe, band, or group, by such means as he may deem appropriate, title to any federally owned buildings, improvements, or facilities (including any personal property used in connection with such buildings, improvements, or facilities) that are situated on lands of such tribe, band, or group or on lands reserved for the administration of its affairs, and that are no longer required by the Secretary for the administration of Indian affairs. Any tribe, band, or group to which property is conveyed pursuant to this section may dispose of such property whenever its governing body determines that the property is no longer needed for its use. If, at any time while property conveyed pursuant to this section remains in the ownership of any Indian tribe, band, or group, the Secretary of the Interior determines that such property is not being adequately maintained or properly utilized by such tribe, band, or group or that the property creates a health or safety hazard or other undesirable condition, he may declare a forfeiture of the conveyance and the title to such property shall thereupon revert to the United States. Such determination by the Secretary shall be final.

For the purpose of this section, the term "Indian" shall include Eskimos and Aleuts.

(Aug. 6, 1956, ch. 979, 70 Stat. 1057.)

§ 443b. Indian goods and supplies

Payment for transportation of Indian goods and supplies shall include all Indian transportation lawfully due such land-grant railroads as have not received aid in Government bonds (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant Acts), but in no case shall more than 50 per centum of full amount of service be paid to said land-grant roads: *Provided*, That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large, and shall be accepted as in full for all demands for such service: *Provided further*, That on and after April 30, 1908 in expending money appropriated for this purpose a railroad company which has not received aid in bonds of the United States, and which obtained a grant of public lands to aid in the construction of its railroad on condition that such railroad should be a post route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulations as Congress may impose, restricting the charge for such government transportation, having claims against the United States for transportation of Indian goods and supplies over such aided railroads, shall be paid out of the moneys appropriated for such purpose only on the basis of such rate for the transportation of such Indian goods and supplies as the Secretary of the Interior shall deem just and reasonable under the provisions set forth herein, such rate not to exceed 50 per centum of the compensation for such Government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service.

(Apr. 30, 1908, ch. 153, 35 Stat. 73.)

CODIFICATION

Section was formerly classified to section 93 of Title 45, Railroads.

§ 443c. Emergency plan for Indian safety and health

(a) Establishment of Fund

There is established in the Treasury of the United States a fund, to be known as the "Emergency Fund for Indian Safety and Health" (referred to in this section as the "Fund"), consisting of such amounts as are appropriated to the Fund under subsection (b).

(b) Transfers to Fund

(1) In general

There is authorized to be appropriated to the Fund, out of funds of the Treasury not otherwise appropriated, $2,000,000,000 for the 5-year period beginning on October 1, 2008.

(2) Availability of amounts

Amounts deposited in the Fund under this section shall—

(A) be made available without further appropriation;

(B) be in addition to amounts made available under any other provision of law; and

(C) remain available until expended.

(c) Expenditures from Fund

On request by the Attorney General, the Secretary of the Interior, or the Secretary of Health and Human Services, the Secretary of the Treasury shall transfer from the Fund to the Attorney General, the Secretary of the Interior, or the Secretary of Health and Human Services, as appropriate, such amounts as the Attorney General, the Secretary of the Interior, or the Secretary of Health and Human Services determines to be necessary to carry out the emergency plan under subsection (f).

(d) Transfers of amounts

(1) In general

The amounts required to be transferred to the Fund under this section shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

(2) Adjustments

Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(e) Remaining amounts

Any amounts remaining in the Fund on September 30 of an applicable fiscal year may be used by the Attorney General, the Secretary of the Interior, or the Secretary of Health and Human Services to carry out the emergency plan under subsection (f) for any subsequent fiscal year.

(f) Emergency plan

Not later than 1 year after July 30, 2008, the Attorney General, the Secretary of the Interior, and the Secretary of Health and Human Services, in consultation with Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)), shall jointly establish an emergency plan that addresses law enforcement, water, and health care needs of Indian tribes under which, for each of fiscal years 2010 through 2019, of amounts in the Fund—

(1) the Attorney General shall use—

(A) 18.5 percent for the construction, rehabilitation, and replacement of Federal Indian detention facilities;

(B) 1.5 percent to investigate and prosecute crimes in Indian country (as defined in section 1151 of title 18);

(C) 1.5 percent for use by the Office of Justice Programs for Indian and Alaska Native programs; and

(D) 0.5 percent to provide assistance to—

(i) parties to cross-deputization or other cooperative agreements between State or local governments and Indian tribes (as defined in section 479a of this title) carrying out law enforcement activities in Indian country; and

(ii) the State of Alaska (including political subdivisions of that State) for carrying out the Village Public Safety Officer Program and law enforcement activities on Alaska Native land (as defined in section 3902 of this title);

(2) the Secretary of the Interior shall—

(A) deposit 15.5 percent in the public safety and justice account of the Bureau of Indian Affairs for use by the Office of Justice Services of the Bureau in providing law enforcement or detention services, directly or through contracts or compacts with Indian tribes under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); and

(B) use 50 percent to implement requirements of Indian water settlement agreements that are approved by Congress (or the legislation to implement such an agreement) under which the United States shall plan, design, rehabilitate, or construct, or provide financial assistance for the planning, design, rehabilitation, or construction of, water supply or delivery infrastructure that will serve an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)); and

(3) the Secretary of Health and Human Services, acting through the Director of the Indian Health Service, shall use 12.5 percent to provide, directly or through contracts or compacts with Indian tribes under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)—

(A) contract health services;

(B) construction, rehabilitation, and replacement of Indian health facilities; and

(C) domestic and community sanitation facilities serving members of Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) pursuant to section 2004a of title 42.

(Pub. L. 110–293, title VI, § 601, July 30, 2008, 122 Stat. 2968.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (f)(2)(A), (3), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§§ 444 to 449. Repealed. Aug. 5, 1954, ch. 658, § 5, 68 Stat. 675

Sections, act Apr. 3, 1952, ch. 129, §§ 1–6, 66 Stat. 35, related to Indian hospital services and facilities. See sec-

tion 2001 et seq. of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1959, see section 6 of act Aug. 5, 1954, set out as an Effective Date note under section 2001 of Title 42, The Public Health and Welfare.

SUBCHAPTER II—INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

§ 450. Congressional statement of findings

(a) Findings respecting historical and special legal relationship, and resultant responsibilities

The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) Further findings

The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

(Pub. L. 93–638, § 2, Jan. 4, 1975, 88 Stat. 2203.)

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–568, title VIII, § 801, Dec. 27, 2000, 114 Stat. 2916, provided that: ''This title [amending sections 450*l*, 458cc, 1407, and 3207 of this title and sections 5604, 5608, and 5609 of Title 20, Education, and repealing section 84 of this title and sections 438 and 439 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Native American Laws Technical Corrections Act of 2000'.''

Pub. L. 106–568, title XIII, § 1301, Dec. 27, 2000, 114 Stat. 2936, provided that: ''This title [enacting part F (§ 458bbb et seq.) of this subchapter] may be cited as the 'American Indian Education Foundation Act of 2000'.''

Pub. L. 106–260, § 1, Aug. 18, 2000, 114 Stat. 711, provided that: ''This Act [enacting part E (§ 458aaa et seq.) of this subchapter, amending sections 450f, 450j, and 450j–1 of this title, enacting provisions set out as notes under sections 450f and 458aaa of this title, and repealing provisions set out as a note under section 450f of this title] may be cited as the 'Tribal Self-Governance Amendments of 2000'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–413, § 1, Oct. 25, 1994, 108 Stat. 4250, provided that: ''This Act [enacting part D (§ 458aa et seq.) of this subchapter and section 450*l* of this title, amending sections 450b, 450c, 450e, 450f, 450j to 450k, 450m, and 450m–1 of this title, and enacting provisions set out as notes under this section and section 458aa of this title] may be cited as the 'Indian Self-Determination Act Amendments of 1994'.''

Pub. L. 103–413, title I, § 101, Oct. 25, 1994, 108 Stat. 4250, provided that: ''This title [enacting section 450*l* of this title and amending sections 450b, 450c, 450e, 450f, 450j to 450k, 450m, and 450m–1 of this title] may be cited as the 'Indian Self-Determination Contract Reform Act of 1994'.''

Pub. L. 103–413, title II, § 201, Oct. 25, 1994, 108 Stat. 4270, provided that: ''This title [enacting part D (§ 458aa et seq.) of this subchapter and provisions set out as notes under section 458aa of this title] may be cited as the 'Tribal Self-Governance Act of 1994'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–644, title II, § 201, Nov. 29, 1990, 104 Stat. 4665, provided that: ''This title [amending sections 450b, 450c, 450f, 450h, 450j, 450j–1, and 450k of this title and enacting provisions set out as a note under section 450h of this title] may be cited as the 'Indian Self-Determination and Education Assistance Act Amendments of 1990'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–472, title I, § 101, Oct. 5, 1988, 102 Stat. 2285, provided that: ''This Act [enacting sections 450j–1 and 450m–1 of this title, amending sections 13a, 450a to 450c, 450f to 450j, 450k, and 450n of this title, sections 3371 and 3372 of Title 5, Government Organization and Employees, sections 2004b and 4762 of Title 42, The Public Health and Welfare, and section 456 of the Appendix to Title 50, War and National Defense, transferring section 450*l* of this title to section 450c(f) of this title, and enacting provisions set out as notes under this section and section 450f of this title] may be cited as the 'Indian Self-Determination and Education Assistance Act Amendments of 1988'.''

SHORT TITLE

Section 1 of Pub. L. 93–638 provided: ''That this Act [enacting this subchapter, section 13a of this title, and section 2004b of Title 42, The Public Health and Welfare, amending section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 456 of Title 50, Appendix, War and National Defense, and enacting provisions set out as notes under sections 450f, 455, and 457 of this title] may be cited as the 'Indian Self-Determination and Education Assistance Act'.''

Section 101 of title I of Pub. L. 93–638 provided that: ''This title [enacting part A (§ 450f et seq.) of this subchapter and section 2004b of Title 42, The Public Health and Welfare, and amending section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 456 of the Appendix to Title 50, War and National Defense] may be cited as the 'Indian Self-Determination Act'.''

Section 201 of title II of Pub. L. 93–638 provided that: ''This title [enacting part C (§ 458 et seq.) of this subchapter, sections 455 to 457 of this title, and provisions set out as a note under section 457 of this title] may be cited as the 'Indian Education Assistance Act'.''

SAVINGS PROVISIONS

Pub. L. 100–472, title II, § 210, Oct. 5, 1988, 102 Stat. 2298, provided that: ''Nothing in this Act [see Short Title of 1988 Amendment note above] shall be construed as—

''(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or

''(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indian people.''

SEVERABILITY

Pub. L. 100–472, title II, §211, Oct. 5, 1988, 102 Stat. 2298, provided that: ''If any provision of this Act [see Short Title of 1988 Amendment note above] or the application thereof to any Indian tribe, entity, person or circumstance is held invalid, neither the remainder of this Act, nor the application of any provisions herein to other Indian tribes, entities, persons, or circumstances, shall be affected thereby.''

CONSULTATION WITH ALASKA NATIVE CORPORATIONS

Pub. L. 108–199, div. H, §161, Jan. 23, 2004, 118 Stat. 452, as amended by Pub. L. 108–447, div. H, title V, §518, Dec. 8, 2004, 118 Stat. 3267, provided that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175 [set out below].''

EXECUTIVE ORDER NO. 13084

Ex. Ord. No. 13084, May 14, 1998, 63 F.R. 27655, which provided for agencies to establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities, to reduce the imposition of unfunded mandates upon Indian tribal governments, and to streamline the application process for and increase the availability of waivers to Indian tribal governments, was revoked, effective 60 days after Nov. 6, 2000, by Ex. Ord. No. 13175, §9(c), Nov. 6, 2000, 65 F.R. 67251, set out below.

EX. ORD. NO. 13175. CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

Ex. Ord. No. 13175, Nov. 6, 2000, 65 F.R. 67249, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

SECTION 1. *Definitions*. For purposes of this order:

(a) ''Policies that have tribal implications'' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) ''Indian tribe'' means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) ''Agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) ''Tribal officials'' means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

SEC. 2. *Fundamental Principles*. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

SEC. 3. *Policymaking Criteria*. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

SEC. 4. *Special Requirements for Legislative Proposals*. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

SEC. 5. *Consultation*. (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a state-

ment of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

SEC. 6. *Increasing Flexibility for Indian Tribal Waivers.*

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

SEC. 7. *Accountability.*

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993 [5 U.S.C. 601 note], each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

SEC. 8. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

SEC. 9. *General Provisions.* (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review) [5 U.S.C. 601 note], Executive Order 12988 (Civil Justice Reform) [28 U.S.C. 519 note], OMB Circular A–19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments [set out below].

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism) [5 U.S.C. 601 note].

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

SEC. 10. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

WILLIAM J. CLINTON.

GOVERNMENT-TO-GOVERNMENT RELATIONS WITH NATIVE AMERICAN TRIBAL GOVERNMENTS

Memorandum of President of the United States, Apr. 29, 1994, 59 F.R. 22951, provided:

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 (''En-

hancing the Intergovernmental Partnership'') [former 5 U.S.C. 601 note] and 12866 (''Regulatory Planning and Review'') [5 U.S.C. 601 note] to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

TRIBAL CONSULTATION

Memorandum of President of the United States, Nov. 5, 2009, 74 F.R. 57881, provided:

Memorandum for the Heads of Executive Departments And Agencies

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship.

My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175. Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency's plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. The Assistant to the President for Domestic Policy and the Director of the OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation process more effective, if any, should be included in this report.

The terms ''Indian tribe,'' ''tribal officials,'' and ''policies that have tribal implications'' as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

BARACK OBAMA.

§ 450a. Congressional declaration of policy

(a) Recognition of obligation of United States

The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) Declaration of commitment

The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

(c) Declaration of national goal

The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

(Pub. L. 93–638, § 3, Jan. 4, 1975, 88 Stat. 2203; Pub. L. 100–472, title I, § 102, Oct. 5, 1988, 102 Stat. 2285.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–472 added subsec. (b) and struck out former subsec. (b) which read as follows: ''The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian

people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.''

§ 450a–1. Tribal and Federal advisory committees

Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund advisory committees or other advisory bodies composed of members of Indian tribes or members of Indian tribes and representatives of the Federal Government to ensure tribal participation in the implementation of the Indian Self-Determination and Education Assistance Act (Public Law 93–638) [25 U.S.C. 450 et seq.].

(Pub. L. 101–644, title II, § 204, as added Pub. L. 103–435, § 22(b), Nov. 2, 1994, 108 Stat. 4575.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in text, is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to this subchapter (§ 450 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

CODIFICATION

Section was enacted as part of the Indian Self-Determination and Education Assistance Act Amendments of 1990, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this subchapter.

§ 450b. Definitions

For purposes of this subchapter, the term—

(a) ''construction programs'' means programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including, but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, and water conservation, flood control, or port facilities;

(b) ''contract funding base'' means the base level from which contract funding needs are determined, including all contract costs;

(c) ''direct program costs'' means costs that can be identified specifically with a particular contract objective;

(d) ''Indian'' means a person who is a member of an Indian tribe;

(e) ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(f) ''indirect costs'' means costs incurred for a common or joint purpose benefiting more than one contract objective, or which are not readily assignable to the contract objectives specifically benefited without effort disproportionate to the results achieved;

(g) ''indirect cost rate'' means the rate arrived at through negotiation between an Indian tribe or tribal organization and the appropriate Federal agency;

(h) ''mature contract'' means a self-determination contract that has been continuously operated by a tribal organization for three or more years, and for which there are no significant and material audit exceptions in the annual financial audit of the tribal organization: *Provided*, That upon the request of a tribal organization or the tribal organization's Indian tribe for purposes of section 450f(a) of this title, a contract of the tribal organization which meets this definition shall be considered to be a mature contract;

(i) ''Secretary'', unless otherwise designated, means either the Secretary of Health and Human Services or the Secretary of the Interior or both;

(j) ''self-determination contract'' means a contract (or grant or cooperative agreement utilized under section 450e–1 of this title) entered into under part A of this subchapter between a tribal organization and the appropriate Secretary for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law: *Provided*, That except as provided[1] the last proviso in section 450j(a)[2] of this title, no contract (or grant or cooperative agreement utilized under section 450e–1 of this title) entered into under part A of this subchapter shall be construed to be a procurement contract;

(k) ''State education agency'' means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law;

(*l*) ''tribal organization'' means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant; and

(m) ''construction contract'' means a fixed-price or cost-reimbursement self-determination contract for a construction project, except that such term does not include any contract—

(1) that is limited to providing planning services and construction management services (or a combination of such services);

(2) for the Housing Improvement Program or roads maintenance program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or

[1] So in original. Probably should be ''provided in''.

[2] See References in Text note below.

(3) for the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

(Pub. L. 93–638, § 4, Jan. 4, 1975, 88 Stat. 2204; Pub. L. 100–472, title I, § 103, Oct. 5, 1988, 102 Stat. 2286; Pub. L. 100–581, title II, § 208, Nov. 1, 1988, 102 Stat. 2940; Pub. L. 101–301, § 2(a)(1)–(3), May 24, 1990, 104 Stat. 206; Pub. L. 101–644, title II, § 202(1), (2), Nov. 29, 1990, 104 Stat. 4665; Pub. L. 103–413, title I, § 102(1), Oct. 25, 1994, 108 Stat. 4250.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this Act", meaning Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this subchapter (§ 450 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (e), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43, and Tables.

Part A of this subchapter, referred to in subsec. (j), was in the original "title I of this act", meaning title I of Pub. L. 93–638, known as the Indian Self-Determination Act, which is classified principally to part A (§ 450f et seq.) of this subchapter. For complete classification of title I to the Code, see Short Title note set out under section 450 of this title and Tables.

Section 450j(a) of this title, referred to in subsec. (j), was repealed and a new subsec. (a) of section 450j was added by Pub. L. 103–413, title I, § 102(10), Oct. 25, 1994, 108 Stat. 4253, which does not contain provisos.

AMENDMENTS

1994—Subsec. (g). Pub. L. 103–413, § 102(1)(A), substituted "indirect cost rate" for "indirect costs rate".

Subsec. (m). Pub. L. 103–413, § 102(1)(B)–(D), added subsec. (m).

1990—Subsec. (e). Pub. L. 101–301, § 2(a)(1), inserted a comma before "which is recognized".

Subsec. (h). Pub. L. 101–644, § 202(1), struck out "in existence on October 5, 1988," before "which meets this definition".

Subsec. (j). Pub. L. 101–644, § 202(2), substituted "contract (or grant or cooperative agreement utilized under section 450e–1 of this title) entered" for "contract entered" in two places.

Pub. L. 101–301, § 2(a)(2), (3), substituted "under this subchapter" for "pursuant to this Act" in two places and struck out "the" before "Secretary".

1988—Pub. L. 100–472 amended section generally, substituting subsecs. (a) to (*l*) for former subsecs. (a) to (d) and (f) which defined "Indian", "Indian tribe", "Tribal organization", "Secretary", and "State education agency".

Subsec. (h). Pub. L. 100–581, § 208(a)(1), substituted "by a tribal organization" for "by tribal organization".

Pub. L. 100–581, § 208(a)(2), which directed the amendment of subsec. (h) by substituting "a tribal organization or the tribal organization's Indian tribe for purposes of section 450f(a) of this title" for "a tribal organization or a tribal governing body" was executed by substituting the new language for "a tribal organization or tribal governing body" to reflect the probable intent of Congress.

Subsec. (j). Pub. L. 100–581, § 208(b), substituted "the Secretary for the planning" for "Secretary the planning" and "except as provided the last proviso in section 450j(a) of this title, no contract" for "no contract".

§ 450c. Reporting and audit requirements for recipients of Federal financial assistance

(a) Maintenance of records

(1) Each recipient of Federal financial assistance under this subchapter shall keep such records as the appropriate Secretary shall prescribe by regulation promulgated under sections 552 and 553 of title 5, including records which fully disclose—

(A) the amount and disposition by such recipient of the proceeds of such assistance,

(B) the cost of the project or undertaking in connection with which such assistance is given or used,

(C) the amount of that portion of the cost of the project or undertaking supplied by other sources, and

(D) such other information as will facilitate an effective audit.

(2) For the purposes of this subsection, such records for a mature contract shall consist of quarterly financial statements for the purpose of accounting for Federal funds, the annual single-agency audit required by chapter 75 of title 31[1] and a brief annual program report.

(b) Access to books, documents, papers, and records for audit and examination by Comptroller General, etc.

The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

(c) Availability by recipient of required reports and information to Indian people served or represented

Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

(d) Repayment to Treasury by recipient of unexpended or unused funds

Except as provided in section 13a or 450j–1(a)(3)[2] of this title, funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States through the respective Secretary.

(e) Annual report to tribes

The Secretary shall report annually in writing to each tribe regarding projected and actual staffing levels, funding obligations, and expenditures for programs operated directly by the Secretary serving that tribe.

[1] So in original. Probably should be followed by a comma.

[2] See References in Text note below.

(f) Single-agency audit report; additional information; declination criteria and procedures

(1) For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract entered into, or grant made, under this subchapter, the tribal organization that requested such contract or grant shall submit to the appropriate Secretary a single-agency audit report required by chapter 75 of title 31.

(2) In addition to submitting a single-agency audit report pursuant to paragraph (1), a tribal organization referred to in such paragraph shall submit such additional information concerning the conduct of the program, function, service, or activity carried out pursuant to the contract or grant that is the subject of the report as the tribal organization may negotiate with the Secretary.

(3) Any disagreement over reporting requirements shall be subject to the declination criteria and procedures set forth in section 450f of this title.

(Pub. L. 93–638, § 5, formerly § 5 and title I, § 108, Jan. 4, 1975, 88 Stat. 2204, 2212; renumbered and amended Pub. L. 100–472, title I, § 104, title II, § 208, Oct. 5, 1988, 102 Stat. 2287, 2296; Pub. L. 100–581, title II, § 209, Nov. 1, 1988, 102 Stat. 2940; Pub. L. 101–301, § 2(a)(4), May 24, 1990, 104 Stat. 206; Pub. L. 101–644, title II, § 202(3), Nov. 29, 1990, 104 Stat. 4665; Pub. L. 103–413, title I, § 102(2), Oct. 25, 1994, 108 Stat. 4250.)

REFERENCES IN TEXT

Section 450j–1(a)(3) of this title, referred to in subsec. (d), was repealed and a new subsec. (a)(3) of section 450j–1 was added by Pub. L. 103–413, title I, § 102(14)(C), Oct. 25, 1994, 108 Stat. 4257. See section 450j–1(a)(4) of this title.

AMENDMENTS

1994—Subsec. (f). Pub. L. 103–413 added subsec. (f) and struck out former subsec. (f) which read as follows: ''For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this subchapter, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request through regulations promulgated under sections 552 and 553 of title 5.''

1990—Subsec. (a)(2). Pub. L. 101–301 substituted ''chapter 75 of title 31'' for ''the Single Audit Act of 1984 (98 Stat. 2327, 31 U.S.C. 7501 et seq.),''.

Subsec. (d). Pub. L. 101–644 substituted ''Except as provided in section 13a or 450j–1(a)(3) of this title,'' for ''Any'' and inserted ''through the respective Secretary'' before period at end.

1988—Subsec. (a). Pub. L. 100–472, § 104(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Each recipient of Federal financial assistance from the Secretary of Interior or the Secretary of Health Education, and Welfare, under this Act, shall keep such records as the appropriate Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.''

Subsec. (e). Pub. L. 100–581 substituted ''to each tribe'' for ''to tribes''.

Pub. L. 100–472, § 104(b), added subsec. (e).

Subsec. (f). Pub. L. 100–472, § 208, redesignated section 450*l* of this title as subsec. (f) of this section and inserted ''through regulations promulgated under sections 552 and 553 of title 5''.

§ 450d. Criminal activities involving grants, contracts, etc.; penalties

Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this subchapter or the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 452 et seq.], embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(Pub. L. 93–638, § 6, Jan. 4, 1975, 88 Stat. 2205.)

REFERENCES IN TEXT

Act of April 16, 1934, referred to in text, is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

§ 450e. Wage and labor standards

(a) Similar construction in locality

All laborers and mechanics employed by contractors or subcontractors (excluding tribes and tribal organizations) in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this subchapter, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. With respect to construction, alteration, or repair work to which the Act of March 3, 1921[1] is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14, of 1950, and section 3145 of title 40.

(b) Preference requirements for wages and grants

Any contract, subcontract, grant, or subgrant pursuant to this subchapter, the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 452 et seq.], or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the adminis-

[1] See References in Text note below.

tration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of this title.

(c) Self-determination contracts

Notwithstanding subsections (a) and (b) of this section, with respect to any self-determination contract, or portion of a self-determination contract, that is intended to benefit one tribe, the tribal employment or contract preference laws adopted by such tribe shall govern with respect to the administration of the contract or portion of the contract.

(Pub. L. 93–638, § 7, Jan. 4, 1975, 88 Stat. 2205; Pub. L. 103–413, title I, § 102(3), (4), Oct. 25, 1994, 108 Stat. 4251.)

REFERENCES IN TEXT

Act of March 3, 1921, referred to in subsec. (a), probably means the act of March 3, 1931, ch. 411, 46 Stat. 1494, as amended, known as the Davis Bacon Act, which was classified generally to sections 276a to 276a–5 of former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted as sections 3141–3144, 3146, and 3147 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (a), is set out in the Appendix to Title 5, Government Organization and Employees.

Act of April 16, 1934, referred to in subsec. (b), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

CODIFICATION

In subsec. (a), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C. 276c)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–413, § 102(3), substituted ''or subcontractors (excluding tribes and tribal organizations)'' for ''of subcontractors''.

Subsec. (c). Pub. L. 103–413, § 102(4), added subsec. (c).

§ 450e–1. Grant and cooperative agreements

The provisions of this subchapter shall not be subject to the requirements of chapter 63 of title 31: *Provided*, That a grant agreement or a cooperative agreement may be utilized in lieu of a contract under sections 450f and 450g[1] of this title when mutually agreed to by the appropriate Secretary and the tribal organization involved.

(Pub. L. 93–638, § 9, as added Pub. L. 98–250, § 1, Apr. 3, 1984, 98 Stat. 118; amended Pub. L. 101–301, § 2(a)(5), May 24, 1990, 104 Stat. 206.)

REFERENCES IN TEXT

Section 450g of this title, referred to in text, was in the original ''section 103 of this Act'', meaning section 103 of Pub. L. 93–638, the Indian Self-Determination Act. Section 103(a) and (b) and the first sentence of section 103(c) of Pub. L. 93–638, were repealed, and the remainder of section 103(c) of Pub. L. 93–638, was redesignated as section 102(d) of Pub. L. 93–638 (section 450f(d) of this title), by Pub. L. 100–472, title II, § 201(b)(1), Oct. 5, 1988, 102 Stat. 2289. Section 104 of Pub. L. 93–638 was renumbered as section 103 of Pub. L. 93–638 by section 202(a) of Pub. L. 100–472, and is classified to section 450h of this title.

AMENDMENTS

1990—Pub. L. 101–301 substituted ''chapter 63 of title 31'' for ''the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224; 92 Stat. 3)''.

§ 450e–2. Use of excess funds

Beginning in fiscal year 1998 and thereafter, where the actual costs of construction projects under self-determination contracts, compacts, or grants, pursuant to Public Laws 93–638, 103–413, or 100–297, are less than the estimated costs thereof, use of the resulting excess funds shall be determined by the appropriate Secretary after consultation with the tribes.

(Pub. L. 105–83, title III, § 310, Nov. 14, 1997, 111 Stat. 1590.)

REFERENCES IN TEXT

Public Law 93–638, referred to in text, is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this subchapter (§ 450 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

Public Law 103–413, referred to in text, is Pub. L. 103–413, Oct. 25, 1994, 108 Stat. 4250, known as the Indian Self-Determination Act Amendments of 1994, which is classified principally to part D (§ 458aa et seq.) of this subchapter. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 450 of this title and Tables.

Public Law 100–297, referred to in text, is Pub. L. 100–297, Apr. 28, 1988, 102 Stat. 130, as amended, known as the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 6301 of Title 20, Education, and Tables.

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1998, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this subchapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 104–208, div. A, title I, § 101(d) [title III, § 310], Sept. 30, 1996, 110 Stat. 3009–181, 3009–221.

Pub. L. 104–134, title I, § 101(c) [title III, § 310], Apr. 26, 1996, 110 Stat. 1321–156, 1321–197; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

§ 450e–3. Investment of advance payments; restrictions

Advance payments made by the Department of the Interior to Indian tribes, tribal organizations, and tribal consortia pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et

[1] See References in Text note below.

seq.) may on and after December 8, 2004, be invested by the Indian tribe, tribal organization, or consortium before such funds are expended for the purposes of the grant, compact, or annual funding agreement so long as such funds are—

(1) invested by the Indian tribe, tribal organization, or consortium only in obligations of the United States, or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or

(2) deposited only into accounts that are insured by an agency or instrumentality of the United States, or are fully collateralized to ensure protection of the funds, even in the event of a bank failure.

(Pub. L. 108–447, div. E, title I, § 111, Dec. 8, 2004, 118 Stat. 3064.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in text, is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to this subchapter (§ 450 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Tribally Controlled Schools Act of 1988, referred to in text, is part B (§§ 5201–5212) of title V of Pub. L. 100–297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§ 2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 2005, and also as part of the Consolidated Appropriations Act, 2005, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this subchapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 108–108, title I, § 111, Nov. 10, 2003, 117 Stat. 1266.

Pub. L. 108–7, div. F, title I, § 111, Feb. 20, 2003, 117 Stat. 239.

Pub. L. 107–63, title I, § 111, Nov. 5, 2001, 115 Stat. 438.

Pub. L. 106–291, title I, § 111, Oct. 11, 2000, 114 Stat. 942.

Pub. L. 106–113, div. B, § 1000(a)(3), [title I, § 111], Nov. 29, 1999, 113 Stat. 1535, 1501A–156.

Pub. L. 105–277, div. A, § 101(e), [title I, § 111], Oct. 21, 1998, 112 Stat. 2681–231, 2681–254.

Pub. L. 105–83, title I, § 112, Nov. 14, 1997, 111 Stat. 1562.

PART A—INDIAN SELF-DETERMINATION

§ 450f. Self-determination contracts

(a) Request by tribe; authorized programs

(1) The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof, including construction programs—

(A) provided for in the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 452 et seq.];

(B) which the Secretary is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208) [25 U.S.C. 13], and any Act subsequent thereto;

(C) provided by the Secretary of Health and Human Services under the Act of August 5, 1954 (68 Stat. 674), as amended [42 U.S.C. 2001 et seq.];

(D) administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of Health and Human Services or the Department of the Interior; and

(E) for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department of Health and Human Services or the Department of the Interior within which it is performed.

The programs, functions, services, or activities that are contracted under this paragraph shall include administrative functions of the Department of the Interior and the Department of Health and Human Services (whichever is applicable) that support the delivery of services to Indians, including those administrative activities supportive of, but not included as part of, the service delivery programs described in this paragraph that are otherwise contractable. The administrative functions referred to in the preceding sentence shall be contractable without regard to the organizational level within the Department that carries out such functions.

(2) If so authorized by an Indian tribe under paragraph (1) of this subsection, a tribal organization may submit a proposal for a self-determination contract, or a proposal to amend or renew a self-determination contract, to the Secretary for review. Subject to the provisions of paragraph (4), the Secretary shall, within ninety days after receipt of the proposal, approve the proposal and award the contract unless the Secretary provides written notification to the applicant that contains a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that—

(A) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(B) adequate protection of trust resources is not assured;

(C) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;

(D) the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 450j–1(a) of this title; or

(E) the program, function, service, or activity (or portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under paragraph (1) because the proposal includes activities that cannot lawfully be carried out by the contractor.

Notwithstanding any other provision of law, the Secretary may extend or otherwise alter the 90-day period specified in the second sentence of this subsection,[1] if before the expiration of such

[1] So in original. Probably should be ''paragraph,''.

period, the Secretary obtains the voluntary and express written consent of the tribe or tribal organization to extend or otherwise alter such period. The contractor shall include in the proposal of the contractor the standards under which the tribal organization will operate the contracted program, service, function, or activity, including in the area of construction, provisions regarding the use of licensed and qualified architects, applicable health and safety standards, adherence to applicable Federal, State, local, or tribal building codes and engineering standards. The standards referred to in the preceding sentence shall ensure structural integrity, accountability of funds, adequate competition for subcontracting under tribal or other applicable law, the commencement, performance, and completion of the contract, adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals), the use of proper materials and workmanship, necessary inspection and testing, and changes, modifications, stop work, and termination of the work when warranted.

(3) Upon the request of a tribal organization that operates two or more mature self-determination contracts, those contracts may be consolidated into one single contract.

(4) The Secretary shall approve any severable portion of a contract proposal that does not support a declination finding described in paragraph (2). If the Secretary determines under such paragraph that a contract proposal—

(A) proposes in part to plan, conduct, or administer a program, function, service, or activity that is beyond the scope of programs covered under paragraph (1), or

(B) proposes a level of funding that is in excess of the applicable level determined under section 450j–1(a) of this title,

subject to any alteration in the scope of the proposal that the Secretary and the tribal organization agree to, the Secretary shall, as appropriate, approve such portion of the program, function, service, or activity as is authorized under paragraph (1) or approve a level of funding authorized under section 450j–1(a) of this title. If a tribal organization elects to carry out a severable portion of a contract proposal pursuant to this paragraph, subsection (b) of this section shall only apply to the portion of the contract that is declined by the Secretary pursuant to this subsection.

(b) Procedure upon refusal of request to contract

Whenever the Secretary declines to enter into a self-determination contract or contracts pursuant to subsection (a) of this section, the Secretary shall—

(1) state any objections in writing to the tribal organization,

(2) provide assistance to the tribal organization to overcome the stated objections, and

(3) provide the tribal organization with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under such rules and regulations as the Secretary may promulgate, except that the tribe or tribal organization may, in lieu of filing such appeal, exercise the option to initiate an action in a Federal district court and proceed directly to such court pursuant to section 450m–1(a) of this title.

(c) Liability insurance; waiver of defense

(1) Beginning in 1990, the Secretary shall be responsible for obtaining or providing liability insurance or equivalent coverage, on the most cost-effective basis, for Indian tribes, tribal organizations, and tribal contractors carrying out contracts, grant agreements and cooperative agreements pursuant to this subchapter. In obtaining or providing such coverage, the Secretary shall take into consideration the extent to which liability under such contracts or agreements are covered by the Federal Tort Claims Act.

(2) In obtaining or providing such coverage, the Secretary shall, to the greatest extent practicable, give a preference to coverage underwritten by Indian-owned economic enterprises as defined in section 1452 of this title, except that, for the purposes of this subsection, such enterprises may include non-profit corporations.

(3)(A) Any policy of insurance obtained or provided by the Secretary pursuant to this subsection shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the sovereign immunity of an Indian tribe from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage or limits of the policy of insurance.

(B) No waiver of the sovereign immunity of an Indian tribe pursuant to this paragraph shall include a waiver to the extent of any potential liability for interest prior to judgment or for punitive damages or for any other limitation on liability imposed by the law of the State in which the alleged injury occurs.

(d) Tribal organizations and Indian contractors deemed part of Public Health Service

For purposes of section 233 of title 42, with respect to claims by any person, initially filed on or after December 22, 1987, whether or not such person is an Indian or Alaska Native or is served on a fee basis or under other circumstances as permitted by Federal law or regulations for personal injury, including death, resulting from the performance prior to, including, or after December 22, 1987, of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, or for purposes of section 2679, title 28, with respect to claims by any such person, on or after November 29, 1990, for personal injury, including death, resulting from the operation of an emergency motor vehicle, an Indian tribe, a tribal organization or Indian contractor carrying out a contract, grant agreement, or cooperative agreement under sections[2] 450f or 450h of this title is deemed to be part of the Public Health Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees (including those acting on behalf of the orga-

[2] So in original. Probably should be "section".

nization or contractor as provided in section 2671 of title 28 and including an individual who provides health care services pursuant to a personal services contract with a tribal organization for the provision of services in any facility owned, operated, or constructed under the jurisdiction of the Indian Health Service) are deemed employees of the Service while acting within the scope of their employment in carrying out the contract or agreement: *Provided*, That such employees shall be deemed to be acting within the scope of their employment in carrying out such contract or agreement when they are required, by reason of such employment, to perform medical, surgical, dental or related functions at a facility other than the facility operated pursuant to such contract or agreement, but only if such employees are not compensated for the performance of such functions by a person or entity other than such Indian tribe, tribal organization or Indian contractor.

(e) Burden of proof at hearing or appeal declining contract; final agency action

(1) With respect to any hearing or appeal conducted pursuant to subsection (b)(3) of this section or any civil action conducted pursuant to section 450m–1(a) of this title, the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for declining the contract proposal (or portion thereof).

(2) Notwithstanding any other provision of law, a decision by an official of the Department of the Interior or the Department of Health and Human Services, as appropriate (referred to in this paragraph as the ''Department'') that constitutes final agency action and that relates to an appeal within the Department that is conducted under subsection (b)(3) of this section shall be made either—

(A) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency (such as the Indian Health Service or the Bureau of Indian Affairs) in which the decision that is the subject of the appeal was made; or

(B) by an administrative judge.

(Pub. L. 93–638, title I, § 102, formerly §§ 102 and 103(c), Jan. 4, 1975, 88 Stat. 2206; Pub. L. 100–202, § 101(g) [title II, § 201], Dec. 22, 1987, 101 Stat. 1329–213, 1329–246; Pub. L. 100–446, title II, § 201, Sept. 27, 1988, 102 Stat. 1817; renumbered § 102 and amended Pub. L. 100–472, title II, § 201(a), (b)(1), Oct. 5, 1988, 102 Stat. 2288, 2289; Pub. L. 100–581, title II, § 210, Nov. 1, 1988, 102 Stat. 2941; Pub. L. 101–644, title II, § 203(b), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103–413, title I, § 102(5)–(9), Oct. 25, 1994, 108 Stat. 4251–4253; Pub. L. 106–260, § 6, Aug. 18, 2000, 114 Stat. 732.)

REFERENCES IN TEXT

Act of April 16, 1934, referred to in subsec. (a)(1)(A), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

Act of August 5, 1954, referred to in subsec. (a)(1)(C), is act Aug. 5, 1954, ch. 658, 68 Stat. 674, as amended, which is classified generally to subchapter I (§ 2001 et seq.) of chapter 22 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

This subchapter, referred to in subsec. (c)(1), was in the original ''this Act'', meaning Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this subchapter (§ 450 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Federal Tort Claims Act, referred to in subsec. (c)(1), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

AMENDMENTS

2000—Subsec. (e)(1). Pub. L. 106–260 inserted ''or any civil action conducted pursuant to section 450m–1(a) of this title'' after ''subsection (b)(3) of this section''.

1994—Subsec. (a)(1). Pub. L. 103–413, § 102(5), inserted concluding provisions.

Subsec. (a)(2). Pub. L. 103–413, § 102(6)(A)(i), (ii), (vi), inserted '', or a proposal to amend or renew a self-determination contract,'' before ''to the Secretary for review'' in first sentence and, in second sentence, substituted ''Subject to the provisions of paragraph (4), the Secretary'' for ''The Secretary'', inserted ''and award the contract'' after ''approve the proposal'', substituted ''the Secretary provides written notification to the applicant that contains a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that'' for '', within sixty days of receipt of the proposal, a specific finding is made that'', and inserted concluding provisions.

Subsec. (a)(2)(D), (E). Pub. L. 103–413, § 102(6)(A)(iii)–(v), added subpars. (D) and (E).

Subsec. (a)(4). Pub. L. 103–413, § 102(6)(B), added par. (4).

Subsec. (b)(3). Pub. L. 103–413, § 102(7), inserted ''with the right to engage in full discovery relevant to any issue raised in the matter'' after ''record'' and '', except that the tribe or tribal organization may, in lieu of filing such appeal, exercise the option to initiate an action in a Federal district court and proceed directly to such court pursuant to section 450m–1(a) of this title'' before period at end.

Subsec. (d). Pub. L. 103–413, § 102(8), substituted ''as provided in section 2671 of title 28 and including an individual who provides health care services pursuant to a personal services contract with a tribal organization for the provision of services in any facility owned, operated, or constructed under the jurisdiction of the Indian Health Service)'' for ''as provided in section 2671 of title 28)''.

Subsec. (e). Pub. L. 103–413, § 102(9), added subsec. (e).

1990—Subsec. (d). Pub. L. 101–644 inserted ''or for purposes of section 2679, title 28, with respect to claims by any such person, on or after November 29, 1990, for personal injury, including death, resulting from the operation of an emergency motor vehicle,'' after ''investigations,''.

1988—Pub. L. 100–472, § 201(a), amended section generally, revising and restating provisions of subsecs. (a) to (c).

Subsec. (c)(2). Pub. L. 100–581 which directed amendment of par. (2) by substituting ''section 1452 of this title'' for ''section 1425 of title 25, United States Code''

was executed by making the substitution for ''section 1425, title 25, United States Code'' to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 100–472, § 201(b)(1), redesignated the last sentence of subsec. (c) of section 450g of this title as subsec. (d) of this section and substituted ''sections 450f or 450h of this title'' for ''sections 450g and 450h(b) of this title''.

Pub. L. 100–446 inserted into sentence beginning ''For purposes of'' the words ''by any person, initially filed on or after December 22, 1987, whether or not such person is an Indian or Alaska Native or is served on a fee basis or under other circumstances as permitted by Federal law or regulations'' after ''claims'', ''prior to, including, or after December 22, 1987,'' after ''performance'', ''an Indian tribe,'' after ''investigations,'' and '': *Provided*, That such employees shall be deemed to be acting within the scope of their employment in carrying out such contract or agreement when they are required, by reason of such employment, to perform medical, surgical, dental or related functions at a facility other than the facility operated pursuant to such contract or agreement, but only if such employees are not compensated for the performance of such functions by a person or entity other than such Indian tribe, tribal organization or Indian contractor'' after ''the contract or agreement''.

1987—Subsec. (d). Pub. L. 100–202 inserted sentence at end deeming a tribal organization or Indian contractor carrying out a contract, grant agreement, or cooperative agreement to be part of the Public Health Service while carrying out any such contract or agreement and its employees to be employees of the Service while acting within the scope of their employment in carrying out the contract or agreement.

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–184, § 1, Dec. 4, 1991, 105 Stat. 1278, provided that: ''This Act [amending provisions set out below] may be cited as the 'Tribal Self-Governance Demonstration Project Act'.''

SHORT TITLE

For short title of title I of Pub. L. 93–638, which is classified principally to this part, as the ''Indian Self-Determination Act'', see section 101 of Pub. L. 93–638, set out as a note under section 450 of this title.

SAVINGS PROVISION

Pub. L. 106–260, § 11, Aug. 18, 2000, 114 Stat. 734, provided that: ''Funds appropriated for title III of the Indian Self-Determination and Education Assistance Act ([Pub. L. 93–638, former] 25 U.S.C. 450f note) shall be available for use under title V of such Act [25 U.S.C. 458aaa et seq.].''

TRIBAL SELF-GOVERNANCE—DEPARTMENT OF HEALTH AND HUMAN SERVICES

Title VI of Pub. L. 93–638, as added by Pub. L. 106–260, § 5, Aug. 18, 2000, 114 Stat. 731, provided that:

''SEC. 601. DEFINITIONS.

''(a) IN GENERAL.—In this title, the Secretary may apply the definitions contained in title V [25 U.S.C. 458aaa et seq.].

''(b) OTHER DEFINITIONS.—In this title:

''(1) AGENCY.—The term 'agency' means any agency or other organizational unit of the Department of Health and Human Services, other than the Indian Health Service.

''(2) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

''SEC. 602. DEMONSTRATION PROJECT FEASIBILITY.

''(a) STUDY.—The Secretary shall conduct a study to determine the feasibility of a tribal self-governance demonstration project for appropriate programs, services, functions, and activities (or portions thereof) of the agency.

''(b) CONSIDERATIONS.—In conducting the study, the Secretary shall consider—

''(1) the probable effects on specific programs and program beneficiaries of such a demonstration project;

''(2) statutory, regulatory, or other impediments to implementation of such a demonstration project;

''(3) strategies for implementing such a demonstration project;

''(4) probable costs or savings associated with such a demonstration project;

''(5) methods to assure quality and accountability in such a demonstration project; and

''(6) such other issues that may be determined by the Secretary or developed through consultation pursuant to section 603.

''(c) REPORT.—Not later than 18 months after the date of the enactment of this title [Aug. 18, 2000], the Secretary shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Resources [now Committee on Natural Resources] of the House of Representatives. The report shall contain—

''(1) the results of the study under this section;

''(2) a list of programs, services, functions, and activities (or portions thereof) within each agency with respect to which it would be feasible to include in a tribal self-governance demonstration project;

''(3) a list of programs, services, functions, and activities (or portions thereof) included in the list provided pursuant to paragraph (2) that could be included in a tribal self-governance demonstration project without amending statutes, or waiving regulations that the Secretary may not waive;

''(4) a list of legislative actions required in order to include those programs, services, functions, and activities (or portions thereof) included in the list provided pursuant to paragraph (2) but not included in the list provided pursuant to paragraph (3) in a tribal self-governance demonstration project; and

''(5) any separate views of tribes and other entities consulted pursuant to section 603 related to the information provided pursuant to paragraphs (1) through (4).

''SEC. 603. CONSULTATION.

''(a) STUDY PROTOCOL.—

''(1) CONSULTATION WITH INDIAN TRIBES.—The Secretary shall consult with Indian tribes to determine a protocol for consultation under subsection (b) prior to consultation under such subsection with the other entities described in such subsection.

''(2) REQUIREMENTS FOR PROTOCOL.—The protocol shall require, at a minimum, that—

''(A) the government-to-government relationship with Indian tribes forms the basis for the consultation process;

''(B) the Indian tribes and the Secretary jointly conduct the consultations required by this section; and

''(C) the consultation process allows for separate and direct recommendations from the Indian tribes and other entities described in subsection (b).

''(b) CONDUCTING STUDY.—In conducting the study under this title, the Secretary shall consult with Indian tribes, States, counties, municipalities, program beneficiaries, and interested public interest groups, and may consult with other entities as appropriate.

''SEC. 604. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated such sums as may be necessary to carry out this title. Such sums shall remain available until expended.''

INDIAN TRIBAL TORT CLAIMS AND RISK MANAGEMENT

Pub. L. 105–277, div. A, § 101(e) [title VII], Oct. 21, 1998, 112 Stat. 2681–231, 2681–335, provided that:

''SEC. 701. SHORT TITLE.

''This title may be cited as the 'Indian Tribal Tort Claims and Risk Management Act of 1998'.''

''SEC. 702. FINDINGS AND PURPOSE.

''(a) FINDINGS.—Congress finds that—

''(1) Indian tribes have made significant achievements toward developing a foundation for economic self-sufficiency and self-determination, and that economic self-sufficiency and self-determination have increased opportunities for the Indian tribes and other entities and persons to interact more frequently in commerce and intergovernmental relationships;

''(2) although Indian tribes have sought and secured liability insurance coverage to meet their needs, many Indian tribes are faced with significant barriers to obtaining liability insurance because of the high cost or unavailability of such coverage in the private market;

''(3) as a result, Congress has extended liability coverage provided to Indian tribes to organizations to carry out activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); and

''(4) there is an emergent need for comprehensive and cost-efficient insurance that allows the economy of Indian tribes to continue to grow and provides compensation to persons that may suffer personal injury or loss of property.

''(b) PURPOSE.—The purpose of this title is to provide for a study to facilitate relief for a person who is injured as a result of an official action of a tribal government.

''SEC. 703. DEFINITIONS.

''In this title:

''(1) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

''(2) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(3) TRIBAL ORGANIZATION.—The term 'tribal organization' has the meaning given that term in section 4(*l*) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(*l*)).

''SEC. 704. STUDY AND REPORT TO CONGRESS.

''(a) IN GENERAL.—

''(1) STUDY.—In order to minimize and, if possible, eliminate redundant or duplicative liability insurance coverage and to ensure that the provision of insurance to Indian tribes is cost-effective, the Secretary shall conduct a comprehensive survey of the degree, type, and adequacy of liability insurance coverage of Indian tribes at the time of the study.

''(2) CONTENTS OF STUDY.—The study conducted under this subsection shall include—

''(A) an analysis of loss data;

''(B) risk assessments;

''(C) projected exposure to liability, and related matters; and

''(D) the category of risk and coverage involved, which may include—

''(i) general liability;

''(ii) automobile liability;

''(iii) the liability of officials of the Indian tribe;

''(iv) law enforcement liability;

''(v) workers' compensation; and

''(vi) other types of liability contingencies.

''(3) ASSESSMENT OF COVERAGE BY CATEGORIES OF RISK.—For each Indian tribe, for each category of risk identified under paragraph (2), the Secretary, in conducting the study, shall determine whether insurance coverage or coverage under chapter 171 of title 28, United States Code, applies to that Indian tribe for that activity.

''(b) REPORT.—Not later than June 1, 1999, and annually thereafter, the Secretary shall submit a report to Congress that contains legislative recommendations that the Secretary determines to—

''(1) be appropriate to improve the provision of insurance coverage to Indian tribes; or

''(2) otherwise achieve the purpose of providing relief to persons who are injured as a result of an official action of a tribal government.

''SEC. 705. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to the Department of the Interior such sums as may be necessary to carry out this title.''

CLAIMS RESULTING FROM PERFORMANCE OF CONTRACT, GRANT AGREEMENT, OR COOPERATIVE AGREEMENT; CIVIL ACTION AGAINST TRIBE, TRIBAL ORGANIZATION, ETC., DEEMED ACTION AGAINST UNITED STATES; REIMBURSEMENT OF TREASURY FOR PAYMENT OF CLAIMS

Pub. L. 101–512, title III, § 314, Nov. 5, 1990, 104 Stat. 1959, as amended by Pub. L. 103–138, title III, § 308, Nov. 11, 1993, 107 Stat. 1416, provided that: ''With respect to claims resulting from the performance of functions during fiscal year 1991 and thereafter, or claims asserted after September 30, 1990, but resulting from the performance of functions prior to fiscal year 1991, under a contract, grant agreement, or any other agreement or compact authorized by the Indian Self-Determination and Education Assistance Act of 1975, as amended (88 Stat. 2203; 25 U.S.C. 450 et seq.) [Pub. L. 93–638, see Short Title note set out under section 450 of this title and Tables] or by title V, part B, Tribally Controlled School Grants of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, as amended (102 Stat. 385; 25 U.S.C. 2501 et seq.), an Indian tribe, tribal organization or Indian contractor is deemed hereafter to be part of the Bureau of Indian Affairs in the Department of the Interior or the Indian Health Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees are deemed employees of the Bureau or Service while acting within the scope of their employment in carrying out the contract or agreement: *Provided*, That after September 30, 1990, any civil action or proceeding involving such claims brought hereafter against any tribe, tribal organization, Indian contractor or tribal employee covered by this provision shall be deemed to be an action against the United States and will be defended by the Attorney General and be afforded the full protection and coverage of the Federal Tort Claims Act [See Short Title note under section 2671 of Title 28, Judiciary and Judicial Procedure]: *Provided further*, That beginning with the fiscal year ending September 30, 1991, and thereafter, the appropriate Secretary shall request through annual appropriations funds sufficient to reimburse the Treasury for any claims paid in the prior fiscal year pursuant to the foregoing provisions: *Provided further*, That nothing in this section shall in any way affect the provisions of section 102(d) of the Indian Self-Determination and Education Assistance Act of 1975, as amended (88 Stat. 2203; 25 U.S.C. 450 et seq.) [25 U.S.C. 450f(d)].''

REFERENCE TO SECTION 450g(c) IN PUBLIC LAW 100–446

Section 201(b)(2) of Pub. L. 100–472 provided that: ''Any reference to section 103(c) [§ 103(c) of Pub. L. 93–638, formerly 25 U.S.C. 450g(c)] contained in an Act making appropriations for the Department of the Interior and Related Agencies for fiscal year 1989 [Pub. L. 100–446] shall be deemed to apply to section 102(d) of such Act [§ 102(d) of Pub. L. 93–638, 25 U.S.C. 450f(d)] as amended by this Act.''

TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT

Title III of Pub. L. 93–638, as added by Pub. L. 100–472, title II, § 209, Oct. 5, 1988, 102 Stat. 2296; amended by Pub. L. 102–184, §§ 2–6, Dec. 4, 1991, 105 Stat. 1278; Pub. L. 102–573, title VIII, § 814, Oct. 29, 1992, 106 Stat. 4590; Pub. L. 103–435, § 22(a)(2), (3), Nov. 2, 1994, 108 Stat. 4575; Pub. L. 103–437, § 10(c)(1), Nov. 2, 1994, 108 Stat. 4589; Pub. L. 105–244, title IX, § 901(d), Oct. 7, 1998, 112 Stat. 1828, related to tribal self-governance research and demonstration project conducted by Secretary of the Interior and Secretary of Health and Human Services, prior to repeal by Pub. L. 106–260, § 10, Aug. 18, 2000, 114 Stat. 734.

§ 450g. Repealed or Transferred. Pub. L. 100–472, title II, § 201(b)(1), Oct. 5, 1988, 102 Stat. 2289

Section, Pub. L. 93–638, title I, § 103, Jan. 4, 1975, 88 Stat. 2206; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100–202, § 101(g) [title II], Dec. 22, 1987, 101 Stat. 1329–213, 1329–246; Pub. L. 100–446, title II, Sept. 27, 1988, 102 Stat. 1817, which related to contracts by Secretary of Health and Human Services with tribal organizations, was repealed except for the last sentence of subsec. (c), providing that tribal organizations and Indian contractors be deemed part of Public Health Service, which was redesignated subsec. (d) of section 450f of this title.

§ 450h. Grants to tribal organizations or tribes

(a) Request by tribe for contract or grant by Secretary of the Interior for improving, etc., tribal governmental, contracting, and program planning activities

The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to section 13 of this title, and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for—

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 450f of this title and the additional costs associated with the initial years of operation under such a contract or contracts; or

(3) the acquisition of land in connection with items (1) and (2) above: *Provided*, That in the case of land within Indian country (as defined in chapter 53 of title 18) or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of[1] Interior may (upon request of the tribe) acquire such land in trust for the tribe.

(b) Grants by Secretary of Health and Human Services for development, maintenance, etc., of health facilities or services and improvement of contract capabilities implementing hospital and health facility functions

The Secretary of Health and Human Services may, in accordance with regulations adopted pursuant to section 450k of this title, make grants to any Indian tribe or tribal organization for—

(1) the development, construction, operation, provision, or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; or

(2) planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 450g[2] of this title.

(c) Use as matching shares for other similar Federal grant programs

The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

(d) Technical assistance

The Secretary is directed, upon the request of any tribal organization and subject to the availability of appropriations, to provide technical assistance on a nonreimbursable basis to such tribal organization—

(1) to develop any new self-determination contract authorized pursuant to this subchapter;

(2) to provide for the assumption by such tribal organization of any program, or portion thereof, provided for in section 450f(a)(1) of this title; or

(3) to develop modifications to any proposal for a self-determination contract which the Secretary has declined to approve pursuant to section 450f of this title.

(e) Grants for technical assistance and for planning, etc., Federal programs for tribe

The Secretary is authorized, upon the request of an Indian tribe, to make a grant to any tribal organization for—

(1) obtaining technical assistance from providers designated by the tribal organization, including tribal organizations that operate mature contracts, for the purposes of program planning and evaluation, including the development of any management systems necessary for contract management, and the development of cost allocation plans for indirect cost rates; and

(2) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe, including Federal administrative functions.

(Pub. L. 93–638, title I, § 103, formerly § 104, Jan. 4, 1975, 88 Stat. 2207; renumbered § 103 and amended Pub. L. 100–472, title II, § 202, Oct. 5, 1988, 102 Stat. 2289; Pub. L. 101–644, title II, § 203(g)(1), Nov. 29, 1990, 104 Stat. 4666.)

REFERENCES IN TEXT

Section 450g of this title, referred to in subsec. (b)(2), was in the original ''section 103 of this Act'', meaning section 103 of Pub. L. 93–638, the Indian Self-Determination Act. Section 103(a) and (b) and the first sentence of section 103(c) of Pub. L. 93–638 were repealed, and the remainder of section 103(c) of Pub. L. 93–638 was redesignated as section 102(d) of Pub. L. 93–638 (section 450f(d) of this title) by Pub. L. 100–472, title II, § 201(b)(1), Oct. 5, 1988, 102 Stat. 2289. Section 104 of Pub. L. 93–638 was renumbered as section 103 of Pub. L. 93–638 by section 202(a) of Pub. L. 100–472, and is classified to this section.

PRIOR PROVISIONS

A prior section 103 of Pub. L. 93–638 was classified to section 450g of this title and was repealed in part and

[1] So in original. Probably should be followed by ''the''.

[2] See References in Text note below.

transferred in part by section 201(b)(1) of Pub. L. 100–472.

AMENDMENTS

1990—Subsec. (a)(3). Pub. L. 101–644, which directed the substitution of ''Indian country (as defined in chapter 53 of title 18)'' for ''reservation boundaries'' in ''section 301(a)(3) of the Indian Self-Determination Act (25 U.S.C. 450h(a)(3))'', was executed to this section, section 103(a)(3) of that Act, to reflect the probable intent of Congress.

1988—Subsec. (a). Pub. L. 100–472, § 202(b), inserted ''or'' at end of par. (2), substituted a period for ''; or'' at end of par. (3), and struck out par. (4) which read as follows: ''the planning, designing, monitoring, and evaluating of Federal programs serving the tribe.''

Subsec. (b). Pub. L. 100–472, § 202(c), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsecs. (d), (e). Pub. L. 100–472, § 202(d), added subsecs. (d) and (e).

AUTHORITY OF SECRETARY TO ACQUIRE LANDS IN TRUST

Section 203(g)(2) of Pub. L. 101–644 provided that: ''The amendment made by paragraph (1) [amending this section] shall not alter or otherwise modify or affect existing prohibitions or limitations on the Secretary's authority to acquire lands in trust.''

§ 450i. Retention of Federal employee coverage, rights and benefits by employees of tribal organizations

(a) to (d) Omitted

(e) Eligible employees; Federal employee programs subject to retention

Notwithstanding the provisions of sections 8347(*o*), 8713, and 8914 of title 5, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization, the city of St. Paul, Alaska, the city of St. George, Alaska, upon incorporation, or the Village Corporations of St. Paul and St. George Islands established pursuant to section 1607 of title 43, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

(1) To retain coverage, rights, and benefits under subchapter I of chapter 81 (''Compensation for Work Injuries'') of title 5, and for this purpose his employment with the tribal organization shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of that payment shall be credited against any benefit payable under subchapter I of chapter 81 of title 5, as follows:

(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

(B) payments on account of death shall be credited against death compensation payable to dependents of the deceased employee.

(2) To retain coverage, rights, and benefits under chapter 83 (''Retirement'') or chapter 84 (''Federal Employees Retirement System'') of title 5, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of title 5); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of title 5. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

(3) To retain coverage, rights, and benefits under chapter 89 (''Health Insurance'') of title 5, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee's Health Benefit Fund (section 8909 of title 5); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of title 5.

(4) To retain coverage, rights, and benefits under chapter 87 (''Life Insurance'') of title 5, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organizations are currently deposited in the Employee's Life Insurance Fund (section 8714 of title 5); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of title 5.

(f) Deposit by tribal organization of employee deductions and agency contributions in appropriate funds

During the period an employee is entitled to the coverage, rights, and benefits pursuant to the preceding subsection, the tribal organization employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of such preceding subsection.

(g) Election for retention by employee and tribal organization before date of employment by tribal organization; transfer of employee to another tribal organization

An employee who is employed by a tribal organization under subsection (e) of this section and such tribal organization shall make the election to retain the coverages, rights, and benefits in paragraphs (1), (2), (3), and (4) of such subsection (e) before the date of his employment by a tribal organization. An employee who is employed by a tribal organization under subsection (e) of this section shall continue to be entitled to the benefits of such subsection if he is employed by another tribal organization to perform service in activities of the type described in such subsection.

(h) "Employee" defined

For the purposes of subsections (e), (f), and (g) of this section, the term ''employee'' means an employee as defined in section 2105 of title 5.

(i) Promulgation of implementation regulations by President

The President may prescribe regulations necessary to carry out the provisions of subsections (e), (f), (g), and (h) of this section and to protect and assure the compensation, retirement, insurance, leave, reemployment rights, and such other similar civil service employment rights as he finds appropriate.

(j) Additional employee employment rights

Anything in sections 205 and 207 of title 18 to the contrary notwithstanding—

(1) an officer or employee of the United States assigned to a tribal organization (as defined in section 450b(*l*) of this title) or an inter-tribal consortium (as defined in section 458aaa of this title), as authorized under section 3372 of title 5 or section 48 of this title may act as agent or attorney for, and appear on behalf of, such tribal organization or inter-tribal consortium in connection with any matter related to a tribal governmental activity or Federal Indian program or service pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That such officer or employee must advise in writing the head of the department, agency, court, or commission with which the officer or employee is dealing or appearing on behalf of the tribal organization or inter-tribal consortium of any personal and substantial involvement with the matter involved; and

(2) a former officer or employee of the United States who is carrying out official duties as an employee or as an elected or appointed official of a tribal organization (as defined in section 450b(*l*) of this title) or inter-tribal consortium (as defined in section 458aaa of this title) may act as agent or attorney for, and appear on behalf of, such tribal organization or intra-tribal consortium in connection with any matter related to a tribal governmental activity or Federal Indian program or service pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That such former officer or employee must advise in writing the head of the department, agency, court, or commission with which the former officer or employee is dealing or appearing on behalf of the tribal organization or inter-tribal consortium of any personal and substantial involvement that he or she may have had as an officer or employee of the United States in connection with the matter involved.

(k), (*l*) Omitted

(m) Conversion to career appointment

The status of an Indian (as defined in section 479 of this title) appointed (except temporary appointments) to the Federal service under an excepted appointment under the authority of section 472 of this title, or any other provision of law granting a preference to Indians in personnel actions, shall be converted to a career appointment in the competitive service after three years of continuous service and satisfactory performance. The conversion shall not alter the Indian's eligibility for preference in personnel actions.

(Pub. L. 93–638, title I, § 104, formerly § 105, Jan. 4, 1975, 88 Stat. 2208; Pub. L. 89–702, title II, § 210(a), as added Pub. L. 98–129, § 2, Oct. 14, 1983, 97 Stat. 843; Pub. L. 99–221, § 3(a), Dec. 26, 1985, 99 Stat. 1735; renumbered § 104 and amended Pub. L. 100–472, title II, § 203, Oct. 5, 1988, 102 Stat. 2290; Pub. L. 101–301, § 2(a)(6), May 24, 1990, 104 Stat. 206; Pub. L. 110–81, title I, § 104(b), Sept. 14, 2007, 121 Stat. 740.)

CODIFICATION

Section is comprised of section 104 of Pub. L. 93–638. Subsecs. (a) to (d) of section 104 of Pub. L. 93–638 are classified to section 3371 of Title 5, Government Organization and Employees, section 2004b of Title 42, The Public Health and Welfare, section 456 of Title 50, Appendix, War and National Defense, and section 4762 of Title 42, respectively. Subsecs. (k) and (*l*) of section 104 of Pub. L. 93–638 are classified to section 3372 of Title 5.

PRIOR PROVISIONS

A prior section 104 of Pub. L. 93–638 was renumbered section 103 by Pub. L. 100–472 and is classified to section 450h of this title.

AMENDMENTS

2007—Subsec. (j). Pub. L. 110–81 amended subsec. (j) generally. Prior to amendment, text read as follows: ''Anything in sections 205 and 207 of title 18 to the contrary notwithstanding, officers and employees of the United States assigned to an Indian tribe as authorized under section 3372 of title 5, or section 48 of this title and former officers and employees of the United States employed by Indian tribes may act as agents or attorneys for or appear on behalf of such tribes in connection wth [sic] any matter pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That each such officer or employee or former officer or employee must advise in writing the head of the department, agency, court, or commission with which he is dealing or appearing on behalf of the tribe of any personal and substantial involvement he may have had as an officer or employee of the United States in connection with the matter involved.''

1990—Subsec. (m). Pub. L. 101–301 substituted ''an Indian (as defined in section 479 of this title) appointed (except temporary appointments)'' for ''an Indian appointed''.

1988—Subsecs. (a), (b). Pub. L. 100–472, § 203(b), (c), amended subsecs. (a) and (b). See Codification note above.

Subsec. (e). Pub. L. 100–472, § 203(d), (e), in introductory provisions, substituted ''Notwithstanding the provisions of sections 8347(*o*), 8713, and 8914 of title 5'' for ''Notwithstanding any other law'' and struck out ''on or before December 31, 1988'' after ''title 43'', and in par. (2), inserted ''or chapter 84 ('Federal Employees Retirement System')''. Notwithstanding directory language that the substitution of ''Notwithstanding the provisions of sections 8347(*o*), 8713, and 8914 of title 5'' be made in par. (2) of subsec. (e), the substitution was made in introductory provisions of subsec. (e) to reflect the probable intent of Congress because the language replaced appeared only in those introductory provisions.

Subsecs. (k), (*l*). Pub. L. 100–472, § 203(f), added subsecs. (k) and (*l*). See Codification note above.

Subsec. (m). Pub. L. 100–472, § 203(f), added subsec. (m).

1985—Subsec. (e). Pub. L. 99–221 substituted ''1988'' for ''1985''.

1983—Subsec. (e). Pub. L. 89–702, § 210(a), as added by Pub. L. 98–129, inserted '', the city of St. Paul, Alaska, the city of St. George, Alaska, upon incorporation, or the Village Corporations of St. Paul and St. George Islands established pursuant to section 1607 of title 43''.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–81, title I, § 105(d), Sept. 14, 2007, 121 Stat. 741, provided that: ''The amendments made by section 104 [amending this section and section 207 of Title 18, Crimes and Criminal Procedure] shall take effect on the date of the enactment of this Act [Sept. 14, 2007], except that section 104(j)(2) of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450i(j)(2)] (as amended by section 104(b)) shall apply to individuals who leave Federal office or employment to which such amendments apply on or after the 60th day after the date of the enactment of this Act.''

PRIBILOF ISLAND NATIVES EMPLOYED BY FEDERAL GOVERNMENT ON OCTOBER 28, 1983

Pub. L. 89–702, title II, § 210(b), as added by Pub. L. 98–129, § 2, Oct. 14, 1983, 97 Stat. 844, provided that: ''Notwithstanding any other provision of law, any Native of the Pribilof Islands employed by the Federal government on October 28, 1983, shall be deemed to have been covered under chapters 81, 83, 85 and 87 of title 5, United States Code, on such date for the purposes of determining eligibility for continuity of benefits under section 105(e) of the Act of January 4, 1975 (Public Law 93–638), known as the Indian Self-Determination and Education Assistance Act [subsec. (e) of this section].''

EX. ORD. NO. 11899. PROVIDING FOR PROTECTION OF CERTAIN CIVIL SERVICE EMPLOYMENT RIGHTS OF FEDERAL PERSONNEL WHO LEAVE FEDERAL EMPLOYMENT TO BE EMPLOYED BY TRIBAL ORGANIZATIONS

Ex. Ord. No. 11899, Jan. 26, 1976, 41 F.R. 3459, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by section 105(i) of the Indian Self-Determination and Education Assistance Act (88 Stat. 2210, 25 U.S.C. 450i), section 3301 of title 5 of the United States Code, section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. The Office of Personnel Management is hereby designated and empowered to exercise, without approval, ratification, or other action by the President, but after consultation with the Department of the Interior and the Department of Health and Human Services, the authority vested in the President by Section 105(i) of the Indian Self-Determination and Education Assistance Act [subsec. (i) of this section] (hereinafter referred to as the Act), to issue regulations necessary to carry out the provisions of subsections (e)(2), (e)(3), (e)(4), (f), (g) and (h) of section 105 of the act [subsecs. (e)(2), (3), (4), (f), (g), and (h) of this section], to carry out the provisions of subsection (e)(1) of section 105 of the act [subsec. (e)(1) of this section] pertains to section 8151 of title 5 of the United States Code, and to protect and assure any other civil service employment rights which it finds appropriate.

SEC. 2. The Office of Personnel Management shall, after consultation with the Department of the Interior and the Department of Health and Human Services, issue regulations, as it deems appropriate, providing for the establishment, granting, and exercise of reemployment rights for employees who leave Federal employment for employment by an Indian tribal organization under provisions of the act.

SEC. 3. The Secretary of Labor is hereby designated and empowered to exercise, without approval, ratification, or other action by the President, the authority vested in the President by section 105(i) of the act [subsec. (i) of this section] to issue regulations necessary to carry out the provisions of section 105(e)(1) of the act [subsec. (e)(1) of this section], except as provided in section 1 of this order.

§ 450j. Contract or grant provisions and administration

(a) Applicability of Federal contracting laws and regulations; waiver of requirements

(1) Notwithstanding any other provision of law, subject to paragraph (3), the contracts and cooperative agreements entered into with tribal organizations pursuant to section 450f of this title shall not be subject to Federal contracting or cooperative agreement laws (including any regulations), except to the extent that such laws expressly apply to Indian tribes.

(2) Program standards applicable to a nonconstruction self-determination contract shall be set forth in the contract proposal and the final contract of the tribe or tribal organization.

(3)(A) With respect to a construction contract (or a subcontract of such a construction contract), the provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and the regulations relating to acquisitions promulgated under such Act shall apply only to the extent that the application of such provision to the construction contract (or subcontract) is—

(i) necessary to ensure that the contract may be carried out in a satisfactory manner;

(ii) directly related to the construction activity; and

(iii) not inconsistent with this subchapter.

(B) A list of the Federal requirements that meet the requirements of clauses (i) through (iii) of subparagraph (A) shall be included in an attachment to the contract pursuant to negotiations between the Secretary and the tribal organization.

(C)(i) Except as provided in subparagraph (B), no Federal law listed in clause (ii) or any other provision of Federal law (including an Executive order) relating to acquisition by the Federal Government shall apply to a construction contract that a tribe or tribal organization enters into under this subchapter, unless expressly provided in such law.

(ii) The laws listed in this paragraph are as follows:

(I) The Federal Property and Administrative Services Act of 1949.[1]

(II) Section 3709 of the Revised Statutes [41 U.S.C. 5].

(III) Section 9(c) of the Act of Aug. 2, 1946 (60 Stat. 809, chapter 744).

(IV) Title III of the Federal Property and Administrative Services Act of 1949 (63 Stat. 393 et seq., chapter 288) [41 U.S.C. 251 et seq.].

(V) Section 13 of the Act of Oct. 3, 1944 (58 Stat. 770; chapter 479) [50 U.S.C. App. 1622].

(VI) Chapters 21, 25, 27, 29, and 31 of title 44.

(VII) Section 3145 of title 40.

(VIII) Sections 1 through 12 of the Act of June 30, 1936 (49 Stat. 2036 et seq. chapter 881) [41 U.S.C. 35–45].

[1] See References in Text note below.

(IX) The Service Control Act of 1965 (41 U.S.C. 351 et seq.).

(X) The Small Business Act (15 U.S.C. 631 et seq.).

(XI) Executive Order Nos. 12138, 11246, 11701 and 11758.

(b) Payments; transfer of funds by Treasury for disbursement by tribal organization; accountability for interest accrued prior to disbursement

Payments of any grants or under any contracts pursuant to sections 450f and 450h of this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this part. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds. Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.

(c) Term of self-determination contracts; annual renegotiation

(1) A self-determination contract shall be—

(A) for a term not to exceed three years in the case of other than a mature contract, unless the appropriate Secretary and the tribe agree that a longer term would be advisable, and

(B) for a definite or an indefinite term, as requested by the tribe (or, to the extent not limited by tribal resolution, by the tribal organization), in the case of a mature contract.

The amounts of such contracts shall be subject to the availability of appropriations.

(2) The amounts of such contracts may be renegotiated annually to reflect changed circumstances and factors, including, but not limited to, cost increases beyond the control of the tribal organization.

(d) Calendar year basis for contracts

(1) Beginning in fiscal year 1990, upon the election of a tribal organization, the Secretary shall use the calendar year as the basis for any contracts or agreements under this subchapter, unless the Secretary and the Indian tribe or tribal organization agree on a different period.

(2) The Secretary shall, on or before April 1 of each year beginning in 1992, submit a report to the Congress on the amounts of any additional obligation authority needed to implement this subsection in the next following fiscal year.

(e) Effective date for retrocession of contract

If an Indian tribe, or a tribal organization authorized by a tribe, requests retrocession of the appropriate Secretary for any contract or portion of a contract entered into pursuant to this subchapter, unless the tribe or tribal organization rescinds the request for retrocession, such retrocession shall become effective on—

(1) the earlier of—

(A) the date that is 1 year after the date the Indian tribe or tribal organization submits such request; or

(B) the date on which the contract expires; or

(2) such date as may be mutually agreed by the Secretary and the Indian tribe.

(f) Use of existing school buildings, hospitals, and other facilities and equipment therein; acquisition and donation of excess or surplus Government personal property

In connection with any self-determination contract or grant made pursuant to section 450f or 450h of this title, the appropriate Secretary may—

(1) permit an Indian tribe or tribal organization in carrying out such contract or grant, to utilize existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance;

(2) donate to an Indian tribe or tribal organization title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, except that—

(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the contract or purchased with funds under any self-determination contract or grant agreement shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization;

(B) if property described in subparagraph (A) has a value in excess of $5,000 at the time of the retrocession, rescission, or termination of the self-determination contract or grant agreement, at the option of the Secretary, upon the retrocession, rescission, or termination, title to such property and equipment shall revert to the Department of the Interior or the Department of Health and Human Services, as appropriate; and

(C) all property referred to in subparagraph (A) shall remain eligible for replacement on the same basis as if title to such property were vested in the United States; and

(3) acquire excess or surplus Government personal or real property for donation to an Indian tribe or tribal organization if the Secretary determines the property is appropriate for use by the tribe or tribal organization for a purpose for which a self-determination contract or grant agreement is authorized under this subchapter.

(g) Performance of personal services

The contracts authorized under section 450f of this title and grants pursuant to section 450h of this title may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, and the extent or amount of such assistance, bene-

fits, or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: *Provided*, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

(h) Fair and uniform provision by tribal organization of services and assistance to covered Indians

Contracts and grants with tribal organizations pursuant to sections 450f and 450h of this title shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants.

(i) Division of administration of program

(1) If a self-determination contract requires the Secretary to divide the administration of a program that has previously been administered for the benefit of a greater number of tribes than are represented by the tribal organization that is a party to the contract, the Secretary shall take such action as may be necessary to ensure that services are provided to the tribes not served by a self-determination contract, including program redesign in consultation with the tribal organization and all affected tribes.

(2) Nothing in this part shall be construed to limit or reduce in any way the funding for any program, project, or activity serving a tribe under this or other applicable Federal law. Any tribe or tribal organization that alleges that a self-determination contract is in violation of this section may apply the provisions of section 450m–1 of this title.

(j) Proposal to redesign program, activity, function, or service

Upon providing notice to the Secretary, a tribal organization that carries out a nonconstruction self-determination contract may propose a redesign of a program, activity, function, or service carried out by the tribal organization under the contract, including any nonstatutory program standard, in such manner as to best meet the local geographic, demographic, economic, cultural, health, and institutional needs of the Indian people and tribes served under the contract. The Secretary shall evaluate any proposal to redesign any program, activity, function, or service provided under the contract. With respect to declining to approve a redesigned program, activity, function, or service under this subsection, the Secretary shall apply the criteria and procedures set forth in section 450f of this title.

(k) Access to Federal sources of supply

For purposes of section 501 of title 40 (relating to Federal sources of supply, including lodging providers, airlines and other transportation providers), a tribal organization carrying out a contract, grant, or cooperative agreement under this subchapter shall be deemed an executive agency and part of the Indian Health Service when carrying out such contract, grant, or agreement and the employees of the tribal organization shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency have such access. For purposes of carrying out such contract, grant, or agreement, the Secretary shall, at the request of an Indian tribe, enter into an agreement for the acquisition, on behalf of the Indian tribe, of any goods, services, or supplies available to the Secretary from the General Services Administration or other Federal agencies that are not directly available to the Indian tribe under this section or under any other Federal law, including acquisitions from prime vendors. All such acquisitions shall be undertaken through the most efficient and speedy means practicable, including electronic ordering arrangements.

(*l*) Lease of facility used for administration and delivery of services

(1) Upon the request of an Indian tribe or tribal organization, the Secretary shall enter into a lease with the Indian tribe or tribal organization that holds title to, a leasehold interest in, or a trust interest in, a facility used by the Indian tribe or tribal organization for the administration and delivery of services under this subchapter.

(2) The Secretary shall compensate each Indian tribe or tribal organization that enters into a lease under paragraph (1) for the use of the facility leased for the purposes specified in such paragraph. Such compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable.

(m) Statutory requirements; technical assistance; precontract negotiation phase; fixed price construction contract

(1) Each construction contract requested, approved, or awarded under this subchapter, shall be subject to—

(A) except as otherwise provided in this subchapter, the provisions of this subchapter, other than sections 450f(a)(2), 450j–1(*l*), 450*l* and 450m of this title; and

(B) section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (104 Stat. 1959).

(2) In providing technical assistance to tribes and tribal organizations in the development of construction contract proposals, the Secretary shall provide, not later than 30 days after receiving a request from a tribe or tribal organization, all information available to the Secretary regarding the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments or environmental impact reports, and archaeological reports.

(3) Prior to finalizing a construction contract proposal pursuant to section 450f(a) of this title, and upon request of the tribe or tribal organization that submits the proposal, the Secretary shall provide for a precontract negotiation phase in the development of a contract proposal. Such phase shall include, at a minimum, the following elements:

(A) The provision of technical assistance pursuant to section 450h of this title and paragraph (2).

(B) A joint scoping session between the Secretary and the tribe or tribal organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement.

(C) An opportunity for the Secretary to revise the plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the tribe or tribal organization.

(D) A negotiation session during which the Secretary and the tribe or tribal organization shall seek to develop a mutually agreeable contract proposal.

(E) Upon the request of the tribe or tribal organization, the use of an alternative dispute resolution mechanism to seek resolution of all remaining areas of disagreement pursuant to the dispute resolution provisions under subchapter IV of chapter 5 of title 5.

(F) The submission to the Secretary by the tribe or tribal organization of a final contract proposal pursuant to section 450f(a) of this title.

(4)(A) Subject to subparagraph (B), in funding a fixed-price construction contract pursuant to section 450j–1(a) of this title, the Secretary shall provide for the following:

(i) The reasonable costs to the tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract.

(ii) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract and other relevant considerations.

(B) In establishing a contract budget for a construction project, the Secretary shall not be required to separately identify the components described in clauses (i) and (ii) of subparagraph (A).

(C) The total amount awarded under a construction contract shall reflect an overall fair and reasonable price to the parties, including the following costs:

(i) The reasonable costs to the tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of this subchapter and any other applicable law.

(ii) The costs of preparing the contract proposal and supporting cost data.

(iii) The costs associated with auditing the general and administrative costs of the tribal organization associated with the management of the construction contract.

(iv) In the case of a fixed-price contract, a fair profit determined by taking into consideration the relevant risks and local market conditions.

(v) If the Secretary and the tribe or tribal organization are unable to develop a mutually agreeable construction contract proposal pursuant to the procedures set forth in this subsection, the tribe or tribal organization may submit a final contract proposal to the Secretary. Not later than 30 days after receiving such final contract proposal, the Secretary shall approve the contract proposal and award the contract, unless, during such period the Secretary declines the proposal pursuant to subsections (a)(2) and (b)[2] of section 450f of this title (including providing opportunity for an appeal pursuant to section 450f(b) of this title).

(n) Rental rates for housing for Government employees in Alaska

Notwithstanding any other provision of law, the rental rates for housing provided to an employee by the Federal Government in Alaska pursuant to a self-determination contract shall be determined on the basis of—

(1) the reasonable value of the quarters and facilities (as such terms are defined under section 5911 of title 5) to such employee, and

(2) the circumstances under which such quarters and facilities are provided to such employee,

as based on the cost of comparable private rental housing in the nearest established community with a year-round population of 1,500 or more individuals.

(*o*) Patient records

(1) In general

At the option of an Indian tribe or tribal organization, patient records may be deemed to be Federal records under those provisions of title 44 that are commonly referred to as the ''Federal Records Act of 1950'' for the limited purposes of making such records eligible for storage by Federal Records Centers to the same extent and in the same manner as other Department of Health and Human Services patient records.

(2) Treatment of records

Patient records that are deemed to be Federal records under those provisions of title 44 that are commonly referred to as the ''Federal Records Act of 1950'' pursuant to this subsection shall not be considered Federal records for the purposes of chapter 5 of title 5.

(Pub. L. 93–638, title I, § 105, formerly § 106, Jan. 4, 1975, 88 Stat. 2210; renumbered § 105 and amended Pub. L. 100–472, title II, § 204, Oct. 5, 1988, 102 Stat. 2291; Pub. L. 101–301, § 2(a)(7), May 24, 1990, 104 Stat. 207; Pub. L. 101–644, title II, § 203(c)–(e), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103–413, title I, §§ 102(10)–(13), 106, Oct. 25, 1994, 108 Stat. 4253–4255, 4270; Pub. L. 104–109, § 7, Feb. 12, 1996, 110 Stat. 764; Pub. L. 106–260, §§ 7, 8, Aug. 18, 2000, 114 Stat. 732, 733.)

REFERENCES IN TEXT

The Office of Federal Procurement Policy Act, referred to in subsec. (a)(3)(A), is Pub. L. 93–400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (§ 401 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 41 and Tables.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a)(3)(C)(ii)(I), (IV), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified gener-

[2] See References in Text note below.

ally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

Section 9(c) of the Act of Aug. 2, 1946, referred to in subsec. (a)(3)(C)(ii)(III), is section 9(c) of act Aug. 2, 1946, ch. 744, 60 Stat. 809, which amended section 5 of Title 41.

The Service Control Act of 1965, referred to in subsec. (a)(3)(C)(ii)(IX), probably means the Service Contract Act of 1965, or Pub. L. 89–286, Oct. 22, 1965, 79 Stat. 1034, as amended, which is classified generally to chapter 6 (§ 351 et seq.) of Title 41. For complete classification of this Act to the Code, see Short Title note set out under section 351 of Title 41 and Tables.

The Small Business Act, referred to in subsec. (a)(3)(C)(ii)(X), is Pub. L. 85–536, § 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

Executive Order Nos. 12138, 11246, 11701 and 11758, referred to in subsec. (a)(3)(C)(ii)(XI), are Ex. Ord. No. 12138, May 18, 1979, 44 F.R. 29637, as amended, which is set out as a note under section 631 of Title 15, Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, as amended, which is set out as a note under section 2000e of Title 42, The Public Health and Welfare, Ex. Ord. No. 11701, Jan. 24, 1973, 38 F.R. 2675, which is set out as a note under section 4212 of Title 38, Veterans' Benefits, and Ex. Ord. No. 11758, Jan. 15, 1974, 39 F.R. 2075, as amended, which is set out as a note under section 701 of Title 29, Labor.

This part, referred to in subsecs. (b) and (i)(2), was in the original "this title", meaning title I of Pub. L. 93–638, known as the Indian Self-Determination Act, which is classified principally to this part (450f et seq.). For complete classification of title I to the Code, see Short Title note set out under section 450 of this title and Tables.

Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991, referred to in subsec. (m)(1)(B), is section 314 of Pub. L. 101–512, which is set out as a note under section 450f of this title.

Subsections (a)(2) and (b) of section 450f of this title, referred to in subsec. (m)(4)(C)(v), was in the original "sections 102(a)(2) and 102(b) of section 102", and was translated as reading "subsections (a)(2) and (b) of section 102", meaning section 102 of Pub. L. 93–638, to reflect the probable intent of Congress.

The Federal Records Act of 1950, referred to in subsec. (*o*), was title V of act June 30, 1949, ch. 288, as added Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583, which was classified generally to sections 392 to 396 and 397 to 401 of former Title 44, Public Printing and Documents. Section 6(d) of act Sept. 5, 1950, was repealed by Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1238, the first section of which enacted Title 44, Public Printing and Documents. For disposition of sections of former Title 44, see Table at the beginning of Title 44. Title V of act June 30, 1949, was repealed by Pub. L. 107–217, § 4, Aug. 21, 2002, 116 Stat. 1303.

CODIFICATION

"Section 3145 of title 40" substituted in subsec. (a)(3)(C)(ii)(VII) for "Section 2 of the Act of June 13, 1934 (48 Stat 948, chapter 483 [meaning chapter 482])" and "section 501 of title 40" substituted in subsec. (k) for "section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a))" on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 105 of Pub. L. 93–638 was renumbered section 104 by Pub. L. 100–472 and is classified to section 450i of this title.

AMENDMENTS

2000—Subsec. (k). Pub. L. 106–260, § 7, substituted "deemed an executive agency and part of the Indian Health Service" for "deemed an executive agency" and inserted at end "For purposes of carrying out such contract, grant, or agreement, the Secretary shall, at the request of an Indian tribe, enter into an agreement for the acquisition, on behalf of the Indian tribe, of any goods, services, or supplies available to the Secretary from the General Services Administration or other Federal agencies that are not directly available to the Indian tribe under this section or under any other Federal law, including acquisitions from prime vendors. All such acquisitions shall be undertaken through the most efficient and speedy means practicable, including electronic ordering arrangements."

Subsec. (*o*). Pub. L. 106–260, § 8, added subsec. (*o*).

1996—Subsec. (e). Pub. L. 104–109 made technical amendment to directory language of Pub. L. 103–413, § 102(11). See 1994 Amendment note below.

1994—Subsec. (a). Pub. L. 103–413, § 102(10), added subsec. (a) and struck out former subsec. (a) which read as follows: "Contracts with tribal organizations pursuant to section 450f of this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of sections 270a to 270d of title 40: *Provided*, That the appropriate Secretary may waive any provisions of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of this Act: *Provided further*, That, except for construction contracts (or subcontracts of such a construction contract), the Office of Federal Procurement Policy Act (88 Stat. 796; 41 U.S.C. 401 et seq.) and Federal acquisition regulations promulgated thereunder shall not apply to self-determination contracts."

Subsec. (e). Pub. L. 103–413, § 102(11), as amended by Pub. L. 104–109, added subsec. (e) and struck out former subsec. (e) which read as follows: "Whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act, such retrocession shall become effective one year from the date of the request by the Indian tribe or at such date as may be mutually agreed by the Secretary and the Indian tribe."

Subsec. (f)(2). Pub. L. 103–413, § 102(12), added par. (2) and struck out former par. (2) which read as follows: "donate to an Indian tribe or tribal organization the title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, including property and equipment purchased with funds under any self-determination contract or grant agreement; and".

Subsec. (h). Pub. L. 103–413, § 106, struck out "and the rules and regulations adopted by the Secretaries of the Interior and Health and Human Services pursuant to section 450k of this title" after "sections 450f and 450h of this title".

Subsecs. (i) to (n). Pub. L. 103–413, § 102(13), added subsecs. (i) to (n).

1990—Subsec. (a). Pub. L. 101–301 substituted "subcontracts of such a construction contract" for "subcontracts in such cases where the tribal contractor has sub-contracted the activity".

Subsec. (c)(1)(B). Pub. L. 101–644, § 203(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "for an indefinite term in the case of a mature contract."

Subsec. (d). Pub. L. 101–644, § 203(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

"(1) No later than fiscal year 1990, the Secretary shall begin using the calendar year as the basis for contracts and agreements under this Act except for instances where the Secretary and the Indian tribe or tribal organization agree on a different period.

''(2) The Secretary shall submit a report to the Congress within ninety days of October 5, 1988, on the amounts of any additional obligational authority needed to implement this subsection in fiscal year 1989.''

Subsec. (f)(2), (3). Pub. L. 101–644, § 203(e), inserted ''or real'' after ''personal''.

1988—Subsec. (a). Pub. L. 100–472, § 204(b), (c), substituted ''section 450f'' for ''sections 450f and 450g'' and inserted proviso relating to nonapplication of Office of Federal Procurement Policy Act to self-determination contracts.

Subsec. (b). Pub. L. 100–472, § 204(d), which directed the amendment of subsec. (b) by substituting ''sections 450f and 450h'' for ''sections 450f, 450g, and 450h'' was executed by substituting the new language for ''section 450f, 450g, or 450h'' as the probable intent of Congress.

Subsec. (c). Pub. L. 100–472, § 204(e), added subsec. (c) and struck out former subsec. (c) which read as follows: ''Any contract requested by a tribe pursuant to sections 450f and 450g of this title shall be for a term not to exceed one year unless the appropriate Secretary determines that a longer term would be advisable: *Provided*, That such term may not exceed three years and shall be subject to the availability of appropriations: *Provided, further*, That the amounts of such contracts may be renegotiated annually to reflect factors, including but not limited to cost increases beyond the control of a tribal organization.''

Subsec. (d). Pub. L. 100–472, § 204(e), added subsec. (d) and struck out former subsec. (d) which related to revision or amendment of contracts or grants at request or with consent of tribal organization and effective date for retrocession of contracts.

Subsec. (e). Pub. L. 100–472, § 204(e), added subsec. (e) and struck out former subsec. (e) which authorized the Secretary to permit tribal organizations to use existing school buildings, hospitals, and other facilities and equipment therein in carrying out grants or contracts.

Subsec. (f). Pub. L. 100–472, § 204(e), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100–472, § 204(f), redesignated former subsec. (f) as (g) and substituted ''section 450f'' for ''sections 450f and 450g''. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 100–472, § 204(g), (h), redesignated former subsec. (g) as (h), substituted ''sections 450f and 450h'' for ''sections 450f, 450g, and 450h'', and ''Health and Human Services'' for ''Health, Education, and Welfare''. Former subsec. (h), which related to minimum amount of funds under terms of contracts, was struck out.

CONTINUED AVAILABILITY OF CERTAIN FUNDS

Pub. L. 105–277, div. A, § 101(e) [title I], Oct. 21, 1998, 105 Stat. 2681–231, 2681–246, provided in part that: ''hereafter funds made available to tribes and tribal organizations through contracts, compact agreements, or grants, as authorized by the Indian Self-Determination Act of 1975 [25 U.S.C. 450f et seq.] or grants authorized by the Indian Education Amendments of 1988 (25 U.S.C. 2001 and 2008A [probably means prior versions of 25 U.S.C. 2001 and 2008a]) shall remain available until expended by the contractor or grantee''.

§ 450j–1. Contract funding and indirect costs

(a) Amount of funds provided

(1) The amount of funds provided under the terms of self-determination contracts entered into pursuant to this subchapter shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract, without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractable, is operated.

(2) There shall be added to the amount required by paragraph (1) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which—

(A) normally are not carried on by the respective Secretary in his direct operation of the program; or

(B) are provided by the Secretary in support of the contracted program from resources other than those under contract.

(3)(A) The contract support costs that are eligible costs for the purposes of receiving funding under this subchapter shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of—

(i) direct program expenses for the operation of the Federal program that is the subject of the contract, and

(ii) any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract,

except that such funding shall not duplicate any funding provided under subsection (a)(1) of this section.

(B) On an annual basis, during such period as a tribe or tribal organization operates a Federal program, function, service, or activity pursuant to a contract entered into under this subchapter, the tribe or tribal organization shall have the option to negotiate with the Secretary the amount of funds that the tribe or tribal organization is entitled to receive under such contract pursuant to this paragraph.

(4) For each fiscal year during which a self-determination contract is in effect, any savings attributable to the operation of a Federal program, function, service, or activity under a self-determination contract by a tribe or tribal organization (including a cost reimbursement construction contract) shall—

(A) be used to provide additional services or benefits under the contract; or

(B) be expended by the tribe or tribal organization in the succeeding fiscal year, as provided in section 13a of this title.

(5) Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary—

(A) to plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and

(B) to ensure compliance with the terms of the contract and prudent management.

(6) Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) if the Secretary does not receive a written notification of the nature

and extent of the costs prior to the date on which such costs are incurred.

(b) Reductions and increases in amount of funds provided

The amount of funds required by subsection (a) of this section—

(1) shall not be reduced to make funding available for contract monitoring or administration by the Secretary;

(2) shall not be reduced by the Secretary in subsequent years except pursuant to—

(A) a reduction in appropriations from the previous fiscal year for the program or function to be contracted;

(B) a directive in the statement of the managers accompanying a conference report on an appropriation bill or continuing resolution;

(C) a tribal authorization;

(D) a change in the amount of pass-through funds needed under a contract; or

(E) completion of a contracted project, activity, or program;

(3) shall not be reduced by the Secretary to pay for Federal functions, including, but not limited to, Federal pay costs, Federal employee retirement benefits, automated data processing, contract technical assistance or contract monitoring;

(4) shall not be reduced by the Secretary to pay for the costs of Federal personnel displaced by a self-determination contract; and

(5) may, at the request of the tribal organization, be increased by the Secretary if necessary to carry out this subchapter or as provided in section 450j(c) of this title.

Notwithstanding any other provision in this subchapter, the provision of funds under this subchapter is subject to the availability of appropriations and the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another tribe or tribal organization under this subchapter.

(c) Annual reports

Not later than May 15 of each year, the Secretary shall prepare and submit to Congress an annual report on the implementation of this subchapter. Such report shall include—

(1) an accounting of the total amounts of funds provided for each program and the budget activity for direct program costs and contract support costs of tribal organizations under self-determination;

(2) an accounting of any deficiency in funds needed to provide required contract support costs to all contractors for the fiscal year for which the report is being submitted;

(3) the indirect cost rate and type of rate for each tribal organization that has been negotiated with the appropriate Secretary;

(4) the direct cost base and type of base from which the indirect cost rate is determined for each tribal organization;

(5) the indirect cost pool amounts and the types of costs included in the indirect cost pool; and

(6) an accounting of any deficiency in funds needed to maintain the preexisting level of services to any Indian tribes affected by contracting activities under this subchapter, and a statement of the amount of funds needed for transitional purposes to enable contractors to convert from a Federal fiscal year accounting cycle, as authorized by section 450j(d) of this title.

(d) Treatment of shortfalls in indirect cost recoveries

(1) Where a tribal organization's allowable indirect cost recoveries are below the level of indirect costs that the tribal organizations should have received for any given year pursuant to its approved indirect cost rate, and such shortfall is the result of lack of full indirect cost funding by any Federal, State, or other agency, such shortfall in recoveries shall not form the basis for any theoretical over-recovery or other adverse adjustment to any future years' indirect cost rate or amount for such tribal organization, nor shall any agency seek to collect such shortfall from the tribal organization.

(2) Nothing in this subsection shall be construed to authorize the Secretary to fund less than the full amount of need for indirect costs associated with a self-determination contract.

(e) Liability for indebtedness incurred before fiscal year 1992

Indian tribes and tribal organizations shall not be held liable for amounts of indebtedness attributable to theoretical or actual under-recoveries or theoretical over-recoveries of indirect costs, as defined in Office of Management and Budget Circular A–87, incurred for fiscal years prior to fiscal year 1992.

(f) Limitation on remedies relating to cost disallowances

Any right of action or other remedy (other than those relating to a criminal offense) relating to any disallowance of costs shall be barred unless the Secretary has given notice of any such disallowance within three hundred and sixty-five days of receiving any required annual single agency audit report or, for any period covered by law or regulation in force prior to October 19, 1984, any other required final audit report. Such notice shall set forth the right of appeal and hearing to the board of contract appeals pursuant to section 450m–1 of this title. For the purpose of determining the 365-day period specified in this paragraph, an audit report shall be deemed to have been received on the date of actual receipt by the Secretary, if, within 60 days after receiving the report, the Secretary does not give notice of a determination by the Secretary to reject the single-agency report as insufficient due to noncompliance with chapter 75 of title 31 or noncompliance with any other applicable law. Nothing in this subsection shall be deemed to enlarge the rights of the Secretary with respect to section 476 of this title.

(g) Addition to contract of full amount contractor entitled; adjustment

Upon the approval of a self-determination contract, the Secretary shall add to the contract the full amount of funds to which the contractor is entitled under subsection (a) of this section, subject to adjustments for each subsequent year

that such tribe or tribal organization administers a Federal program, function, service, or activity under such contract.

(h) Indirect costs for contracts for construction programs

In calculating the indirect costs associated with a self-determination contract for a construction program, the Secretary shall take into consideration only those costs associated with the administration of the contract and shall not take into consideration those moneys actually passed on by the tribal organization to construction contractors and subcontractors.

(i) Indian Health Service and Bureau of Indian Affairs budget consultations

On an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31).

(j) Use of funds for matching or cost participation requirements

Notwithstanding any other provision of law, a tribal organization may use funds provided under a self-determination contract to meet matching or cost participation requirements under other Federal and non-Federal programs.

(k) Allowable uses of funds without approval of Secretary

Without intending any limitation, a tribal organization may, without the approval of the Secretary, expend funds provided under a self-determination contract for the following purposes, to the extent that the expenditure of the funds is supportive of a contracted program:

(1) Depreciation and use allowances not otherwise specifically prohibited by law, including the depreciation of facilities owned by the tribe or tribal organization.

(2) Publication and printing costs.

(3) Building, realty, and facilities costs, including rental costs or mortgage expenses.

(4) Automated data processing and similar equipment or services.

(5) Costs for capital assets and repairs.

(6) Management studies.

(7) Professional services, other than services provided in connection with judicial proceedings by or against the United States.

(8) Insurance and indemnification, including insurance covering the risk of loss of or damage to property used in connection with the contract without regard to the ownership of such property.

(9) Costs incurred to raise funds or contributions from non-Federal sources for the purpose of furthering the goals and objectives of the self-determination contract.

(10) Interest expenses paid on capital expenditures such as buildings, building renovation, or acquisition or fabrication of capital equipment, and interest expenses on loans necessitated due to delays by the Secretary in providing funds under a contract.

(11) Expenses of a governing body of a tribal organization that are attributable to the management or operation of programs under this subchapter.

(12) Costs associated with the management of pension funds, self-insurance funds, and other funds of the tribal organization that provide for participation by the Federal Government.

(*l*) Suspension, withholding, or delay in payment of funds

(1) The Secretary may only suspend, withhold, or delay the payment of funds for a period of 30 days beginning on the date the Secretary makes a determination under this paragraph to a tribal organization under a self-determination contract, if the Secretary determines that the tribal organization has failed to substantially carry out the contract without good cause. In any such case, the Secretary shall provide the tribal organization with reasonable advance written notice, technical assistance (subject to available resources) to assist the tribal organization, a hearing on the record not later than 10 days after the date of such determination or such later date as the tribal organization shall approve, and promptly release any funds withheld upon subsequent compliance.

(2) With respect to any hearing or appeal conducted pursuant to this subsection, the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for suspending, withholding, or delaying payment of funds.

(m) Use of program income earned

The program income earned by a tribal organization in the course of carrying out a self-determination contract—

(1) shall be used by the tribal organization to further the general purposes of the contract; and

(2) shall not be a basis for reducing the amount of funds otherwise obligated to the contract.

(n) Reduction of administrative or other responsibilities of Secretary; use of savings

To the extent that programs, functions, services, or activities carried out by tribal organizations pursuant to contracts entered into under this subchapter reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of contract funds determined under subsection (a) of this section, the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct and contracted programs.

(*o*) Rebudgeting by tribal organization

Notwithstanding any other provision of law (including any regulation), a tribal organization that carries out a self-determination contract may, with respect to allocations within the approved budget of the contract, rebudget to meet contract requirements, if such rebudgeting would not have an adverse effect on the performance of the contract.

(Pub. L. 93–638, title I, § 106, as added Pub. L. 100–472, title II, § 205, Oct. 5, 1988, 102 Stat. 2292; amended Pub. L. 101–301, § 2(a)(8), (9), May 24, 1990, 104 Stat. 207; Pub. L. 101–644, title II, § 203(a), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103–413, title I, § 102(14)–(19), Oct. 25, 1994, 108 Stat. 4257–4259; Pub. L. 105–362, title VIII, § 801(g), Nov. 10, 1998, 112 Stat. 3288; Pub. L. 106–260, § 9, Aug. 18, 2000, 114 Stat. 733.)

PRIOR PROVISIONS

A prior section 106 of Pub. L. 93–638 was renumbered section 105 by Pub. L. 100–472 and is classified to section 450j of this title.

AMENDMENTS

2000—Subsecs. (c) to (*o*). Pub. L. 106–260 added subsec. (c) and redesignated former subsecs. (c) to (n) as (d) to (*o*), respectively.

1998—Subsecs. (c) to (*o*). Pub. L. 105–362 redesignated subsecs. (d) to (*o*) as (c) to (n), respectively, and struck out former subsec. (c) which related to Secretary's annual report to Congress on implementation of this subchapter.

1994—Subsec. (a)(1). Pub. L. 103–413, § 102(14)(A), inserted before period at end ", without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractable, is operated".

Subsec. (a)(2). Pub. L. 103–413, § 102(14)(B), inserted "an amount for" after "consist of".

Subsec. (a)(3). Pub. L. 103–413, § 102(14)(C), added par. (3) and struck out former par. (3) which read as follows: "Any savings in operation under a self-determination contract shall be utilized to provide additional services or benefits under the contract or be expended in the succeeding fiscal year as provided in section 13a of this title."

Subsec. (a)(4) to (6). Pub. L. 103–413, § 102(14)(C), added pars. (4) to (6).

Subsec. (c). Pub. L. 103–413, § 102(15)(A), substituted "May 15" for "March 15" in introductory provisions.

Subsec. (c)(1), (2). Pub. L. 103–413, § 102(15)(B), substituted "contract support costs" for "indirect costs".

Subsec. (c)(6). Pub. L. 103–413, § 102(15)(C)–(E), added par. (6).

Subsec. (f). Pub. L. 103–413, § 102(16), inserted after second sentence "For the purpose of determining the 365-day period specified in this paragraph, an audit report shall be deemed to have been received on the date of actual receipt by the Secretary, if, within 60 days after receiving the report, the Secretary does not give notice of a determination by the Secretary to reject the single-agency report as insufficient due to noncompliance with chapter 75 of title 31 or noncompliance with any other applicable law."

Subsec. (g). Pub. L. 103–413, § 102(17), added subsec. (g) and struck out former subsec. (g) which read as follows: "Upon the approval of a self-determination contract and at the request of an Indian tribe or tribal organization, the Secretary shall add the indirect cost funding amount awarded for a self-determination contract to the amount awarded for direct program funding for the first year and, subject to adjustments in the amount of direct program costs for the contract, for each subsequent year that the program remains continuously under contract."

Subsec. (i). Pub. L. 103–413, § 102(18), added subsec. (i) and struck out former subsec. (i) which read as follows: "Within one month after October 5, 1988, the Secretary is mandated to establish a team in each area of the Bureau of Indian Affairs which consists of agency personnel (area personnel in the Navajo Area and in the case of Indian tribes not served by an agency) and tribal representatives for the purpose of analyzing the 'Indian Priority System' and other aspects of the budgeting and funding allocation process of the Bureau of Indian Affairs for the purpose of making a report to Congress with appropriate recommendations for changes and legislative actions to achieve greater tribal decision-making authority over the use of funds appropriated for the benefit of the tribes and their members. The report along with the analysis, findings and recommendations of the area teams shall be submitted to Congress within six months of October 5, 1988. The Secretary may submit to Congress separate comments on the information and recommendations on the report."

Subsecs. (j) to (*o*). Pub. L. 103–413, § 102(19), added subsecs. (j) to (*o*).

1990—Subsec. (e). Pub. L. 101–644 substituted "1992" for "1988".

Subsec. (f). Pub. L. 101–301, § 2(a)(8), substituted "prior to enactment of chapter 75 of title 31" for "prior to enactment of the Single Agency Audit Act of 1984 (chapter 75 of title 31)", which for purposes of codification was translated as "prior to October 19, 1984", requiring no change in text.

Subsec. (i). Pub. L. 101–301, § 2(a)(9), substituted "agency personnel (area personnel in the Navajo Area and in the case of Indian tribes not served by an agency)" for "agency personnel".

§ 450j–2. Indian Health Service: availability of funds for Indian self-determination or self-governance contract or grant support costs

Before, on, and after October 21, 1998, and notwithstanding any other provision of law, funds available to the Indian Health Service in this Act or any other Act for Indian self-determination or self-governance contract or grant support costs may be expended only for costs directly attributable to contracts, grants and compacts pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.] and no funds appropriated by this or any other Act shall be available for any contract support costs or indirect costs associated with any contract, grant, cooperative agreement, self-governance compact, or funding agreement entered into between an Indian tribe or tribal organization and any entity other than the Indian Health Service.

(Pub. L. 105–277, div. A, § 101(e) [title II], Oct. 21, 1998, 112 Stat. 2681–231, 2681–280.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in text, is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to this part (§ 450f et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 450j–3. Department of the Interior: availability of funds for Indian self-determination or self-governance contract or grant support costs

Notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975, as amended [25 U.S.C. 450f et seq.], on and after November 29, 1999, funds available to the Department of the Interior for Indian self-determination or self-governance contract or grant support costs may be expended only for costs directly attributable to contracts, grants and compacts pursuant to the Indian Self-Determination Act of 1975 and on and after November 29, 1999, funds appropriated in this title[1] shall not be available for any con-

[1] See References in Text note below.

tract support costs or indirect costs associated with any contract, grant, cooperative agreement, self-governance compact or funding agreement entered into between an Indian tribe or tribal organization and any entity other than an agency of the Department of the Interior.

(Pub. L. 106–113, div. B, § 1000(a)(3) [title I, § 113], Nov. 29, 1999, 113 Stat. 1535, 1501A–157.)

REFERENCES IN TEXT

The Indian Self-Determination Act of 1975, referred to in text, probably means the Indian Self-Determination Act, title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to this part (§ 450f et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

This title, referred to in text, is title I of the Department of the Interior and Related Agencies Appropriations Act, 2000, as enacted by Pub. L. 106–113, div. B, § 1000(a)(3), Nov. 29, 1999, 113 Stat. 1535, 1501A–135. For complete classification of this title to the Code, see Tables.

SIMILAR PROVISIONS

Similar provisions were contained in Pub. L. 105–277, div. A, § 101(e) [title I, § 114], Oct. 21, 1998, 112 Stat. 2681–231, 2681–255.

§ 450k. Rules and regulations

(a) Authority of Secretaries of the Interior and of Health and Human Services to promulgate; time restriction

(1) Except as may be specifically authorized in this subsection, or in any other provision of this subchapter, the Secretary of the Interior and the Secretary of Health and Human Services may not promulgate any regulation, nor impose any nonregulatory requirement, relating to self-determination contracts or the approval, award, or declination of such contracts, except that the Secretary of the Interior and the Secretary of Health and Human Services may promulgate regulations under this subchapter relating to chapter 171 of title 28, commonly known as the ''Federal Tort Claims Act'', the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), declination and waiver procedures, appeal procedures, reassumption procedures, discretionary grant procedures for grants awarded under section 450h of this title, property donation procedures arising under section 450j(f) of this title, internal agency procedures relating to the implementation of this subchapter, retrocession and tribal organization relinquishment procedures, contract proposal contents, conflicts of interest, construction, programmatic reports and data requirements, procurement standards, property management standards, and financial management standards.

(2)(A) The regulations promulgated under this subchapter, including the regulations referred to in this subsection, shall be promulgated—

(i) in conformance with sections 552 and 553 of title 5 and subsections (c), (d), and (e) of this section; and

(ii) as a single set of regulations in title 25 of the Code of Federal Regulations.

(B) The authority to promulgate regulations set forth in this subchapter shall expire if final regulations are not promulgated within 20 months after October 25, 1994.

(b) Conflicting laws and regulations

The provisions of this subchapter shall supersede any conflicting provisions of law (including any conflicting regulations) in effect on the day before October 25, 1994, and the Secretary is authorized to repeal any regulation inconsistent with the provisions of this subchapter.

(c) Revisions and amendments; procedures applicable

The Secretary of the Interior and the Secretary of Health and Human Services are authorized, with the participation of Indian tribes and tribal organizations, to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the respective Secretary or Secretaries shall present the proposed revision or amendment to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives and shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

(d) Consultation in drafting and promulgating; negotiation process; interagency committees; extension of deadlines

(1) In drafting and promulgating regulations as provided in subsection (a) of this section (including drafting and promulgating any revised regulations), the Secretary of the Interior and the Secretary of Health and Human Services shall confer with, and allow for active participation by, representatives of Indian tribes, tribal organizations, and individual tribal members.

(2)(A) In carrying out rulemaking processes under this subchapter, the Secretary of the Interior and the Secretary of Health and Human Services shall follow the guidance of—

(i) subchapter III of chapter 5 of title 5, commonly known as the ''Negotiated Rulemaking Act of 1990''; and

(ii) the recommendations of the Administrative Conference of the United States numbered 82–4 and 85–5 entitled ''Procedures for Negotiating Proposed Regulations'' under sections 305.82–4 and 305.85–5 of title 1, Code of Federal Regulations, and any successor recommendation or law (including any successor regulation).

(B) The tribal participants in the negotiation process referred to in subparagraph (A) shall be nominated by and shall represent the groups described in this paragraph and shall include tribal representatives from all geographic regions.

(C) The negotiations referred to in subparagraph (B) shall be conducted in a timely manner. Proposed regulations to implement the amendments made by the Indian Self-Determination Contract Reform Act of 1994 shall be published in the Federal Register by the Secretary of the Interior and the Secretary of Health and Human Services not later than 180 days after October 25, 1994.

(D) Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund such interagency committees or other interagency bodies, including advisory bodies comprised of tribal representatives, as may be necessary or appropriate to carry out the provisions of this subchapter.

(E) If the Secretary determines that an extension of the deadlines under subsection (a)(2)(B) of this section and subparagraph (C) of this paragraph is appropriate, the Secretary may submit proposed legislation to Congress for the extension of such deadlines.

(e) Exceptions in or waiver of regulations

The Secretary may, with respect to a contract entered into under this subchapter, make exceptions in the regulations promulgated to carry out this subchapter, or waive such regulations, if the Secretary finds that such exception or waiver is in the best interest of the Indians served by the contract or is consistent with the policies of this subchapter, and is not contrary to statutory law. In reviewing each request, the Secretary shall follow the timeline, findings, assistance, hearing, and appeal procedures set forth in section 450f of this title.

(Pub. L. 93–638, title I, § 107, Jan. 4, 1975, 88 Stat. 2212; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100–472, title II, § 207, Oct. 5, 1988, 102 Stat. 2295; Pub. L. 101–644, title II, § 203(f), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103–413, title I, § 105, Oct. 25, 1994, 108 Stat. 4269; Pub. L. 103–435, § 22(a)(1), Nov. 2, 1994, 108 Stat. 4575; Pub. L. 103–437, § 10(c)(2), Nov. 2, 1994, 108 Stat. 4589; Pub. L. 104–133, § 1, Apr. 25, 1996, 110 Stat. 1320; Pub. L. 104–287, § 6(e), Oct. 11, 1996, 110 Stat. 3399.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (a)(1), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

The Indian Self-Determination Contract Reform Act of 1994, referred to in subsec. (d)(2)(C), is title I of Pub. L. 103–413, Oct. 25, 1994, 108 Stat. 4250, which enacted section 450*l* of this title, amended this section and sections 450b, 450c, 450e, 450f, 450j, 450j–1, 450m, and 450m–1 of this title, and enacted provisions set out as a note under section 450 of this title. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 450 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(2)(B). Pub. L. 104–133 substituted ''20 months'' for ''18 months''.

Subsec. (b). Pub. L. 104–287 repealed Pub. L. 103–437, § 10(c)(2)(A). See 1994 Amendment note below.

1994—Subsec. (a). Pub. L. 103–413, § 105(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''The Secretaries of the Interior and of Health and Human Services are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying out the provisions of this subchapter: *Provided, however*, That all Federal requirements for self-determination contracts and grants under this Act shall be promulgated as regulations in conformity with sections 552 and 553 of title 5.''

Subsec. (b). Pub. L. 103–437, § 10(c)(2)(A), which directed that subsec. (b) be repealed, was itself repealed by Pub. L. 104–287, § 6(e). See Effective Date and Construction of 1996 Amendment note below.

Pub. L. 103–435, which directed substitution of ''Committee on Natural Resources'' for ''Committee on Interior and Insular Affairs'' in par. (2), could not be executed because ''Committee on Interior and Insular Affairs'' did not appear in text subsequent to amendment by Pub. L. 103–413, § 105(1). See below.

Pub. L. 103–413, § 105(1), added subsec. (b) and struck out former subsec. (b) which read as follows:

''(b)(1) Within three months from October 5, 1988, the Secretary shall consider and formulate appropriate regulations to implement the provisions of this Act, with the participation of Indian tribes. Such proposed regulations shall contain all Federal requirements applicable to self-determination contracts and grants under this Act.

''(2) Within six months from October 5, 1988, the Secretary shall present the proposed regulations to the Select Committee on Indian Affairs of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

''(3) Within seven months from October 5, 1988, the Secretary shall publish proposed regulations in the Federal Register for the purpose of receiving comments from tribes and other interested parties.

''(4) Within ten months from October 5, 1988, the Secretary shall promulgate regulations to implement the provisions of such Act.''

Subsec. (c). Pub. L. 103–437, § 10(c)(2)(B), substituted ''Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives'' for ''Committees on Interior and Insular Affairs of the United States Senate and House of Representatives''.

Subsecs. (d), (e). Pub. L. 103–413, § 105(2), added subsecs. (d) and (e).

1990—Subsec. (c). Pub. L. 101–644 inserted '', with the participation of Indian tribes and tribal organizations,'' after ''authorized''.

1988—Subsec. (a). Pub. L. 100–472, § 207(a), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'', and inserted proviso relating to promulgation of Federal requirements for self-determination contracts as regulations.

Subsec. (b). Pub. L. 100–472, § 207(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) Within six months from January 4, 1975, the Secretary of the Interior and the Secretary of Health and Human Services shall each to the extent practicable, consult with national and regional Indian organizations to consider and formulate appropriate rules and regulations to implement the provisions of this subchapter.

''(2) Within seven months from January 4, 1975, the Secretary of the Interior and the Secretary of Health and Human Services shall each present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

''(3) Within eight months from January 4, 1975, the Secretary of the Interior and the Secretary of Health and Human Services shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

''(4) Within ten months from January 4, 1975, the Secretary of the Interior and the Secretary of Health and Human Services shall promulgate rules and regulations to implement the provisions of this subchapter.''

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (c), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE AND CONSTRUCTION OF 1996 AMENDMENT

Section 6(e) of Pub. L. 104–287 provided that: ''Effective November 2, 1994, section 10(c)(2)(A) of the Act of November 2, 1994 (Public Law 103–437, 108 Stat. 4589) [amending this section], is repealed and section 107(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450k(b)), as amended by section 105(1) of the Indian Self-Determination Act (Public Law 103–413, 108 Stat. 4269), is revived and shall read as if section 10(c)(2)(A) of the Act of November 2, 1994 (Public Law 103–437, 108 Stat. 4589), had not been enacted.

§ 450*l*. Contract or grant specifications

(a) Terms

Each self-determination contract entered into under this subchapter shall—

(1) contain, or incorporate by reference, the provisions of the model agreement described in subsection (c) of this section (with modifications where indicated and the blanks appropriately filled in), and

(2) contain such other provisions as are agreed to by the parties.

(b) Payments; Federal records

Notwithstanding any other provision of law, the Secretary may make payments pursuant to section 1(b)(6) of such model agreement. As provided in section 1(b)(7) of the model agreement, the records of the tribal government or tribal organization specified in such section shall not be considered Federal records for purposes of chapter 5 of title 5.

(c) Model agreement

The model agreement referred to in subsection (a)(1) of this section reads as follows:

"SECTION 1. AGREEMENT BETWEEN THE SECRETARY AND THE _____ TRIBAL GOVERNMENT.

''(a) AUTHORITY AND PURPOSE.—

''(1) AUTHORITY.—This agreement, denoted a Self-Determination Contract (referred to in this agreement as the 'Contract'), is entered into by the Secretary of the Interior or the Secretary of Health and Human Services (referred to in this agreement as the 'Secretary'), for and on behalf of the United States pursuant to title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and by the authority of the _____ tribal government or tribal organization (referred to in this agreement as the 'Contractor'). The provisions of title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) are incorporated in this agreement.

''(2) PURPOSE.—Each provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and each provision of this Contract shall be liberally construed for the benefit of the Contractor to transfer the funding and the following related functions, services, activities, and programs (or portions thereof), that are otherwise contractable under section 102(a) of such Act, including all related administrative functions, from the Federal Government to the Contractor: (List functions, services, activities, and programs).

''(b) TERMS, PROVISIONS, AND CONDITIONS.—

''(1) TERM.—Pursuant to section 105(c)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(1)), the term of this contract shall be ____ years. Pursuant to section 105(d)(1) of such Act (25 U.S.C. 450j(d)), upon the election by the Contractor, the period of this Contract shall be determined on the basis of a calendar year, unless the Secretary and the Contractor agree on a different period in the annual funding agreement incorporated by reference in subsection (f)(2).

''(2) EFFECTIVE DATE.—This Contract shall become effective upon the date of the approval and execution by the Contractor and the Secretary, unless the Contractor and the Secretary agree on an effective date other than the date specified in this paragraph.

''(3) PROGRAM STANDARD.—The Contractor agrees to administer the program, services, functions and activities (or portions thereof) listed in subsection (a)(2) of the Contract in conformity with the following standards: (list standards).

''(4) FUNDING AMOUNT.—Subject to the availability of appropriations, the Secretary shall make available to the Contractor the total amount specified in the annual funding agreement incorporated by reference in subsection (f)(2). Such amount shall not be less than the applicable amount determined pursuant to section 106(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j–1).

''(5) LIMITATION OF COSTS.—The Contractor shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under this Contract. If, at any time, the Contractor has reason to believe that the total amount required for performance of this Contract or a specific activity conducted under this Contract would be greater than the amount of funds awarded under this Contract, the Contractor shall provide reasonable notice to the appropriate Secretary. If the appropriate Secretary does not take such action as may be necessary to increase the amount of funds awarded under this Contract, the Contractor may suspend performance of the Contract until such time as additional funds are awarded.

''(6) PAYMENT.—

''(A) IN GENERAL.—Payments to the Contractor under this Contract shall—

''(i) be made as expeditiously as practicable; and

''(ii) include financial arrangements to cover funding during periods covered by joint resolutions adopted by Congress making continuing appropriations, to the extent permitted by such resolutions.

''(B) QUARTERLY, SEMIANNUAL, LUMP-SUM, AND OTHER METHODS OF PAYMENT.—

''(i) IN GENERAL.—Pursuant to section 108(b) of the Indian Self-Determination and Education Assistance Act, and notwithstanding any other provision of law, for each fiscal year covered by this Contract, the Secretary shall make available to the Contractor the funds specified for the fiscal year under the annual funding

agreement incorporated by reference pursuant to subsection (f)(2) by paying to the Contractor, on a quarterly basis, one-quarter of the total amount provided for in the annual funding agreement for that fiscal year, in a lump-sum payment or as semi-annual payments, or any other method of payment authorized by law, in accordance with such method as may be requested by the Contractor and specified in the annual funding agreement.

''(ii) METHOD OF QUARTERLY PAYMENT.—If quarterly payments are specified in the annual funding agreement incorporated by reference pursuant to subsection (f)(2), each quarterly payment made pursuant to clause (i) shall be made on the first day of each quarter of the fiscal year, except that in any case in which the Contract year coincides with the Federal fiscal year, payment for the first quarter shall be made not later than the date that is 10 calendar days after the date on which the Office of Management and Budget apportions the appropriations for the fiscal year for the programs, services, functions, and activities subject to this Contract.

''(iii) APPLICABILITY.—Chapter 39 of title 31, United States Code, shall apply to the payment of funds due under this Contract and the annual funding agreement referred to in clause (i).

''(7) RECORDS AND MONITORING.—

''(A) IN GENERAL.—Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the recordkeeping system of the Department of the Interior or the Department of Health and Human Services (or both), records of the Contractor shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

''(B) RECORDKEEPING SYSTEM.—The Contractor shall maintain a recordkeeping system and, upon reasonable advance request, provide reasonable access to such records to the Secretary.

''(C) RESPONSIBILITIES OF CONTRACTOR.—The Contractor shall be responsible for managing the day-to-day operations conducted under this Contract and for monitoring activities conducted under this Contract to ensure compliance with the Contract and applicable Federal requirements. With respect to the monitoring activities of the Secretary, the routine monitoring visits shall be limited to not more than one performance monitoring visit for this Contract by the head of each operating division, departmental bureau, or departmental agency, or duly authorized representative of such head unless—

''(i) the Contractor agrees to one or more additional visits; or

''(ii) the appropriate official determines that there is reasonable cause to believe that grounds for reassumption of the Contract, suspension of Contract payments, or other serious Contract performance deficiency may exist.

No additional visit referred to in clause (ii) shall be made until such time as reasonable advance notice that includes a description of the nature of the problem that requires the additional visit has been given to the Contractor.

''(8) PROPERTY.—

''(A) IN GENERAL.—As provided in section 105(f) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(f)), at the request of the Contractor, the Secretary may make available, or transfer to the Contractor, all reasonably divisible real property, facilities, equipment, and personal property that the Secretary has used to provide or administer the programs, services, functions, and activities covered by this Contract. A mutually agreed upon list specifying the property, facilities, and equipment so furnished shall also be prepared by the Secretary, with the concurrence of the Contractor, and periodically revised by the Secretary, with the concurrence of the Contractor.

''(B) RECORDS.—The Contractor shall maintain a record of all property referred to in subparagraph (A) or other property acquired by the Contractor under section 105(f)(2)(A) of such Act for purposes of replacement.

''(C) JOINT USE AGREEMENTS.—Upon the request of the Contractor, the Secretary and the Contractor shall enter into a separate joint use agreement to address the shared use by the parties of real or personal property that is not reasonably divisible.

''(D) ACQUISITION OF PROPERTY.—The Contractor is granted the authority to acquire such excess property as the Contractor may determine to be appropriate in the judgment of the Contractor to support the programs, services, functions, and activities operated pursuant to this Contract.

''(E) CONFISCATED OR EXCESS PROPERTY.—The Secretary shall assist the Contractor in obtaining such confiscated or excess property as may become available to tribes, tribal organizations, or local governments.

''(F) SCREENER IDENTIFICATION CARD.—A screener identification card (General Services Administration form numbered 2946) shall be issued to the Contractor not later than the effective date of this Contract. The designated official shall, upon request, assist the Contractor in securing the use of the card.

''(G) CAPITAL EQUIPMENT.—The Contractor shall determine the capital equipment, leases, rentals, property, or services the Contractor requires to perform the obligations of the Contractor under this subsection, and shall acquire and maintain records of such capital equipment, property rentals, leases, property, or services through applicable procurement procedures of the Contractor.

''(9) AVAILABILITY OF FUNDS.—Notwithstanding any other provision of law, any funds provided under this Contract—

''(A) shall remain available until expended; and

''(B) with respect to such funds, no further—

''(i) approval by the Secretary, or

''(ii) justifying documentation from the Contractor,

shall be required prior to the expenditure of such funds.

''(10) TRANSPORTATION.—Beginning on the effective date of this Contract, the Secretary shall authorize the Contractor to obtain interagency motor pool vehicles and related services for performance of any activities carried out under this Contract.

''(11) FEDERAL PROGRAM GUIDELINES, MANUALS, OR POLICY DIRECTIVES.—Except as specifically provided in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) the Contractor is not required to abide by program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Contractor and the Secretary, or otherwise required by law.

''(12) DISPUTES.—

''(A) THIRD-PARTY MEDIATION DEFINED.—For the purposes of this Contract, the term 'third-party mediation' means a form of mediation whereby the Secretary and the Contractor nominate a third party who is not employed by or significantly involved with the Secretary of the Interior, the Secretary of Health and Human Services, or the Contractor, to serve as a third-party mediator to mediate disputes under this Contract.

''(B) ALTERNATIVE PROCEDURES.—In addition to, or as an alternative to, remedies and procedures prescribed by section 110 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450m–1), the parties to this Contract may jointly—

''(i) submit disputes under this Contract to third-party mediation;

''(ii) submit the dispute to the adjudicatory body of the Contractor, including the tribal court of the Contractor;

''(iii) submit the dispute to mediation processes provided for under the laws, policies, or procedures of the Contractor; or

''(iv) use the administrative dispute resolution processes authorized in subchapter IV of chapter 5 of title 5, United States Code.

''(C) EFFECT OF DECISIONS.—The Secretary shall be bound by decisions made pursuant to the processes set forth in subparagraph (B), except that the Secretary shall not be bound by any decision that significantly conflicts with the interests of Indians or the United States.

''(13) ADMINISTRATIVE PROCEDURES OF CONTRACTOR.—Pursuant to the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.), the laws, policies, and procedures of the Contractor shall provide for administrative due process (or the equivalent of administrative due process) with respect to programs, services, functions, and activities that are provided by the Contractor pursuant to this Contract.

''(14) SUCCESSOR ANNUAL FUNDING AGREEMENT.—

''(A) IN GENERAL.—Negotiations for a successor annual funding agreement, provided for in subsection (f)(2), shall begin not later than 120 days prior to the conclusion of the preceding annual funding agreement. Except as provided in section 105(c)(2) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(2)) the funding for each such successor annual funding agreement shall only be reduced pursuant to section 106(b) of such Act (25 U.S.C. 450j–1(b)).

''(B) INFORMATION.—The Secretary shall prepare and supply relevant information, and promptly comply with any request by the Contractor for information that the Contractor reasonably needs to determine the amount of funds that may be available for a successor annual funding agreement, as provided for in subsection (f)(2) of this Contract.

''(15) CONTRACT REQUIREMENTS; APPROVAL BY SECRETARY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), for the term of the Contract, section 2103 of the Revised Statutes (25 U.S.C. 81), section 16 of the Act of June 18, 1934 (48 Stat. 987, chapter 576; 25 U.S.C. 476), and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply to any contract entered into in connection with this Contract.

''(B) REQUIREMENTS.—Each Contract entered into by the Contractor with a third party in connection with performing the obligations of the Contractor under this Contract shall—

''(i) be in writing;

''(ii) identify the interested parties, the authorities of such parties, and purposes of the Contract;

''(iii) state the work to be performed under the Contract; and

''(iv) state the process for making any claim, the payments to be made, and the terms of the Contract, which shall be fixed.

''(c) OBLIGATION OF THE CONTRACTOR.—

''(1) CONTRACT PERFORMANCE.—Except as provided in subsection (d)(2), the Contractor shall perform the programs, services, functions, and activities as provided in the annual funding agreement under subsection (f)(2) of this Contract.

''(2) AMOUNT OF FUNDS.—The total amount of funds to be paid under this Contract pursuant to section 106(a) shall be determined in an annual funding agreement entered into between the Secretary and the Contractor, which shall be incorporated into this Contract.

''(3) CONTRACTED PROGRAMS.—Subject to the availability of appropriated funds, the Contractor shall administer the programs, services, functions, and activities identified in this Contract and funded through the annual funding agreement under subsection (f)(2).

''(4) TRUST SERVICES FOR INDIVIDUAL INDIANS.—

''(A) IN GENERAL.—To the extent that the annual funding agreement provides funding for the delivery of trust services to individual Indians that have been provided by the Secretary, the Contractor shall maintain at least the same level of service as the Secretary provided for such individual Indians,

subject to the availability of appropriated funds for such services.

''(B) TRUST SERVICES TO INDIVIDUAL INDIANS.—For the purposes of this paragraph only, the term 'trust services for individual Indians' means only those services that pertain to land or financial management connected to individually held allotments.

''(5) FAIR AND UNIFORM SERVICES.—The Contractor shall provide services under this Contract in a fair and uniform manner and shall provide access to an administrative or judicial body empowered to adjudicate or otherwise resolve complaints, claims, and grievances brought by program beneficiaries against the Contractor arising out of the performance of the Contract.

''(d) OBLIGATION OF THE UNITED STATES.—

''(1) TRUST RESPONSIBILITY.—

''(A) IN GENERAL.—The United States reaffirms the trust responsibility of the United States to the _____ Indian tribe(s) to protect and conserve the trust resources of the Indian tribe(s) and the trust resources of individual Indians.

''(B) CONSTRUCTION OF CONTRACT.—Nothing in this Contract may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the tribe(s) or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility.

''(2) GOOD FAITH.—To the extent that health programs are included in this Contract, and within available funds, the Secretary shall act in good faith in cooperating with the Contractor to achieve the goals set forth in the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

''(3) PROGRAMS RETAINED.—As specified in the annual funding agreement, the United States hereby retains the programs, services, functions, and activities with respect to the tribe(s) that are not specifically assumed by the Contractor in the annual funding agreement under subsection (f)(2).

''(e) OTHER PROVISIONS.—

''(1) DESIGNATED OFFICIALS.—Not later than the effective date of this Contract, the United States shall provide to the Contractor, and the Contractor shall provide to the United States, a written designation of a senior official to serve as a representative for notices, proposed amendments to the Contract, and other purposes for this Contract.

''(2) CONTRACT MODIFICATIONS OR AMENDMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no modification to this Contract shall take effect unless such modification is made in the form of a written amendment to the Contract, and the Contractor and the Secretary provide written consent for the modification.

''(B) EXCEPTION.—The addition of supplemental funds for programs, functions, and activities (or portions thereof) already included in the annual funding agreement under subsection (f)(2), and the reduction of funds pursuant to section 106(b)(2), shall not be subject to subparagraph (A).

''(3) OFFICIALS NOT TO BENEFIT.—No Member of Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Contract, or to any benefit that may arise from such contract. This paragraph may not be construed to apply to any contract with a third party entered into under this Contract if such contract is made with a corporation for the general benefit of the corporation.

''(4) COVENANT AGAINST CONTINGENT FEES.—The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

''(f) ATTACHMENTS.—

''(1) APPROVAL OF CONTRACT.—Unless previously furnished to the Secretary, the resolution of the _____ Indian tribe(s) authorizing the contracting of the programs, services, functions, and activities identified in this Contract is attached to this Contract as attachment 1.

''(2) ANNUAL FUNDING AGREEMENT.—

''(A) IN GENERAL.—The annual funding agreement under this Contract shall only contain—

''(i) terms that identify the programs, services, functions, and activities to be performed or administered, the general budget category assigned, the funds to be provided, and the time and method of payment; and

''(ii) such other provisions, including a brief description of the programs, services, functions, and activities to be performed (including those supported by financial resources other than those provided by the Secretary), to which the parties agree.

''(B) INCORPORATION BY REFERENCE.—The annual funding agreement is hereby incorporated in its entirety in this Contract and attached to this Contract as attachment 2.''

(Pub. L. 93–638, title I, § 108, as added Pub. L. 103–413, title I, § 103, Oct. 25, 1994, 108 Stat. 4260; amended Pub. L. 106–568, title VIII, § 812(a), Dec. 27, 2000, 114 Stat. 2917.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in section 1(a), (b)(6)(B)(i), (11) of the provisions of subsec. (c) setting out the model agreement, is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to this subchapter (§ 450 et seq.). Title I of the Act is classified principally to this part (§ 450f et seq.). Section 102(a) of the Act is classified to section 450f(a) of this title. Section 108(b) of the Act is classified to subsec. (b) of this section. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Indian Civil Rights Act of 1968, referred to in section 1(b)(13) of the provisions of subsec. (c) setting out the model agreement, is title II of Pub. L. 90–284, Apr.

11, 1968, 82 Stat. 77, as amended, which is classified generally to subchapter I (§ 1301 et seq.) of chapter 15 of this title. For complete classification of this Act to the Code, see Tables.

The Act of July 3, 1952, referred to in section 1(b)(15)(A) of the provisions of subsec. (c) setting out the model agreement, is act July 3, 1952, ch. 549, 66 Stat. 323, which enacted section 82a of this title and provisions set out as a note under section 82a of this title.

The Indian Health Care Improvement Act, referred to in section 1(d)(2) of the provisions of subsec. (c) setting out the model agreement, is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§ 1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

PRIOR PROVISIONS

A prior section 450*l*, Pub. L. 93–638, title I, § 108, Jan. 4, 1975, 88 Stat. 2212, which related to report by tribe requesting contract or grant, was renumbered section 5(f) of Pub. L. 93–638, by Pub. L. 100–472, title II, § 208, Oct. 5, 1988, 102 Stat. 2296, and is classified to section 450c(f) of this title.

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–568 substituted ", section 16 of the Act of June 18, 1934" for "and section 16 of the Act of June 18, 1934" and "and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply" for "shall not apply" in section 1(b)(15)(A) of the provisions setting out the model agreement.

QUARTERLY PAYMENTS OF FUNDS TO TRIBES

Pub. L. 105–83, title III, § 311, Nov. 14, 1997, 111 Stat. 1590, provided that: "Notwithstanding Public Law 103–413 [see Short Title of 1994 Amendment note set out under section 450 of this title], quarterly payments of funds to tribes and tribal organizations under annual funding agreements pursuant to section 108 of Public Law 93–638 [25 U.S.C. 450*l*], as amended, beginning in fiscal year 1998 and therafter, [sic] may be made on the first business day following the first day of a fiscal quarter."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–208, div. A, title I, § 101(d) [title III, § 311], Sept. 30, 1996, 110 Stat. 3009–181, 3009–221.

Pub. L. 104–134, title I, § 101(c) [title III, § 311], Apr. 26, 1996, 110 Stat. 1321–156, 1321–197; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

§ 450m. Rescission of contract or grant and assumption of control of program, etc.; authority; grounds; procedure; correction of violation as prerequisite to new contract or grant agreement; construction with occupational safety and health requirements

Each contract or grant agreement entered into pursuant to sections 450f, 450g, and 450h[1] of this title shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, or in the management of trust fund, trust lands or interests in such lands pursuant to such contract or grant agreement, such Secretary may, under regulations prescribed by him and after providing notice and a hearing on the record to such tribal organization, rescind such contract or grant agreement, in whole or in part, and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by the Secretary to remedy the contract deficiency, except that the appropriate Secretary may, upon written notice to a tribal organization, and the tribe served by the tribal organization, immediately rescind a contract or grant, in whole or in part, and resume control or operation of a program, activity, function, or service, if the Secretary finds that (i) there is an immediate threat of imminent harm to the safety of any person, or imminent substantial and irreparable harm to trust funds, trust lands, or interests in such lands, and (ii) such threat arises from the failure of the contractor to fulfill the requirements of the contract. In such cases, the Secretary shall provide the tribal organization with a hearing on the record within ten days or such later date as the tribal organization may approve. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. In any hearing or appeal provided for under this section, the Secretary shall have the burden of proof to establish, by clearly demonstrating the validity of the grounds for rescinding, assuming, or reassuming the contract that is the subject of the hearing. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970, as amended [29 U.S.C. 651 et seq.].

(Pub. L. 93–638, title I, § 109, Jan. 4, 1975, 88 Stat. 2212; Pub. L. 100–581, title II, § 211, Nov. 1, 1988, 102 Stat. 2941; Pub. L. 101–301, § 2(a)(10), May 24, 1990, 104 Stat. 207; Pub. L. 103–413, title I, § 104(1), Oct. 25, 1994, 108 Stat. 4268.)

REFERENCES IN TEXT

Sections 450g and 450h of this title, referred to in text, was in the original "sections 103 and 104 of this Act", meaning sections 103 and 104 of Pub. L. 93–638, the Indian Self-Determination Act. Section 103(a) and (b) and the first sentence of section 103(c) of Pub. L. 93–638 were repealed, and the remainder of section 103(c) of Pub. L. 93–638 was redesignated as section 102(d) of Pub. L. 93–638 (section 450f(d) of this title), by Pub. L. 100–472, title II, § 201(b)(1), Oct. 5, 1988, 102 Stat. 2289. Sections 104 and 105 of Pub. L. 93–638 were renumbered as sections 103 and 104, respectively, of Pub. L. 93–638 by sections 202(a) and 203(a) of Pub. L. 100–472, and are classified to sections 450h and 450i, respectively, of this title.

The Occupational Safety and Health Act of 1970, as amended, referred to in text, is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

AMENDMENTS

1994—Pub. L. 103–413 inserted "or in the management of trust fund, trust lands or interests in such lands pur-

[1] See References in Text note below.

suant to such contract or grant agreement,'' after ''pursuant to such contract or grant agreement,'' and '', in whole or in part,'' after ''rescind such contract or grant agreement'', substituted ''action as prescribed by the Secretary to remedy the contract deficiency, except that the appropriate Secretary may, upon written notice to a tribal organization, and the tribe served by the tribal organization, immediately rescind a contract or grant, in whole or in part, and resume control or operation of a program, activity, function, or service, if the Secretary finds that (i) there is an immediate threat of imminent harm to the safety of any person, or imminent substantial and irreparable harm to trust funds, trust lands, or interests in such lands, and (ii) such threat arises from the failure of the contractor to fulfill the requirements of the contract. In such cases, the Secretary'' for ''action as prescribed by him: *Provided*, That the appropriate Secretary may, upon notice to a tribal organization, immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat to safety and, in such cases, he'', struck out second period after ''the tribal organization may approve'', and inserted before last sentence ''In any hearing or appeal provided for under this section, the Secretary shall have the burden of proof to establish, by clearly demonstrating the validity of the grounds for rescinding, assuming, or reassuming the contract that is the subject of the hearing.''

1990—Pub. L. 101–301 substituted ''providing notice and a hearing'' for ''providing notice and hearing''.

1988—Pub. L. 100–581 inserted ''on the record'' after ''providing notice and hearing''.

Pub. L. 100–581 which directed amendment of this section by substituting ''in such cases, he shall provide the tribal organization with a hearing on the record within ten days or such later date as the tribal organization may approve.'' for ''in such cases, he shall hold a hearing within ten days thereof'' was executed by substituting the new language for ''in such cases, he shall hold a hearing on such action within ten days thereof'' to reflect the probable intent of Congress.

§ 450m–1. Contract disputes and claims

(a) Civil actions; concurrent jurisdiction; relief

The United States district courts shall have original jurisdiction over any civil action or claim against the appropriate Secretary arising under this subchapter and, subject to the provisions of subsection (d) of this section and concurrent with the United States Court of Claims, over any civil action or claim against the Secretary for money damages arising under contracts authorized by this subchapter. In an action brought under this paragraph, the district courts may order appropriate relief including money damages, injunctive relief against any action by an officer of the United States or any agency thereof contrary to this subchapter or regulations promulgated thereunder, or mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a duty provided under this subchapter or regulations promulgated hereunder (including immediate injunctive relief to reverse a declination finding under section 450f(a)(2) of this title or to compel the Secretary to award and fund an approved self-determination contract).

(b) Revision of contracts

The Secretary shall not revise or amend a self-determination contract with a tribal organization without the tribal organization's consent.

(c) Application of laws to administrative appeals

The Equal Access to Justice Act (Publc[1] Law 96–481, Act of October 1,[1] 1980; 92[1] Stat. 2325, as amended), section 504 of title 5, and section 2412 of title 28 shall apply to administrative appeals pending on or filed after October 5, 1988, by tribal organizations regarding self-determination contracts.

(d) Application of Contract Disputes Act

The Contract Disputes Act (Public Law 95–563, Act of November 1, 1978; 92 Stat. 2383, as amended) [41 U.S.C. 601 et seq.] shall apply to self-determination contracts, except that all administrative appeals relating to such contracts shall be heard by the Interior Board of Contract Appeals established pursuant to section 8 of such Act (41 U.S.C. 607).

(e) Application of subsection (d)

Subsection (d) of this section shall apply to any case pending or commenced on or after March 17, 1986, before the Boards of Contract Appeals of the Department of the Interior or the Department of Health and Human Services except that in any such cases finally disposed of before October 5, 1988, the thirty-day period referred to in section 504(a)(2) of title 5 shall be deemed to commence on October 5, 1988.

(Pub. L. 93–638, title I, § 110, as added Pub. L. 100–472, title II, § 206(a), Oct. 5, 1988, 102 Stat. 2294; amended Pub. L. 100–581, title II, § 212, Nov. 1, 1988, 102 Stat. 2941; Pub. L. 101–301, §§ 1(a)(2), 2(b), May 24, 1990, 104 Stat. 206, 207; Pub. L. 103–413, title I, § 104(2), (3), Oct. 25, 1994, 108 Stat. 4268.)

REFERENCES IN TEXT

The Equal Access to Justice Act, referred to in subsec. (c), is Pub. L. 96–481, title II, Oct. 21, 1980, 94 Stat. 2325. For complete classification of this Act to the Code, see Short Title note set out under section 504 of Title 5, Government Organization and Employees, and Tables.

The Contract Disputes Act of 1978, referred to in subsec. (d), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

October 5, 1988, referred to in subsec. (e), was in the original ''the date of enactment of these amendments'' and ''the date of enactment of this subsection'', meaning the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988, Pub. L. 100–472, which enacted this section.

PRIOR PROVISIONS

A prior section 110 of Pub. L. 93–638 was renumbered section 111 by Pub. L. 100–472 and is classified to section 450n of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–413, § 104(2), inserted before period at end ''(including immediate injunctive relief to reverse a declination finding under section 450f(a)(2) of this title or to compel the Secretary to award and fund an approved self-determination contract)''.

Subsec. (d). Pub. L. 103–413, § 104(3), inserted before period at end '', except that all administrative appeals

[1] So in original. Probably should be ''Public'', ''21,'', and ''94'', respectively.

relating to such contracts shall be heard by the Interior Board of Contract Appeals established pursuant to section 8 of such Act (41 U.S.C. 607)''.

1990—Subsec. (a). Pub. L. 101–301, § 1(a)(2), made technical correction to directory language of Pub. L. 100–581, § 212(a). See 1988 Amendment note below.

Subsec. (b). Pub. L. 101–301, § 2(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Unless otherwise agreed to by the resolution of tribal organization, the Secretary shall not revise or amend a self-determination contract with such tribal organization.''

Subsec. (c). Pub. L. 101–301, § 1(a)(2), made technical correction to directory language of Pub. L. 100–581, § 212(c). See 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–581, § 212(a), as amended by Pub. L. 101–301, § 1(a)(2), substituted ''over any civil action'' for ''over civil action'' after ''Court of Claims,''.

Subsec. (b). Pub. L. 100–581, § 212(b), substituted ''of tribal organization'' for ''of an Indian tribe'' and ''such tribal organization'' for ''such tribe''.

Subsec. (c). Pub. L. 100–581, § 212(c), as amended by Pub. L. 101–301, § 1(a)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Equal Access to Justice Act (Public Law 96–481, Act of October 1 [21], 1980; 94 Stat. 2325, as amended) shall apply to administrative appeals by tribal organizations regarding self-determination contracts.''

§ 450n. Sovereign immunity and trusteeship rights unaffected

Nothing in this subchapter shall be construed as—

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

(Pub. L. 93–638, title I, § 111, formerly § 110, Jan. 4, 1975, 88 Stat. 2213; renumbered § 111, Pub. L. 100–472, title II, § 206(b), Oct. 5, 1988, 102 Stat. 2295.)

PART B—CONTRACTS WITH STATES

CODIFICATION

This part, consisting of sections 451 to 457 of this title, which was previously set out as part of former subchapter III of this chapter, was not enacted as part of the Indian Self-Determination and Education Assistance Act which comprises this subchapter.

§ 451. Donations for Indians; use of gifts; annual report to Congress

The Secretary of the Interior may accept donations of funds or other property for the advancement of the Indian race, and he may use the donated property in accordance with the terms of the donation in furtherance of any program authorized by other provision of law for the benefit of Indians. An annual report shall be made to the Congress on donations received and allocations made from such donations. This report shall include administrative costs and other pertinent data.

(Feb. 14, 1931, ch. 171, 46 Stat. 1106; Pub. L. 90–333, June 8, 1968, 82 Stat. 171.)

CODIFICATION

Section was not enacted as part of the Johnson-O'Malley Act which comprises this part, nor as part of the Indian Self-Determination and Education Assistance Act which comprises this subchapter.

AMENDMENTS

1968—Pub. L. 90–333 expanded area of permissible uses to which Secretary may put donated property by substituting provisions allowing inclusion of programs otherwise authorized by law intended to benefit Indians for provisions limiting permissible uses to programs otherwise authorized by law only if it could be shown that property would benefit a particular Indian institution or individual, and inserted provisions for an annual report to Congress on donations received and allocations made from such donations.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to making an annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 113 of House Document No. 103–7.

§ 452. Contracts for education, medical attention, relief and social welfare of Indians

The Secretary of the Interior is authorized, in his discretion, to enter into a contract or contracts with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named, and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory.

(Apr. 16, 1934, ch. 147, § 1, 48 Stat. 596; June 4, 1936, ch. 490, § 1, 49 Stat. 1458.)

AMENDMENTS

1936—Act June 4, 1936, substituted ''with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution'', ''through the agencies of the State or Territory or of the corporations and organizations hereinbefore named,'', and ''such State or Territory'' for ''any State or Territory having legal authority so to do,'', ''through the qualified agencies of such State or Territory,'', and ''such State'', respectively.

SHORT TITLE

Act April 16, 1934, ch. 147, 48 Stat. 596, which enacted sections 452 to 457 of this title, is popularly known as the ''Johnson-O'Malley Act''.

DISTRIBUTION OF PUBLIC SCHOOL ASSISTANCE

Pub. L. 100–446, title I, Sept. 27, 1988, 102 Stat. 1795, provided that: ''notwithstanding any other provision of law, the amounts available for assistance to public schools under the Act of April 16, 1934 (48 Stat. 596), as amended (25 U.S.C. 452 et seq.), shall be distributed on the basis of the formula recommended by the Assistant Secretary of Indian Affairs in a letter to the Committees on Appropriations dated June 27, 1988, except that for the fiscal year ending September 30, 1989, the minimum weight factor shall be 1.1 rather than 1.3 and for the fiscal year ending September 30, 1990, the minimum weight factor shall be 1.2 rather than 1.3''.

Similar provisions were contained in the following prior appropriation act:

Pub. L. 100–202, § 101(g) [title I], Dec. 22, 1987, 101 Stat. 1329–213, 1329–228.

LIMITATION ON CONTRACT AUTHORITY

Pub. L. 99–190, § 101(d) [title I], Dec. 19, 1985, 99 Stat. 1224, 1235, provided that: ''notwithstanding any law or regulation, in allocating funds for aid to public schools under the Act of April 16, 1934, as amended [sections 452 to 457 of this title], the Secretary shall enter into contracts only for the provision of supplementary educational services for Indian children''.

§ 453. Use of Government property by States and Territories

The Secretary of the Interior, in making any contract authorized by sections 452 to 457 of this title, may permit such contracting party to utilize, for the purposes of said sections, existing school buildings, hospitals, and other facilities, and all equipment therein or appertaining thereto, including livestock and other personal property owned by the Government, under such terms and conditions as may be agreed upon for their use and maintenance.

(Apr. 16, 1934, ch. 147, § 2, 48 Stat. 596; June 4, 1936, ch. 490, § 2, 49 Stat. 1459.)

AMENDMENTS

1936—Act June 4, 1936, substituted '', may permit such contracting party'' for ''with any State or Territory, may permit such State or Territory''.

§ 454. Rules and regulations; minimum standards of service

The Secretary of the Interior is authorized to perform any and all acts and to make such rules and regulations, including minimum standards of service, as may be necessary and proper for the purpose of carrying the provisions of sections 452 to 457 of this title into effect: *Provided*, That such minimum standards of service are not less than the highest maintained by the States or Territories within which said contract or contracts, as herein provided, are to be effective.

(Apr. 16, 1934, ch. 147, § 3, 48 Stat. 596; June 4, 1936, ch. 490, § 3, 49 Stat. 1459.)

AMENDMENTS

1936—Act June 4, 1936, substituted ''within which'' for ''with which''.

§ 455. Contracts for education in public schools; submission of education plan by contractor as prerequisite; criteria for approval of plan by Secretary of the Interior; participation by non-Indian students

The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives: *Provided*, That where students other than Indian students participate in such programs, money expended under such contract shall be prorated to cover the participation of only the Indian students.

(Apr. 16, 1934, ch. 147, § 4, as added Pub. L. 93–638, title II, § 202, Jan. 4, 1975, 88 Stat. 2213.)

PRIOR PROVISIONS

A prior section 4 of act Apr. 16, 1934, ch. 147, 48 Stat. 596; June 4, 1936, ch. 490, 49 Stat. 1458, directed Secretary of the Interior to report to Congress any contracts made under provisions of sections 452 to 454 of this title, prior to repeal by Pub. L. 86–533, § 1(15), June 29, 1960, 74 Stat. 248.

§ 456. Local committee of Indian parents in school districts having school boards composed of non-Indian majority

(a) Election; functions

Whenever a school district affected by a contract or contracts for the education of Indians pursuant to sections 452 to 457 of this title has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such committee shall fully participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation provide: *Provided*, *however*, That, whenever a local Indian committee or committees established pursuant to section 7424(c)(4) of title 20 or an Indian advisory school board or boards established pursuant to sections 452 to 457 of this title prior to January 4, 1975, exists in such school district, such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes of this section.

(b) Revocation of contracts

The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a) of this section.

(Apr. 16, 1934, ch. 147, § 5, as added Pub. L. 93–638, title II, § 202, Jan. 4, 1975, 88 Stat. 2213; amended Pub. L. 103–382, title III, § 393(d), Oct. 20, 1994, 108 Stat. 4027; Pub. L. 107–110, title VII, § 702(e), Jan. 8, 2002, 115 Stat. 1947.)

PRIOR PROVISIONS

A prior section 5 of act Apr. 16, 1934, ch. 147, 48 Stat. 596, excluded Oklahoma from the application of contract provisions, and was omitted by act June 4, 1936, ch. 490, 49 Stat. 1458.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–110 substituted reference to section 7424(c)(4) of title 20 for reference to section 7814(c)(4) of title 20.

1994—Subsec. (a). Pub. L. 103–382 substituted reference to section 7814(c)(4) of title 20 for reference to section 241dd(b)(2)(B)(ii) of title 20.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

§ 457. Reimbursement to school districts for educating non-resident students

Any school district educating Indian students who are members of recognized Indian tribes,

who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students.

(Apr. 16, 1934, ch. 147, § 6, as added Pub. L. 93–638, title II, § 202, Jan. 4, 1975, 88 Stat. 2214.)

INDIAN EDUCATIONAL REPORT; SUBMISSION TO CONGRESSIONAL COMMITTEES; TIME OF SUBMISSION; SCOPE AND CONTENT OF REPORT

Section 203 of Pub. L. 93–638 provided for a report to be prepared and submitted not later than Oct. 1, 1975, by the Secretary of the Interior to the Committees on Interior and Insular Affairs of the United States Senate and the House of Representatives after conferring with persons competent in the field of Indian education and consulting with the Secretary of Health, Education, and Welfare. The report was to include analysis of the act of Apr. 16, 1934, and a specific program to meet the special educational needs of Indian children who attend public schools.

PART C—INDIAN EDUCATION ASSISTANCE

§ 458. School construction, acquisition, or renovation contracts

(a) Authorization; prerequisites

The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

(b) Eligibility requirements for assistance in federally-affected areas; applicability to projects in determining maximum amount, allocation, of funds, etc.

The Secretary may expend not less than 75 per centum of such funds as are authorized and appropriated pursuant to this section on those projects which meet the eligibility requirements under subsections (a) and (b) of section 644[1] of title 20. Such funds shall be allocated on the basis of existing funding priorities, if any, established by the Secretary of Education under subsections (a) and (b) of section 644[1] of title 20. The Secretary of Education is directed to submit to the Secretary, at the beginning of each fiscal year, commencing with the first full fiscal year after January 4, 1975, a list of those projects eligible for funding under subsections (a) and (b) of section 644[1] of title 20.

(c) Eligibility of private schools to receive funds; maximum amount

The Secretary may expend not more than 25 per centum of such funds as may be authorized and appropriated pursuant to this section on any school eligible to receive funds under section 458d of this title.

(d) Duties of State education agencies pursuant to contracts

Any contract entered into by the Secretary pursuant to this section shall contain provisions requiring the relevant State educational agency to—

(1) provide Indian students attending any such facilities constructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.

(e) Advisory consultations by Secretary with affected entities and governing bodies prior to contracts; applicability

The Secretary shall consult with the entity designated pursuant to section 456 of this title, and with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by any contract entered into pursuant to this section. Such consultation shall be advisory only, but shall occur prior to the entering into of any such contract. The foregoing provisions of this subsection shall not be applicable where the application for a contract pursuant to this section is submitted by an elected school board of which a majority of its members are Indians.

(f) Evaluation and report to Congress of effectiveness of construction, etc., programs; scope and content of report

Within ninety days following the expiration of the three year period following January 4, 1975, the Secretary shall evaluate the effectiveness of the program pursuant to this section and transmit a report of such evaluation to the Congress. Such report shall include—

(1) an analysis of construction costs and the impact on such costs of the provisions of subsection (f) of this section and the Act of March 3, 1921 (46 Stat. 1491), as amended;[1]

(2) a description of the working relationship between the Department of the Interior and the Department of Education including any memorandum of understanding in connection with the acquisition of data pursuant to subsection (b) of this section;

(3) projections of the Secretary of future construction needs of the public schools serving Indian children residing on or adjacent to Indian reservations;

(4) a description of the working relationship of the Department of the Interior with local or State educational agencies in connection with the contracting for construction, acquisition, or renovation of school facilities pursuant to this section; and

(5) the recommendations of the Secretary with respect to the transfer of the responsibility for administering subsections (a) and (b) of

[1] See References in Text note below.

section 644[1] of title 20 from the Department of Education to the Department of the Interior.

(g) Authorization of appropriations

For the purpose of carrying out the provisions of this section, there is authorized to be appropriated the sum of $35,000,000 for the fiscal year ending June 30, 1974; $35,000,000 for each of the four succeeding fiscal years; and thereafter, such sums as may be necessary, all of such sums to remain available until expended.

(Pub. L. 93–638, title II, § 204, Jan. 4, 1975, 88 Stat. 2214; Pub. L. 96–88, title III, § 301, title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

REFERENCES IN TEXT

Section 644 of title 20, referred to in subsecs. (b) and (f)(5), was repealed by Pub. L. 103–382, title III, § 331(a), Oct. 20, 1994, 108 Stat. 3965.

Act of March 3, 1921, referred to in subsec. (f)(1), probably means the act of Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, known as the Davis-Bacon Act, which was classified generally to sections 276a to 276a–5 of former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted as sections 3141–3144, 3146, and 3147 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

TRANSFER OF FUNCTIONS

''Secretary of Education'' substituted for ''United States Commissioner of Education'' in subsec. (b), and ''Department of Education'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (f)(2), (5), pursuant to sections 301 and 507 of Pub. L. 96–88, which is classified to sections 3441 and 3507 of Title 20, Education, and which transferred functions and offices (relating to education) of Commissioner of Education and Department of Health, Education, and Welfare to Secretary and Department of Education.

§ 458a. General education contract and grant provisions and requirements; school district quality and standards of excellence

No funds from any grant or contract pursuant to this part shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources, other than resources provided in this part, available to the local school district.

(Pub. L. 93–638, title II, § 205, Jan. 4, 1975, 88 Stat. 2216.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this title'', meaning title II of Pub. L. 93–638, known as the Indian Education Assistance Act, which is classified principally to this part (§ 458 et seq.). For complete classification of title II to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 458b. Availability of funds to agencies, institutions, and organizations

No funds from any contract or grant pursuant to this part shall be made available by any Federal agency directly to other than public agencies and Indian tribes, institutions, and organizations: *Provided*, That school districts, State education agencies, and Indian tribes, institutions, and organizations assisted by this part may use funds provided herein to contract for necessary services with any appropriate individual, organization, or corporation.

(Pub. L. 93–638, title II, § 206, Jan. 4, 1975, 88 Stat. 2216.)

§ 458c. Rules and regulations

(a) Prerequisites for promulgation

(1) Within six months from January 4, 1975, the Secretary shall, to the extent practicable, consult with national and regional Indian organizations with experiences in Indian education to consider and formulate appropriate rules and regulations to implement the provisions of this part.

(2) Within seven months from January 4, 1975, the Secretary shall present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(3) Within eight months from January 4, 1975, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from January 4, 1975, the Secretary shall promulgate rules and regulations to implement the provisions of this part.

(b) Revision and amendment

The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to subsection (a) of this section: *Provided*, That prior to any revision or amendment to such rules or regulations the Secretary shall, to the extent practicable, consult with appropriate national and regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

(Pub. L. 93–638, title II, § 207, Jan. 4, 1975, 88 Stat. 2216.)

CHANGE OF NAME

Committee on Interior and Insular Affairs of the Senate abolished and replaced by Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of the Senate, as amended by Senate Resolution No. 4, Ninety-fifth Congress (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977. Section 105 of Senate Resolution No. 4 established a temporary Select Committee on Indian Affairs having jurisdiction over matters relating to Indian affairs (such matters previously having been within the jurisdiction of the Committee on Interior and Insular Affairs). Senate Resolution No. 127, June 6, 1984, Ninety-eighth Congress, established the Select Committee on Indian Affairs as a permanent committee of the Senate, and section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress, redesignated the Select Committee on Indian Affairs as the Committee on Indian Affairs.

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

§ 458d. Eligibility for funds of tribe or tribal organization controlling or managing private schools

The Secretary is authorized and directed to provide funds, pursuant to this subchapter; the the[1] Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 452 et seq.]; or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private school.

(Pub. L. 93–638, title II, § 208, Jan. 4, 1975, 88 Stat. 2216; Pub. L. 97–375, title I, § 108(d), Dec. 21, 1982, 96 Stat. 1820.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this subchapter (§ 450 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

Act of April 16, 1934, referred to in text, is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

AMENDMENTS

1982—Pub. L. 97–375 struck out provisions relating to annual reporting requirements of Secretary to Congressional committees respecting educational assistance program conducted pursuant to this section.

§ 458e. Supplemental assistance to funds provided to local educational agencies

The assistance provided in this subchapter for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IX of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801 et seq.].

(Pub. L. 93–638, title II, § 209, Jan. 4, 1975, 88 Stat. 2217; Pub. L. 103–382, title III, § 393(c), Oct. 20, 1994, 108 Stat. 4027.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Title IX of the Act is classified generally to subchapter IX (§ 7801 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

AMENDMENTS

1994—Pub. L. 103–382 substituted ''title IX of the Elementary and Secondary Education Act of 1965'' for ''title IV of the Act of June 23, 1972 (86 Stat. 235)''.

PART D—TRIBAL SELF-GOVERNANCE—DEPARTMENT OF THE INTERIOR

§ 458aa. Establishment

The Secretary of the Interior (hereinafter in this part referred to as the ''Secretary'') shall establish and carry out a program within the Department of the Interior to be known as Tribal Self-Governance (hereinafter in this part referred to as ''Self-Governance'') in accordance with this part.

(Pub. L. 93–638, title IV, § 401, as added Pub. L. 103–413, title II, § 204, Oct. 25, 1994, 108 Stat. 4271.)

SHORT TITLE

For short title of title II of Pub. L. 103–413, which enacted this part, as the ''Tribal Self-Governance Act of 1994'', see section 201 of Pub. L. 103–413, set out as a Short Title of 1994 Amendment note under section 450 of this title.

CONGRESSIONAL STATEMENT OF FINDINGS

Section 202 of Pub. L. 103–413 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 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 by title III of Pub. L. 93–638, formerly set out as a note under 25 U.S.C. 450f] 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; and

''(5) Congress has reviewed the results of the Tribal Self-Governance Demonstration Project and finds that—

''(A) transferring control to tribal governments, upon tribal request, over funding and decision-making for Federal programs, services, functions, and activities, or portions thereof, is an effective way to implement the Federal policy of government-to-government relations with Indian tribes; and

''(B) transferring control to tribal governments, upon tribal request, over funding and decision-making for Federal programs, services, functions, and activities strengthens the Federal policy of Indian self-determination.''

CONGRESSIONAL DECLARATION OF POLICY

Section 203 of title II of Pub. L. 103–413 provided that: ''It is the policy of this title [enacting this part] to permanently establish and implement tribal self-governance—

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

''(2) to permit each Indian tribe to choose the extent of the participation of such tribe in self-governance;

''(3) to coexist with the provisions of the Indian Self-Determination Act [title I of Pub. L. 93–638, see Short Title note set out under section 450 of this title] relating to the provision of Indian services by designated Federal agencies;

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

''(5) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority to plan, conduct, redesign, and administer programs, services, functions, and activities that meet the needs of the individual tribal communities; and

''(6) to provide for an orderly transition through a planned and measurable parallel reduction in the Federal bureaucracy.''

[1] So in original.

§ 458bb. Selection of participating Indian tribes

(a) Continuing participation

Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project at the Department of the Interior under title III[1] on October 25, 1994, shall thereafter participate in Self-Governance under this part and cease participation in the Tribal Self-Governance Demonstration Project under title III[1] with respect to the Department of the Interior.

(b) Additional participants

(1) In addition to those Indian tribes participating in self-governance under subsection (a) of this section, the Secretary, acting through the Director of the Office of Self-Governance, may select up to 50 new tribes per year from the applicant pool described in subsection (c) of this section to participate in self-governance.

(2) If each tribe requests, two or more otherwise eligible Indian tribes may be treated as a single Indian tribe for the purpose of participating in Self-Governance as a consortium.

(c) Applicant pool

The qualified applicant pool for Self-Governance shall consist of each tribe that—

(1) successfully completes the planning phase described in subsection (d) of this section;

(2) has requested participation in Self-Governance by resolution or other official action by the tribal governing body; and

(3) has demonstrated, for the previous three fiscal years, financial stability and financial management capability as evidenced by the tribe having no material audit exceptions in the required annual audit of the self-determination contracts of the tribe.

(d) Planning phase

Each Indian tribe seeking to begin participation in Self-Governance shall complete a planning phase in accordance with this subsection. The tribe shall be eligible for a grant to plan and negotiate participation in Self-Governance. The planning phase shall include—

(1) legal and budgetary research; and

(2) internal tribal government planning and organizational preparation.

(Pub. L. 93–638, title IV, § 402, as added Pub. L. 103–413, title II, § 204, Oct. 25, 1994, 108 Stat. 4272; amended Pub. L. 104–208, div. A, title I, § 101(d) [title I, § 117], Sept. 30, 1996, 110 Stat. 3009–181, 3009–201.)

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

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–208 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In addition to those Indian tribes participating in Self-Governance under subsection (a) of this section, the Secretary, acting through the Director of the Office of Self-Governance, may select up to 20 new tribes per year from the applicant pool described in subsection (c) of this section to participate in Self-Governance.''

[1] See References in Text note below.

§ 458cc. Funding agreements

(a) Authorization

The Secretary shall negotiate and enter into an annual written funding agreement with the governing body of each participating tribal government in a manner consistent with the Federal Government's laws and trust relationship to and responsibility for the Indian people.

(b) Contents

Each funding agreement shall—

(1) authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior through the Bureau of Indian Affairs, without regard to the agency or office of the Bureau of Indian Affairs within which the program, service, function, and activity, or portion thereof, is performed, including funding for agency, area, and central office functions in accordance with subsection (g)(3) of this section, and including any program, service, function, and activity, or portion thereof, administered under the authority of—

(A) the Act of April 16, 1934 (25 U.S.C. 452 et seq.);

(B) section 13 of this title; and

(C) programs, services, functions, and activities or portions thereof administered by the Secretary of the Interior that are otherwise available to Indian tribes or Indians for which appropriations are made to agencies other than the Department of the Interior;

(2) subject to such terms as may be negotiated, authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, that are otherwise available to Indian tribes or Indians, as identified in section 458ee(c) of this title, except that nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided for by law;

(3) subject to the terms of the agreement, authorize the tribe to redesign or consolidate programs, services, functions, and activities, or portions thereof, and reallocate funds for such programs, services, functions, and activities, or portions thereof, except that, with respect to the reallocation, consolidation, and redesign of programs described in paragraph (2), a joint agreement between the Secretary and the tribe shall be required;

(4) 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 450f of this title;

(5) specify the services to be provided, the functions to be performed, and the responsibilities of the tribe and the Secretary pursuant to the agreement;

(6) authorize the tribe and the Secretary to reallocate funds or modify budget allocations within any year, and specify the procedures to be used;

(7) allow for retrocession of programs or portions of programs pursuant to section 450j(e) of this title;

(8) provide that, for the year for which, and to the extent to which, funding is provided to a tribe under this section, the tribe—

(A) shall not be entitled to contract with the Secretary for such funds under section 450f of this title, except that such tribe shall be eligible for new programs on the same basis as other tribes; and

(B) shall be responsible for the administration of programs, services, functions, and activities pursuant to agreements entered into under this section; and

(9) prohibit the Secretary from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, and other laws.

(c) Additional activities

Each funding agreement negotiated pursuant to subsections (a) and (b) of this section may, in accordance to such additional terms as the parties deem appropriate, also include other programs, services, functions, and activities, or portions thereof, administered by the Secretary of the Interior which are of special geographic, historical, or cultural significance to the participating Indian tribe requesting a compact.

(d) Provisions relating to Secretary

Funding agreements negotiated between the Secretary and an Indian tribe shall include provisions—

(1) to monitor the performance of trust functions by the tribe through the annual trust evaluation, and

(2) for the Secretary to reassume a program, service, function, or activity, or portions thereof, if there is a finding of imminent jeopardy to a physical trust asset, natural resources, or public health and safety.

(e) Construction projects

(1) Regarding construction programs or projects, the Secretary and Indian tribes may negotiate for the inclusion of specific provisions of the Office of Federal Procurement and Policy Act [41 U.S.C. 401 et seq.] and Federal acquisition regulations in any funding agreement entered into under this subchapter. Absent a negotiated agreement, such provisions and regulatory requirements shall not apply.

(2) In all construction projects performed pursuant to this part, the Secretary shall ensure that proper health and safety standards are provided for in the funding agreements.

(f) Submission for review

Not later than 90 days before the proposed effective date of an agreement entered into under this section, the Secretary shall submit a copy of such agreement to—

(1) each Indian tribe that is served by the Agency that is serving the tribe that is a party to the funding agreement;

(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.

(g) Payment

(1) At the request of the governing body of the tribe and under the terms of an agreement entered into under this section, the Secretary shall provide funding to the tribe to carry out the agreement.

(2) The funding agreements authorized by this part and title III of this Act shall provide for advance payments to the tribes in the form of annual or semi-annual installments at the discretion of the tribes.

(3) Subject to paragraph (4) of this subsection and paragraphs (1) through (3) of subsection (b) of this section, the Secretary shall provide funds to the tribe under an agreement under this part for programs, services, functions, and activities, or portions thereof, in an amount equal to the amount that the tribe would have been eligible to receive under contracts and grants under this subchapter, including amounts for direct program and contract support costs and, in addition, any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the tribe or its members, without regard to the organization level within the Department where such functions are carried out.

(4) Funds for trust services to individual Indians shall be available under an agreement entered into under this section only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the tribe.

(h) Civil actions

(1) Except as provided in paragraph (2), for the purposes of section 450m–1 of this title, the term ''contract'' shall include agreements entered into under this part.

(2) For the period that an agreement entered into under this part is in effect, the provisions of section 81 of this title, section 476 of this title, and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply to attorney and other professional contracts by Indian tribal governments participating in Self-Governance under this part.

(i) Facilitation

(1) Except as otherwise provided by law, the Secretary shall interpret each Federal law and regulation in a manner that will facilitate—

(A) the inclusion of programs, services, functions, and activities in the agreements entered into under this section; and

(B) the implementation of agreements entered into under this section.

(2)(A) A tribe may submit a written request for a waiver to the Secretary identifying the

regulation sought to be waived and the basis for the request.

(B) Not later than 60 days after receipt by the Secretary of a written request by a tribe to waive application of a Federal regulation for an agreement entered into under this section, the Secretary shall either approve or deny the requested waiver in writing to the tribe. A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law. The Secretary's decision shall be final for the Department.

(j) Funds

All funds provided under funding agreements entered into pursuant to this subchapter, and all funds provided under contracts or grants made pursuant to this subchapter, shall be treated as non-Federal funds for purposes of meeting matching requirements under any other Federal law.

(k) Disclaimer

Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary so as to authorize the Secretary to enter into any agreement under subsection (b)(2) of this section and section 458ee(c)(1) of this title with respect to functions that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe: *Provided*, however an Indian tribe or tribes need not be identified in the authorizing statute in order for a program or element of a program to be included in a compact under subsection (b)(2) of this section.

(*l*) Incorporate self-determination provisions

At the option of a participating tribe or tribes, any or all provisions of part A of this subchapter shall be made part of an agreement entered into under title III of this Act or this part. The Secretary is obligated to include such provisions at the option of the participating tribe or tribes. If such provision is incorporated it shall have the same force and effect as if set out in full in title III or this part.

(Pub. L. 93–638, title IV, § 403, as added Pub. L. 103–413, title II, § 204, Oct. 25, 1994, 108 Stat. 4272; amended Pub. L. 104–109, § 19, Feb. 12, 1996, 110 Stat. 766; Pub. L. 105–244, title IX, § 901(d), Oct. 7, 1998, 112 Stat. 1828; Pub. L. 106–568, title VIII, § 812(b), Dec. 27, 2000, 114 Stat. 2917; Pub. L. 110–315, title IX, § 941(k)(2)(H), Aug. 14, 2008, 122 Stat. 3467.)

REFERENCES IN TEXT

Act of April 16, 1934, referred to in subsec. (b)(1)(A), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

The Tribally Controlled Colleges and Universities Assistance Act of 1978, referred to in subsec. (b)(4)(A), is Pub. L. 95–471, Oct. 17, 1978, 92 Stat. 1325, which is classified principally to chapter 20 (§ 1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Office of Federal Procurement Policy Act, referred to in subsec. (e)(1), is Pub. L. 93–400, Aug. 30, 1974, 88 Stat. 796, which is classified principally to chapter 7 (§ 401 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 41 and Tables.

This subchapter, referred to in subsecs. (e)(1), (g)(3), and (j), 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 subchapter (§ 450 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

Title III of this Act, referred to in subsecs. (g)(2) and (*l*), is 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 section 450f of this title prior to repeal by Pub. L. 106–260, § 10, Aug. 18, 2000, 114 Stat. 734.

The Act of July 3, 1952, referred to in subsec. (h)(2), is act July 3, 1952, ch. 549, 66 Stat. 323, which enacted section 82a of this title and provisions set out as a note under section 82a of this title.

Part A of this subchapter, referred to in subsec. (*l*), was in the original "title I of this Act", meaning title I of Pub. L. 93–638, known as the Indian Self-Determination Act, which is classified principally to part A (§ 450f et seq.) of this subchapter. For complete classification of title I to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

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 476 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*).

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.

§ 458dd. Budget request

The Secretary shall identify, in the annual budget request of the President to the Congress under section 1105 of title 31 any funds proposed to be included in agreements authorized under this part.

(Pub. L. 93–638, title IV, § 404, as added Pub. L. 103–413, title II, § 204, Oct. 25, 1994, 108 Stat. 4275.)

§ 458ee. Reports

(a) Requirement

The Secretary shall submit to Congress a written report on January 1 of each year following October 25, 1994, regarding the administration of this part.

(b) Contents

The report shall—

(1) identify the relative costs and benefits of Self-Governance;

(2) identify, with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to Self-Governance tribes and their members;

(3) identify the funds transferred to each Self-Governance tribe and the corresponding reduction in the Federal bureaucracy;

(4) include the separate views of the tribes; and

(5) include the funding formula for individual tribal shares of Central Office funds, together with the comments of affected Indian tribes, developed under subsection (d) of this section.

(c) Report on non-BIA programs

(1) In order to optimize opportunities for including non-Bureau of Indian Affairs programs, services, functions, and activities, or portions thereof, in agreements with tribes participating in Self-Governance under this part, the Secretary shall—

(A) review all programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, without regard to the agency or office concerned; and

(B) not later than 90 days after October 25, 1994, provide to the appropriate committees of Congress a listing of all such programs, services, functions, and activities, or portions thereof, that the Secretary determines, with the concurrence of tribes participating in Self-Governance under this part, are eligible for inclusion in such agreements at the request of a participating Indian tribe.

(2) The Secretary shall establish programmatic targets, after consultation with tribes participating in Self-Governance under this part, to encourage bureaus of the Department to assure that a significant portion of such programs, services, functions, and activities are actually included in the agreements negotiated under section 458cc of this title.

(3) The listing and targets under paragraphs (1) and (2) shall be published in the Federal Register and be made available to any Indian tribe participating in Self-Governance under this part. The list shall be published before January 1, 1995, and annually thereafter by January 1 preceding the fiscal year in which the targets are to be met.

(4) Thereafter, the Secretary shall annually review and publish in the Federal Register, after consultation with tribes participating in Self-Governance under this part, a revised listing and programmatic targets.

(d) Report on Central Office funds

Within 90 days after October 25, 1994, the Secretary shall, in consultation with Indian tribes, develop a funding formula to determine the individual tribal share of funds controlled by the Central Office of the Bureau of Indian Affairs for inclusion in the Self-Governance compacts. The Secretary shall include such formula in the annual report submitted to the Congress under subsection (b) of this section, together with the views of the affected Indian tribes.

(Pub. L. 93–638, title IV, § 405, as added Pub. L. 103–413, title II, § 204, Oct. 25, 1994, 108 Stat. 4276.)

§ 458ff. Disclaimers

(a) Other services, contracts, and funds

Nothing in this part shall be construed to limit or reduce in any way the services, contracts, or funds that any other Indian tribe or tribal organization is eligible to receive under section 450f of this title or any other applicable Federal law.

(b) Federal trust responsibilities

Nothing in this subchapter shall be construed to diminish the Federal trust responsibility to Indian tribes, individual Indians, or Indians with trust allotments.

(c) Application of other sections of subchapter

All provisions of sections 450c(d), 450d, 450f(c), 450i, 450j(f), 450m–1, and 450n of this title shall apply to agreements provided under this part.

(Pub. L. 93–638, title IV, § 406, as added Pub. L. 103–413, title II, § 204, Oct. 25, 1994, 108 Stat. 4277; amended Pub. L. 105–277, div. A, § 101(e) [title I, § 133], Oct. 21, 1998, 112 Stat. 2681–231, 2681–264.)

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–277 inserted ''450c(d),'' after ''sections''.

§ 458gg. Regulations

(a) In general

Not later than 90 days after October 25, 1994, at the request of a majority of the Indian tribes with agreements under this part, 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 part.

(b) Committee

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 representatives of Indian tribes with agreements under this part.

(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 the Indian tribes.

(d) Effect

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

(Pub. L. 93–638, title IV, § 407, as added Pub. L. 103–413, title II, § 204, Oct. 25, 1994, 108 Stat. 4277.)

§ 458hh. Authorization of appropriations

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

(Pub. L. 93–638, title IV, § 408, as added Pub. L. 103–413, title II, § 204, Oct. 25, 1994, 108 Stat. 4278.)

PART E—TRIBAL SELF-GOVERNANCE—INDIAN HEALTH SERVICE

CODIFICATION

This part 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 was added by Pub. L. 106–568, title XIII, § 1302, Dec. 27, 2000, 114 Stat. 2936, and is classified to part F (§ 458bbb et seq.) of this subchapter.

§ 458aaa. Definitions

(a) In general

In this part:

(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 450b(m) of this title, that may otherwise be included in a funding agreement under this part.

(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 two[1] 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 458aaa–1 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 activities (or portions thereof) on its behalf under this part, 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 part). In such event, the term ''Indian tribe'' as used in this part 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.)

CODIFICATION

Another section 501 of Pub. L. 93–638, as added by Pub. L. 106–568, title XIII, § 1302, Dec. 27, 2000, 114 Stat. 2936, is classified to section 458bbb of this title.

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 part, amending sections 450f, 450j, and 450j–1 of this title, enacting provisions set out as notes under this section and sections 450 and 450f of this title, and repealing provisions set out as a note under 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

[1] So in original. Probably should be followed by ''or''.

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) 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. 450 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 450 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.''

§ 458aaa–1. 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 part.

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

CODIFICATION

Another section 502 of Pub. L. 93–638, as added by Pub. L. 106–568, title XIII, § 1302, Dec. 27, 2000, 114 Stat. 2938, is classified to section 458bbb–1 of this title.

§ 458aaa–2. Selection of participating Indian tribes

(a) Continuing participation

Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project under title III[1] on August 18, 2000, may elect to participate in self-governance under this part 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 In-

[1] See References in Text note below.

dian 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.)

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

CODIFICATION

Another section 503 of Pub. L. 93–638, as added by Pub. L. 106–568, title XIII, § 1302, Dec. 27, 2000, 114 Stat. 2938, is classified to section 458bbb–2 of this title.

§ 458aaa–3. 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 III[1] 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 the provisions of that funding agreement are not directly contrary to any express provision of this part; 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 part.

(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 reassumption.

(Pub. L. 93–638, title V, § 504, as added Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 715.)

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

§ 458aaa–4. 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—

[1] See References in Text note below.

(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.);

(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 part.

(d) Funding agreement terms

Each funding agreement under this part 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 the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.

(f) Existing funding agreements

Each Indian tribe participating in the Tribal Self-Governance Demonstration Project established under title III[1] on August 18, 2000, shall have the option at any time thereafter to—

(1) retain the Tribal Self-Governance Demonstration Project funding agreement of that Indian tribe (in whole or in part) to the extent that the provisions of that funding agreement are not directly contrary to any express provision of this part; or

(2) instead of retaining a funding agreement or portion thereof under paragraph (1), negotiate a new funding agreement in a manner consistent with the requirements of this part.

(g) Stable base funding

At the option of an Indian tribe, a funding agreement may provide for a stable base budget specifying the recurring funds (including, for purposes of this provision, funds available under section 450j–1(a) of this title) to be transferred to such Indian tribe, for such period as may be specified in the funding agreement, subject to annual adjustment only to reflect changes in congressional appropriations by sub-sub activity excluding earmarks.

(Pub. L. 93–638, title V, § 505, as added Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 716.)

REFERENCES IN TEXT

Act of April 16, 1934, referred to in subsec. (b)(2)(B), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

Act of August 5, 1954, referred to in subsec. (b)(2)(C), is act Aug. 5, 1954, ch. 658, 68 Stat. 674, as amended, which is classified generally to subchapter I (§ 2001 et seq.) of chapter 22 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

The Indian Health Care Improvement Act, referred to in subsec. (b)(2)(D), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§ 1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

The Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, referred to in subsec. (b)(2)(E), is subtitle C of title IV of Pub. L. 99–570, Oct. 27, 1986, 100 Stat. 3207–137, as amended, which is classified generally to chapter 26 (§ 2401 et seq.) of this title. For complete classification of subtitle C to the Code, see Short Title note set out under section 2401 of this title and Tables.

Title III, referred to in subsec. (f), 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 section 450f of this title prior to repeal by Pub. L. 106–260, § 10, Aug. 18, 2000, 114 Stat. 734.

§ 458aaa–5. General provisions

(a) Applicability

The provisions of this section shall apply to compacts and funding agreements negotiated under this part and an Indian tribe may, at its option, include provisions that reflect such requirements in a compact or funding agreement.

(b) Conflicts of interest

Indian tribes participating in self-governance under this part shall ensure that internal meas-

[1] See References in Text note below.

ures are in place to address conflicts of interest in the administration of self-governance programs, services, functions, or activities (or portions thereof).

(c) Audits

(1) Single Agency Audit Act

The provisions of chapter 75 of title 31 requiring a single agency audit report shall apply to funding agreements under this part.

(2) Cost principles

An Indian tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by section 450j–1 of this title[1] other provisions of law, or by any exemptions to applicable Office of Management and Budget circulars subsequently granted by the Office of Management and Budget. No other audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government against the Indian tribe relating to funds received under a funding agreement based on any audit under this subsection shall be subject to the provisions of section 450j–1(f) of this title.

(d) Records

(1) In general

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

(2) Recordkeeping system

The Indian tribe shall maintain a recordkeeping system, and, after 30 days advance notice, provide the Secretary with reasonable access to such records to enable the Department of Health and Human Services to meet its minimum legal recordkeeping system requirements under sections 3101 through 3106 of title 44.

(e) Redesign and consolidation

An Indian tribe may redesign or consolidate programs, services, functions, and activities (or portions thereof) included in a funding agreement under section 458aaa–4 of this title and reallocate or redirect funds for such programs, services, functions, and activities (or portions thereof) in any manner which the Indian tribe deems to be in the best interest of the health and welfare of the Indian community being served, only if 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.

(f) Retrocession

An Indian tribe may retrocede, fully or partially, to the Secretary programs, services, functions, or activities (or portions thereof) included in the compact or funding agreement. Unless the Indian tribe rescinds the request for retrocession, such retrocession will become effective within the timeframe specified by the parties in the compact or funding agreement. In the absence of such a specification, such retrocession shall become effective on—

(1) the earlier of—

(A) 1 year after the date of submission of such request; or

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

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

(g) Withdrawal

(1) Process

(A) In general

An Indian tribe may fully or partially withdraw from a participating inter-tribal consortium or tribal organization its share of any program, function, service, or activity (or portions thereof) included in a compact or funding agreement.

(B) Effective date

The withdrawal referred to in subparagraph (A) shall become effective within the timeframe specified in the resolution which authorizes transfer to the participating tribal organization or inter-tribal consortium. In the absence of a specific timeframe set forth in the resolution, such withdrawal shall become effective on—

(i) the earlier of—

(I) 1 year after the date of submission of such request; or

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

(ii) such date as may be mutually agreed upon by the Secretary, the withdrawing Indian tribe, and the participating tribal organization or inter-tribal consortium that has signed the compact or funding agreement on behalf of the withdrawing Indian tribe, inter-tribal consortium, or tribal organization.

(2) Distribution of funds

When an Indian tribe or tribal organization eligible to enter into a self-determination contract under part A of this subchapter or a compact or funding agreement under this part fully or partially withdraws from a participating inter-tribal consortium or tribal organization—

(A) the withdrawing Indian tribe or tribal organization shall be entitled to its tribal share of funds supporting those programs, services, functions, or activities (or portions thereof) that the Indian tribe will be carrying out under its own self-determination contract or compact and funding agreement (calculated on the same basis as the funds were initially allocated in the funding agreement of the inter-tribal consortium or tribal organization); and

(B) the funds referred to in subparagraph (A) shall be transferred from the funding agreement of the inter-tribal consortium or tribal organization, on the condition that the provisions of sections 450f and 450j(i) of this title, as appropriate, shall apply to that withdrawing Indian tribe.

(3) Regaining mature contract status

If an Indian tribe elects to operate all or some programs, services, functions, or activi-

[1] So in original.

ties (or portions thereof) carried out under a compact or funding agreement under this part through a self-determination contract under part A of this subchapter, at the option of the Indian tribe, the resulting self-determination contract shall be a mature self-determination contract.

(h) Nonduplication

For the period for which, and to the extent to which, funding is provided under this part or under the compact or funding agreement, the Indian tribe shall not be entitled to contract with the Secretary for such funds under section 450f of this title, except that such Indian tribe shall be eligible for new programs on the same basis as other Indian tribes.

(Pub. L. 93–638, title V, § 506, as added Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 717.)

§ 458aaa–6. Provisions relating to the Secretary

(a) Mandatory provisions

(1) Health status reports

Compacts or funding agreements negotiated between the Secretary and an Indian tribe shall include a provision that requires the Indian tribe to report on health status and service delivery—

(A) to the extent such data is not otherwise available to the Secretary and specific funds for this purpose are provided by the Secretary under the funding agreement; and

(B) if such reporting shall impose minimal burdens on the participating Indian tribe and such requirements are promulgated under section 458aaa–16 of this title.

(2) Reassumption

(A) In general

Compacts or funding agreements negotiated between the Secretary and an Indian tribe shall include a provision authorizing the Secretary to reassume operation of a program, service, function, or activity (or portions thereof) and associated funding if there is a specific finding relative to that program, service, function, or activity (or portion thereof) of—

(i) imminent endangerment of the public health caused by an act or omission of the Indian tribe, and the imminent endangerment arises out of a failure to carry out the compact or funding agreement; or

(ii) gross mismanagement with respect to funds transferred to a tribe by a compact or funding agreement, as determined by the Secretary in consultation with the Inspector General, as appropriate.

(B) Prohibition

The Secretary shall not reassume operation of a program, service, function, or activity (or portions thereof) unless—

(i) the Secretary has first provided written notice and a hearing on the record to the Indian tribe; and

(ii) the Indian tribe has not taken corrective action to remedy the imminent endangerment to public health or gross mismanagement.

(C) Exception

(i) In general

Notwithstanding subparagraph (B), the Secretary may, upon written notification to the Indian tribe, immediately reassume operation of a program, service, function, or activity (or portion thereof) if—

(I) the Secretary makes a finding of imminent substantial and irreparable endangerment of the public health caused by an act or omission of the Indian tribe; and

(II) the endangerment arises out of a failure to carry out the compact or funding agreement.

(ii) Reassumption

If the Secretary reassumes operation of a program, service, function, or activity (or portion thereof) under this subparagraph, the Secretary shall provide the Indian tribe with a hearing on the record not later than 10 days after such reassumption.

(D) Hearings

In any hearing or appeal involving a decision to reassume operation of a program, service, function, or activity (or portion thereof), the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence the validity of the grounds for the reassumption.

(b) Final offer

In the event the Secretary and a participating Indian tribe are unable to agree, in whole or in part, on the terms of a compact or funding agreement (including funding levels), the Indian tribe may submit a final offer to the Secretary. Not more than 45 days after such submission, or within a longer time agreed upon by the Indian tribe, the Secretary shall review and make a determination with respect to such offer. In the absence of a timely rejection of the offer, in whole or in part, made in compliance with subsection (c) of this section, the offer shall be deemed agreed to by the Secretary.

(c) Rejection of final offers

(1) In general

If the Secretary rejects an offer made under subsection (b) of this section (or one or more provisions or funding levels in such offer), the Secretary shall provide—

(A) a timely written notification to the Indian tribe that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that—

(i) the amount of funds proposed in the final offer exceeds the applicable funding level to which the Indian tribe is entitled under this part;

(ii) the program, function, service, or activity (or portion thereof) that is the subject of the final offer is an inherent Federal function that cannot legally be delegated to an Indian tribe;

(iii) the Indian tribe cannot carry out the program, function, service, or activity (or portion thereof) in a manner that

would not result in significant danger or risk to the public health; or

(iv) the Indian tribe is not eligible to participate in self-governance under section 458aaa–2 of this title;

(B) technical assistance to overcome the objections stated in the notification required by subparagraph (A);

(C) the Indian tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, except that the Indian tribe may, in lieu of filing such appeal, directly proceed to initiate an action in a Federal district court pursuant to section 450m–1(a) of this title; and

(D) the Indian tribe with the option of entering into the severable portions of a final proposed compact or funding agreement, or provision thereof, (including a lesser funding amount, if any), that the Secretary did not reject, subject to any additional alterations necessary to conform the compact or funding agreement to the severed provisions.

(2) Effect of exercising certain option

If an Indian tribe exercises the option specified in paragraph (1)(D), that Indian tribe shall retain the right to appeal the Secretary's rejection under this section, and subparagraphs (A), (B), and (C) of that paragraph shall only apply to that portion of the proposed final compact, funding agreement, or provision thereof that was rejected by the Secretary.

(d) Burden of proof

With respect to any hearing or appeal or civil action conducted pursuant to this section, the Secretary shall have the burden of demonstrating by clear and convincing evidence the validity of the grounds for rejecting the offer (or a provision thereof) made under subsection (b) of this section.

(e) Good faith

In the negotiation of compacts and funding agreements the Secretary shall at all times negotiate in good faith to maximize implementation of the self-governance policy. The Secretary shall carry out this part in a manner that maximizes the policy of tribal self-governance, in a manner consistent with the purposes specified in section 3 of the Tribal Self-Governance Amendments of 2000.

(f) Savings

To the extent that programs, functions, services, or activities (or portions thereof) carried out by Indian tribes under this part reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of tribal shares and other funds determined under section 458aaa–7(c) of this title, the Secretary shall make such savings available to the Indian tribes, inter-tribal consortia, or tribal organizations for the provision of additional services to program beneficiaries in a manner equitable to directly served, contracted, and compacted programs.

(g) Trust responsibility

The Secretary is prohibited from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, other laws, or court decisions.

(h) Decisionmaker

A decision that constitutes final agency action and relates to an appeal within the Department of Health and Human Services conducted under subsection (c) of this section shall be made either—

(1) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency in which the decision that is the subject of the appeal was made; or

(2) by an administrative judge.

(Pub. L. 93–638, title V, § 507, as added Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 719.)

REFERENCES IN TEXT

Section 3 of the Tribal Self-Governance Amendments of 2000, referred to in subsec. (e), is section 3 of Pub. L. 106–260, which is set out as a note under section 458aaa of this title.

§ 458aaa–7. Transfer of funds

(a) In general

Pursuant to the terms of any compact or funding agreement entered into under this part, the Secretary shall transfer to the Indian tribe all funds provided for in the funding agreement, pursuant to subsection (c) of this section, and provide funding for periods covered by joint resolution adopted by Congress making continuing appropriations, to the extent permitted by such resolutions. In any instance where a funding agreement requires an annual transfer of funding to be made at the beginning of a fiscal year, or requires semiannual or other periodic transfers of funding to be made commencing at the beginning of a fiscal year, the first such transfer shall be made not later than 10 days after the apportionment of such funds by the Office of Management and Budget to the Department, unless the funding agreement provides otherwise.

(b) Multiyear funding

The Secretary is authorized to employ, upon tribal request, multiyear funding agreements. References in this part to funding agreements shall include such multiyear funding agreements.

(c) Amount of funding

The Secretary shall provide funds under a funding agreement under this part in an amount equal to the amount that the Indian tribe would have been entitled to receive under self-determination contracts under this subchapter, including amounts for direct program costs specified under section 450j–1(a)(1) of this title and amounts for contract support costs specified under section 450j–1(a) (2), (3), (5), and (6) of this title, including any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the Indian tribe or its members, all without regard to the

organizational level within the Department where such functions are carried out.

(d) Prohibitions

(1) In general

Except as provided in paragraph (2), the Secretary is expressly prohibited from—

(A) failing or refusing to transfer to an Indian tribe its full share of any central, headquarters, regional, area, or service unit office or other funds due under this subchapter, except as required by Federal law;

(B) withholding portions of such funds for transfer over a period of years; and

(C) reducing the amount of funds required under this subchapter—

(i) to make funding available for self-governance monitoring or administration by the Secretary;

(ii) in subsequent years, except pursuant to—

(I) a reduction in appropriations from the previous fiscal year for the program or function to be included in a compact or funding agreement;

(II) a congressional directive in legislation or accompanying report;

(III) a tribal authorization;

(IV) a change in the amount of pass-through funds subject to the terms of the funding agreement; or

(V) completion of a project, activity, or program for which such funds were provided;

(iii) to pay for Federal functions, including Federal pay costs, Federal employee retirement benefits, automated data processing, technical assistance, and monitoring of activities under this subchapter; or

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

(2) Exception

The funds described in paragraph (1)(C) may be increased by the Secretary if necessary to carry out this subchapter or as provided in section 450j(c)(2) of this title.

(e) Other resources

In the event 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 acquire and transfer such personnel, supplies, or resources to the Indian tribe.

(f) Reimbursement to Indian Health Service

With respect to functions transferred by the Indian Health Service to an Indian tribe, the Indian Health Service shall provide goods and services to the Indian tribe, on a reimbursable basis, including payment in advance with subsequent adjustment. The reimbursements received from those goods and services, along with the funds received from the Indian tribe pursuant to this part, may be credited to the same or subsequent appropriation account which provided the funding, such amounts to remain available until expended.

(g) 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 part.

(h) Interest or other income on transfers

An Indian tribe is entitled to retain interest earned on any funds paid under a compact or funding agreement to carry out governmental or health purposes and such interest shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in the year the interest is earned or in any subsequent fiscal year. Funds transferred under this part shall be managed using the prudent investment standard.

(i) Carryover of funds

All funds paid to an Indian tribe in accordance with a compact or funding agreement shall remain available until expended. In the event that an Indian tribe elects to carry over funding from 1 year to the next, such carryover shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in that or any subsequent fiscal year.

(j) Program income

All Medicare, Medicaid, or other program income earned by an Indian tribe shall be treated as supplemental funding to that negotiated in the funding agreement. The Indian tribe may retain all such income and expend such funds in the current year or in future years except to the extent that the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) provides otherwise for Medicare and Medicaid receipts. Such funds shall not result in any offset or reduction in the amount of funds the Indian tribe is authorized to receive under its funding agreement in the year the program income is received or for any subsequent fiscal year.

(k) Limitation of costs

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

(Pub. L. 93–638, title V, § 508, as added Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 722.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (c) and (d), was in the original ''this Act'', meaning Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as the Indian Self-Determination and Education Assistance Act,

which is classified principally to this subchapter (§ 450 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (j), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§ 1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

§ 458aaa–8. Construction projects

(a) In general

Indian tribes participating in tribal self-governance may carry out construction projects under this part if they elect to assume all Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), and related provisions of law that would apply if the Secretary were to undertake a construction project, by adopting a resolution—

(1) designating a certifying officer to represent the Indian tribe and to assume the status of a responsible Federal official under such laws; and

(2) accepting the jurisdiction of the Federal court for the purpose of enforcement of the responsibilities of the responsible Federal official under such environmental laws.

(b) Negotiations

Construction project proposals shall be negotiated pursuant to the statutory process in section 450j(m) of this title and resulting construction project agreements shall be incorporated into funding agreements as addenda.

(c) Codes and standards

The Indian tribe and the Secretary shall agree upon and specify appropriate building codes and architectural and engineering standards (including health and safety) which shall be in conformity with nationally recognized standards for comparable projects.

(d) Responsibility for completion

The Indian tribe shall assume responsibility for the successful completion of the construction project in accordance with the negotiated construction project agreement.

(e) Funding

Funding for construction projects carried out under this part shall be included in funding agreements as annual advance payments, with semiannual payments at the option of the Indian tribe. Annual advance and semiannual payment amounts shall be determined based on mutually agreeable project schedules reflecting work to be accomplished within the advance payment period, work accomplished and funds expended in previous payment periods, and the total prior payments. The Secretary shall include associated project contingency funds with each advance payment installment. The Indian tribe shall be responsible for the management of the contingency funds included in funding agreements.

(f) Approval

The Secretary shall have at least one opportunity to approve project planning and design documents prepared by the Indian tribe in advance of construction of the facilities specified in the scope of work for each negotiated construction project agreement or amendment thereof which results in a significant change in the original scope of work. The Indian tribe shall provide the Secretary with project progress and financial reports not less than semiannually. The Secretary may conduct onsite project oversight visits semiannually or on an alternate schedule agreed to by the Secretary and the Indian tribe.

(g) Wages

All laborers and mechanics employed by contractors and subcontractors (excluding tribes and tribal organizations) in the construction, alteration, or repair, including painting or decorating of a building or other facilities in connection with construction projects funded by the United States under this subchapter shall be paid wages at not less than those prevailing wages on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. With respect to construction alteration, or repair work to which sections 3141–3144, 3146, and 3147 of title 40 are applicable under this section, the Secretary of Labor shall have the authority and functions set forth in the Reorganization Plan numbered 14, of 1950, and section 3145 of title 40.

(h) Application of other laws

Unless otherwise agreed to by the Indian tribe, no provision of the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.], the Federal Acquisition Regulations issued pursuant thereto, or any other law or regulation pertaining to Federal procurement (including Executive orders) shall apply to any construction project conducted under this part.

(Pub. L. 93–638, title V, § 509, as added Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 724.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The National Historic Preservation Act, referred to in subsec. (a), is Pub. L. 89–665, Oct. 15, 1966, 80 Stat. 915, as amended, which is classified generally to subchapter II (§ 470 et seq.) of chapter 1A of Title 16, Conservation. For complete classification of this Act to the Code, see section 470(a) of Title 16 and Tables.

Reorganization Plan numbered 14, of 1950, referred to in subsec. (g), is set out in the Appendix to Title 5, Government Organization and Employees.

The Office of Federal Procurement Policy Act, referred to in subsec. (h), is Pub. L. 93–400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (§ 401 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 41 and Tables.

CODIFICATION

In subsec. (g), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494)'', ''sections 3141–3144, 3146, and 3147

of title 40 are'' substituted for ''the Act of March 3, 1931, is'', and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934 (48 Stat. 948)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 458aaa–9. Federal procurement laws and regulations

Regarding construction programs or projects, the Secretary and Indian tribes may negotiate for the inclusion of specific provisions of the Office of Federal Procurement and Policy Act (41 U.S.C. 401 et seq.) and Federal acquisition regulations in any funding agreement entered into under this part. Absent a negotiated agreement, such provisions and regulatory requirements shall not apply.

(Pub. L. 93–638, title V, § 510, as added Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 726.)

REFERENCES IN TEXT

The Office of Federal Procurement and Policy Act, referred to in text, probably means the Office of Federal Procurement Policy Act, Pub. L. 93–400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (§ 401 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 41 and Tables.

§ 458aaa–10. Civil actions

(a) Contract defined

For the purposes of section 450m–1 of this title, the term ''contract'' shall include compacts and funding agreements entered into under this part.

(b) Applicability of certain laws

Section 81 of this title and section 476 of this title, shall not apply to attorney and other professional contracts entered into by Indian tribes participating in self-governance under this part.

(c) References

All references in this subchapter to section 501 of this title are hereby deemed to include section 82a of this title.

(Pub. L. 93–638, title V, § 511, as added Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 726.)

§ 458aaa–11. Facilitation

(a) Secretarial interpretation

Except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive orders, and regulations in a manner that will facilitate—

(1) the inclusion of programs, services, functions, and activities (or portions thereof) and funds associated therewith, in the agreements entered into under this section;

(2) the implementation of compacts and funding agreements entered into under this part; and

(3) the achievement of tribal health goals and objectives.

(b) Regulation waiver

(1) In general

An Indian tribe may submit a written request to waive application of a regulation promulgated under section 458aaa–16 of this title or the authorities specified in section 458aaa–4(b) of this title for a compact or funding agreement entered into with the Indian Health Service under this part, to the Secretary identifying the applicable Federal regulation sought to be waived and the basis for the request.

(2) Approval

Not later than 90 days after receipt by the Secretary of a written request by an Indian tribe to waive application of a regulation for a compact or funding agreement entered into under this part, the Secretary shall either approve or deny the requested waiver in writing. A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law. A failure to approve or deny a waiver request not later than 90 days after receipt shall be deemed an approval of such request. The Secretary's decision shall be final for the Department.

(c) Access to Federal property

In connection with any compact or funding agreement executed pursuant to this part or an agreement negotiated under the Tribal Self-Governance Demonstration Project established under title III,[1] as in effect before August 18, 2000, upon the request of an Indian tribe, the Secretary—

(1) shall permit an Indian tribe to use existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon by the Secretary and the Indian tribe for their use and maintenance;

(2) may donate to an Indian tribe title to any personal or real property found to be excess to the needs of any agency of the Department, or the General Services Administration, except that—

(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the compact or funding agreement or purchased with funds under any compact or funding agreement shall, unless otherwise requested by the Indian tribe, vest in the appropriate Indian tribe;

(B) if property described in subparagraph (A) has a value in excess of $5,000 at the time of retrocession, withdrawal, or reassumption, at the option of the Secretary upon the retrocession, withdrawal, or reassumption, title to such property and equipment shall revert to the Department of Health and Human Services; and

(C) all property referred to in subparagraph (A) shall remain eligible for replacement, maintenance, and improvement on the same basis as if title to such property were vested in the United States; and

[1] See References in Text note below.

(3) shall acquire excess or surplus Government personal or real property for donation to an Indian tribe if the Secretary determines the property is appropriate for use by the Indian tribe for any purpose for which a compact or funding agreement is authorized under this part.

(d) Matching or cost-participation requirement

All funds provided under compacts, funding agreements, or grants made pursuant to this subchapter, shall be treated as non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or non-Federal program.

(e) State facilitation

States are hereby authorized and encouraged to enact legislation, and to enter into agreements with Indian tribes to facilitate and supplement the initiatives, programs, and policies authorized by this part and other Federal laws benefiting Indians and Indian tribes.

(f) Rules of construction

Each provision of this part and each provision of a compact or funding agreement shall be liberally construed for the benefit of the Indian tribe participating in self-governance and any ambiguity shall be resolved in favor of the Indian tribe.

(Pub. L. 93–638, title V, § 512, as added Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 726.)

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

§ 458aaa–12. Budget request

(a) Requirement of annual budget request

(1) In general

The President shall identify in the annual budget request submitted to Congress under section 1105 of title 31 all funds necessary to fully fund all funding agreements authorized under this part, including funds specifically identified to fund tribal base budgets. All funds so appropriated shall be apportioned to the Indian Health Service. Such funds shall be provided to the Office of Tribal Self-Governance which shall be responsible for distribution of all funds provided under section 458aaa–4 of this title.

(2) Rule of construction

Nothing in this subsection shall be construed to authorize the Indian Health Service to reduce the amount of funds that a self-governance 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 part.

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

§ 458aaa–13. 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 part.

(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 part A of this subchapter, or under compacts and funding agreements authorized under this subchapter. 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 subchapter.

(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.)

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.

§ 458aaa–14. Disclaimers

(a) No funding reduction

Nothing in this part 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 450m–1 of this title.

(b) Federal trust and treaty responsibilities

Nothing in this subchapter 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 subchapter 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.)

§ 458aaa–15. Application of other sections of this subchapter

(a) Mandatory application

All provisions of sections 450c(b), 450d, 450e, 450f(c) and (d), 450i, 450j(k) and (*l*), 450j–1(a) through (k), and 450n 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 part, shall apply to compacts and funding agreements authorized by this part.

(b) Discretionary application

At the request of a participating Indian tribe, any other provision of part A of this subchapter, to the extent such provision is not in conflict with this part, shall be made a part of a funding agreement or compact entered into under this part. 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 part. 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.)

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 450f of this title.

§ 458aaa–16. 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 part.

(2) Publication of proposed regulations

Proposed regulations to implement this part 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 subchapter.

(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 part.

(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 450j(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.)

§ 458aaa–17. Appeals

In any appeal (including civil actions) involving decisions made by the Secretary under this part, the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence—

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

(2) that the decision is fully consistent with provisions and policies of this part.

(Pub. L. 93–638, title V, § 518, as added Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 730.)

§ 458aaa–18. Authorization of appropriations

(a) In general

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

(b) Availability of appropriations

Notwithstanding any other provision of this subchapter, the provision of funds under this subchapter shall be subject to the availability of appropriations and the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe in order to make funds available to another tribe or tribal organization under this subchapter.

(Pub. L. 93–638, title V, § 519, as added Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 731.)

PART F—NATIONAL FUND FOR EXCELLENCE IN AMERICAN INDIAN EDUCATION

CODIFICATION

This part is comprised of title V of Pub. L. 93–638, as added by Pub. L. 106–568, title XIII, § 1302, Dec. 27, 2000, 114 Stat. 2936, as amended. Another title V of Pub. L. 93–638 was added by Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 712, and is classified to part E (§ 458aaa et seq.) of this subchapter.

§ 458bbb. National Fund for Excellence in American Indian Education

(a) In general

As soon as practicable after December 27, 2000, the Secretary of the Interior shall establish, under the laws of the District of Columbia and in accordance with this part, a foundation to be known as the ''National Fund for Excellence in American Indian Education'' (hereinafter referred to as the ''Foundation'').

(b) Perpetual existence

Except as otherwise provided, the Foundation shall have perpetual existence.

(c) Nature of corporation

The Foundation shall be a charitable and nonprofit federally chartered corporation and shall not be an agency or instrumentality of the United States.

(d) Place of incorporation and domicile

The Foundation shall be incorporated and domiciled in the District of Columbia.

(e) Purposes

The purposes of the Foundation shall be—

(1) to encourage, accept, and administer private gifts of real and personal property or any income therefrom or other interest therein for the benefit of, or in support of, the mission of the Office of Indian Education Programs of the Bureau of Indian Affairs (or its successor office);

(2) to undertake and conduct such other activities as will further the educational opportunities of American Indians who attend a Bureau funded school; and

(3) to participate with, and otherwise assist, Federal, State, and tribal governments, agencies, entities, and individuals in undertaking and conducting activities that will further the educational opportunities of American Indians attending Bureau funded schools.

(f) Board of Directors

(1) In general

The Board of Directors shall be the governing body of the Foundation. The Board may exercise, or provide for the exercise of, the powers of the Foundation.

(2) Selection

The number of members of the Board, the manner of their selection (including the filling of vacancies), and their terms of office shall be as provided in the constitution and bylaws of the Foundation. However, the Board shall have at least 11 members, two of whom shall be the Secretary and the Assistant Secretary of the Interior for Indian Affairs, who shall serve as ex officio nonvoting members, and the initial voting members of the Board shall be appointed by the Secretary not later than 6 months after the date that the Foundation is established and shall have staggered terms (as determined by the Secretary).

(3) Qualification

The members of the Board shall be United States citizens who are knowledgeable or experienced in American Indian education and shall, to the extent practicable, represent diverse points of view relating to the education of American Indians.

(4) Compensation

Members of the Board shall not receive compensation for their services as members, but shall be reimbursed for actual and necessary travel and subsistence expenses incurred by them in the performance of the duties of the Foundation.

(g) Officers

(1) In general

The officers of the Foundation shall be a secretary, elected from among the members of the Board, and any other officers provided for in the constitution and bylaws of the Foundation.

(2) Secretary of Foundation

The secretary shall serve, at the direction of the Board, as its chief operating officer and shall be knowledgeable and experienced in matters relating to education in general and education of American Indians in particular.

(3) Election

The manner of election, term of office, and duties of the officers shall be as provided in the constitution and bylaws of the Foundation.

(h) Powers

The Foundation—

(1) shall adopt a constitution and bylaws for the management of its property and the regulation of its affairs, which may be amended;

(2) may adopt and alter a corporate seal;

(3) may make contracts, subject to the limitations of this subchapter;

(4) may acquire (through a gift or otherwise), own, lease, encumber, and transfer real or personal property as necessary or convenient to carry out the purposes of the Foundation;

(5) may sue and be sued; and

(6) may perform any other act necessary and proper to carry out the purposes of the Foundation.

(i) Principal office

The principal office of the Foundation shall be in the District of Columbia. However, the activities of the Foundation may be conducted, and offices may be maintained, throughout the United States in accordance with the constitution and bylaws of the Foundation.

(j) Service of process

The Foundation shall comply with the law on service of process of each State in which it is incorporated and of each State in which the Foundation carries on activities.

(k) Liability of officers and agents

The Foundation shall be liable for the acts of its officers and agents acting within the scope of their authority. Members of the Board are personally liable only for gross negligence in the performance of their duties.

(*l*) Restrictions

(1) Limitation on spending

Beginning with the fiscal year following the first full fiscal year during which the Foundation is in operation, the administrative costs of the Foundation may not exceed 10 percent of the sum of—

(A) the amounts transferred to the Foundation under subsection (m) of this section during the preceding fiscal year; and

(B) donations received from private sources during the preceding fiscal year.

(2) Appointment and hiring

The appointment of officers and employees of the Foundation shall be subject to the availability of funds.

(3) Status

Members of the Board, and the officers, employees, and agents of the Foundation are not, by reason of their association with the Foundation, officers, employees, or agents of the United States.

(m) Transfer of donated funds

The Secretary may transfer to the Foundation funds held by the Department of the Interior under section 451 of this title, if the transfer or use of such funds is not prohibited by any term under which the funds were donated.

(n) Audits

The Foundation shall comply with the audit requirements set forth in section 10101 of title 36, as if it were a corporation in part B of subtitle II of that title.

(Pub. L. 93–638, title V, § 501, as added Pub. L. 106–568, title XIII, § 1302, Dec. 27, 2000, 114 Stat. 2936; amended Pub. L. 108–267, § 1(a),(b)(2), July 2, 2004, 118 Stat. 797.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (h)(3), was in the original ''this Act'', meaning Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this subchapter (§ 450 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

CODIFICATION

Another section 501 of Pub. L. 93–638, as added by Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 712, is classified to section 458aaa of this title.

AMENDMENTS

2004—Pub. L. 108–267, § 1(b)(2), substituted ''National Fund for Excellence in American Indian Education'' for ''American Indian Education Foundation'' in section catchline.

Subsec. (a). Pub. L. 108–267, § 1(a), substituted ''a foundation to be known as the 'National Fund for Excellence in American Indian Education' (hereinafter referred to as the 'Foundation')'' for ''the American Indian Education Foundation''.

§ 458bbb–1. Administrative services and support

(a) Provision of support by Secretary

Subject to subsection (b) of this section, during the 5-year period beginning on the date that the Foundation is established, the Secretary—

(1) may provide personnel, facilities, and other administrative support services to the Foundation;

(2) may provide funds to reimburse the travel expenses of the members of the Board under section 458bbb of this title; and

(3) shall require and accept reimbursements from the Foundation for any—

(A) services provided under paragraph (1); and

(B) funds provided under paragraph (2).

(b) Reimbursement

Reimbursements accepted under subsection (a)(3) of this section shall be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing services described in subsection (a)(1) of this section and the travel expenses described in subsection (a)(2) of this section.

(c) Continuation of certain services

Notwithstanding any other provision of this section, the Secretary may continue to provide facilities and necessary support services to the Foundation after the termination of the 5-year period specified in subsection (a) of this section, on a space available, reimbursable cost basis.

(Pub. L. 93–638, title V, § 502, as added Pub. L. 106–568, title XIII, § 1302, Dec. 27, 2000, 114 Stat. 2938.)

CODIFICATION

Another section 502 of Pub. L. 93–638, as added by Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 714, is classified to section 458aaa–1 of this title.

§ 458bbb–2. Definitions

For the purposes of this part—

(1) the term ''Bureau funded school'' has the meaning given that term in title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.];

(2) the term ''Foundation'' means the Foundation established by the Secretary pursuant to section 458bbb of this title; and

(3) the term ''Secretary'' means the Secretary of the Interior.

(Pub. L. 93–638, title V, § 503, as added Pub. L. 106–568, title XIII, § 1302, Dec. 27, 2000, 114 Stat. 2938.)

REFERENCES IN TEXT

The Education Amendments of 1978, referred to in par. (1), is Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143, as amended. Title XI of the Act is classified principally to chapter 22 (§ 2000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20, Education, and Tables.

CODIFICATION

Another section 503 of Pub. L. 93–638, as added by Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 714, is classified to section 458aaa–2 of this title.

[SUBCHAPTER III—RESERVED]

SUBCHAPTER IV—CONVEYANCE OF SUBMARGINAL LAND

§ 459. Submarginal lands of United States held in trust for specified Indian tribes

(a) Declaration; addition to reservations

Except as hereinafter provided, all of the right, title, and interest of the United States of America in all of the land, and the improvements now thereon, that was acquired under title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), the Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115), and section 55 of the Act of August 24, 1935 (49 Stat. 750, 781), and that are now administered by the Secretary of the Interior for the use or benefit of the Indian tribes identified in section 459a(a) of this title, together with all minerals underlying any such land whether acquired pursuant to such Acts or otherwise owned by the United States, are hereby declared to be held by the United States in trust for each of said tribes, and (except in the case of the Cherokee Nation) shall be a part of the reservations heretofore established for each of said tribes.

(b) Imposition of conditions on conveyed lands; lands excepted from conveying authority

The property conveyed by this subchapter shall be subject to the appropriation or disposition of any of the lands, or interests therein, within the Pine Ridge Indian Reservation, South Dakota, as authorized by sections 441j to 441*o* of title 16, and subject to a reservation in the United States of a right to prohibit or restrict improvements or structures on, and to continuously or intermittently inundate or otherwise use, lands in sections 25 and 26, township 48 north, range 3 west, at Odanah, Wisconsin, in connection with the Bad River flood control project as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311): *Provided*, That this subchapter shall not convey the title to any part of the lands or any interest therein that prior to October 17, 1975, have been included in the authorized water resources development projects in the Missouri River Basin as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311), as amended and supplemented: *Provided further*, That such lands included in Missouri River Basin projects shall be treated as former trust lands are treated.

(c) Additional lands held in trust for specified Indian tribes

The right, title, and interest of the United States of America in all of the lands, including the improvements now thereon (title to which is in the United States), acquired under title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), and any subsequent Emergency Relief Appropriation Acts, including but not limited to section 5 of the Emergency Relief Appropriation Act of 1939 (53 Stat. 927, 930) and section 4 of the Emergency Relief Appropriation Act, fiscal year 1941 (54 Stat. 611, 617), together with all minerals underlying any such land whether acquired pursuant to such Acts or otherwise owned by the United States, and which lands are now administered by the Secretary of the Interior for the use or benefit of (1) Ramah Navajo Indians, are hereby declared to be held in trust for the Ramah Band of the Navajo Tribe, and (2) Choctaw Indians of Mississippi, except lands subject to the Act of June 21, 1939 (53 Stat. 851), are hereby declared to be held in trust for the Mississippi Band of Choctaw Indians; excepting valid rights-of-way of record.

(Pub. L. 94–114, § 1, Oct. 17, 1975, 89 Stat. 577; Pub. L. 97–434, § 1(a), Jan. 8, 1983, 96 Stat. 2280.)

REFERENCES IN TEXT

The National Industrial Recovery Act, referred to in subsecs. (a) and (c), is act June 16, 1933, ch. 90, 48 Stat. 195, as amended. Title II of the Act was classified principally to subchapter I (§ 401 et seq.) of chapter 8 of former Title 40, Public Buildings, Property, and Works, and was terminated June 30, 1943 by act June 27, 1942, ch. 450, § 1, 56 Stat. 410. Provisions of title II of the Act which were classified to former Title 40 were repealed by Pub. L. 107–217, § 6(b), Aug. 21, 2002, 116 Stat. 1304. For complete classification of this Act to the Code, see Tables.

Emergency Relief Appropriation Act of April 8, 1935, referred to in subsec. (a), is act Apr. 8, 1935, ch. 48, 49 Stat. 115, which was not classified to the Code but was listed in the Supplementary Legislation note under section 721 of Title 15, Commerce and Trade.

Section 55 of the Act of August 24, 1935, referred to in subsec. (a), is act Aug. 24, 1935, ch. 641, § 55, 49 Stat. 781, as amended, which was not classified to the Code but was listed in the Supplementary Legislation note under section 721 of Title 15.

Section 203 of the Act of July 3, 1958, referred to in subsec. (b), is section 203 of Pub. L. 85–500, July 3, 1958, 72 Stat. 311, which was not classified to the Code.

Section 5 of the Emergency Relief Appropriation Act of 1939, referred to in subsec. (c), is act June 30, 1939, ch. 252, § 5, 53 Stat. 930, which was not classified to the Code.

Section 4 of the Emergency Relief Appropriation Act, fiscal year 1941, referred to in subsec. (c), is act June 26, 1940, ch. 432, § 4, 54 Stat. 617, which was not classified to the Code.

Act of June 21, 1939, referred to in subsec. (c), is act June 21, 1939, ch. 235, 53 Stat. 851, which was not classified to the Code.

AMENDMENTS

1983—Subsec. (c). Pub. L. 97–434 added subsec. (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1(c) of Pub. L. 97–434 provided that: ''The amendments made by this Act [amending this section and section 459a of this title] shall be effective upon enactment of this Act [Jan. 8, 1983].''

§ 459a. Designation of tribes

(a) Description of lands

The lands, declared by section 459(a) of this title to be held in trust by the United States for the benefit of the Indian tribes named in this section, are generally described as follows:

Tribe	Reservation	Submarginal land project donated to said tribe or group	Approximate acreage
1. Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin.	Bad River	Bad River LI–WI–8	13,148.81
2. Blackfeet Tribe	Blackfeet	Blackfeet LI–MT–9	9,036.73
3. Cherokee Nation of Oklahoma		Delaware LI–OK–4	18,749.19
		Adair LI–OK–5	
4. Cheyenne River Sioux Tribe	Cheyenne River	Cheyenne Indian LI–SD–13	3,738.47
5. Crow Creek Sioux Tribe	Crow Creek	Crow Creek LI–SD–10	19,169.89
6. Lower Brule Sioux Tribe	Lower Brule	Lower Brule LI–SD–10	13,209.22
7. Devils Lake Sioux Tribe	Fort Totten	Fort Totten LI–ND–11	1,424.45
8. Fort Belknap Indian Community	Fort Belknap	Fort Belknap LI–MT–8	25,530.10
9. Assiniboine and Sioux Tribes	Fort Peck	Fort Peck LI–MT–6	85,835.52
10. Lac Courte Oreilles Band of Lake Superior Chippewa Indians	Lac Courte Oreilles	Lac Courte LI–WI–9	13,184.65
11. Keweenaw Bay Indian Community	L'Anse	L'Anse LI–MI–8	4,016.49
12. Minnesota Chippewa Tribe	White Earth	Twin Lakes LI–MN–6	28,544.80
		Flat Lake LI–MN–15	
13. Navajo Tribe	Navajo	Gallup-Two Wells LI–NM–18	69,947.24
14. Oglala Sioux Tribe	Pine Ridge	Pine Ridge LI–SD–7	18,064.48
15. Rosebud Sioux Tribe	Rosebud	Cutmeat LI–SD–8	28,734.59
		Antelope LI–SD–9	
16. Shoshone-Bannock Tribes	Fort Hall	Fort Hall LI–ID–2	8,711.00
17. Standing Rock Sioux Tribe	Standing Rock	Standing Rock LI–ND–10	10,255.50
		Standing Rock LI–SD–10	

(b) Publication in Federal Register of boundaries, etc.; estimation of acreages

The Secretary of the Interior shall cause to be published in the Federal Register the boundaries and descriptions of the lands conveyed by this subchapter. The acreages set out in the preceding subsection are estimates and shall not be construed as expanding or limiting the grant of the United States as defined in section 459 of this title.

(Pub. L. 94–114, § 2, Oct. 17, 1975, 89 Stat. 578; Pub. L. 97–434, § 1(b), Jan. 8, 1983, 96 Stat. 2280.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 97–434 substituted ''section 459(a) of this title'' for ''section 459 of this title''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–434 effective Jan. 8, 1983, see section 1(c) of Pub. L. 97–434, set out as a note under section 459 of this title.

§ 459b. Submarginal lands of United States held in trust for Stockbridge Munsee Indian Community

All of the right, title, and interest of the United States in all the minerals including gas and oil underlying the submarginal lands declared to be held in trust for the Stockbridge Munsee Indian Community by the Act of October 9, 1972 (86 Stat. 795), are hereby declared to be held by the United States in trust for the Stockbridge Munsee Indian Community.

(Pub. L. 94–114, § 3(a), Oct. 17, 1975, 89 Stat. 578.)

REFERENCES IN TEXT

Act of October 9, 1972, referred to in text, is Pub. L. 92–480, Oct. 9, 1972, 86 Stat. 795, which was not classified to the Code.

CODIFICATION

Section is comprised of section 3(a) of Pub. L. 94–114. Section 3(b) of Pub. L. 94–114 repealed section 2 of Pub. L. 92–480, which related to claims offset involving the Stockbridge Munsee Indian Community and was not classified to the Code. Section 3(c) of Pub. L. 94–114 amended section 5 of Pub. L. 92–488, which related to claims offset involving the Burns Indian Colony and was not classified to the Code.

§ 459c. Existing rights of possession, contract, interest, etc.

(a) Preservation; force and effect of mineral leases; rejection of pending applications for leases and return of advance rental payments

Nothing in this subchapter shall deprive any person of any existing valid right of possession, contract right, interest, or title he may have in the land involved, or of any existing right of access to public domain lands over and across the land involved, as determined by the Secretary of the Interior. All existing mineral leases, including oil and gas leases, which may have been issued or approved pursuant to section 5 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915) [30 U.S.C. 354], or the Mineral Leasing Act of 1920 (41 Stat. 437) [30 U.S.C. 181 et seq.], as amended prior to October 17, 1975, shall remain in force and effect in accordance with the provisions thereof. All applications for mineral leases, including oil and gas leases, pursuant to such Acts, pending on October 17, 1975, and covering any of the minerals conveyed by sections 459 and 459b of this title shall be rejected and the advance rental payments returned to the applicants.

(b) Administration of lands

Subject to the provisions of subsection (a) of this section, the property conveyed by this subchapter shall hereafter be administered in accordance with the laws and regulations applicable to property held in trust by the United States for Indian tribes, including but not limited to sections 396a to 396g of this title.

(Pub. L. 94–114, § 4, Oct. 17, 1975, 89 Stat. 578.)

REFERENCES IN TEXT

The Mineral Leasing Act of 1920, referred to in subsec. (a), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, known as the Mineral Leasing Act, which is classified generally to chapter 3A (§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

§ 459d. Gross receipts from conveyed lands

(a) Deposit to credit of tribe; nonapplicability

Any and all gross receipts derived from, or which relate to, the property conveyed by this subchapter, the Act of July 20, 1956 (70 Stat. 581), the Act of August 2, 1956 (70 Stat. 941), the Act of October 9, 1972 (86 Stat. 795), and section 1 of the Act of October 13, 1972 (86 Stat. 806) which were received by the United States subsequent to its acquisition by the United States under the statutes cited in section 459 of this title and prior to such conveyance, from whatever source and for whatever purpose, including but not limited to the receipts in the special fund of the Treasury as required by section 6 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915) [30 U.S.C. 355], shall as of October 17, 1975, be deposited to the credit of the Indian tribe receiving such land and may be expended by the tribe for such beneficial programs as the tribal governing body may determine: *Provided*, That this section shall not apply to any such receipts received prior to October 17, 1975, from the leasing of public domain minerals which were subject to the Mineral Leasing Act of 1920 (41 Stat. 437) [30 U.S.C. 181 et seq.], as amended and supplemented.

(b) Administration of gross receipts

All gross receipts (including but not limited to bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit or lease referred to in section 459c(a) of this title, or otherwise, shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

(Pub. L. 94–114, § 5, Oct. 17, 1975, 89 Stat. 579.)

REFERENCES IN TEXT

Act of July 20, 1956, referred to in subsec. (a), is act July 20, 1956, ch. 645, 70 Stat. 581, as amended, which is set out as a note under section 465 of this title. For complete classification of this Act to the Code, see Tables.

Act of August 2, 1956, referred to in subsec. (a), is act Aug. 2, 1956, ch. 886, 70 Stat. 941, which was not classified to the Code.

Act of October 9, 1972, referred to in subsec. (a), is Pub. L. 92–480, Oct. 9, 1972, 86 Stat. 795, which was not classified to the Code.

Section 1 of the Act of October 13, 1972, referred to in subsec. (a), is section 1 of Pub. L. 92–488, Oct. 13, 1972, 86 Stat. 806, which was not classified to the Code.

For statutes cited in section 459 of this title, referred to in subsec. (a), see text of such section and References in Text note set out thereunder.

The Mineral Leasing Act of 1920, referred to in subsec. (a), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, known as the Mineral Leasing Act, which is classified generally to chapter 3A (§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

§ 459e. Tax exemption for conveyed lands and gross receipts; distribution of gross receipts to tribal members

All property conveyed to tribes pursuant to this subchapter and all the receipts therefrom referred to in section 459d of this title, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income, resources, or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act [42 U.S.C. 301 et seq.] or any other Federal or federally assisted program.

(Pub. L. 94–114, § 6, Oct. 17, 1975, 89 Stat. 579.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

SUBCHAPTER V—PROTECTION OF INDIANS AND CONSERVATION OF RESOURCES

§ 461. Allotment of land on Indian reservations

On and after June 18, 1934, no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

(June 18, 1934, ch. 576, § 1, 48 Stat. 984.)

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–204, § 1(a), Mar. 2, 2004, 118 Stat. 542, provided that: ''This Act [amending sections 476, 640d–24, and 712e of this title and provisions set out as notes under section 301 of Title 7, Agriculture, section 7420 of Title 10, Armed Forces, and section 431 of Title 16, Conservation] may be cited as the 'Native American Technical Corrections Act of 2004'.''

SHORT TITLE

Act June 18, 1934, which enacted this section and sections 462, 463, 464, 465, 466 to 470, 471, 472, 473, 474, 475, 476 to 478, and 479 of this title, is popularly known as the ''Indian Reorganization Act''.

§ 462. Existing periods of trust and restrictions on alienation extended

The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are extended and continued until otherwise directed by Congress.

(June 18, 1934, ch. 576, § 2, 48 Stat. 984.)

§ 462a. Omitted

CODIFICATION

Section, act Apr. 11, 1940, ch. 80, 54 Stat. 106, related to reimposition and extension of trust period on lands of Crow Reservation.

§ 463. Restoration of lands to tribal ownership

(a) Protection of existing rights

The Secretary of the Interior, if he shall find it to be in the public interest, is authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: *Provided, however*, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act: *Provided further*, That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation.

(b) Papago Indians; permits for easements, etc.

(1), (2) Repealed. May 27, 1955, ch. 106, § 1, 69 Stat. 67.

(3) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of this Act, except under permit from the Secretary of the Interior approved by the Papago Indian Council: *Provided*, That nothing herein shall be construed as interfering with or affecting the validity of the water rights of the Indians of this reservation: *Provided further*, That the appropriation of living water heretofore or hereafter affected, by the Papago Indians is recognized and validated subject to all the laws applicable thereto.

(4) Nothing herein contained shall restrict the granting or use of permits for easements or rights-of-way; or ingress or egress over the lands for all proper and lawful purposes.

(June 18, 1934, ch. 576, § 3, 48 Stat. 984; Aug. 28, 1937, ch. 866, 50 Stat. 862; May 27, 1955, ch. 106, § 1, 69 Stat. 67.)

REFERENCES IN TEXT

''Heretofore'', referred to in subsec. (a), means before June 18, 1934.

The public-land laws of the United States, referred to in subsec. (a), are classified generally to Title 43, Public Lands.

This Act, referred to in subsecs. (a) and (b)(3), is act June 18, 1934, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

AMENDMENTS

1955—Subsec. (b)(1). Act May 27, 1955, repealed par. (1) which restored lands of Papago Indian Reservation to exploration and location.

Subsec. (b)(2). Act May 27, 1955, repealed par. (2) which required person desiring a mineral patent to pay $1 per acre in lieu of annual rental.

Subsec. (b)(4). Act May 27, 1955, struck out provisions relating to authority to issue or promulgate rules or regulations in conflict with Executive Order of Feb. 1, 1917 or act of Feb. 21, 1931 (46 Stat. 1202).

1937—Subsec. (a). Act Aug. 28, 1937, designated existing provisions of first par. as subsec. (a).

Subsec. (b)(1). Act Aug. 28, 1937, designated existing provisions of first par. as par. (1), substituted ''damages shall be paid to the superintendent or other officer in charge of the reservation for the credit of the owner thereof'' for ''damages shall be paid to the Papago Tribe'' and ''to be the fair and reasonable value of such improvement'' for ''but not to exceed the cost of said improvements'' and struck out ''and payments derived from damages or rentals shall be deposited in the Treasury of the United States to the credit of the Papago Tribe'' after ''mining operations,''.

Subsec. (b)(2). Act Aug. 28, 1937, designated existing provisions of first par. as par. (2), inserted ''pay to the superintendent or other officer in charge of the reservation, for'' before ''deposit'', substituted ''*Provided*, That an applicant for patent shall also pay to the Secretary or other officer in charge of the said reservation for the credit of the owner'' for ''*Provided further*, That patentee shall also pay into the Treasury of the United States to the credit of the Papago Tribe'' substituted ''but the sum thus deposited, except for a deduction of rental at the annual rate hereinbefore provided, shall be refunded to the applicant in the event that patent is not acquired'' for ''the payment of $1.00 per acre for surface use to be refunded to patentee in the event that patent is not acquired'' after ''determination by the Secretary of the Interior, but not to exceed the cost thereof''.

Subsec. (b)(3). Act Aug. 28, 1937, added par. (3).

Subsec. (b)(4). Act Aug. 28, 1937, designated second par. as par. (4).

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Interior and functions of all agencies and employees of Department, with two exceptions, transferred to Secretary of the Interior, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

RESTORATION OF VACANT AND UNDISPOSED-OF CEDED LANDS IN CERTAIN INDIAN RESERVATIONS

Pub. L. 85–420, May 19, 1958, 72 Stat. 121, provided: ''That all lands now or hereafter classified as vacant and undisposed-of ceded lands (including townsite lots) on the following named Indian reservations are hereby restored to tribal ownership, subject to valid existing rights:

Reservation and State	*Approximate acreage*
Klamath River, California	159.57
Coeur d'Alene, Idaho	12,877.65
Crow, Montana	10,260.95
Fort Peck, Montana	41,450.13
Spokane, Washington	5,451.00

Provided, That such restoration shall not apply to any lands while they are within reclamation projects heretofore authorized.

''SEC. 2. Title to the lands restored to tribal ownership by this Act shall be held by the United States in trust for the respective tribe or tribes, and such lands are hereby added to and made a part of the existing reservations for such tribe or tribes.

''SEC. 3. The lands restored to tribal ownership by this Act may be sold or exchanged by the tribe, with the approval of the Secretary of the Interior.''

PAPAGO INDIAN RESERVATION

Section 1 of act May 27, 1955, provided: ''That the provisions with respect to subjection of mineral lands within the Papago Indian Reservation to exploration, location, and entry under the mining laws of the United States in the Executive order dated February 1, 1917, creating the Papago Indian Reservation, and in the third proviso in section 1 of the Act of February 21,

1931 (46 Stat. 1202), and the provisions of subsection (b)(1) and (2) and of the remainder, following the word 'purposes', of subsection (b)(4) of section 3 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–479), as amended by the Act of August 28, 1937 (50 Stat. 862, 863; 25 U.S.C. 463) [this section], are hereby repealed, all tribal lands within the Papago Indian Reservation are hereby withdrawn from all forms of exploration, location, and entry under such laws, the minerals underlying such lands are hereby made a part of the reservation to be held in trust by the United States for the Papago Indian Tribe, and such minerals shall be subject to lease for mining purposes pursuant to the provisions of the Act of May 11, 1938 (52 Stat. 347) [sections 396a to 396g of this title]: *Provided*, That the provisions of this Act shall not be applicable to lands within the Papago Indian Reservation for which a mineral patent has heretofore been issued or to a claim that has been validly initiated before the date of this Act and thereafter maintained under the mining laws of the United States.''

§ 463a. Extension of boundaries of Papago Indian Reservation

Whenever all privately owned lands except mining claims within the following-described area have been purchased and acquired as authorized in sections 463b and 463c of this title, the boundary of the Papago Indian Reservation in Arizona shall be extended to include the west half of section 4; west half of section 9, township 17 south, range 8 east; all of township 18 south, range 2 west, all of fractional township 19 south, range 2 west; and all of fractional townships 18 and 19 south, range 3 west, except sections 6, 7, 18, 19, 30, and 31 in township 18 south, range 3 west, Gila and Salt River meridian. This extension shall not affect any valid rights initiated prior to July 28, 1937, nor the reservation of a strip of land sixty feet wide along the United States-Mexico boundary made by proclamation of the President dated May 27, 1907 (35 Stat. 2136). The lands herein described when added to the Papago Indian Reservation as provided in sections 463a to 463c of this title shall become a part of said reservation in all respects and upon all the same terms as if said lands had been included in the Executive order issued by the President on February 1, 1917: *Provided*, That lands acquired under sections 463a to 463c of this title shall remain tribal lands and shall not be subject to allotment to individual Indians.

(July 28, 1937, ch. 527, § 1, 50 Stat. 536.)

§ 463b. Purchase of private lands; limitations

The Secretary of the Interior is authorized to purchase for the use and benefit of the Papago Indians with any available funds heretofore or hereafter appropriated, pursuant to authority contained in section 465 of this title, all privately owned lands, water rights, and reservoir site reserves within townships 18 and 19 south, ranges 2 and 3 west, together with all grazing privileges and including improvements upon public lands appurtenant to the so-called Menager Dam property, at the appraised value of $40,016.37.

(July 28, 1937, ch. 527, § 2, 50 Stat. 536.)

§ 463c. Gift of lands by Arizona

The State of Arizona may relinquish in favor of the Papago Indians such tracts within the townships referred to in section 463a of this title as it may see fit and shall have the right to select other unreserved and nonmineral public lands within the State of Arizona equal in area to those relinquished, said lieu selections to be made in the same manner as is provided for in the Enabling Act of June 20, 1910 (36 Stat. 558), or in the discretion of the State of Arizona under the provisions of section 315g of title 43. The payment of fees or commissions is waived in all lieu selections made pursuant to this section.

(July 28, 1937, ch. 527, § 3, 50 Stat. 536.)

REFERENCES IN TEXT

The Enabling Act of June 20, 1910, referred to in text, probably means act June 20, 1910, ch. 310, 36 Stat. 557, which provided that, subject to certain limitations, lieu selections of land in Arizona are to be made pursuant to sections 851 and 852 of Title 43, Public Lands.

Section 315g of title 43, referred to in text, was repealed by Pub. L. 94–579, title VII, § 705(a), Oct. 21, 1976, 90 Stat. 2792.

§ 463d. Restoration of lands in Umatilla Indian Reservation to tribal ownership

The Secretary of the Interior is authorized in his discretion to restore to tribal ownership the undisposed of surplus lands of the Umatilla Indian Reservation, Oregon, heretofore opened to entry or other form of disposal under the public-land laws: *Provided*, That restoration shall be subject to any existing valid rights.

(Aug. 10, 1939, ch. 662, § 1, 53 Stat. 1351.)

REFERENCES IN TEXT

The public-land laws, referred to in text, are classified generally to Title 43, Public Lands.

INHERITANCE OF TRUST OR RESTRICTED LANDS

Pub. L. 95–264, Apr. 18, 1978, 92 Stat. 202, provided: ''That the right to inherit trust or restricted land on the Umatilla Indian Reservation, to the extent that the laws of descent of the State of Oregon are inconsistent herewith, shall be as provided herein.

''SEC. 2. When any Indian dies leaving any interest in trust or restricted land within the Umatilla Reservation and not having lawfully devised the same, such interest shall descend in equal shares to his or her children and to the issue of any deceased child by right of representation; and if there is no child of the decedent living at the time of his or her death, such interests shall descend to his or her other lineal descendants; and if such descendants are in the same degree of kindred to the intestate, they shall take such real property equally, or otherwise they shall take according to the right of representation. An interest taken hereunder shall be subject to the right of a surviving spouse as provided in section 3.

''SEC. 3. The surviving spouse of any Indian who dies leaving any interest in trust or restricted land within the Umatilla Reservation shall be entitled to obtain a one-half interest in all such trust or restricted interests in land during his or her lifetime.

''SEC. 4. If any Indian, who leaves any interest in trust or restricted land within the Umatilla Reservation, makes provisions for his or her surviving spouse by an approved will, such surviving spouse shall have an election whether to take the provisions as made in such will or to take the interest as set forth in section 3 of this Act, but such surviving spouse shall not be entitled to both unless it plainly appears by the will to have been so intended by the testator. When any surviving spouse is entitled to an election under this section, he or she shall be deemed to have elected to take the provisions as made in such will unless, at or prior

to the first hearing to probate the will, he or she has elected to take under section 3 of this Act and not under the will.

''SEC. 5. The provisions of this Act shall apply to all estates of decedents who die on or after the date of enactment of this Act [Apr. 18, 1978].''

CONVEYANCE OF LANDS TO STIMULATE INDUSTRIAL DEVELOPMENT

Pub. L. 85–186, Aug. 28, 1957, 71 Stat. 468, provided: ''That, upon request of any Indian tribe, group, or corporate entity, and approval of the request by the Secretary of the Interior as provided in this Act, the Administrator of the General Services Administration is authorized to transfer, without cost to such Indian tribe, group, or corporate entity, title to any property of the United States at the McNary Dam townsite, Umatilla, Oregon, or at Pickstown, South Dakota, that is declared surplus pursuant to the Federal Property and Administrative Services Act of 1949 (Act of June 30, 1949; 63 Stat. 378), as amended [now chapters 1 to 11 of Title 40, Public Buildings, Property, and Works, and title III of the Act of June 30, 1949 (41 U.S.C. 251 et seq.)]. Such property shall not be exempt from taxation because of the fact that title is held by the Indian tribe, group, or corporate entity.

''SEC. 2. The Secretary of the Interior shall approve a request for surplus property pursuant to this Act only if—

''(a) the Indian tribe, group, or corporate entity is organized under State or Federal law in a form satisfactory to the Secretary for the purpose of holding title to the property;

''(b) the surplus property is to be used to stimulate industrial development near the Indian tribe, band, group, or reservations;

''(c) the Indian tribe, group, or corporate entity has executed a contract with an industrial enterprise that is acceptable to the Secretary;

''(d) the contract between the Indian tribe, group, or corporate entity and the industrial enterprise contains such provisions as the Secretary deems desirable, including in substance the following:

''(1) Title to the property will remain in the Indian tribe, group, or corporate entity, and the property will be made available to the industrial enterprise at a rental fee commensurate with the purposes of this Act, which rental shall be paid to the United States Treasury.

''(2) The industrial enterprise will employ Indians in large enough numbers to justify, in the judgment of the Secretary, the purposes of this Act.

''(3) The industrial enterprise will agree to pay its employees fair and equitable wages commensurate with the general wage scale in the area.

''(4) The industrial enterprise will maintain the property in good repair, pay all taxes properly assessed against the property, and be responsible for the payment of all charges for utility services to the property.

''(5) At the end of the contract period the industry will have an option to purchase the property at its appraised price, as determined by the Secretary, the proceeds of such sale will revert to the United States Treasury.

''SEC. 3. Any transfer of title to surplus property pursuant to this Act shall provide for a reversion of title to the United States if the Secretary of the Interior finds that the property is not being used in accordance with the provisions of the Act.

''SEC. 4. The United States shall not be responsible for providing to the Indians who are employed in an industrial development pursuant to this Act community services that are normally furnished by State and local governments, such as school, health, welfare, and law-enforcement services.

''SEC. 5. The transfer of McNary Dam townsite shall be upon the express condition that persons or families occupying residential property on the date of the enactment of this Act [Aug. 28, 1957] shall be entitled to at least one hundred and eighty days' notice of termination of their occupancy.''

§ 463e. Exchanges of land

For the purpose of effecting land consolidations between Indians and non-Indians within the reservation, the Secretary of the Interior is authorized, under such rules and regulations as he may prescribe, to acquire through purchase, exchange, or relinquishment, any interest in lands, water rights, or surface rights to lands within said reservation. Exchanges of lands hereunder shall be made on the basis of equal value and the value of improvements on lands to be relinquished to the Indians or by Indians to non-Indians shall be given due consideration and allowance made therefor in the valuation of lieu lands. This section shall apply to tribal, trust, or otherwise restricted Indian allotments whether the allottee be living or deceased.

(Aug. 10, 1939, ch. 662, § 2, 53 Stat. 1351.)

§ 463f. Title to lands

Title to lands or any interest therein acquired pursuant to sections 463d to 463g of this title for Indian use shall be taken in the name of the United States of America in trust for the tribe or individual Indian for which acquired.

(Aug. 10, 1939, ch. 662, § 3, 53 Stat. 1351.)

§ 463g. Use of funds appropriated under section 465

For the purpose of carrying into effect the land-purchase provision of sections 463d to 463g of this title, the Secretary of the Interior is authorized to use so much as may be necessary of any funds heretofore or hereafter appropriated pursuant to section 465 of this title.

(Aug. 10, 1939, ch. 662, § 4, 53 Stat. 1351.)

§ 464. Transfer and exchange of restricted Indian lands and shares of Indian tribes and corporations

Except as provided in this Act, no sale, devise, gift, exchange, or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized under this Act shall be made or approved: *Provided*, That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or shares are located or from which the shares were derived, or to a successor corporation: *Provided further*, That, subject to section 8(b) of the American Indian Probate Reform Act of 2004 (Public Law 108–374; 25 U.S.C. 2201 note), lands and shares described in the preceding proviso shall descend or be devised to any member of an Indian tribe or corporation described in that proviso or to an heir or lineal descendant of such a member in accordance with the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.), including a tribal probate code approved, or regulations promulgated under, that Act: *Provided further*, That the Secretary of the Interior may authorize any voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in the judgment of the Secretary, is

expedient and beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations.

(June 18, 1934, ch. 576, § 4, 48 Stat. 985; Pub. L. 96–363, § 1, Sept. 26, 1980, 94 Stat. 1207; Pub. L. 106–462, title I, § 106(c), Nov. 7, 2000, 114 Stat. 2007; Pub. L. 108–374, § 6(d), Oct. 27, 2004, 118 Stat. 1805; Pub. L. 109–157, § 8(b), Dec. 30, 2005, 119 Stat. 2952; Pub. L. 109–221, title V, § 501(b)(1), May 12, 2006, 120 Stat. 343.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 18, 1934, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

The Indian Land Consolidation Act, referred to in text, is title II of Pub. L. 97–459, Jan. 12, 1983, 96 Stat. 2517, which is classified generally to chapter 24 (§ 2201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

AMENDMENTS

2006—Pub. L. 109–221 amended section catchline and text generally. Prior to amendment, text related to transfer and exchange of restricted Indian land and shares of Indian tribes and corporations.

2005—Pub. L. 109–157 amended section catchline and text generally. Prior to amendment, text related to transfer of restricted Indian lands or shares in assets of Indian tribes or corporation and exchange of lands.

2004—Pub. L. 108–374, § 6(d)(1), (2), in first proviso, struck out ", in accordance with the then existing laws of the State, or Federal laws where applicable, in which said lands are located or in which the subject matter of the corporation is located," after "descend or be devised" and ", except as provided by the Indian Land Consolidation Act, any other Indian person for whom the Secretary of the Interior determines that the United States may hold land in trust:" after "lineal descendants of such member or".

Pub. L. 108–374, § 6(d)(3), which directed insertion of "in accordance with the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act):" in first proviso without specifying where the insertion was to be made, was executed by making the insertion at end of first proviso, to reflect the probable intent of Congress.

2000—Pub. L. 106–462, which directed the amendment of this section by substituting "member or, except as provided by the Indian Land Consolidation Act," for "member or:", was executed by making the substitution for "member or" before "any other Indian person" to reflect the probable intent of Congress because the phrase "member or:" did not appear in text.

1980—Pub. L. 96–363, which directed the amendment of the first proviso of this section by substituting "or any heirs or lineal descendants of such member or any other Indian person for whom the Secretary of the Interior determines that the United States may hold land in trust" for "or any heirs of such members", was executed by making the substitution for "or any heirs of such member" to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–221 effective as if included in the enactment of Pub. L. 108–374, see section 501(c) of Pub. L. 109–221, set out as a note under section 348 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–157, § 9, Dec. 30, 2005, 119 Stat. 2953, provided that: "The amendments made by this Act [amending this section, sections 2204 to 2206, 2212, 2214, and 2216 of this title and provisions set out as a note under section 2201 of this title] shall be effective as if included in the American Indian Probate Reform Act of 2004 (25 U.S.C. 2201 note; Public Law 108–374)."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–374 applicable on and after the date that is 1 year after June 20, 2005, see section 8(b) of Pub. L. 108–374, set out as a Notice; Effective Date of 2004 Amendment note under section 2201 of this title.

§ 465. Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

(June 18, 1934, ch. 576, § 5, 48 Stat. 985; Pub. L. 100–581, title II, § 214, Nov. 1, 1988, 102 Stat. 2941.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 18, 1934, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Act of July 28, 1955, referred to in text, is act July 28, 1955, ch. 423, 69 Stat. 392, as amended, which is classified to sections 608 to 608c of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1988—Pub. L. 100–581 inserted "or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.)" after "this Act".

PAYSON BAND, YAVAPAI-APACHE INDIAN RESERVATION

Pub. L. 92–470, Oct. 6, 1972, 86 Stat. 783, provided: "That (a) a suitable site (of not to exceed eighty-five acres) for a village for the Payson Community of

Yavapai-Apache Indians shall be selected in the Tonto National Forest within Gila County, Arizona, by the leaders of the community, subject to approval by the Secretary of the Interior and the Secretary of Agriculture. The site so selected is hereby declared to be held by the United States in trust as an Indian reservation for the use and benefit of the Payson Community of Yavapai-Apache Indians.

''(b) The Payson Community of Yavapai-Apache Indians shall be recognized as a tribe of Indians within the purview of the Act of June 18, 1934, as amended (25 U.S.C. 461–479, relating to the protection of Indians and conservation of resources), and shall be subject to all of the provisions thereof.''

ROCKY BOY'S INDIAN RESERVATION

Pub. L. 85–773, Aug. 27, 1958, 72 Stat. 931, provided: ''That the land acquired by the United States pursuant to section 5 of the Act of June 18, 1934 (48 Stat. 984) [this section], title to which was conveyed to the United States of America in trust for the Chippewa, Cree, and other Indians of Montana, and thereafter added to the Rocky Boy's Indian Reservation, Montana, by proclamation signed by the Assistant Secretary of the Interior on November 26, 1947, is hereby designated for the exclusive use of the members of the Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana.''

SEMINOLE INDIAN RESERVATION

Act July 20, 1956, ch. 645, 70 Stat. 581, provided: ''That the equitable title to the lands and interests in lands together with the improvements thereon, acquired by the United States under authority of title II of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 200), the Emergency Relief Appropriation Act of 1935, approved April 8, 1935 (49 Stat. 115), and section 55 of the Act entitled 'An Act to amend the Agricultural Adjustment Act, and for other purposes', approved August 24, 1935 (49 Stat. 750, 781), administrative jurisdiction over which was transferred from the Secretary of Agriculture to the Secretary of the Interior by Executive Order Numbered 7868, dated April 15, 1938, for the use of the Seminole Tribe, is hereby conveyed to the Seminole Tribe of Indians in the State of Florida, and such lands and interests are hereby declared to be held by the United States in trust for the Seminole Tribe of Indians in the State of Florida in the same manner and to the same extent as other land held in trust for such tribe.

''SEC. 2. The lands declared to be held in trust for the Seminole Tribe of Indians in the State of Florida under the first section of this Act and all lands which have been acquired by the United States for the Seminole Tribe of Indians in the State of Florida under authority of the Act entitled 'An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes' approved June 18, 1934 (48 Stat. 984) [sections 461, 462, 463, 464, 465, 466 to 470, 471, 472, 473, 474, 475, 476 to 478 and 479 of this title], are hereby declared to be a reservation for the use and benefit of such Seminole Tribe in Florida.

''SEC. 3. Nothing in this Act shall deprive any Indian of any individual right, ownership, right of possession, or contract right he may have in any land or interest in land referred to in this Act.''

§ 465a. Receipt and purchase in trust by United States of land for Klamath Tribe Indians

The Secretary of the Interior is authorized to receive on behalf of the United States from individual members of the Klamath Tribe of Indians voluntarily executed deeds to such lands as said Indians may own in fee simple free from all encumbrances, said lands to be held in trust by the United States for said Indians and their heirs; and, whenever restricted funds are used for the purchase of lands for individual members of the Klamath Tribe of Indians, the Secretary of the Interior is authorized, in his discretion, to take title to said lands in the United States, the same to be held in trust for said individual Indians: *Provided, however*, That while any of the foregoing lands are held in trust by the United States for said Indians, the same shall be subject to the same restrictions, immunities, and exemptions as homesteads purchased out of trust or restricted funds of individual Indians pursuant to section 412a of this title, except the restrictions, immunities, or exemptions of the second proviso of said section.

(Feb. 24, 1942, ch. 113, § 1, 56 Stat. 121.)

§ 465b. "Klamath Tribe of Indians" defined

As used in this section and section 465a of this title the term ''Klamath Tribe of Indians'' includes the Klamath and Modoc Tribes, and the Yahooskin Band of Snake Indians.

(Feb. 24, 1942, ch. 113, § 2, 56 Stat. 121.)

§ 466. Indian forestry units; rules and regulations

The Secretary of the Interior is directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes.

(June 18, 1934, ch. 576, § 6, 48 Stat. 986.)

§ 467. New Indian reservations

The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations: *Provided*, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.

(June 18, 1934, ch. 576, § 7, 48 Stat. 986.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 18, 1934, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 468. Allotments or holdings outside of reservations

Nothing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or established hereafter.

(June 18, 1934, ch. 576, § 8, 48 Stat. 986.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 18, 1934, which is classified generally to this subchapter. For

complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 469. Indian corporations; appropriation for organizing

There is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary, but not to exceed $250,000 in any fiscal year, to be expended at the order of the Secretary of the Interior, in defraying the expenses of organizing Indian chartered corporations or other organizations created under this Act.

(June 18, 1934, ch. 576, § 9, 48 Stat. 986.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 18, 1934, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 470. Revolving fund; appropriation for loans

There is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $20,000,000 to be established as a revolving fund from which the Secretary of the Interior, under such rules and regulations as he may prescribe, may make loans to Indian chartered corporations for the purpose of promoting the economic development of such tribes and of their members, and may defray the expenses of administering such loans. Repayment of amounts loaned under this authorization shall be credited to the revolving fund and shall be available for the purposes for which the fund is established.

(June 18, 1934, ch. 576, § 10, 48 Stat. 986; Pub. L. 86–533, § 1(16), June 29, 1960, 74 Stat. 248; Pub. L. 87–250, Sept. 15, 1961, 75 Stat. 520.)

AMENDMENTS

1961—Pub. L. 87–250 substituted ''$20,000,000'' for ''$10,000,000''.

1960—Pub. L. 86–533 repealed provisions which required a report to be made annually to the Congress of transactions under the authorization.

REVOLVING FUND: INTEREST-FREE LOANS TO KLAMATH INDIANS; REFINANCING LENDING AGENCY LOANS

Use of Revolving Loan Fund for Indians to assist Klamath Indians during period for terminating Federal supervision, see note set out under section 564 of this title. Funds to be administered as a single Indian Revolving Loan Fund after Apr. 12, 1974, see section 1461 of this title.

§ 470a. Interest charges covered into revolving fund

Interest or other charges heretofore or hereafter collected on loans shall be credited to the revolving fund created by section 470 of this title and shall be available for the establishment of a revolving fund for the purpose of making and administering loans to Indian-chartered corporations in accordance with the Act of June 18, 1934 (48 Stat. 986) [25 U.S.C. 461 et seq.], and of making and administering loans to individual Indians and to associations or corporate groups of Indians of Oklahoma in accordance with the Act of June 26, 1936 (49 Stat. 1967) [25 U.S.C. 501 et seq.].

(June 28, 1941, ch. 259, § 1, 55 Stat. 316.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Act of June 26, 1936, referred to in text, popularly known as the Oklahoma Welfare Act, is classified generally to subchapter VIII (§ 501 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 501 of this title and Tables.

§ 471. Vocational and trade schools; appropriation for tuition

There is authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed $250,000 annually, together with any unexpended balances of previous appropriations made pursuant to this section, for loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools: *Provided*, That not more than $50,000 of such sum shall be available for loans to Indian students in high schools and colleges. Such loans shall be reimbursable under rules established by the Commissioner of Indian Affairs.

(June 18, 1934, ch. 576, § 11, 48 Stat. 986.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 472. Standards for Indians appointed to Indian Office

The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.

(June 18, 1934, ch. 576, § 12, 48 Stat. 986.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

CONVERSION TO CAREER APPOINTMENT

Status of Indian appointed to Federal service under excepted appointment to be converted to career appointment in competitive service after three years of continuous service and satisfactory performance, see section 450i(m) of this title.

§ 472a. Indian preference laws applicable to Bureau of Indian Affairs and Indian Health Service positions

(a) Establishment of retention categories for purposes of reduction-in-force procedures

For purposes of applying reduction-in-force procedures under subsection (a) of section 3502 of title 5 with respect to positions within the Bureau of Indian Affairs and the Indian Health Service, the competitive and excepted service retention registers shall be combined, and any employee entitled to Indian preference who is within a retention category established under regulations prescribed under such subsection to provide due effect to military preference shall be entitled to be retained in preference to other employees not entitled to Indian preference who are within such retention category.

(b) Reassignment of employees other than to positions in higher grades; authority to make determinations respecting

(1) The Indian preference laws shall not apply in the case of any reassignment within the Bureau of Indian Affairs or within the Indian Health Service (other than to a position in a higher grade) of an employee not entitled to Indian preference if it is determined that under the circumstances such reassignment is necessary—

(A) to assure the health or safety of the employee or of any member of the employee's household;

(B) in the course of a reduction in force; or

(C) because the employee's working relationship with a tribe has so deteriorated that the employee cannot provide effective service for such tribe or the Federal Government.

(2) The authority to make any determination under subparagraph (A), (B), or (C) of paragraph (1) is vested in the Secretary of the Interior with respect to the Bureau of Indian Affairs and the Secretary of Health and Human Services with respect to the Indian Health Service, and, notwithstanding any other provision of law, the Secretary involved may not delegate such authority to any individual other than a Deputy Secretary or Assistant Secretary of the respective department.

(c) Waiver of applicability in personnel actions; scope, procedures, etc.

(1) Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action respecting an applicant or employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action.

(2) The provisions of section 8336(j) of title 5 shall not apply to any individual who has accepted a waiver with respect to a personnel action pursuant to paragraph (1) of this subsection or to section 2011(f)[1] of this title.

[1] See References in Text note below.

(d) Placement of non-Indian employees in other Federal positions; assistance of Office of Personnel Management; cooperation of other Federal agencies

The Office of Personnel Management shall provide all appropriate assistance to the Bureau of Indian Affairs and the Indian Health Service in placing non-Indian employees of such agencies in other Federal positions. All other Federal agencies shall cooperate to the fullest extent possible in such placement efforts.

(e) Definitions

For purposes of this section—

(1) The term ''tribal organization'' means—

(A) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 1602(c) of title 43); or

(B) in connection with any personnel action referred to in subsection (c)(1) of this section, any legally established organization of Indians which is controlled, sanctioned, or chartered by a governing body referred to in subparagraph (A) of this paragraph and which has been delegated by such governing body the authority to grant a waiver under such subsection with respect to such personnel action.

(2) The term ''Indian preference laws'' means section 472 of this title or any other provision of law granting a preference to Indians in promotions and other personnel actions.

(3) The term ''Bureau of Indian Affairs'' means (A) the Bureau of Indian Affairs and (B) all other organizational units in the Department of the Interior directly and primarily related to providing services to Indians and in which positions are filled in accordance with the Indian preference laws.

(Pub. L. 96–135, § 2, Dec. 5, 1979, 93 Stat. 1057; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100–581, title II, § 205, Nov. 1, 1988, 102 Stat. 2940; Pub. L. 101–509, title V, § 529 [title I, § 112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454; Pub. L. 105–362, title VIII, § 801(e), title XIII, § 1302(d), Nov. 10, 1998, 112 Stat. 3288, 3294.)

REFERENCES IN TEXT

Section 2011(f) of this title, referred to in subsec. (c)(2), was in the original a reference to section 1131 of the Education Amendments of 1978, Pub. L. 95–561. Section 1131 of Pub. L. 95–561 was omitted in the general amendment of chapter 22 (§ 2001 et seq.) of this title by Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 3979. Pub. L. 103–382 enacted a new section 1131 of Pub. L. 95–561, relating to policy for Indian control of Indian education, which is classified to section 2011 of this title. Provisions relating to waivers of education personnel actions are now contained in section 2012(f) of this title.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–362, § 801(e)(3), struck out par. (1) designation and struck out par. (2) which read as follows: ''The Secretaries of the Interior and Health and Human Services, and the Director of the Office of Personnel Management shall each submit a report to Congress following the close of each fiscal year with respect to the actions which they took in such fiscal year to place non-Indian employees of the Bureau of

Indian Affairs and the Indian Health Service in other Federal positions.''

Pub. L. 105–362, § 801(e)(1), (2), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''The Secretaries of the Interior and Health and Human Services shall each submit to the Congress a report following the close of each fiscal year with respect to the actions which they took in such fiscal year to recruit and train Indians to qualify such Indians for positions which are subject to preference under the Indian preference laws. Such report shall also include information as to the grade levels and occupational classifications of Indian and non-Indian employees in the Bureau of Indian Affairs and the Indian Health Service.''

Subsec. (e). Pub. L. 105–362, § 1302(d), which directed the amendment of subsec. (e) by striking out par. (1) designation after ''(e)'' and striking out par. (2), could not be executed because par. (1) designation did not immediately follow ''(e)'' subsequent to amendment by Pub. L. 105–362, § 801(e)(2). See above.

Pub. L. 105–362, § 801(e)(2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 105–362, § 801(e)(2), redesignated subsec. (f) as (e).

1990—Subsec. (b)(2). Pub. L. 101–509 substituted ''a Deputy Secretary'' for ''an Under Secretary'' before ''or Assistant Secretary''.

1988—Subsec. (c)(1). Pub. L. 100–581 substituted ''an applicant or employee'' for ''an employee''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (b)(2) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on first day of first pay period beginning on or after Nov. 5, 1990, with continued service by incumbent Under Secretary of the Interior, see section 529 [title I, § 112(e)(1), (2)(B)] of Pub. L. 101–509, set out as a note under section 3404 of Title 20, Education.

§ 473. Application generally

The provisions of this Act shall not apply to any of the Territories, colonies, or insular possessions of the United States, except that sections 9, 10, 11, 12, and 16 [25 U.S.C. 469, 470, 471, 472, 476] shall apply to the Territory of Alaska: *Provided*, That sections 4, 7, 16, 17, and 18 of this Act [25 U.S.C. 464, 467, 476, 477, 478] shall not apply to the following-named Indian tribes, the members of such Indian tribes, together with members of other tribes affiliated with such named tribes located in the State of Oklahoma, as follows: Cheyenne, Arapaho, Apache, Comanche, Kiowa, Caddo, Delaware, Wichita, Osage, Kaw, Otoe, Tonkawa, Pawnee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawatomi, Cherokee, Chickasaw, Choctaw, Creek, and Seminole. Section 4 of this Act [25 U.S.C. 464] shall not apply to the Indians of the Klamath Reservation in Oregon.

(June 18, 1934, ch. 576, § 13, 48 Stat. 986; Pub. L. 101–301, § 3(b), May 24, 1990, 104 Stat. 207.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 18, 1934, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

AMENDMENTS

1990—Pub. L. 101–301 substituted ''sections 4,'' for ''sections 2, 4,'' in proviso.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 473a. Application to Alaska

Sections 461, 465, 467, 468, 475, 477, and 479 of this title shall after May 1, 1936, apply to the Territory of Alaska: *Provided*, That groups of Indians in Alaska not recognized prior to May 1, 1936, as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans under sections 470, 476, and 477 of this title.

(May 1, 1936, ch. 254, § 1, 49 Stat. 1250.)

CODIFICATION

Section was formerly classified to section 362 of Title 48, Territories and Insular Possessions.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 474. Continuation of allowances

The Secretary of the Interior is directed to continue the allowance of the articles enumerated in section 17 of the Act of March 2, 1889 (23 Stat. L. 894), or their commuted cash value under the Act of June 10, 1896 (29 Stat. L. 334), to all Sioux Indians who would be eligible, but for the provisions of this Act, to receive allotments of lands in severalty under section 19 of the Act of May 29, 1908 (25 Stat. L. 451), or under any prior Act, and who have the prescribed status of the head of a family or single person over the age of eighteen years, and his approval shall be final and conclusive, claims therefor to be paid as formerly from the permanent appropriation made by said section 17 and carried on the books of the Treasury for this purpose. No person shall receive in his own right more than one allowance of the benefits, and application must be made and approved during the lifetime of the allottee or the right shall lapse. Such benefits shall continue to be paid upon such reservation until such such time as the lands available therein for allotment on June 18, 1934, would have been exhausted by the award to each person receiving such benefits of an allotment of eighty acres of such land.

(June 18, 1934, ch. 576, § 14, 48 Stat. 987.)

REFERENCES IN TEXT

Section 17 of the Act of March 2, 1889, referred to in text, probably means section 17 of act Mar. 2, 1889, ch. 405, 25 Stat. 894, which contains a proviso that each

head of family or single person over the age of eighteen years of the Sioux Nation of Indians, ''who shall have or may hereafter take his or her allotment of land in severalty, shall be provided with two milch cows, one pair of oxen, with yoke and chain, or two mares and one set of harness in lieu of said oxen, yoke and chain, as the Secretary of the Interior may deem advisable, and they shall also receive one plow, one wagon, one harrow, one hoe, one axe, and one pitchfork, all suitable to the work they may have to do, and also fifty dollars in cash; to be expended under the direction of the Secretary of the Interior in aiding such Indians to erect a house and other buildings suitable for residence or the improvement of his allotment; no sales, barters or bargains shall be made by any person other than said Indians with each other, of any of the personal property hereinbefore provided for, and any violation of this provision shall be deemed a misdemeanor and punished by fine not exceeding one hundred dollars, or imprisonment not exceeding one year or both in the discretion of the court.''

Act of June 10, 1896, referred to in text, is act June 10, 1896, ch. 398, 29 Stat. 334, which contains a provision directing the Secretary of the Interior to ascertain the number of Sioux and Ponca Indians in South Dakota and Nebraska who would not be benefited by the fulfillment of the proviso quoted above from the act of March 2, 1889, and who desire to have the articles of personal property, therein mentioned converted into money, and in lieu of such articles of personal property, or any part thereof he may think proper, to convert or commute the same, or so much thereof as he may think proper, into money, and to pay the amount thereof to such Indians.

This Act, referred to in text, is act June 18, 1934, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Section 19 of the Act of May 29, 1908, referred to in text, probably means section 19 of act May 29, 1908, ch. 216, 35 Stat. 451, which authorizes the Secretary of the Interior to cause allotments to be made under the provisions of act Mar. 2, 1889, ch. 405, 25 Stat. 888, to any living children of the Sioux tribe of Indians belonging on any of the Great Sioux reservations affected thereby and who had not prior to May 29, 1908, been allotted, so long as the tribe to which such Indian children belong is possessed of any unallotted tribal or reservation lands. The section further provides that where, for any reason, an Indian did not receive the quantity of land to which he was entitled under the provisions of said act March 2, 1889, the Secretary of the Interior shall cause to be allotted to him sufficient additional lands on the reservation to which he belongs to make, together with the quantity of land theretofore allotted to him, the acreage to which he is entitled under said act March 2, 1889; and in case of the death of any such Indian, the additional lands to which he is of right entitled may be allotted to his heirs: *Provided*, the tribe to which he belonged is possessed of any unallotted tribal or reservation lands.

APPROPRIATIONS

Section 2 of act June 26, 1934, ch. 756, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation under the title ''Civilization of the Sioux (4x950)'' effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.

§ 475. Claims or suits of Indian tribes against United States; rights unimpaired

Nothing in this Act shall be construed to impair or prejudice any claim or suit of any Indian tribe against the United States. It is declared to be the intent of Congress that no expenditures for the benefit of Indians made out of appropriations authorized by said sections shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States.

(June 18, 1934, ch. 576, § 15, 48 Stat. 987.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 18, 1934, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 475a. Offsets of gratuities

In all suits now pending in the United States Court of Federal Claims by an Indian tribe or band which have not been tried or submitted, and in any suit hereafter filed in the United States Court of Federal Claims by any such tribe or band, the United States Court of Federal Claims is directed to consider and to offset against any amount found due the said tribe or band all sums expended gratuitously by the United States for the benefit of the said tribe or band; and in all cases now pending or hereafter filed in the United States Court of Federal Claims in which an Indian tribe or band is party plaintiff, wherein the duty of the court is merely to report its findings of fact and conclusions to Congress, the said United States Court of Federal Claims is directed to include in its report a statement of the amount of money which has been expended by the United States gratuitously for the benefit of the said tribe or band: *Provided*, That expenditures made prior to the date of the law, treaty, agreement, or Executive order under which the claims arise shall not be offset against the claims or claim asserted; and expenditures under the Act of June 18, 1934 (48 Stat. L. 984) [25 U.S.C. 461 et seq.], except expenditures under appropriations made pursuant to section 5 of such Act [25 U.S.C. 465], shall not be charged as offsets against any claim on behalf of an Indian tribe or tribes now pending in the United States Court of Federal Claims or hereafter filed: *Provided further*, That funds appropriated and expended from tribal funds shall not be construed as gratuities; and this section shall not be deemed to amend or affect the various Acts granting jurisdiction to the United States Court of Federal Claims to hear and determine the claims listed on page 678 of the hearings before the subcommittee of the House Committee on Appropriations on the second deficiency appropriation bill for the fiscal year 1935: *And provided further*, That no expenditure under any emergency appropriation or allotment made subsequently to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public works and public projects for the relief of unemployment or to increase employment, and for work relief (including the civil-works program) shall be considered in connection with the operation of this section.

(Aug. 12, 1935, ch. 508, § 2, 49 Stat. 596; Pub. L. 97–164, title I, § 160(a)(8), Apr. 2, 1982, 96 Stat. 48;

Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' wherever appearing.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims'' wherever appearing.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 476. Organization of Indian tribes; constitution and bylaws and amendment thereof; special election

(a) Adoption; effective date

Any Indian tribe shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, and any amendments thereto, which shall become effective when—

(1) ratified by a majority vote of the adult members of the tribe or tribes at a special election authorized and called by the Secretary under such rules and regulations as the Secretary may prescribe; and

(2) approved by the Secretary pursuant to subsection (d) of this section.

(b) Revocation

Any constitution or bylaws ratified and approved by the Secretary shall be revocable by an election open to the same voters and conducted in the same manner as provided in subsection (a) of this section for the adoption of a constitution or bylaws.

(c) Election procedure; technical assistance; review of proposals; notification of contrary-to-applicable law findings

(1) The Secretary shall call and hold an election as required by subsection (a) of this section—

(A) within one hundred and eighty days after the receipt of a tribal request for an election to ratify a proposed constitution and bylaws, or to revoke such constitution and bylaws; or

(B) within ninety days after receipt of a tribal request for election to ratify an amendment to the constitution and bylaws.

(2) During the time periods established by paragraph (1), the Secretary shall—

(A) provide such technical advice and assistance as may be requested by the tribe or as the Secretary determines may be needed; and

(B) review the final draft of the constitution and bylaws, or amendments thereto to determine if any provision therein is contrary to applicable laws.

(3) After the review provided in paragraph (2) and at least thirty days prior to the calling of the election, the Secretary shall notify the tribe, in writing, whether and in what manner the Secretary has found the proposed constitution and bylaws or amendments thereto to be contrary to applicable laws.

(d) Approval or disapproval by Secretary; enforcement

(1) If an election called under subsection (a) of this section results in the adoption by the tribe of the proposed constitution and bylaws or amendments thereto, the Secretary shall approve the constitution and bylaws or amendments thereto within forty-five days after the election unless the Secretary finds that the proposed constitution and bylaws or any amendments are contrary to applicable laws.

(2) If the Secretary does not approve or disapprove the constitution and bylaws or amendments within the forty-five days, the Secretary's approval shall be considered as given. Actions to enforce the provisions of this section may be brought in the appropriate Federal district court.

(e) Vested rights and powers; advisement of presubmitted budget estimates

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local governments. The Secretary shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Office of Management and Budget and the Congress.

(f) Privileges and immunities of Indian tribes; prohibition on new regulations

Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 et seq., 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.

(g) Privileges and immunities of Indian tribes; existing regulations

Any regulation or administrative decision or determination of a department or agency of the United States that is in existence or effect on May 31, 1994, and that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of

their status as Indian tribes shall have no force or effect.

(h) Tribal sovereignty

Notwithstanding any other provision of this Act—

(1) each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section; and

(2) nothing in this Act invalidates any constitution or other governing document adopted by an Indian tribe after June 18, 1934, in accordance with the authority described in paragraph (1).

(June 18, 1934, ch. 576, § 16, 48 Stat. 987; Pub. L. 100–581, title I, § 101, Nov. 1, 1988, 102 Stat. 2938; Pub. L. 103–263, § 5(b), May 31, 1994, 108 Stat. 709; Pub. L. 106–179, § 3, Mar. 14, 2000, 114 Stat. 47; Pub. L. 108–204, title I, § 103, Mar. 2, 2004, 118 Stat. 543.)

REFERENCES IN TEXT

Act of June 18, 1934, and this Act, referred to in subsecs. (f) and (h), is act of June 18, 1934, ch. 576, 48 Stat. 984, popularly known as the Indian Reorganization Act, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

CODIFICATION

May 31, 1994, referred to in subsec. (g), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 103–263, which enacted subsec. (g) of this section, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (h). Pub. L. 108–204 added subsec. (h).

2000—Subsec. (e). Pub. L. 106–179 struck out '', the choice of counsel and fixing of fees to be subject to the approval of the Secretary'' after ''To employ legal counsel''.

1994—Subsecs. (f), (g). Pub. L. 103–263 added subsecs. (f) and (g).

1988—Pub. L. 100–581 amended section generally, substituting subsecs. (a) to (e) for two former undesignated pars.

DEFINITIONS APPLICABLE

Section 102 of title I of Pub. L. 100–581 provided that: ''For the purpose of this Act [probably means title I of Pub. L. 100–581 which amended this section and enacted provisions set out below], the term—

''(1) 'applicable laws' means any treaty, Executive order or Act of Congress or any final decision of the Federal courts which are applicable to the tribe, and any other laws which are applicable to the tribe pursuant to an Act of Congress or by any final decision of the Federal courts;

''(2) 'appropriate tribal request' means receipt in the Area Office of the Bureau of Indian Affairs having administrative jurisdiction over the requesting tribe, of a duly enacted tribal resolution requesting a Secretarial election as well as a copy of the proposed tribal constitution and bylaws, amendment, or revocation action;

''(3) 'Secretary' means the Secretary of the Interior.''

AMENDMENT OF TRIBAL CONSTITUTION AND BYLAWS

Section 103 of title I of Pub. L. 100–581 provided that: ''Nothing in this Act [probably means title I of Pub. L. 100–581 which amended this section and enacted provisions set out above] is intended to amend, revoke, or affect any tribal constitution, bylaw, or amendment ratified and approved prior to this Act.''

§ 477. Incorporation of Indian tribes; charter; ratification by election

The Secretary of the Interior may, upon petition by any tribe, issue a charter of incorporation to such tribe: *Provided*, That such charter shall not become operative until ratified by the governing body of such tribe. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law; but no authority shall be granted to sell, mortgage, or lease for a period exceeding twenty-five years any trust or restricted lands included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.

(June 18, 1934, ch. 576, § 17, 48 Stat. 988; Pub. L. 101–301, § 3(c), May 24, 1990, 104 Stat. 207.)

AMENDMENTS

1990—Pub. L. 101–301 substituted ''by any tribe'' for ''by at least one-third of the adult Indians'', ''by the governing body of such tribe'' for ''at a special election by a majority vote of the adult Indians living on the reservation'', and ''twenty-five years any trust or restricted lands'' for ''ten years any of the land''.

§ 478. Acceptance optional

This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after June 18, 1934, to call such an election, which election shall be held by secret ballot upon thirty days' notice.

(June 18, 1934, ch. 576, § 18, 48 Stat. 988.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 18, 1934, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

EXTENSIONS OF TIME

The time for holding an election under this section was extended to June 18, 1936, by act June 15, 1935, ch. 260, § 2, 49 Stat. 378.

Act June 15, 1935, ch. 260, § 3, 49 Stat. 378, provided that the periods of trust or the restrictions on alienation of Indian lands should be extended to Dec. 31, 1936, in case of a vote against the application of sections 461, 462, 463, 464, 465, 466 to 470, 471, 472, 473, 474, 475, 476 to 478, and 479 of this title.

§ 478–1. Mandatory application of sections 462 and 477

Notwithstanding section 478 of this title, sections 462 and 477 of this title shall apply to—

(1) all Indian tribes,

(2) all lands held in trust by the United States for Indians, and

(3) all lands owned by Indians that are subject to a restriction imposed by the United States on alienation of the rights of the Indians in the lands.

(Pub. L. 101–301, § 3(a), May 24, 1990, 104 Stat. 207.)

§ 478a. Procedure

In any election heretofore or hereafter held under the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.], on the question of excluding a reservation from the application of the said Act or on the question of adopting a constitution and bylaws or amendments thereto or on the question of ratifying a charter, the vote of a majority of those actually voting shall be necessary and sufficient to effectuate such exclusion, adoption, or ratification, as the case may be: *Provided, however*, That in each instance the total vote cast shall not be less than 30 per centum of those entitled to vote.

(June 15, 1935, ch. 260, § 1, 49 Stat. 378.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 478b. Application of laws and treaties

All laws, general and special, and all treaty provisions affecting any Indian reservation which has voted or may vote to exclude itself from the application of the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.], shall be deemed to have been continuously effective as to such reservation, notwithstanding the passage of said Act of June 18, 1934. Nothing in the Act of June 18, 1934, shall be construed to abrogate or impair any rights guaranteed under any existing treaty with any Indian tribe, where such tribe voted not to exclude itself from the application of said Act.

(June 15, 1935, ch. 260, § 4, 49 Stat. 378.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 479. Definitions

The term ''Indian'' as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term ''tribe'' wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words ''adult Indians'' wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

(June 18, 1934, ch. 576, § 19, 48 Stat. 988.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 18, 1934, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 479a. Definitions

For the purposes of this title:[1]

(1) The term ''Secretary'' means the Secretary of the Interior.

(2) The term ''Indian tribe'' means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.

(3) The term ''list'' means the list of recognized tribes published by the Secretary pursuant to section 479a–1 of this title.

(Pub. L. 103–454, title I, § 102, Nov. 2, 1994, 108 Stat. 4791.)

REFERENCES IN TEXT

This title, referred to in introductory provisions, is title I of Pub. L. 103–454, Nov. 2, 1994, 108 Stat. 4791, which enacted this section, section 479a–1 of this title, and provisions set out as notes below. For complete classification of this title to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 101 of title I of Pub. L. 103–454 provided that: ''This title [enacting this section and section 479a–1 of this title and provisions set out below] may be cited as the 'Federally Recognized Indian Tribe List Act of 1994'.''

CONGRESSIONAL FINDINGS

Section 103 of Pub. L. 103–454 provided that: ''The Congress finds that—

''(1) the Constitution, as interpreted by Federal case law, invests Congress with plenary authority over Indian Affairs;

''(2) ancillary to that authority, the United States has a trust responsibility to recognized Indian tribes, maintains a government-to-government relationship with those tribes, and recognizes the sovereignty of those tribes;

''(3) Indian tribes presently may be recognized by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated 'Procedures for Establishing that an American Indian Group Exists as an Indian Tribe;' or by a decision of a United States court;

''(4) a tribe which has been recognized in one of these manners may not be terminated except by an Act of Congress;

''(5) Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated;

''(6) the Secretary of the Interior is charged with the responsibility of keeping a list of all federally recognized tribes;

[1] See References in Text note below.

''(7) the list published by the Secretary should be accurate, regularly updated, and regularly published, since it is used by the various departments and agencies of the United States to determine the eligibility of certain groups to receive services from the United States; and

''(8) the list of federally recognized tribes which the Secretary publishes should reflect all of the federally recognized Indian tribes in the United States which are eligible for the special programs and services provided by the United States to Indians because of their status as Indians.''

§ 479a–1. Publication of list of recognized tribes

(a) Publication of list

The Secretary shall publish in the Federal Register a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(b) Frequency of publication

The list shall be published within 60 days of November 2, 1994, and annually on or before every January 30 thereafter.

(Pub. L. 103–454, title I, § 104, Nov. 2, 1994, 108 Stat. 4792.)

§ 480. Indians eligible for loans

On and after May 10, 1939, no individual of less than one-quarter degree of Indian blood shall be eligible for a loan from funds made available in accordance with the provisions of the Act of June 18, 1934 (48 Stat. 986) [25 U.S.C. 461 et seq.], and the Act of June 26, 1936 (49 Stat. 1967) [25 U.S.C. 501 et seq.].

(May 10, 1939, ch. 119, § 1, 53 Stat. 698.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Act of June 26, 1936, referred to in text, popularly known as the Oklahoma Welfare Act, is classified generally to subchapter VIII (§ 501 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 501 of this title and Tables.

§ 481. Omitted

CODIFICATION

Section, act July 2, 1942, ch. 473, § 1, 56 Stat. 513, which related to an allowance to Indians traveling away from home involved in tribal organization work, was from the Interior Department Appropriation Act, 1943, and was not repeated in subsequent appropriations acts.

§ 482. Revolving fund; loans; regulations

The Secretary of the Interior, or his designated representative, is authorized, under such regulations as the Secretary may prescribe, to make loans from the revolving fund established pursuant to the Acts of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.], and June 26, 1936 (49 Stat. 1967) [25 U.S.C. 501 et seq.], to tribes, bands, groups, and individual Indians, not otherwise eligible for loans under said Acts: *Provided*, That no portion of these funds shall be loaned to Indians of less than one-quarter Indian blood.

(May 7, 1948, ch. 266, 62 Stat. 211.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to this subchapter. Provisions of the Act establishing the revolving fund are set out in section 470 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Act of June 26, 1936, referred to in text, popularly known as the Oklahoma Welfare Act, is classified generally to subchapter VIII (§ 501 et seq.) of this chapter. Provisions of the Act relating to the revolving fund appear in section 506 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 501 of this title and Tables.

Funds in the revolving fund authorized by these Acts, and certain other sums, to be administered after Apr. 12, 1974, as a single Indian Revolving Loan Fund, see section 1461 of this title.

§ 483. Sale of land by individual Indian owners

The Secretary of the Interior, or his duly authorized representative, is authorized in his discretion, and upon application of the Indian owners, to issue patents in fee, to remove restrictions against alienation, and to approve conveyances, with respect to lands or interests in lands held by individual Indians under the provisions of the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.], or the Act of June 26, 1936 (49 Stat. 1967) [25 U.S.C. 501 et seq.].

(May 14, 1948, ch. 293, 62 Stat. 236.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Act of June 26, 1936, referred to in text, popularly known as the Oklahoma Welfare Act, is classified generally to subchapter VIII (§ 501 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 501 of this title and Tables.

§ 483a. Mortgages and deeds of trust by individual Indian owners; removal from trust or restricted status; application to Secretary

(a) The individual Indian owners of any land which either is held by the United States in trust for them or is subject to a restriction against alienation imposed by the United States are authorized, subject to approval by the Secretary of the Interior, to execute a mortgage or deed of trust to such land. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the tribe which has jurisdiction over such land or, in the case where no tribal foreclosure law exists, in accordance with the laws of the State or Territory in which the land is located. For the purpose of any foreclosure or sale proceeding the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceeding, and any conveyance of the land pursuant to the proceeding shall divest the United States of title

to the land. All mortgages and deeds of trust to such land heretofore approved by the Secretary of the Interior are ratified and confirmed.

(b) In the event such land is acquired by an Indian or an Indian tribe, such land shall not be removed from trust or restricted status except upon application to the Secretary under existing law.

(Mar. 29, 1956, ch. 107, 70 Stat. 62; Pub. L. 98–608, § 2, Oct. 30, 1984, 98 Stat. 3173; Pub. L. 101–644, title III, § 301(c), Nov. 29, 1990, 104 Stat. 4667.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–644 inserted ''tribe which has jurisdiction over such land or, in the case where no tribal foreclosure law exists, in accordance with the laws of the'' before ''State'' in second sentence.

1984—Pub. L. 98–608 designated existing provisions as subsec. (a) and added subsec. (b).

§ 484. Conversion of exchange assignments of tribal lands on certain Sioux reservations into trust titles; trust and tax exemption

From and after July 14, 1954, each grant of exchange assignment of tribal lands on the Cheyenne River Sioux Reservation and the Standing Rock Sioux Reservation shall have the same force and effect, and shall confer the same rights, including all timber, mineral, and water rights now vested in or held by the Cheyenne River Sioux Tribe or the Standing Rock Sioux Tribe, upon the holder or holders thereof, that are conveyed by a trust patent issued pursuant to section 348 of this title, as supplemented, except that the period of trust and tax exemption shall continue until otherwise directed by Congress.

(July 14, 1954, ch. 472, § 1, 68 Stat. 467.)

§ 485. Payment to assignment holders of moneys collected for use of subsurface rights

The Cheyenne River Sioux Tribe and the Standing Rock Sioux Tribe are authorized to pay to each holder of an exchange assignment of tribal lands all moneys collected by the tribe for the lease or use of subsurface rights in such lands.

(July 14, 1954, ch. 472, § 2, 68 Stat. 468.)

§ 486. Regulations

The Secretary of the Interior is authorized to prescribe such regulations as may be necessary to carry out the provisions of sections 484 to 486 of this title.

(July 14, 1954, ch. 472, § 3, 68 Stat. 468.)

§ 487. Spokane Indian Reservation; consolidations of land

(a) Purchase, sale, and exchange

For the purpose of effecting consolidations of land situated within the Spokane Indian Reservation in the State of Washington into the ownership of the tribe and of individual tribal members and for the purpose of attaining and preserving an economic land base for Indian use, alleviating problems of Indian heirship and assisting in the productive leasing, disposition, and other use of tribal lands, the Secretary of the Interior is authorized in his discretion to:

(1) Purchase for the Spokane Tribe of Indians with any funds of such tribe and to otherwise acquire by gift, exchange, or relinquishment any lands or interest in lands or improvements thereon within the Spokane Indian Reservation.

(2) Sell or approve sales of any tribal trust lands, any interest therein or improvements thereon.

(3) Exchange any tribal trust lands, including interests therein or improvements thereon, for any lands situated within such reservation.

(b) Individual Indian trust lands

The Secretary of the Interior is authorized to sell and exchange individual Indian trust lands held in multiple ownership to the Spokane Tribe or to individual members thereof if the sale or exchange is authorized in writing by owners of at least a majority interest in such lands; except that no greater percentage of approval of individual Indians shall be required under this Act than in any other statute of general application approved by Congress.

(c) Nontaxability

Title to lands, or any interests therein, acquired pursuant to this Act for the Spokane Tribe or individual enrolled members thereof, shall be taken in the name of the United States of America in trust for the tribe or individual Indian, and shall be nontaxable as other tribal and allotted Indian trust lands of the Spokane Reservation.

(d) Lands held by mortgage or deed of trust

That any tribal land that may be sold pursuant to this Act may, with the approval of the Secretary of the Interior, be encumbered by a mortgage or deed of trust and shall be subject to foreclosure or sale pursuant to the terms of such a mortgage or deed of trust in accordance with the laws of the State of Washington. The United States shall be an indispensable party to any such proceeding with the right of removal of the clause to the United States district court for the district in which the land is located, following the procedure in section 1446 of title 28: *Provided*, That the United States shall have the right to appeal from any order of remand in the case.

(e) Acquisition and sale procedures; land purchase and consolidation program

The acquisition and sale of lands for the Spokane Tribe pursuant to this Act shall be upon request of the business council of the Spokane Tribe, evidenced by a resolution adopted in accordance with the constitution and bylaws of the tribe, and shall be in accordance with a land purchase and consolidation plan approved by the Secretary of the Interior, and except as it may otherwise be authorized or prescribed by the Secretary, shall be limited to lands situated within the boundary of the Spokane Reservation. Such acquisition by the Spokane Tribe, or individual members thereof, may be achieved by exchange of lands with Indians or non-Indians as well as outright purchase, with adjusting payments to approximate equal value. Moneys or credits received by the tribe in the sale of lands shall be used for the purchase of other lands, or

for such other purpose as may be consistent with the land purchase and consolidation program, approved by the Secretary of the Interior.

(Pub. L. 90–335, § 1(a)–(e), June 10, 1968, 82 Stat. 174; Pub. L. 93–286, May 21, 1974, 88 Stat. 142.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (c), (d), and (e), is Pub. L. 90–335, June 10, 1968, 82 Stat. 174, as amended, which enacted this section and amended section 415 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section is comprised of subsecs. (a) to (e) of section 1 of Pub. L. 90–335. Subsec. (f) of section 1 of Pub. L. 90–335 amended section 415 of this title.

AMENDMENTS

1974—Subsec. (c). Pub. L. 93–286 substituted ''for the Spokane Tribe or individual'' for ''by the Spokane Tribe or individual'', and struck out proviso that the value on nontrust lands, or nontrust interests in land, acquired under this section by the Spokane Tribe during any twelve-month period shall not exceed the value of lands, or interests in land, that passed in any manner from a nontaxable trust status to a taxable fee status within the boundaries of the Spokane Reservation in Stevens County, Washington, during the twelve-month period preceding acquisition by the tribe.

§ 488. Loans to purchasers of highly fractioned land

(a) In general

The Secretary of Agriculture is authorized to make loans from the Farmers Home Administration Direct Loan Account created by section 1988(c)[1] of title 7, and to make and insure loans as provided in sections 1928[1] and 1929 of title 7, to any Indian tribe recognized by the Secretary of the Interior or tribal corporation established pursuant to the Indian Reorganization Act (25 U.S.C. 477), which does not have adequate uncommitted funds, to acquire lands or interests therein within the tribe's reservation as determined by the Secretary of the Interior, or within a community in Alaska incorporated by the Secretary pursuant to the Indian Reorganization Act [25 U.S.C. 461 et seq.], for use of the tribe or the corporation or the members of either. Such loans shall be limited to such Indian tribes or tribal corporations as have reasonable prospects of success in their proposed operations and as are unable to obtain sufficient credit elsewhere at reasonable rates and terms to finance the purposes authorized in sections 488 to 494 of this title.

(b) Highly fractionated land

(1) In general

Subject to paragraph (2), the Secretary of Agriculture may make and insure loans in accordance with section 1929 of title 7 to eligible purchasers of highly fractionated land pursuant to section 2204(c) of this title.

(2) Exclusion

Section 491 of this title shall not apply to trust land, restricted tribal land, or tribal corporation land that is mortgaged in accordance with paragraph (1).

[1] See References in Text note below.

(Pub. L. 91–229, § 1, Apr. 11, 1970, 84 Stat. 120; Pub. L. 110–234, title V, § 5501, May 22, 2008, 122 Stat. 1161; Pub. L. 110–246, § 4(a), title V, § 5501, June 18, 2008, 122 Stat. 1664, 1922.)

REFERENCES IN TEXT

Section 1988(c) of title 7, referred to in subsec. (a), was repealed by Pub. L. 104–127, title VII, § 749(a)(1), Apr. 4, 1996, 110 Stat. 1129.

Section 1928 of title 7, referred to in subsec. (a), was amended generally by Pub. L. 104–127, title VI, § 605, Apr. 4, 1996, 110 Stat. 1086, and, as so amended, no longer contains provisions relating to insurance of loans.

Tribal corporation established by the Indian Reorganization Act (25 U.S.C. 477), referred to in subsec. (a), means a tribal corporation established under act June 18, 1934, ch. 576, § 17, 48 Stat. 988, which is classified to section 477 of this title.

The Indian Reorganization Act, referred to in subsec. (a), is act June 18, 1934, ch. 576, 48 Stat. 984, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Pub. L. 110–246, § 5501, inserted section catchline, designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 489. Title in trust to United States

Title to land acquired by a tribe or tribal corporation with a loan made or insured pursuant to sections 488 to 494 of this title may, with the approval of the Secretary of the Interior, be taken by the United States in trust for the tribe or tribal corporation.

(Pub. L. 91–229, § 2, Apr. 11, 1970, 84 Stat. 120.)

§ 490. Tribal rights and privileges in connection with loans

A tribe or tribal corporation to which a loan is made or insured pursuant to sections 488 to 494 of this title (1) may waive in writing any immunity from suit or liability which it may possess, (2) may mortgage or otherwise hypothecate trust or restricted property if (a) authorized by its constitution or charter or by a tribal referendum, and (b) approved by the Secretary of the Interior, and (3) shall comply with rules and regulations prescribed by the Secretary of Agriculture in connection with such loans.

(Pub. L. 91–229, § 3, Apr. 11, 1970, 84 Stat. 120.)

§ 491. Mortgaged property governed by State law

Trust or restricted tribal or tribal corporation property mortgaged pursuant to sections 488 to 494 of this title shall be subject to foreclosure and sale or conveyance in lieu of foreclosure,

free of such trust or restrictions, in accordance with the laws of the State in which the property is located.

(Pub. L. 91–229, § 4, Apr. 11, 1970, 84 Stat. 120.)

§ 492. Interest rates and taxes

Loans made or insured pursuant to sections 488 to 494 of this title will be subject to the interest rate provisions of section 307(a)(3)(B) of the Consolidated Farmers Home Administration Act of 1961, as amended [7 U.S.C. 1927(a)(3)(B)], and to the provisions of subtitle D of that Act [7 U.S.C. 1981 et seq.] except sections 340 [7 U.S.C. 1990], 341, 342 [7 U.S.C. 1013a], and 343 [7 U.S.C. 1991] thereof: *Provided*, That section 334 [7 U.S.C. 1984] thereof shall not be construed to subject to taxation any lands or interests therein while they are held by an Indian tribe or tribal corporation or by the United States in trust for such tribe or tribal corporation pursuant to sections 488 to 494 of this title.

(Pub. L. 91–229, § 5, Apr. 11, 1970, 84 Stat. 120; Pub. L. 101–624, title XVIII, § 1854(a), Nov. 28, 1990, 104 Stat. 3837.)

REFERENCES IN TEXT

The Consolidated Farmers Home Administration Act of 1961, referred to in text, is now the Consolidated Farm and Rural Development Act (Pub. L. 87–128, title III, Aug. 8, 1961, 75 Stat. 307, as amended). Subtitle D of the Consolidated Farm and Rural Development Act is classified principally to subchapter IV (§ 1981 et seq.) of chapter 50 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

Section 341 of that Act is set out as a note under section 1921 of Title 7.

AMENDMENTS

1990—Pub. L. 101–624 substituted ''section 307(a)(3)(B)'' for ''section 307(a)''.

§ 493. Reduction of unpaid principal

(a) In general

The Secretary of Agriculture may, on the application of the borrower of a loan or loans made under sections 488 to 494 of this title, reduce the unpaid principal balance of such loan or loans to the current fair market value of the land purchased with the proceeds of the loan or loans if—

(1) the fair market value of the land has declined by at least 25 percent since such land was purchased by the borrower;

(2) the land has been held by the borrower for a period of at least 5 years; and

(3) the Secretary of the Interior finds that the borrower has insufficient income to both repay the loan or loans and provide normal tribal governmental services.

(b) Fair market value

(1) Appraisal

Current fair market value under subsection (a) of this section shall be determined through an appraisal by an independent qualified fee appraiser, selected by mutual agreement between the borrower and the Secretary of Agriculture.

(2) Costs

The cost of appraisals undertaken under paragraph (1) shall be paid by the borrower.

(c) Appeals

Decisions of the Secretary of Agriculture under this section shall be appealable in accordance with the provisions of section 333B[1] of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983b).

(d) Future applications

A borrower that had a loan or loans reduced under this section shall not submit an application for another reduction on such loan or loans for a period of 5 years after the initial reduction.

(Pub. L. 91–229, § 6, as added Pub. L. 101–82, title III, § 303, Aug. 14, 1989, 103 Stat. 583.)

REFERENCES IN TEXT

Section 333B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983b), referred to in subsec. (c), was repealed by Pub. L. 103–354, title II, § 281(c), Oct. 13, 1994, 108 Stat. 3233.

CODIFICATION

Another section 6 of Pub. L. 91–229 was added by Pub. L. 101–624, title XVIII, § 1854(b), Nov. 28, 1990, 104 Stat. 3837, and is classified to section 494 of this title.

§ 494. Authorization of appropriations

There are authorized to be appropriated to carry out sections 488 to 494 of this title $8,000,000 for each of the fiscal years 1991 through 1995.

(Pub. L. 91–229, § 6, as added Pub. L. 101–624, title XVIII, § 1854(b), Nov. 28, 1990, 104 Stat. 3837.)

CODIFICATION

Another section 6 of Pub. L. 91–229 was added by Pub. L. 101–82, title III, § 303, Aug. 14, 1989, 103 Stat. 583, and is classified to section 493 of this title.

§ 494a. Certification of rental proceeds

Notwithstanding any other provision of law, any actual rental proceeds from the lease of land acquired under section 488 of this title certified by the Secretary of the Interior shall be deemed—

(1) to constitute the rental value of that land; and

(2) to satisfy the requirement for appraisal of that land.

(Pub. L. 109–221, title II, § 203, May 12, 2006, 120 Stat. 341.)

SUBCHAPTER VI—INDIANS OF ALASKA

§ 495. Annette Islands reserved for Metlakahtla Indians

Until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in southeastern Alaska on the north side of Dixon's entrance, is set apart as a reservation for the use of the Metlakahtla Indians, and those people known as Metlakahtlans who, on March 3, 1891, had recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior.

[1] See References in Text note below.

(Mar. 3, 1891, ch. 561, § 15, 26 Stat. 1101.)

CODIFICATION

Section was formerly classified to section 358 of Title 48, Territories and Insular Possessions.

§§ 496, 497. Repealed. Pub. L. 94–579, title VII, § 704(a), Oct. 21, 1976, 90 Stat. 2792

Section 496, act May 1, 1936, ch. 254, § 2, 49 Stat. 1250, authorized Secretary of the Interior to designate as an Indian reservation any area of land which has been reserved for use and occupancy of Indians or Eskimos under sections 280a or 495 of this title, executive order, etc. Section was formerly classified to section 358a of Title 48, Territories and Insular Possessions.

Section 497, act May 31, 1938, ch. 304, 52 Stat. 593, authorized Secretary of the Interior to reserve tracts for schools, hospitals, etc., in Alaska for Indians, Eskimos, and Aleuts. Section was formerly classified to section 353a of Title 48.

EFFECTIVE DATE OF REPEAL

Section 704(a) of Pub. L. 94–579 provided that the repeal is effective on and after Oct. 21, 1976.

SAVINGS PROVISION

Repeal by Pub. L. 94–579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94–579, set out as a note under section 1701 of Title 43, Public Lands.

SUBCHAPTER VII—REINDEER INDUSTRY

§ 500. Purpose

A necessity for providing means of subsistence for the Eskimos and other natives of Alaska is hereby declared to exist. It is also declared to be the policy of Congress, and the purpose of this subchapter, to establish and maintain for the said natives of Alaska a self-sustaining economy by acquiring and organizing for and on behalf of said natives a reindeer industry or business, by encouraging and developing native activity and responsibility in all branches of the said industry or business, and by preserving the native character of the said industry or business thus established.

(Sept. 1, 1937, ch. 897, § 1, 50 Stat. 900.)

CODIFICATION

Section was formerly classified to section 250 of Title 48, Territories and Insular Possessions.

SHORT TITLE

Act Sept. 1, 1937, ch. 897, 500 Stat. 900, as amended, which enacted this subchapter, is popularly known as the ''Reindeer Industry Act of 1937''.

REPEALS

Section 17 of act Sept. 1, 1937, provided: ''All Acts of Congress or parts thereof which are inconsistent with the provisions of this Act are hereby repealed.''

AUTHORIZATION OF APPROPRIATIONS

Section 16 of act Sept. 1, 1937, authorized the appropriation of $2,000,000 for the use of the Secretary of the Interior in carrying out this subchapter.

§ 500a. Acquisition of reindeer and other property

The Secretary of the Interior is hereby authorized and directed, to acquire, in the name of the United States, by purchase or other lawful means, including exercise of the power of eminent domain, for and on behalf of the Eskimos and other natives of Alaska, reindeer, reindeer-range equipment, abattoirs, cold-storage plants, warehouses, and other property, real or personal, the acquisition of which he determines to be necessary to the effectuation of the purposes of this subchapter. Any condemnation proceedings undertaken by virtue of the authority granted in this section shall conform, as nearly as may be, to the procedure provided for the condemnation of real estate by section 3113 of title 40, or to that provided by sections 3114 to 3116 and 3118 of title 40: *Provided*, That nothing herein contained shall authorize the Secretary of the Interior to consolidate native-owned herds of reindeer with herds owned by others than natives prior to the purchase or acquisition of such herds of others than natives.

(Sept. 1, 1937, ch. 897, § 2, 50 Stat. 900.)

CODIFICATION

Section was formerly classified to section 250a of Title 48, Territories and Insular Possessions.

''Section 3113 of title 40'' substituted in text for ''the Act of August 1, 1888 (Chapter 728)'' and ''sections 3114 to 3116 and 3118 of title 40'' substituted in text for ''the Act of February 26, 1931 (Chapter 307)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 500b. Filing claim of title to reindeer by non-natives

All persons, other than natives of Alaska, who upon September 1, 1937, claim title to any Alaskan reindeer shall, within one year after September 1, 1937, file in Alaska, with the duly authorized agent or agents of the Secretary of the Interior, declarations of their ownership. Similar declarations concerning Alaskan reindeer acquired by any person not a native of Alaska by purchase or by gift at any time after September 1, 1937, shall be filed as aforesaid within thirty days after the date of such acquisition. Records of all declarations thus filed shall be made and kept open to public inspection in Alaska. If any owner of Alaskan reindeer, to whom the foregoing provisions of this section are applicable, shall fail to file the required declaration within the stated period, he shall be barred thereafter from asserting his claim of title.

(Sept. 1, 1937, ch. 897, § 3, 50 Stat. 900.)

CODIFICATION

Section was formerly classified to section 250b of Title 48, Territories and Insular Possessions.

§ 500c. Acceptance of gifts

The Secretary of the Interior is hereby authorized to receive, in the name of the United States, for and on behalf of said natives of Alaska, gifts made for the purposes of this subchapter.

(Sept. 1, 1937, ch. 897, § 4, 50 Stat. 900.)

CODIFICATION

Section was formerly classified to section 250c of Title 48, Territories and Insular Possessions.

§ 500d. Acceptance and expenditure of Federal funds

The Secretary of the Interior is hereby authorized to receive and expend, for the purposes of this subchapter, properly authorized loans, grants, or allocations made to him for said purposes by Federal agencies.

(Sept. 1, 1937, ch. 897, § 5, 50 Stat. 900.)

CODIFICATION

Section was formerly classified to section 250d of Title 48, Territories and Insular Possessions.

§ 500e. Revolving fund; moneys not to be covered into Treasury

Except as herein otherwise specially provided, none of the moneys collected or received by the Secretary of the Interior in his administration of this subchapter shall be paid into the Treasury, but all such moneys shall constitute a revolving fund to be administered by the Secretary of the Interior for the purposes of this subchapter.

(Sept. 1, 1937, ch. 897, § 6, 50 Stat. 900.)

REFERENCES IN TEXT

Herein, referred to in text, means act Sept. 1, 1937, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 250e of Title 48, Territories and Insular Possessions.

§ 500f. Management of industry by Secretary; aim of management

The Secretary of the Interior is authorized and directed to organize and manage the reindeer industry or business provided for by this subchapter in such manner as to establish and maintain for said natives of Alaska a complete and self-sustaining economy and to encourage and develop the activity and responsibility of said natives in all branches of said industry or business.

(Sept. 1, 1937, ch. 897, § 7, 50 Stat. 900.)

CODIFICATION

Section was formerly classified to section 250f of Title 48, Territories and Insular Possessions.

§ 500g. Distribution of reindeer, property, and profits to natives

The Secretary of the Interior is authorized to distribute the reindeer and other property acquired by the United States under this subchapter among the Eskimos or other natives of Alaska, or to corporations, associations, or organizations of said natives, either in the form of gifts or under such conditions as the Secretary of the Interior may prescribe, and to execute and deliver appropriate instruments of title, or to hold and use the same in trust for the use and benefit of said natives, with a view of effecting the widest possible distribution of such reindeer and other property among those natives of Alaska who are in need thereof and who can make proper use of the same: *Provided*, That during the period of the trust, income derived directly from the sale of reindeer and reindeer products as provided in this subchapter shall be exempt from Federal income taxation. The Secretary of the Interior may from time to time, in such manner as he determines to be proper for effectuating the purposes of this subchapter, distribute among those of said natives or corporations, associations, or other organizations of said natives, who are engaged in said industry or business or for whose subsistence reindeer are necessary, whatever profits may be earned by that part of the industry or business which is owned by the United States and which may, in the judgment of the Secretary of the Interior, be distributed in accordance with sound business practice.

(Sept. 1, 1937, ch. 897, § 8, 50 Stat. 901; Pub. L. 99–514, title XVII, § 1709(a), Oct. 22, 1986, 100 Stat. 2783.)

CODIFICATION

Section was formerly classified to section 250g of Title 48, Territories and Insular Possessions.

AMENDMENTS

1986—Pub. L. 99–514 inserted proviso directing that during the period of the trust, income derived directly from the sale of reindeer and reindeer products as provided in this subchapter shall be exempt from Federal income taxation.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1709(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall take effect as if originally included in the provision of the Act of September 1, 1937, to which such amendment relates.''

§ 500h. Grant of administrative powers to organizations of natives

The Secretary of the Interior is hereby authorized to grant, in his discretion and subject to such terms as he may impose, to any corporations, associations, or other organizations of said natives any or all of the powers relating to the administration of the reindeer industry or business herein provided for, upon a finding by him as to each grant that it is in the interests of the said natives of Alaska and will serve the purposes of this subchapter.

(Sept. 1, 1937, ch. 897, § 9, 50 Stat. 901.)

REFERENCES IN TEXT

Herein, referred to in text, means act Sept. 1, 1937, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 250h of Title 48, Territories and Insular Possessions.

§ 500i. Alienation of reindeer or interests; penalty

Live reindeer in Alaska, and the increase thereof, acquired by the Secretary of the Interior pursuant to this subchapter, and live reindeer in Alaska, and the increase thereof, owned by the said natives of Alaska or corporations, associations, or other organizations of said natives, however acquired, shall not be sold or transferred, by descent, devise, or in any other manner whatsoever, to anyone other than the

said natives of Alaska the United States for and on behalf of said natives, or corporations, associations, or other organizations of said natives, except with the consent in writing of the Secretary of the Interior or his duly authorized agent, stating that such consent is given upon the condition that the reindeer, and any increase thereof, sold or otherwise transferred with said consent, shall either be butchered in the Territory of Alaska within thirty days or shipped out of said Territory and never brought back alive into said Territory. Sales or other transfers of said reindeer, if made without the consent in writing herein required, or, although made with said consent, if followed by failure to comply with the condition therein required, shall be null and void, and shall not pass any title to or right to possession of any reindeer or increase thereof. No stock or other interest in any corporation, association, or other organization of said natives, engaged in or organized for the purposes of engaging in the reindeer industry or business, shall be transferred, by descent, devise, or in any other manner whatsoever, to anyone other than said natives of Alaska, the United States for and on behalf of said natives, or corporations, associations, or other organizations of said natives. Any willful violation of the provisions of this section by any vendee or other transferee shall be punishable by a fine of not more than $500: *Provided*, That no title to any reindeer, or reindeer products, owned by the United States for and on behalf of the said natives of Alaska, nor any title to reindeer, or reindeer products, owned by any of said natives or said corporations, associations, or other organizations of said natives, nor any stock or other interest in said corporations, associations, or other organizations of said natives, shall be transferred by descent, device,[1] or in any other manner whatsoever, except pursuant to regulations promulgated by the Secretary of the Interior for the purposes of preserving the native character of the reindeer industry or business in Alaska and effectuating the other purposes of this subchapter: *Provided further*, That nothing herein contained shall prevent any native of Alaska who owns reindeer or any interest therein through stock ownership, or otherwise, in any corporation or association or other organization owning reindeer, from transferring his reindeer, or any interest therein, to his children or other native relatives by gift, sale, devise, or bequest, or prevent the same from being so transferred or passed by descent.

(Sept. 1, 1937, ch. 897, § 10, 50 Stat. 901.)

REFERENCES IN TEXT

Herein, referred to in text, means act Sept. 1, 1937, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 250i of Title 48, Territories and Insular Possessions.

§ 500j. "Reindeer" defined

''Reindeer'' as used in this subchapter shall be understood to include reindeer and such caribou as have been introduced into animal husbandry or have actually joined reindeer herds, and the increase thereof.

(Sept. 1, 1937, ch. 897, § 11, 50 Stat. 902.)

CODIFICATION

Section was formerly classified to section 250j of Title 48, Territories and Insular Possessions.

§ 500k. Rules and regulations

The Secretary of the Interior is hereby authorized to promulgate such rules and regulations as, in his judgment, are necessary to carry into effect the provisions of this subchapter.

(Sept. 1, 1937, ch. 897, § 12, 50 Stat. 902.)

CODIFICATION

Section was formerly classified to section 250k of Title 48, Territories and Insular Possessions.

§ 500*l*. Appointment of natives to administer industry

Whenever, in his judgment, it is practicable and to the best interests of the natives the Secretary shall appoint natives to the supervisory and other positions in the administration of such reindeer industry or business.

(Sept. 1, 1937, ch. 897, § 13, 50 Stat. 902.)

CODIFICATION

Section was formerly classified to section 250*l* of Title 48, Territories and Insular Possessions.

§ 500m. Use of public lands; violation

In order to coordinate the use of public lands in Alaska for grazing reindeer with the purposes of this subchapter, the Secretary of the Interior is hereby authorized to regulate the grazing of reindeer upon said lands. He may, in his discretion, define reindeer ranges and regulate the use thereof for grazing reindeer; issue grazing permits; regulate and control all round-ups, handlings, markings, and butcherings of reindeer upon said public lands; and may issue rules and regulations to carry into effect the provisions of this section. Any person who willfully violates any of the rules and regulations promulgated for the purpose of carrying into effect the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than one year or by a fine of not more than $500.

(Sept. 1, 1937, ch. 897, § 14, 50 Stat. 902.)

CODIFICATION

Section was formerly classified to section 250m of Title 48, Territories and Insular Possessions.

§ 500n. "Natives of Alaska" defined

The term ''natives of Alaska'' as used herein shall be deemed to mean the native Indians, Eskimos, and Aleuts of whole or part blood inhabiting Alaska at the time of the Treaty of Cession of Alaska to the United States and their descendants of whole or part blood, together with the Indians and Eskimos who, since the year 1867 and prior to September 1, 1937, have migrated into Alaska from the Dominion of Canada, and their descendants of the whole or part blood.

[1] So in original. Probably should be ''devise,''.

(Sept. 1, 1937, ch. 897, § 15, 50 Stat. 902.)

REFERENCES IN TEXT

Herein, referred to in text, means act Sept. 1, 1937, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 250n of Title 48, Territories and Insular Possessions.

SUBCHAPTER VIII—INDIANS IN OKLAHOMA: PROMOTION OF WELFARE

§ 501. Acquisition of agricultural and grazing lands for Indians; title to lands; tax exemption

The Secretary of the Interior is authorized, in his discretion, to acquire by purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing Indian reservations, including trust or otherwise restricted lands now in Indian ownership: *Provided*, That such lands shall be agricultural and grazing lands of good character and quality in proportion to the respective needs of the particular Indian or Indians for whom such purchases are made. Title to all lands so acquired shall be taken in the name of the United States, in trust for the tribe, band, group, or individual Indian for whose benefit such land is so acquired, and while the title thereto is held by the United States said lands shall be free from any and all taxes, save that the State of Oklahoma is authorized to levy and collect a gross-production tax, not in excess of the rate applied to production from lands in private ownership, upon all oil and gas produced from said lands, which said tax the Secretary of the Interior is authorized and directed to cause to be paid.

(June 26, 1936, ch. 831, § 1, 49 Stat. 1967.)

REFERENCES TO THIS SECTION

References to this section in subchapter II of chapter 14 of this title deemed to include section 82a of this title, see section 458aaa–10 of this title.

SHORT TITLE

Act June 26, 1936, ch. 831, 49 Stat. 1967, as amended, which enacted this subchapter, is popularly known as the ''Oklahoma Welfare Act'' and the ''Oklahoma Indian Welfare Act''.

§ 502. Purchase of restricted Indian lands; preference to Secretary of the Interior; waiver of preference

Whenever any restricted Indian land or interests in land, other than sales or leases of oil, gas, or other minerals therein, are offered for sale, pursuant to the terms of this subchapter or any other Act of Congress, the Secretary of the Interior shall have a preference right, in his discretion, to purchase the same for or in behalf of any other Indian or Indians of the same or any other tribe, at a fair valuation to be fixed by the appraisement satisfactory to the Indian owner or owners, or if offered for sale at auction said Secretary shall have a preference right, in his discretion, to purchase the same for or in behalf of any other Indian or Indians by meeting the highest bid otherwise offered therefor.

The preference right of the Secretary to purchase shall be considered as waived where notice of the pendency of sale is given in writing to the Superintendent of the Five Civilized Tribes for at least ten days prior to the date of sale and the Secretary does not within that time exercise the preferential right to purchase.

(June 26, 1936, ch. 831, § 2, 49 Stat. 1967; Aug. 4, 1947, ch. 458, § 10, 61 Stat. 734.)

AMENDMENTS

1947—Act Aug. 4, 1947, provided for waiver of preference by failure to purchase after notice.

§ 503. Organization of tribes or bands; constitution; charter; right to participate in revolving credit fund

Any recognized tribe or band of Indians residing in Oklahoma shall have the right to organize for its common welfare and to adopt a constitution and bylaws, under such rules and regulations as the Secretary of the Interior may prescribe. The Secretary of the Interior may issue to any such organized group a charter of incorporation, which shall become operative when ratified by a majority vote of the adult members of the organization voting: *Provided, however*, That such election shall be void unless the total vote cast be at least 30 per centum of those entitled to vote. Such charter may convey to the incorporated group, in addition to any powers which may properly be vested in a body corporate under the laws of the State of Oklahoma, the right to participate in the revolving credit fund and to enjoy any other rights or privileges secured to an organized Indian tribe under the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.]: *Provided*, That the corporate funds of any such chartered group may be deposited in any national bank within the State of Oklahoma or otherwise invested, utilized, or disbursed in accordance with the terms of the corporate charter.

(June 26, 1936, ch. 831, § 3, 49 Stat. 1967.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 504. Cooperative associations; charter; purposes; voting rights

Any ten or more Indians, as determined by the official tribal rolls, or Indian descendants of such enrolled members, or Indians as defined in the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.], who reside within the State of Oklahoma in convenient proximity to each other may receive from the Secretary of the Interior a charter as a local cooperative association for any one or more of the following purposes: Credit administration, production, marketing, consumers' protection, or land management. The provisions of this subchapter, the regulations of the Secretary of the Interior, and the charters of the cooperative associations issued pursuant thereto shall govern such cooperative associa-

tions: *Provided*, That in those matters not covered by this subchapter, regulations, or charters, the laws of the State of Oklahoma, if applicable, shall govern. In any stock or nonstock cooperative association no one member shall have more than one vote, and membership therein shall be open to all Indians residing within the prescribed district.

(June 26, 1936, ch. 831, § 4, 49 Stat. 1967.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. Provisions of the Act defining ''Indian'' appear in section 479 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 505. Amendment or revocation of charters; suits by and against associations

The charters of any cooperative association organized pursuant to section 504 of this title shall not be amended or revoked by the Secretary except after a majority vote of the membership. Such cooperative associations may sue and be sued in any court of the State of Oklahoma or of the United States having jurisdiction of the cause of action, but a certified copy of all papers filed in any action against a cooperative association in a court of Oklahoma shall be served upon the Secretary of the Interior, or upon an employee duly authorized by him to receive such service. Within thirty days after such service or within such extended time as the trial court may permit, the Secretary of the Interior may intervene in such action or may remove such action to the United States district court.

(June 26, 1936, ch. 831, § 5, 49 Stat. 1968; June 25, 1948, ch. 646, § 29, 62 Stat. 991.)

AMENDMENTS

1948—Act June 25, 1948, struck out provisions relating to procedure for removal. See sections 1441 to 1450 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

§ 506. Loans to individuals and groups; appropriation

The Secretary is authorized to make loans to individual Indians and to associations or corporate groups organized pursuant to this subchapter. For the making of such loans and for expenses of the cooperative associations organized pursuant to this subchapter there shall be appropriated, out of the Treasury of the United States, the sum of $2,000,000.

(June 26, 1936, ch. 831, § 6, 49 Stat. 1968.)

REVOLVING FUND: INTEREST-FREE LOANS TO KLAMATH INDIANS; REFINANCING LENDING AGENCY LOANS

Use of Revolving Loan Fund for Indians to assist Klamath Indians during period for terminating Federal supervision, see note set out under section 564 of this title. Funds to be administered as a single Indian Revolving Loan Fund after Apr. 12, 1974, see section 1461 of this title.

§ 507. Availability and allocation of funds; royalties from mineral deposits

All funds appropriated under the several grants of authority contained in the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.], are hereby made available for use under the provisions of this subchapter, and Oklahoma Indians shall be accorded and allocated a fair and just share of any and all funds appropriated after June 26, 1936, under the authorization herein set forth: *Provided*, That any royalties, bonuses, or other revenues derived from mineral deposits underlying lands purchased in Oklahoma under the authority granted by this subchapter, or by the Act of June 18, 1934, shall be deposited in the Treasury of the United States, and such revenues are made available for expenditure by the Secretary of the Interior for the acquisition of lands and for loans to Indians in Oklahoma as authorized by this subchapter and by the Act of June 18, 1934 (48 Stat. 984).

(June 26, 1936, ch. 831, § 7, 49 Stat. 1968.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 508. Application of provisions to Osage County

This subchapter shall not relate to or affect Osage County, Oklahoma.

(June 26, 1936, ch. 831, § 8, 49 Stat. 1968.)

§ 509. Rules and regulations; repeals

The Secretary of the Interior is authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of this subchapter. All Acts or parts of Acts inconsistent with this subchapter are repealed.

(June 26, 1936, ch. 831, § 9, 49 Stat. 1968.)

§ 510. Payment of gross production taxes; method

Whenever restricted Indian lands in the State of Oklahoma are subject to gross production tax on minerals, including oil and gas, the Secretary of the Interior, in his discretion, may cause such tax or taxes due the State of Oklahoma to be paid in the manner provided for by the statutes of the State of Oklahoma.

(Aug. 25, 1937, ch. 772, 50 Stat. 806.)

CODIFICATION

This section was not enacted as part of act June 26, 1936, ch. 831, 49 Stat. 1967, which comprises this subchapter.

SUBCHAPTER IX—KLAMATH TRIBE: CAPITAL RESERVE FUND

§ 530. Capital reserve fund; interest for administrative expenses

The Secretary of the Interior shall cause to be established on the books of the Treasury, out of any unobligated tribal funds of the Indians of the Klamath Reservation in Oregon (hereinafter referred to as the ''Klamath Indians'') on deposit

in the Treasury of the United States, a capital reserve fund for said Klamath Indians. Such fund shall be created by setting aside the sum of $50,000 for the fiscal year 1937, and shall be augmented by additions of $50,000 for each fiscal year thereafter. Such fund shall be held in the Treasury of the United States and shall bear interest as provided by law. The interest upon such fund shall be used, insofar as it is sufficient, for the payment of the expenses of administration of the Klamath Indian Reservation in Oregon.

(Aug. 28, 1937, ch. 874, § 1, 50 Stat. 872.)

§§ 531 to 535. Repealed. Aug. 13, 1954, ch. 732, § 12, 68 Stat. 721

Sections 531 to 535, act Aug. 28, 1937, ch. 874, §§ 2–6, 50 Stat. 872, 873, related to revolving loan fund. See section 564 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Section 12 of act Aug. 13, 1954, provided that the repeal is effective on the date of the transfer of title to tribal property to a trustee, corporation, or other legal entity pursuant to section 564e of this title.

SUBCHAPTER X—KLAMATH TRIBE: DISPOSITION OF CERTAIN TRIBAL FUNDS

§ 541. Creation of individual credits; authorized purchases

The Secretary of the Interior is authorized and directed from the judgment fund of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians created as the result of the passage of the Act of June 25, 1938, and accrued interest thereon, to credit the sum of $2,000 upon the books of the Office of Indian Affairs, to each person determined by the Secretary of the Interior to be entitled to enrollment upon the annuity roll of said tribes of the Klamath Reservation, Oregon, living on August 7, 1939. The share of each adult member and not to exceed $1,500 of the share of any minor shall be available for expenditure, under such rules and regulations as the Secretary of the Interior may prescribe, for the following purposes:

Purchase of land; improvement of lands acquired or already held by the Indian; erection and improvement of suitable homes; repayment of any loans received from the United States or from the Klamath tribal funds; purchase of building material, farming equipment, livestock, feed, food, seed, grain, tools, machinery, implements, household goods, bedding, clothing, and any other equipment or supplies necessary to enable the Indians to fit themselves for or to engage in farming, livestock, industry, or such other pursuits or vocations, including education, as will enable them to become self-supporting; and health purposes: *Provided, however*, That the funds of the aged, infirm, decrepit, and incapacitated members, and of minors, may be used for their proper maintenance and support. The remainder of the share of each minor Indian shall be held intact until such Indian reaches his majority, when it, together with interest at the rate of 4 per centum per annum, shall be available for expenditure for the purposes specified herein. As herein used, the term ''minor'' shall include all members of the tribe less than twenty-one years of age, except that minors eighteen years of age or over and who are married or have families of their own to support, shall be regarded as adults. On the death of any enrolled member, adult, or minor, the sum on deposit to his credit shall be distributed as personal property, and shall be available for expenditure by the distributees only for the purposes herein authorized: *Provided, however*, That of the aforesaid $2,000 to be prorated to each person, $100 shall be paid to each member of said tribes as a per capita payment, free from the aforesaid restrictions, under rules and regulations prescribed by the Secretary of the Interior.

(Aug. 7, 1939, ch. 552, § 1, 53 Stat. 1252.)

REFERENCES IN TEXT

Act of June 25, 1938, referred to in text, probably refers to the Second Deficiency Appropriation Act, fiscal year 1938, act June 25, 1938, ch. 681, § 203(a), 52 Stat. 1156. Section 203(a) of that act provided for an appropriation for payment of judgments rendered by the court of claims and reported to the 75th Congress in Senate Document Numbered 191, and House Documents Numbered 661 and 686. House Document No. 681 listed a judgment in favor of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians in the sum of $5,313,347.32, with interest on a part thereof to date of payment, for the taking of land.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 542. Limitations on remainder of fund

After the segregation provided for in section 541 of this title shall have been made, the remainder of such judgment fund, including interest, shall be available for expenditure subject to the following limitations and conditions:

(a) Repealed. Aug. 13, 1954, ch. 732, § 12, 68 Stat. 721.

(b) Three hundred and seventy-five thousand dollars for immediate payment in a lump sum of $1,500 to each adult unallotted Indian found to be entitled to payment in lieu of allotment, as authorized in the Act of June 1, 1938 (52 Stat. 605) [25 U.S.C. 551 et seq.]: *Provided*, That the amount due any minor under the provisions of said subchapter shall be withheld until he becomes an adult, as herein defined, when it shall be paid to him in a lump sum from any funds, principal, or interest, on deposit to the credit of the Klamath Tribe, and section 2 of said Act of June 1, 1938 [25 U.S.C. 552], is amended accordingly.

(c) Such moneys as shall remain in the principal fund shall be transferred to and become a part of the capital reserve fund created by section 530 of this title.

(Aug. 7, 1939, ch. 552, § 2, 53 Stat. 1253; Aug. 13, 1954, ch. 732, § 12, 68 Stat. 721.)

REFERENCES IN TEXT

Act of June 1, 1938, referred to in subsec. (b), is act June 1, 1938, ch. 310, 52 Stat. 605, as amended, which is classified generally to subchapter XI (§ 551 et seq.) of

this chapter. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1954—Subsec. (a). Act Aug. 13, 1954, repealed subsec. (a) which related to transfer of funds.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 12 of act Aug. 13, 1954, provided that the amendment made by that section is effective on the date of the transfer of tribal property to a trustee, corporation, or other legal entity pursuant to section 564e of this title.

§ 543. Liability of judgment funds for debts

In no event shall any portion of the said judgment fund become liable, payable, or subject to any debt or debts contracted prior to the passage of this subchapter by any Indian of the Klamath Tribe except debts to the United States or to the tribe.

(Aug. 7, 1939, ch. 552, § 3, 53 Stat. 1253.)

§ 544. Creation of individual credits; authorized purchases

The Secretary of the Interior be, and he is authorized and directed, from the capital reserve fund deposited in the Treasury of the United States to the credit of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians (hereinafter referred to as the ''Klamath Tribes''), said fund being established pursuant to the Act of August 28, 1937 (ch. 874, 50 Stat. 872) [25 U.S.C. 530 et seq.], as augmented by the proceeds of the judgment fund of the Klamath Indians as provided in the Act of August 7, 1939 (ch. 552, 53 Stat. 1252) [25 U.S.C. 541 et seq.], to credit the sum of $500 upon the books of the Office of Indian Affairs, to each person determined by the Secretary of the Interior to be entitled to enrollment upon the annuity roll of said tribes of the Klamath Reservation, Oregon, living upon March 29, 1948. The share of each adult member of the credit so established shall be available for expenditure, under such rules and regulations as the Secretary of the Interior may prescribe, for the following purposes:

Purchase of land or interests in land; improvement of lands acquired or already held by the Indian; erection and improvement of suitable homes including household equipment and furnishings; repayment of any loans received from the United States or from the Klamath tribal funds; purchase of building material, feed, seed, and grain; purchase or rehabilitation and repair of farming equipment, tools, trucks, tractors, machinery, and implements; and purchase of any other equipment or supplies necessary to enable the Indians to fit themselves for or to engage in farming, livestock, industry, or such other pursuits or vocations, including education and adult education, as will enable them to become self-supporting; and health, including dental work: *Provided, however*, That the funds of the aged, infirm, decrepit, and incapacitated members may be used for their proper maintenance and support: *Provided further*, That during minority the share of each minor Indian shall be available for expenditure only for his education and for health purposes, including dental work, except that in an emergency expenditure of a minor Indian's share may be made for any of the purposes specified in this section and section 545 of this title. As herein used, the term ''minor'' shall include all members of the tribe who have not attained the age of twenty-one years, except that minors eighteen years of age or over and who are married or have families of their own to support, shall be regarded as adults. On the death of any enrolled member, adult or minor, the sum on deposit to his credit shall be distributed as personal property, and shall be available for expenditure by the distributees only for the purposes herein authorized: *And provided further*, That each member of the Klamath Tribes honorably discharged from service to the United States in its armed forces shall, upon application to the Commissioner of Indian Affairs, be paid $200 in cash, free from the aforesaid restrictions and in addition to the $500 to be credited to such member as provided in this section.

(Mar. 29, 1948, ch. 160, § 2, 62 Stat. 92.)

REFERENCES IN TEXT

Act of August 28, 1937, referred to in text, is act Aug. 28, 1937, ch. 874, 50 Stat. 872, as amended, which is classified generally to subchapter IX (§ 530 et seq.) of this chapter.

Act of August 7, 1939, referred to in text, is act Aug. 7, 1939, ch. 552, 53 Stat. 1252, as amended, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Tables.

CODIFICATION

This section was not enacted as part of act Aug. 7, 1939, ch. 552, 53 Stat. 1252, which comprises this subchapter.

SHORT TITLE

Section 1 of act Mar. 29, 1948, provided: ''That this Act [enacting this section and section 545 of this title] shall be known as the 'Klamath Welfare Act'.''

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 545. Liability of judgment funds for debts

In no event shall any portion of the funds directed to be credited and paid become liable, payable, or subject to any debt or debts contracted prior to the passage of this section and section 544 of this title by any Indian of the Klamath Tribe, except debts to the United States or to the tribe.

(Mar. 29, 1948, ch. 160, § 3, 62 Stat. 93.)

CODIFICATION

This section was not enacted as part of act Aug. 7, 1939, ch. 552, 53 Stat. 1252, which comprises this subchapter.

SUBCHAPTER XI—KLAMATH TRIBE: PAYMENTS IN LIEU OF ALLOTMENTS; INHERITANCE OF RESTRICTED PROPERTY

§ 551. "Klamath Tribe" defined

As used in this subchapter the term ''Klamath Tribe'' includes the members of the Klamath

and Modoc Tribes and the Yahooskin Band of Snakes and all other Indians having rights on the Klamath Indian Reservation in the State of Oregon.

(June 1, 1938, ch. 310, § 1, 52 Stat. 605.)

§ 552. Payments in lieu of allotments

Each enrolled member of the Klamath Tribe living on June 1, 1938, who has not received an allotment of land shall be paid the sum of $1,500 from unobligated Klamath tribal funds on deposit in the Treasury of the United States, under such rules and regulations as the Secretary of the Interior shall prescribe, in installments of not to exceed $300 per annum: *Provided*, That no member of the Klamath Tribe who shall not be enrolled within one year from June 1, 1938, shall receive a payment in lieu of allotment. No member of the Klamath Tribe born after June 1, 1938, shall be entitled to receive any allotment of land or money payment in lieu thereof.

(June 1, 1938, ch. 310, § 2, 52 Stat. 605.)

§ 553. Deposit and expenditure of payments

The payments herein authorized shall be deposited to the credit of the individual Indian money accounts of such Indians subject to expenditure by such Indians, under such rules and regulations as the Secretary of the Interior may prescribe for (1) industrial and agricultural assistance, and the construction and improvement of homes, including the purchase of land and interests in land, building material, farming equipment, industrial equipment, trucks, livestock, feed, food, seed, tools, machinery, implements, household goods, bedding, clothing, and any other equipment or supplies necessary to enable the Indians to fit themselves for or to engage in the farming, livestock industry, or such other industrial or agricultural pursuits or avocations as will enable them to become self-supporting; (2) the educational advancement of such Indians; (3) financial assistance in cases of illness, death, or other emergency; (4) the repayment of reimbursable debts previously contracted; or (5) security for or the repayment of loans made to such Indians from any Klamath revolving loan fund now existent or which shall hereafter be created.

(June 1, 1938, ch. 310, § 3, 52 Stat. 605.)

REFERENCES IN TEXT

Herein, referred to in text, means act June 1, 1938, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

§ 554. Disposition of payment on death of Indian

In the event of the death of any such Indian entitled to receive a payment in lieu of allotment after June 1, 1938, any unexpended balance of said $1,500 still due the decedent shall first be applied to the repayment of any loans received by such Indian from the United States or from the Klamath Tribal funds, and the balance thereafter shall be distributed as personal property.

(June 1, 1938, ch. 310, § 4, 52 Stat. 606.)

§ 555. Repealed. Aug. 13, 1954, ch. 732, § 9(c), 68 Stat. 721

Section, act June 1, 1938, ch. 310, § 5, 52 Stat. 606, related to devise of restricted or trust property and is now covered by section 564h of this title.

§ 556. Reversion of interest in property on death without heirs or devisees

If any enrolled member of the Klamath Tribe dies without lawful heirs or devises,[1] all interest which such member has in any restricted or trust property within the Klamath Reservation shall revert to and become part of the common tribal property.

(June 1, 1938, ch. 310, § 6, 52 Stat. 606.)

SUBCHAPTER XII—KLAMATH TRIBE: FEES AND CHARGES

§§ 561, 562. Omitted

CODIFICATION

Sections, which related to fees for general services and medical services, were from the Interior Department Appropriation Act, 1946, July 3, 1945, ch. 262, § 1, 59 Stat. 334, and were not repeated in the Interior Department Appropriation Act of 1947, July 1, 1946, ch. 529, 60 Stat. 348.

§ 563. Salaries and expenses for Klamath Tribe Officials

The Secretary of the Interior, or such official as may be designated by him, is authorized, until otherwise directed by Congress, to advance to the tribe or to pay out of any unobligated tribal funds of the Klamath Indians in the Treasury of the United States salaries and expenses of tribal officials or representatives (except the Klamath Loan Fund Board) at rates and/or limitations designated in advance by the Klamath General Council, or any governing body to which it may delegate such authority, and approved by the Secretary of the Interior: *Provided*, That the length of stay of representatives serving the tribe at the seat of government shall be determined by the Secretary of the Interior.

(May 29, 1953, ch. 86, § 1, 67 Stat. 40.)

PRIOR PROVISIONS

A prior section 563, acts June 25, 1938, ch. 710, 52 Stat. 1207; Aug. 7, 1939, ch. 519, 53 Stat. 1244; May 15, 1945, ch. 123, 59 Stat. 167, provided for payment of salaries and expenses of Klamath Tribe officials out of tribal funds but limited the amount of such expenditures to $15,000 per annum, prior to repeal by act May 29, 1953, § 2, 67 Stat. 40.

SUBCHAPTER XIII—KLAMATH TRIBE: TERMINATION OF FEDERAL SUPERVISION

§ 564. Purpose

The purpose of this subchapter is to provide for the termination of Federal supervision over the trust and restricted property of the Klamath Tribe of Indians consisting of the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians, and of the individual members thereof, for the disposition of federally owned property

[1] So in original. Probably should be "devisees,".

acquired or withdrawn for the administration of the affairs of said Indians, and for a termination of Federal services furnished such Indians because of their status as Indians.

(Aug. 13, 1954, ch. 732, § 1, 68 Stat. 718.)

REVOLVING FUND: INTEREST-FREE LOANS TO KLAMATH INDIANS; REFINANCING LENDING AGENCY LOANS

Pub. L. 86–40, June 11, 1959, 73 Stat. 70, provided: ''That the Secretary of the Interior is authorized to make loans, without interest, from the revolving fund authorized by the Acts of June 18, 1934 (48 Stat. 986; 25 U.S.C. 470), and June 26, 1936 (49 Stat. 1968; 25 U.S.C. 506), as amended and supplemented, to members of the Klamath Tribe of Indians who elected to withdraw from the tribe pursuant to the Act of August 13, 1954 (68 Stat. 718; 25 U.S.C. 564), as amended, regardless of the degree of Indian blood of the borrower, and to collect such loans by setoff against funds payable to the borrower pursuant to said Act of August 13, 1954, as amended [this subchapter]. The Secretary is also authorized to refinance from such revolving fund any loan made by a lending agency to a withdrawing Klamath Indian that is secured by encumbrance of his beneficial interest in tribal property with the approval of the Secretary as required by section 4 of said 1954 Act [section 564c of this title], and to include therein a nonreimbursable grant equal to the interest charges incurred by the borrower prior to such refinancing. In the event adequate funds are not available from the revolving fund to refinance a loan by such lending agency, the Secretary is authorized to pay from the revolving fund, without reimbursement, the interest charged on such loan.''

INDIAN REVOLVING LOAN FUND

Certain funds to be administered as a single Indian Revolving Loan Fund after Apr. 12, 1974, see section 1461 of this title.

REPEALS; RECOUPMENT OF FUNDS EXPENDED FOR KLAMATH COUNTY SCHOOL BOARD

Section 24 of act Aug. 13, 1954, as amended by Pub. L. 85–72, June 29, 1957, 71 Stat. 243, provided that: ''All Acts or parts of Acts inconsistent with this Act [this subchapter] are hereby repealed insofar as they affect the tribe or its members. Effective on July 1, 1957, section 2 of the Act of August 19, 1949 (63 Stat. 621, ch. 488) shall become inapplicable to the unrecouped balance of funds expended in cooperation with the school board of Klamath County, Oregon, pursuant to said Act.''

SEPARABILITY

Section 25 of act Aug. 13, 1954, provided that: ''If any provision of this Act [this subchapter], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.''

§ 564a. Definitions

For the purposes of this subchapter:

(a) ''Tribe'' means the Klamath Tribe of Indians consisting of the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians.

(b) ''Secretary'' means the Secretary of the Interior.

(c) ''Lands'' means real property, interests therein, or improvements thereon, and include water rights.

(d) ''Tribal property'' means any real or personal property, including water rights, or any interest in real or personal property, that belongs to the tribe and either is held by the United States in trust for the tribe or is subject to a restriction against alienation imposed by the United States.

(e) ''Adult'' means a person who is an adult according to the law of the place of his residence.

(Aug. 13, 1954, ch. 732, § 2, 68 Stat. 718; Pub. L. 85–132, § 1(f), Aug. 14, 1957, 71 Stat. 348.)

AMENDMENTS

1957—Subsec. (e). Pub. L. 85–132 substituted provision defining adult as a person who is an adult according to the law of the place of his residence, for provision defining adult as a member of the tribe who has attained the age of twenty-one years.

§ 564b. Membership roll; closure; preparation and initial publication; appeal from inclusion or omission from roll; finality of determination; final publication

At midnight of August 13, 1954, the roll of the tribe shall be closed and no child born thereafter shall be eligible for enrollment: *Provided*, That the tribe shall have a period of six months from August 13, 1954, in which to prepare and submit to the Secretary a proposed roll of the members of the tribe living on August 13, 1954, which shall be published in the Federal Register. If the tribe fails to submit such roll within the time specified in this section, the Secretary shall prepare a proposed roll for the tribe, which shall be published in the Federal Register. Any person claiming membership rights in the tribe or an interest in its assets, or a representative of the Secretary on behalf of any such person, may, within ninety days from the date of publication of the proposed roll, file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such roll. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals, the roll of the tribe shall be published in the Federal Register, and such roll shall be final for the purposes of this subchapter.

(Aug. 13, 1954, ch. 732, § 3, 68 Stat. 718.)

§ 564c. Personal property rights; restrictions; tax exemption

Upon publication in the Federal Register of the final roll as provided in section 564b of this title, the rights or beneficial interests in tribal property of each person whose name appears on the roll shall constitute personal property which may be inherited or bequeathed, but shall not otherwise be subject to alienation or encumbrance before the transfer of title to such tribal property as provided in section 564e of this title without the approval of the Secretary. Any contract made in violation of this section shall be null and void. Property which this section makes subject to inheritance or bequest and which is inherited or bequeathed after August 13, 1954, and prior to the transfer of title to tribal property as provided in section 564e of this title shall not be subject to State or Federal inheritance, estate, legacy, or succession taxes.

(Aug. 13, 1954, ch. 732, § 4, 68 Stat. 718; Pub. L. 85–731, § 2, Aug. 23, 1958, 72 Stat. 818.)

AMENDMENTS

1958—Pub. L. 85–731 inserted provision that property which is inherited or bequeathed after Aug. 13, 1954, and prior to transfer of title to tribal property should not be subject to taxes.

REVOLVING FUND: INTEREST-FREE LOANS TO KLAMATH INDIANS; REFINANCING LENDING AGENCY LOANS

Use of Revolving Loan Fund for Indians to assist Klamath Indians during period for terminating Federal supervision, see note set out under section 564 of this title.

§ 564d. Management specialists

(a) Employment; duties

The Secretary is authorized and directed to select and retain by contract, at the earliest practicable time after August 13, 1954 and after consultation with the tribe at a general meeting called for that purpose, the services of qualified management specialists who shall—

(1) cause an appraisal to be made, within not more than twelve months after their employment, or as soon thereafter as practicable, of all tribal property showing its fair market value by practicable logging or other appropriate economic units;

(2) immediately after the appraisal of the tribal property and approval of the appraisal by the Secretary, give to each member whose name appears on the final roll of the tribe an opportunity to elect to withdraw from the tribe and have his interest in tribal property converted into money and paid to him, or to remain in the tribe and participate in the tribal management plan to be prepared pursuant to paragraph (5) of this subsection; in the case of members who are minors, persons declared incompetent by judicial proceedings, or deceased, the opportunity to make such election on their behalf shall be given to the person designated by the Secretary as the person best able to represent the interests of such member: *Provided, however*, That any member, or any heir or any devisee of any deceased member, for whom the Secretary has so designated a representative may (on his own behalf, through his natural guardian, or next friend) within one hundred and twenty days after receipt of written notice of such secretarial designation, contest the secretarial designation in any naturalization court for the area in which such member resides, by filing of a petition therein requesting designation of a named person other than the secretarial designee, and the burden shall thereupon devolve upon the Secretary to show cause why the member-designated representative should not represent the interests of such member, and the decision of such court shall be final and conclusive;

(3) determine and select the portion of the tribal property which if sold at the appraised value would provide sufficient funds to pay the members who elect to have their interests converted into money, arrange for the sale of such property, and distribute the proceeds of sale among the members entitled thereto: *Provided*, That any person whose name appears on the final roll of the tribe, or a guardian on behalf of any such person who is a minor or an incompetent, shall have the right to purchase, for his or its own account but not as an agent for others, any of such property in lots as offered for sale for not less than the highest offer received by competitive bid; any individual Indian purchaser who has elected to withdraw from the tribe may apply toward the purchase price up to 100 per centum of the amount estimated by the Secretary to be due him from the sale or taking of forest and marsh land pursuant to subsection (b), (d), and (f) of section 564w–1 of this title, and up to 75 per centum of the amount estimated by the Secretary to be due him from the conversion of his interest in other tribal property; and if more than one right is exercised to purchase the same property pursuant to this proviso the property shall be sold to one of such persons on the basis of competitive bids: *Provided further*, That when determining and selecting the portion of the tribal property to be sold, due consideration shall be given to the use of such property for grazing purposes by the members of both groups of the tribe;

(4) cause such studies and reports to be made as may be deemed necessary or desirable by the tribe or by the Secretary in connection with the termination of Federal supervision as provided for in this subchapter; and

(5) cause a plan to be prepared in form and content satisfactory to the members who elect to remain in the tribe and to the Secretary for the management of tribal property through a trustee, corporation, or other legal entity. If no plan that is satisfactory both to the members who elect to remain in the tribe and to the Secretary has been prepared six months before the time limit provided in section 564e(b) of this title the Secretary shall adopt a plan for managing the tribal property, subject to the provisions of section 564n of this title.

(b) Availability of funds for expenditures; reimbursement of tribal funds

Such amounts of Klamath tribal funds as may be required for the purposes of this section shall be available for expenditure by the Secretary. In order to reimburse the tribe, in part, for expenditure of such tribal funds as the Secretary deems necessary for the purposes of carrying out the requirements of this section, there is authorized to be appropriated out of any money in the Treasury not otherwise appropriated, an amount equal to one-half of such expenditures from tribal funds, or the sum of $550,000, whichever is the lesser amount.

(Aug. 13, 1954, ch. 732, § 5, 68 Stat. 718; Pub. L. 85–132, § 1(b), (d), (e), (g), Aug. 14, 1957, 71 Stat. 347, 348; Pub. L. 85–731, §§ 6–8, Aug. 23, 1958, 72 Stat. 819.)

AMENDMENTS

1958—Subsec. (a)(3). Pub. L. 85–731, §§ 6, 7, struck out first proviso requiring that funds payable to the withdrawing members be distributed as each $200,000 accumulates, and substituted "who has elected to withdraw from the tribe may apply toward the purchase price up to 100 per centum of the amount estimated by the Secretary to be due him from the sale or taking of forest and marsh lands pursuant to subsections (b), (d), and (f) of section 564w–1 of this title, and up to 75 per centum of the amount estimated by the Secretary to be due him from the conversion of his interest in other tribal property" for "may apply toward the purchase price all or any part of the sum due him from the conversion of his interest in tribal property" in second proviso.

Subsec. (a)(5). Pub. L. 85–731, § 8, inserted sentence to provide that if no plan is satisfactory both to the members who elect to remain in the tribe and to the Secretary, the Secretary shall adopt a management plan.

1957—Subsec. (a)(2). Pub. L. 85–132, §1(d), provided that the time of election to withdraw be given after the appraisal is approved by the Secretary, and provided for election on behalf of minors, incompetents, or deceased persons by designee of Secretary.

Subsec. (a)(3). Pub. L. 85–132, §1(e), in second proviso provided that any person whose name appears on the final roll of the tribe, may purchase for his own account, but not as an agent for others, any such property in lots as offered for sale, and provided that if more than one right is exercised to purchase the same property, it be sold on the basis of competitive bids.

Subsec. (a)(5). Pub. L. 85–132, §1(g), substituted ''members who elect to remain in the tribe'' for ''tribe''.

Subsec. (b). Pub. L. 85–132, §1(b), provided for partial reimbursement of the tribe for expenditures of tribal funds under this section, authorization of appropriation of the lesser of amount equal to one-half of such expenditures, or $550,000, in lieu of former provisions which charged expenses incident to par. (3) to members who withdraw from tribe, charged expenses under pars. (4) and (5) to members who remain in tribe, and charged all other expenses under this section to interests of both groups of members.

COMPENSATION FOR SERVICES PERTAINING TO ENACTMENT PROHIBITED

Section 3 of Pub. L. 85–731 provided that: ''No funds distributed pursuant to section 5 of the Act of August 13, 1954, as amended [this section], to members who withdraw from the tribe shall be paid to any person as compensation for services pertaining to the enactment of said Act or amendments thereto [this subchapter] and any person making or receiving such payments shall be guilty of a misdemeanor and shall be imprisoned for not more than six months and fined not more than $500.''

TERMINATION OF CONTRACT WITH MANAGEMENT SPECIALISTS BY SECRETARY OF THE INTERIOR

Section 4 of Pub. L. 85–731 provided that: ''The Secretary of the Interior is directed to terminate the contract between him and the management specialists by giving immediately the sixty-day notice required by paragraph 18 of such contract. When the contract is terminated, all of the functions of the management specialists under section 5 of the Act of August 13, 1954, as amended [this section], shall be performed by the Secretary.''

PROVISIONS REQUIRING ELECTION TO WITHDRAW OR REMAIN IN TRIBE FOLLOWING APPRAISAL AS UNAFFECTED

Section 5 of Pub. L. 85–731 provided that: ''Nothing in this Act shall in any way modify or repeal the provisions of subsection 5(a) of the Act of August 13, 1954, 68 Stat. 718), as amended [subsec. (a) of this section], providing for and requiring members of the Klamath Tribe to elect to withdraw from or remain in the tribe, following the appraisal of the tribal property.''

CEMETERIES WITHIN RESERVATION

Section 9 of Pub. L. 85–731 provided that: ''Except as provided below the provisions of the Act of August 13, 1954 (68 Stat. 718), as amended [this subchapter], shall not apply to cemeteries within the reservation. The Secretary is hereby authorized and directed to transfer title to such properties to any organization authorized by the tribe and approved by him. In the event such an organization is not formed by the tribe within eighteen months following enactment of this Act [August 23, 1958], the Secretary is directed to perfect the organization of a nonprofit entity empowered to accept title and maintain said cemeteries, any costs involved to be subject to the provisions of section 5(b) of said Act of August 13, 1954, as amended [subsec. (b) of this section].''

DEFERRAL OF TIME FOR SALES OF TRIBAL PROPERTY

Sales of tribal property made pursuant to subsec. (a)(3) of this section or section 564e of this title as deferred until the adjournment of the second session of the Eighty-fifth Congress, see note set out under section 564e of this title.

§ 564e. Sale of tribal property

(a) Transfer procedure

The Secretary is authorized and directed to execute any conveyancing instrument that is necessary or appropriate to convey title to tribal property to be sold in accordance with the provisions of paragraph (3) of subsection (a) of section 564d of this title, and to transfer title to all other tribal property to a trustee, corporation, or other legal entity in accordance with the plan prepared pursuant to paragraph (5) of subsection (a) of section 564d of this title.

(b) Time limitation

It is the intention of the Congress that all of the actions required by section 564d of this title and this section shall be completed at the earliest practicable time and in no event later than seven years from August 13, 1954.

(c) Effect on tribal members selling interests

Members of the tribe who receive the money value of their interests in tribal property shall thereupon cease to be members of the tribe: *Provided*, That nothing shall prevent them from sharing in the proceeds of tribal claims against the United States.

(Aug. 13, 1954, ch. 732, §6, 68 Stat. 719; Pub. L. 85–132, §1(c), Aug. 14, 1957, 71 Stat. 347; Pub. L. 85–731, §10, Aug. 23, 1958, 72 Stat. 819.)

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–731 substituted ''seven years'' for ''six years''.

1957—Subsec. (b). Pub. L. 85–132 substituted ''six years'' for ''four years''.

DEFERRAL OF TIME FOR SALES OF TRIBAL PROPERTY

Section 27 of act Aug. 13, 1954, ch. 732, as added by Pub. L. 85–132, §1(a), provided that: ''Notwithstanding any other provisions of this Act [this subchapter], no sales of tribal property shall be made pursuant to paragraph (3) of subsection (a) of section 5, or section 6 of this Act [section 564d(a)(3) of this title or this section] prior to the adjournment of the second session of the Eighty-fifth Congress.''

§ 564f. Per capita payments to tribal members

The Secretary is authorized and directed, as soon as practicable after the passage of this subchapter, to pay from such funds as are deposited to the credit of the tribe in the Treasury of the United States, $250 to each member of the tribe on the rolls of the tribe on August 13, 1954. Any other person whose application for enrollment on the rolls of the tribe is subsequently approved, pursuant to the terms of section 564b of this title, shall, after enrollment, be paid a like sum of $250: *Provided*, That such payments shall be made first from the capital reserve fund created by section 530 of this title.

(Aug. 13, 1954, ch. 732, §7, 68 Stat. 720.)

§ 564g. Individual property

(a) Transfer of unrestricted control

The Secretary is authorized and directed to transfer within four years from August 13, 1954, to each member of the tribe unrestricted control of funds or other personal property held in trust for such member by the United States.

(b) Removal of restrictions on sales or encumbrances; fee simple title

All restrictions on the sale or encumbrance of trust or restricted interests in land, wherever located, owned by members of the tribe (including allottees, purchasers, heirs, and devisees, either adult or minor), and on trust or restricted interests in land within the Klamath Indian Reservation, regardless of ownership, are removed four years after August 13, 1954, and the patents or deeds under which titles are then held shall pass the titles in fee simple, subject to any valid encumbrances. The titles to all interests in trust or restricted land acquired by members of the tribe by devise or inheritance four years or more after August 13, 1954, shall vest in such members in fee simple, subject to any valid encumbrance.

(c) Multiple land ownership; partition; sale; election to purchase; unlocated owners

Prior to the time provided in subsection (b) of this section for the removal of restrictions on land owned by one or by more than one member of a tribe, the Secretary may—

(1) upon request of any of the owners, partition the land and issue to each owner a patent or deed for his individual share that shall become unrestricted four years from August 13, 1954;

(2) upon request of any of the owners, and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided*, That any one or more of the owners may elect before a sale to purchase the other interests in the land at not less than the appraised value thereof, and the purchaser shall receive an unrestricted patent or deed to the land; and

(3) if the whereabouts of none of the owners can be ascertained, cause such lands to be sold and deposit the proceeds of sale in the Treasury of the United States for safekeeping.

(d) Approval of exchanges or sales by Secretary

The Secretary is authorized to approve—

(1) the exchange of trust or restricted land between the tribe and any of its members;

(2) the sale by the tribe of tribal property to individual members of the tribe; and

(3) the exchange of tribal property for real property in fee status. Title to all real property included in any sale or exchange as provided in this subsection shall be conveyed in fee simple.

(Aug. 13, 1954, ch. 732, § 8, 68 Stat. 720; Pub. L. 85–132, § 1(h), (i), Aug. 14, 1957, 71 Stat. 348; Pub. L. 85–731, § 11, Aug. 23, 1958, 72 Stat. 819.)

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–731 struck out provision making subsection inapplicable to subsurface rights and directing Secretary to transfer subsurface rights to trustees for management for a period not less than ten years.

1957—Subsec. (b). Pub. L. 85–132, § 1(i), substituted ''interests in land, wherever located'' for ''land'', and inserted ''purchasers'' and ''and on trust or restricted interests in land within the Klamath Reservation regardless of ownership'' preceding proviso.

Subsec. (c). Pub. L. 85–132, § 1(h), inserted ''one or by'' after ''on land owned by''.

§ 564h. Property of deceased members

(a) Federal laws inapplicable to probate

The Act of June 25, 1910 (36 Stat. 855), the Act of February 14, 1913 (37 Stat. 678), and other Acts amendatory thereto shall not apply to the probate of the trust and restricted property of the members of the tribe who die six months or more after August 13, 1954.

(b) State, etc., laws applicable to probate

The laws of the several States, Territories, possessions, and the District of Columbia with respect to the probate of wills, the determination of heirs, and the administration of decedents' estates shall apply to the individual property of members of the tribe who die six months or more after August 13, 1954.

(Aug. 13, 1954, ch. 732, § 9(a), (b), 68 Stat. 720, 721.)

REFERENCES IN TEXT

Act of June 25, 1910, referred to in subsec. (a), is act June 25, 1910, ch. 431, 36 Stat. 855, as amended, which enacted sections 47, 93, 151, 202, 337, 344a, 351, 352, 353, 372, 403, 406, 407, and 408 of this title, sections 6a–1 and 16a of Title 41, Public Contracts, and section 148 of Title 43, Public Lands, and amended sections 191, 312, 331, 333, and 336 of this title and sections 104 and 107 of former Title 18, Criminal Code and Criminal Procedure. Sections 104 and 107 of former title 18 were repealed and reenacted as sections 1853 and 1856 of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, 62 Stat. 683. For complete classification of this Act to the Code, see Tables.

Act of February 14, 1913, referred to in subsec. (a), is act Feb. 14, 1913, ch. 55, 37 Stat. 678, which amended section 373 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section is comprised of subsecs. (a) and (b) of section 9 of act Aug. 13, 1954. Subsection (c) of section 9 repealed section 555 of this title.

§ 564i. Transfer of federally owned property

The Secretary is authorized, in his discretion, to transfer to the tribe or any member or group of members thereof any federally owned property acquired, withdrawn, or used for the administration of the affairs of the tribe which he deems necessary for Indian use, or to transfer to a public or nonprofit body any such property which he deems necessary for public use and from which members of the tribe will derive benefit.

(Aug. 13, 1954, ch. 732, § 10, 68 Stat. 721.)

§ 564j. Taxes; initial exemption; taxes following distribution; valuation for capital gains or losses

No property distributed under the provisions of this subchapter shall at the time of distribu-

tion be subject to Federal or State income tax. Following any distribution of property made under the provisions of this subchapter, such property and any income derived therefrom by the individual, corporation, or other legal entity shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided*, That, for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation or other legal entity.

(Aug. 13, 1954, ch. 732, § 11, 68 Stat. 721.)

ALL AMOUNTS REALIZED FROM CONDEMNATION OF CERTAIN FOREST LANDS HELD IN TRUST

Pub. L. 94–81, § 1, Aug. 9, 1975, 89 Stat. 417, as amended by Pub. L. 96–596, § 5(a), Dec. 24, 1980, 94 Stat. 3476; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided: ''That, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, Title 26, Internal Revenue Code], all amounts realized by the trust from the condemnation, pursuant to Public Law 93–102 [section 564w–2 of this title], of the Klamath Indian forest lands held by the trustee for the Klamath Indian Tribe—

''(1) shall be excluded from the gross income of the trust, and

''(2) on the distribution from the trust of the proceeds of such condemnation, shall be excluded from the gross income of each person receiving such distribution.''

Section 5(b) of Pub. L. 96–596 provided that: ''The amendment made by subsection (a) [amending section 1 of Pub. L. 94–81, set out above] shall apply to all amounts whether received before, on, or after the date of the enactment of this Act [Dec. 24, 1980].''

§ 564k. Loan transfers; collection by tribe

All loans made from the reimbursable loan fund established by section 531 of this title, and all other loans made from Klamath tribal funds, including loans of livestock made by the tribe repayable in kind, shall be transferred to the tribe for collection in accordance with the terms thereof.

(Aug. 13, 1954, ch. 732, § 12, 68 Stat. 721.)

REFERENCES IN TEXT

Section 531 of this title, referred to in text, was repealed by act Aug. 13, 1954, ch. 732, § 12, 68 Stat. 721.

CODIFICATION

Section is composed of second sentence of section 12 of act Aug. 13, 1954. The first sentence of said section 12 repealed sections 531 to 535 and 542(a) of this title.

§ 564*l*. Klamath irrigation works

(a) Transfer of operation and maintenance

That part of section 499 of title 43, which relates to the transfer of the care, operation, and maintenance of reclamation works to water users associations or irrigation districts shall be applicable to the irrigation works on the Klamath Reservation.

(b) Termination of construction costs deferment; recordation of lien

Effective on the first day of the calendar year beginning after the date of the proclamation provided for in section 564q of this title, the deferment of the assessment and collection of construction costs provided for in the first proviso of section 386a of this title, shall terminate with respect to any lands within irrigation projects on the Klamath Reservation. The Secretary shall cause the first lien against such lands created by section 387[1] of this title, to be filed of record in the appropriate county office.

(c) Appropriation authorization

There is authorized to be appropriated out of any funds in the Treasury not otherwise appropriated the sum of $89,212 for payment to the Klamath Tribe with interest at 4 per centum annually as reimbursement for tribal funds used for irrigation construction operation and maintenance benefiting nontribal lands on the Klamath Reservation, such interest being computed from the dates of disbursement of such funds from the United States Treasury.

(d) Adjustment of reimbursable irrigation costs

The Secretary is authorized to adjust, eliminate, or cancel all or any part of reimbursable irrigation operation and maintenance costs and reimbursable irrigation construction costs chargeable against Indian owned lands that are subject to the provisions of this subchapter, and all or any part of assessments heretofore or hereafter imposed on account of such costs, when he determines that the collection thereof would be inequitable or would result in undue hardship on the Indian owner of the land, or that the administrative costs of collection would probably equal or exceed the amount collected.

(e) Applicable irrigation laws

Nothing contained in any other section of this subchapter shall affect in any way the laws applicable to irrigation projects on the Klamath Reservation.

(Aug. 13, 1954, ch. 732, § 13, 68 Stat. 721.)

REFERENCES IN TEXT

Section 387 of this title, referred to in subsec. (b), was omitted after not being repeated in the Interior Department Appropriation Act of 1947, July 1, 1946, ch. 529, 60 Stat. 348.

§ 564m. Water and fishing rights

(a) Water rights; laws applicable to abandonment

Nothing in this subchapter shall abrogate any water rights of the tribe and its members, and the laws of the State of Oregon with respect to the abandonment of water rights by nonuse shall not apply to the tribe and its members until fifteen years after the date of the proclamation issued pursuant to section 564q of this title.

(b) Fishing rights or privileges

Nothing in this subchapter shall abrogate any fishing rights or privileges of the tribe or the members thereof enjoyed under Federal treaty.

(Aug. 13, 1954, ch. 732, § 14, 68 Stat. 722.)

§ 564n. Protection of minors, persons non compos mentis, and other members needing assistance; guardians; other adequate means; trusts; annuities; assistance factors; contests

Prior to the transfer of title to, or the removal of restrictions from, property in accordance

[1] See References in Text note below.

with the provisions of this subchapter, the Secretary shall protect the rights of members of the tribe who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs, by causing the appointment of guardians for such members in courts of competent jurisdiction, or by such other means as he may deem adequate, without application from the member, including but not limited to the creation of a trust of such member's property with a trustee selected by the Secretary, or the purchase by the Secretary of an annuity for such member: *Provided, however*, That no member shall be declared to be in need of assistance in conducting his affairs unless the Secretary determines that such member does not have sufficient ability, knowledge, experience, and judgment to enable him to manage his business affairs, including the administration, use, investment, and disposition of any property turned over to such member and the income and proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent him from losing such property or the benefits thereof: *Provided further*, That any member determined by the Secretary to be in need of assistance in conducting his affairs may, within one hundred and twenty days after receipt of written notice of such secretarial determination, contest the secretarial determination in any naturalization court for the area in which said member resides by filing therein a petition having that purpose; the burden shall thereupon devolve upon the Secretary to show cause why such member should not conduct his own affairs, and the decision of such court shall be final and conclusive with respect to the affected member's conduct of his affairs.

(Aug. 13, 1954, ch. 732, § 15, 68 Stat. 722; Pub. L. 85–132, § 1(j), Aug. 14, 1957, 71 Stat. 348.)

AMENDMENTS

1957—Pub. L. 85–132 inserted provisions allowing Secretary to act without application from member to create a trust or purchase an annuity for such member, by setting out factors for determination by Secretary before he declares a member to be in need of assistance, and by providing for contest of such secretarial determination by member.

§ 564*o*. Advances or expenditures from tribal funds

Pending the completion of the property dispositions provided for in this subchapter, the funds now on deposit, or hereafter deposited, in the United States Treasury to the credit of the tribe shall be available for advance to the tribe, or for expenditure, for such purposes as may be designated by the governing body of the tribe and approved by the Secretary.

(Aug. 13, 1954, ch. 732, § 16, 68 Stat. 722.)

§ 564p. Execution by Secretary of patents, deeds, etc.

The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments as may be necessary or appropriate to carry out the provisions of this subchapter, or to establish a marketable and recordable title to any property disposed of pursuant to this subchapter.

(Aug. 13, 1954, ch. 732, § 17, 68 Stat. 722.)

§ 564q. Termination of Federal trust

(a) Publication; termination of Federal services; application of Federal and State laws

Upon removal of Federal restrictions on the property of the tribe and individual members thereof, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to the affairs of the tribe and its members has terminated. Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians and, except as otherwise provided in this subchapter, all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

(b) Citizenship status unaffected

Nothing in this subchapter shall affect the status of the members of the tribe as citizens of the United States.

(Aug. 13, 1954, ch. 732, § 18, 68 Stat. 722.)

§ 564r. Termination of Federal powers over tribe

Effective on the date of the proclamation provided for in section 564q of this title, all powers of the Secretary or other officer of the United States to take, review, or approve any action under the constitution and bylaws of the tribe are terminated. Any powers conferred upon the tribe by such constitution which are inconsistent with the provisions of this subchapter are terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is consistent with this subchapter without the participation of the Secretary or other officer of the United States.

(Aug. 13, 1954, ch. 732, § 19, 68 Stat. 722.)

§ 564s. Set off of individual indebtedness; credit

The Secretary is authorized to set off against any indebtedness payable to the tribe or to the United States by an individual member of the tribe or payable to the United States by the tribe, any funds payable to such individual or tribe under this subchapter and to deposit the amounts set off to the credit of the tribe or the United States as the case may be.

(Aug. 13, 1954, ch. 732, § 20, 68 Stat. 723.)

§ 564t. Indian claims unaffected

Nothing contained in this subchapter shall deprive the tribe or its constituent parts of any right, privilege, or benefit granted by the Act of August 13, 1946 (60 Stat. 1049) [25 U.S.C. 70 et seq.].

(Aug. 13, 1954, ch. 732, § 21, 68 Stat. 723.)

REFERENCES IN TEXT

Act of August 13, 1946, referred to in text, is act Aug. 13, 1946, ch. 959, 60 Stat. 1049, as amended, known as the

Indian Claims Commission Act of 1946, which was classified generally to chapter 2A (§ 70 et seq.) of this title and was omitted in view of the termination of the Indian Claims Commission on Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 564u. Valid leases, permits, liens, etc., unaffected

Nothing in this subchapter shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved. Whenever any such instrument places in or reserves to the Secretary any powers, duties, or other functions with respect to the property subject thereto, the Secretary may transfer such functions, in whole or in part, to any Federal agency with the consent of such agency and may transfer such functions, in whole or in part to a State agency with the consent of such agency and the other party or parties to such instrument.

(Aug. 13, 1954, ch. 732, § 22, 68 Stat. 723.)

§ 564v. Rules and regulations; tribal referenda

The Secretary is authorized to issue rules or regulations necessary to effectuate the purposes of this subchapter, and may in his discretion provide for tribal referenda on matters pertaining to management or disposition of tribal assets.

(Aug. 13, 1954, ch. 732, § 23, 68 Stat. 723.)

§ 564w. Education and training program; purposes; subjects; transportation; subsistence; contracts; other education programs

Prior to the issuance of a proclamation in accordance with the provisions of section 564q of this title, the Secretary is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.

(Aug. 13, 1954, ch. 732, § 26, 68 Stat. 723.)

§ 564w–1. Klamath Indian Forest and Klamath Marsh

Notwithstanding the provisions of sections 564d and 564e of this title, and all Acts amendatory thereof—

(a) Designation of boundaries

The tribal lands that comprise the Klamath Indian Forest, and the tribal lands that comprise the Klamath Marsh, shall be designated by the Secretary of the Interior and the Secretary of Agriculture, jointly.

(b) Sales; terms and conditions

The portion of the Klamath Indian Forest that is selected for sale pursuant to section 564d(a)(3) of this title to pay members who withdraw from the tribe shall be offered for sale by the Secretary of the Interior in appropriate units, on the basis of competitive bids, to any purchaser or purchasers who agree to manage the forest lands as far as practicable according to sustained yield procedures so as to furnish a continuous supply of timber according to plans to be prepared and submitted by them for approval and inclusion in the conveyancing instruments in accordance with specifications and requirements referred to in the invitations for bids: *Provided*, That no sale shall be for a price that is less than the realization value of the units involved determined as provided in subsection (c) of this section. The terms and conditions of the sales shall be prescribed by the Secretary. The specifications and minimum requirements to be included in the invitations for bids, and the determination of appropriate units for sale, shall be developed and made jointly by the Secretary of the Interior and the Secretary of Agriculture. Such plans when prepared by the purchaser shall include provisions for the conservation of soil and water resources as well as for the management of the timber resources as hereinbefore set forth in this section. Such plans shall be satisfactory to and have the approval of the Secretary of Agriculture as complying with the minimum standards included in said specifications and requirements before the prospective purchaser shall be entitled to have his bid considered by the Secretary of the Interior and the failure on the part of the purchaser to prepare and submit a satisfactory plan to the Secretary of Agriculture shall constitute grounds for rejection of such bid. Such plans shall be incorporated as conditions in the conveyancing instruments executed by the Secretary and shall be binding on the grantee and all successors in interest. The conveyancing instruments shall provide for a forfeiture and a reversion of title to the lands to the United States, not in trust for or subject to Indian use, in the event of a breach of such conditions. The purchase price paid by the grantee shall be deemed to represent the full appraised fair market value of the lands, undiminished by the right of reversion retained by the United States in a nontrust status, and the retention of such right of reversion shall not be the basis for any claim against the United States. The Secretary of Agriculture shall be responsible for enforcing such conditions. Upon any reversion of title pursuant to this subsection, the lands shall become national forest lands subject to the laws that are applicable to lands acquired pursuant to the Act of March 1, 1911 (36 Stat. 961), as amended.

(c) Appraisals; notice to Congressional committees; appropriation; realization value; report to Congressional committees

Within sixty days after August 23, 1958 the Secretary of the Interior shall contract by ne-

gotiation with three qualified appraisers or three qualified appraisal organizations for a review of the appraisal approved by the Secretary pursuant to section 564d(a)(2) of this title. In such review full consideration shall be given to all reasonably ascertainable elements of land, forest, and mineral values. Not less than thirty days before executing such contracts the Secretary shall notify the chairman of the House Committee on Interior and Insular Affairs and the chairman of the Senate Committee on Interior and Insular Affairs of the names and addresses of the appraisers selected. The cost of the appraisal review shall be paid from tribal funds which are made available for such purpose, subject to full reimbursement by the United States, and the appropriation of funds for that purpose is authorized. Upon the basis of a review of the appraisal heretofore made of the forest units and marsh lands involved and such other materials as may be readily available, including additional market data since the date of the prior appraisal, but without making any new and independent appraisal, each appraiser shall estimate the fair market value of such forest units and marsh lands as if they had been offered for sale on a competitive market without limitation on use during the interval between the adjournment of the Eighty-fifth Congress and the termination date specified in section 564e(b) of this title. This value shall be known as the realization value. If the three appraisers are not able to agree on the realization value of such forest units and marsh lands, then such realization values shall be determined by averaging the values estimated by each appraiser. The Secretary shall report such realization values to the chairman of the House Committee on Interior and Insular Affairs and to the chairman of the Senate Committee on Interior and Insular Affairs not later than January 15, 1959. No sale of forest units that comprise the Klamath Indian Forest designated pursuant to subsection (a) of this section shall be made under the provisions of this subchapter prior to April 1, 1959.

(d) Unsold forest units and marsh lands; title after publication in Federal Register; aggregate realization value; appropriation

If all of the forest units offered for sale in accordance with subsection (b) of this section are not sold before April 1, 1961, the Secretary of Agriculture shall publish in the Federal Register a proclamation taking title in the name of the United States to as many of the unsold units or parts thereof as have, together with the Klamath Marsh lands acquired pursuant to subsection (f) of the section, an aggregate realization value of not to exceed $90,000,000, which shall be the maximum amount payable for lands acquired by the United States pursuant to this subchapter. Compensation for the forest lands so taken shall be the realization value of the lands determined as provided in subsection (c) of this section, unless a different amount is provided by law enacted prior to the proclamation of the Secretary of Agriculture. Appropriation of funds for that purpose is authorized. Payment shall be made as soon as possible after the proclamation of the Secretary of Agriculture. Such lands shall become national forest lands subject to the laws that are applicable to lands acquired pursuant to the Act of March 1, 1911 (36 Stat. 961), as amended. Any of the forest units that are offered for sale and that are not sold or taken pursuant to subsection (b) or (d) of this section shall be subject to sale without limitation on use in accordance with the provisions of section 564d of this title.

(e) Sale of retained lands to Secretary of Agriculture

If at any time any of the tribal lands that comprise the Klamath Indian Forest and that are retained by the tribe are offered for sale other than to members of the tribe, such lands shall first be offered for sale to the Secretary of Agriculture, who shall be given a period of twelve months after the date of each such offer within which to purchase such lands. No such lands shall be sold at a price below the price at which they have been offered for sale to the Secretary of Agriculture, and if such lands are reoffered for sale they shall first be reoffered to the Secretary of Agriculture. The Secretary of Agriculture is authorized to purchase such lands subject to such terms and conditions as to the use thereof as he may deem appropriate, and any lands so acquired shall thereupon become national forest lands subject to the laws that are applicable to lands acquired pursuant to the Act of March 1, 1911 (36 Stat. 961), as amended.

(f) Klamath Marsh National Wildlife Refuge; appropriation

The lands that comprise the Klamath Marsh shall be a part of the property selected for sale pursuant to section 564d(a)(3) of this title to pay members who withdraw from the tribe. Title to such lands is taken in the name of the United States, effective the earliest date after September 30, 1959, when the Secretary of the Interior determines that funds for the payment of the purchase price are available from the sale of stamps under the Migratory Bird Hunting Stamp Act of March 16, 1934, as amended [16 U.S.C. 718 et seq.]. Such lands are designated as the Klamath Marsh National Wildlife Refuge, which shall be administered in accordance with the law applicable to areas acquired pursuant to section 4 of the Act of March 16, 1934 (48 Stat. 451), as amended or supplemented [16 U.S.C. 718d]. Compensation for said taking shall be the realization value of the lands determined in accordance with subsection (c) of this section, and shall be paid out of funds in the Treasury of the United States, which are authorized to be appropriated for that purpose.

(g) Homesites

Any person whose name appears on the final roll of the tribe, and who has since December 31, 1956, continuously resided on any lands taken by the United States by subsections (d) and (f) of this section, shall be entitled to occupy and use as a homesite for his lifetime a reasonable acreage of such lands, as determined by the Secretary of Agriculture, subject

to such regulations as the Secretary of Agriculture may issue to safeguard the administration of the national forest and as the Secretary of the Interior may issue to safeguard the administration of the Klamath Marsh National Wildlife Refuge.

(h) Administration of outstanding timber sales contracts

If title to any of the lands comprising the Klamath Indian Forest is taken by the United States, the administration of any outstanding timber sales contracts thereon entered into by the Secretary of the Interior as trustee for the Klamath Indians shall be administered by the Secretary of Agriculture.

(i) Right of United States to use roads

All sales of tribal lands pursuant to subsection (b) of this section or pursuant to section 564d of this title on which roads are located shall be made subject to the right of the United States and its assigns to maintain and use such roads.

(Aug. 13, 1954, ch. 732, § 28, as added Pub. L. 85–731, § 1, Aug. 23, 1958, 72 Stat. 816; amended Pub. L. 86–247, Sept. 9, 1959, 73 Stat. 477; Pub. L. 105–312, title II, § 205, Oct. 30, 1998, 112 Stat. 2957; Pub. L. 105–321, § 4(e), Oct. 30, 1998, 112 Stat. 3025.)

REFERENCES IN TEXT

Act of March 1, 1911, referred to in subsecs. (b), (d), and (e), is act Mar. 1, 1911, ch. 186, 36 Stat. 961, as amended, popularly known as the Weeks Law, which is classified to sections 480, 500, 513 to 519, 521, 552, and 563 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 552 of Title 16 and Tables.

The adjournment of the Eighty-fifth Congress, referred to in subsec. (c) of this section, took place on Aug. 24, 1958.

The Migratory Bird Hunting Stamp Act, referred to in subsec. (f), subsequently renamed the Migratory Bird Hunting and Conservation Stamp Act, is act Mar. 16, 1934, ch. 71, 48 Stat. 451, as amended, which is classified generally to subchapter IV (§ 718 et seq.) of chapter 7 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 718 of Title 16 and Tables.

AMENDMENTS

1998—Subsecs. (f), (g). Pub. L. 105–312 and Pub. L. 105–321 amended subsecs. (f) and (g) identically, substituting ''Klamath Marsh National Wildlife Refuge'' for ''Klamath Forest National Wildlife Refuge''.

1959—Subsec. (f). Pub. L. 86–247 changed date for Federal acquisition of Klamath Indian Marsh from April 1, 1961, to earliest date after September 30, 1959, that funds are available to pay for property from sale of stamps.

CHANGE OF NAME

Committee on Interior and Insular Affairs of the Senate abolished and replaced by Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of the Senate, as amended by Senate Resolution No. 4, Ninety-fifth Congress (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977. Section 105 of Senate Resolution No. 4 established a temporary Select Committee on Indian Affairs having jurisdiction over matters relating to Indian affairs (such matters previously having been within the jurisdiction of the Committee on Interior and Insular Affairs). Senate Resolution No. 127, June 6, 1984, Ninety-eighth Congress, established the Select Committee on Indian Affairs as a permanent committee of the Senate, and section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress, redesignated the Select Committee on Indian Affairs as the Committee on Indian Affairs.

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

§ 564w–2. Federal acquisition of tribal land

(a) Condemnation authority

The Secretary of Agriculture is authorized and directed to acquire by condemnation all of the Klamath Indian forest lands which the trustee for the Klamath Indian Tribe is required to sell by the terms of its trust agreement, and the lands so acquired shall become a part of the Winema National Forest.

(b) Initiation of action; authorization of appropriations

The condemnation action may be initiated either before or after the lands are offered for sale by the trustee, and for the purpose of carrying out the provisions of this section, there is hereby authorized to be appropriated not to exceed $70,000,000.

(c) Applicability of homesite provisions

The homesite provisions of section 564w–1(g) of this title shall apply to the lands acquired by the Secretary pursuant to this subchapter.

(Aug. 13, 1954, ch. 732, § 29, as added Pub. L. 93–102, Aug. 16, 1973, 87 Stat. 349.)

§ 564x. Timber sales

Nothing in this subchapter shall affect the authority to make timber sales otherwise authorized by law prior to the termination of Federal control over such timber.

(Pub. L. 85–132, § 2, Aug. 14, 1957, 71 Stat. 348.)

CODIFICATION

This section was not enacted as a part of act Aug. 13, 1954, ch. 732, 68 Stat. 718, which comprises this subchapter.

SUBCHAPTER XIV—KLAMATH TRIBE: DISTRIBUTION OF JUDGMENT FUND

§ 565. Authorization to distribute funds

The Secretary of the Interior is authorized and directed to distribute in accordance with the provisions of this subchapter the funds appropriated in satisfaction of a judgment obtained by the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians, hereinafter called the Klamath Tribe for the purposes of the administration of this subchapter, from the Indian Claims Commission against the United States in docket numbered 100, and all other funds heretofore or hereafter deposited in the United States Treasury to the credit of the Klamath Tribe or any of its constituent parts or groups, except the funds heretofore or hereafter set aside for the purpose of paying the usual and necessary expenses of prosecuting claims against the United States.

(Pub. L. 89–224, § 1, Oct. 1, 1965, 79 Stat. 897.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 565a. Distribution to persons on final roll; payment of shares due living adults, deceased enrollees, adults under legal disabilities, persons in need of assistance, and minors

(a) A distribution shall be made of the funds resulting from docket numbered 100, including interest, after deducting litigation expenses and estimated costs of distribution to all persons whose names appear on the final roll of the Klamath Tribe, which roll was closed and made final as of August 13, 1954 (68 Stat. 718). Except as provided in subsections (b), (c), (d), and (e) of this section, a share or portion of a share payable to a living adult shall be paid directly to such adult; (b) a share payable to a deceased enrollee shall be paid to his heirs or legatees upon the filing of proof of death and inheritance satisfactory to the Secretary of the Interior, whose findings and determinations upon such proof shall be final and conclusive: *Provided*, That amounts payable to deceased heirs amounting to $5 or less shall not be paid, and such amounts shall remain in the United States Treasury to the credit of the Klamath Tribe; (c) a share payable to an adult under legal disability shall be paid to his legal representative; (d) a share payable to a person previously found to be in need of assistance under the provisions of section 564n of this title, may be paid directly to the individual or, if the Secretary deems it in the best interest of the individual, it may be added to the trust now in force on behalf of the said individual, with concurrence of the trustee; and (e) a share or portion of a share payable to a person under age of majority as determined by the laws of the State of residence shall be paid to a parent, legal guardian, or trustee of such minor.

(Pub. L. 89–224, § 2, Oct. 1, 1965, 79 Stat. 897.)

REFERENCES IN TEXT

August 13, 1954, referred to in text, is a reference to section 3 of act Aug. 13, 1954, ch. 732, 68 Stat. 718, which is classified to section 564b of this title.

§ 565b. Time of payment; claims for shares of deceased enrollees

Within sixty days of October 1, 1965, the Secretary of the Interior shall commence to pay the share due to each living person whose name appears on the final roll of August 13, 1954. As to members who have died since promulgation of the final roll of August 13, 1954, the Secretary shall mail a notice of distribution of funds and a form for presentation of a claim thereunder to all known heirs or legatees of such deceased enrollees. All such claims shall be filed with the area director of the Bureau of Indian Affairs, Portland, Oregon, within two years following October 1, 1965. From and after that date, all claims and the right to file claims for any distribution from the judgment in docket numbered 100 shall be forever barred.

(Pub. L. 89–224, § 3, Oct. 1, 1965, 79 Stat. 897.)

§ 565c. Disposition of funds remaining after distribution

Funds remaining in the United States Treasury to the credit of the said Klamath Tribe, or any of its constituent parts or groups, after the distribution of funds resulting from Indian Claims Commission docket numbered 100 as provided by sections 565a and 565b of this title, together with any other funds which may be deposited in the United States Treasury, including without limitation funds accruing from other judgments against the United States ([1]after payment of expenses, including attorney fees, payments for rights-of-way, trespass damages, or other revenues, together with any interest accrued thereon, shall, after deduction of the estimated cost of distribution, be distributed from time to time as determined by the Secretary to the members of the Klamath Tribe or to the members of any of its constituent parts or groups in the same manner as provided in sections 565a and 565b of this title.

(Pub. L. 89–224, § 4, Oct. 1, 1965, 79 Stat. 897.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 565d. Disposition of funds insufficient to justify further distribution

After all claims of the Klamath Tribe or any of its constituent parts or groups against the United States have been finally determined, appropriated, and distributed, as provided in sections 565a, 565b, and 565c of this title; and after all litigation expenses (including attorney fees) and costs of distributions have been paid, any funds remaining in the United States Treasury to the credit of the Klamath Tribe or any of its constituent parts or groups which, in the discretion of the Secretary of the Interior are insufficient to justify a further distribution, shall be deposited in the miscellaneous receipts of the Treasury of the United States.

(Pub. L. 89–224, § 5, Oct. 1, 1965, 79 Stat. 898.)

§ 565e. Costs

The costs of distribution may be paid out of the deductions authorized by sections 565a and 565c of this title. Any unused portion of such amounts shall remain in the United States Treasury to the credit of the Klamath Tribe.

(Pub. L. 89–224, § 6, Oct. 1, 1965, 79 Stat. 898.)

§ 565f. Taxes

None of the funds distributed pursuant to this subchapter shall be subject to Federal or State income tax.

(Pub. L. 89–224, § 7, Oct 1, 1965, 79 Stat. 898.)

§ 565g. Rules and regulations

The Secretary is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 89–224, § 8, Oct. 1, 1965, 79 Stat. 898.)

[1] So in original. No closing parenthesis was enacted.

SUBCHAPTER XIV–A—KLAMATH TRIBE: RESTORATION OF FEDERAL SUPERVISION

§ 566. Restoration of Federal recognition, rights, and privileges

(a) Federal recognition

Notwithstanding any provision of law, Federal recognition is hereby extended to the tribe and to members of the tribe. Except as otherwise provided in this subchapter, all laws and regulations of the United States of general application to Indians or nations, tribes, or bands of Indians which are not inconsistent with any specific provision of this subchapter shall be applicable to the tribe and its members.

(b) Restoration of rights and privileges

All rights and privileges of the tribe and the members of the tribe under any Federal treaty, Executive order, agreement, or statute, or any other Federal authority, which may have been diminished or lost under the Act entitled ''An Act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members thereof, and for other purposes'', approved August 13, 1954 (25 U.S.C. 564 et seq.), are restored, and the provisions of such Act, to the extent that they are inconsistent with this subchapter, shall be inapplicable to the tribe and to members of the tribe after August 27, 1986.

(c) Federal services and benefits

Notwithstanding any other provision of law, the tribe and its members shall be eligible, on and after August 27, 1986, for all Federal services and benefits furnished to federally recognized Indian tribes or their members without regard to the existence of a reservation for the tribe. In the case of Federal services available to members of federally recognized Indian tribes residing on or near a reservation, members of the tribe residing in Klamath County shall be deemed to be residing in or near a reservation. Any member residing in Klamath County shall continue to be eligible to receive any such Federal service notwithstanding the establishment of a reservation for the tribe in the future. Notwithstanding any other provision of law, the tribe shall be considered an Indian tribe for the purpose of the ''Indian Tribal Government Tax Status Act'' (Sec. 7871, I.R.C. 1986).

(d) Certain rights not altered

Nothing in this subchapter shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes already levied.

(e) Modoc Indian Tribe of Oklahoma

This subchapter does not apply to the members of the Modoc Indian Tribe of Oklahoma as recognized under section 861a(a) of this title and the Klamath Tribe of Indians does not (except for the purposes set out in section 861a(a)(1) of this title) include the members of the Modoc Indian Tribe of Oklahoma.

(Pub. L. 99–398, § 2, Aug. 27, 1986, 100 Stat. 849; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Act approved August 13, 1954, referred to in subsec. (b), is act Aug. 13, 1954, ch. 732, 68 Stat. 718, as amended, which is classified generally to subchapter XIII (§ 564 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

The Indian Tribal Government Tax Status Act (Sec. 7871, I.R.C. 1986), referred to in subsec. (c), probably means the Indian Tribal Governmental Tax Status Act of 1982, which is title II of Pub. L. 97–473, Jan. 14, 1983, 96 Stat. 2607, as amended, and is classified principally to subchapter C (§ 7871) of chapter 80 of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see Short Title of 1983 Amendments note set out under section 1 of Title 26 and Tables.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514 substituted ''I.R.C. 1986'' meaning Internal Revenue Code of 1986 for ''I.R.C. 1954'' meaning Internal Revenue Code of 1954.

SHORT TITLE

Section 1 of Pub. L. 99–398 provided that: ''This Act [enacting this subchapter] may be cited as the 'Klamath Indian Tribe Restoration Act'.''

§ 566a. Tribe Constitution and Bylaws

The tribe's Constitution and Bylaws shall remain in full force and effect and nothing in this subchapter shall affect the power of the General Council to take any action under the Constitution and Bylaws.

(Pub. L. 99–398, § 3, Aug. 27, 1986, 100 Stat. 850.)

§ 566b. Conservation and development of lands

(a) In general

Notwithstanding the tribe's previous rejection of the Act of June 18, 1934 (25 U.S.C. 461 et seq.), upon written request of the General Council, the Secretary of the Interior shall conduct a special election pursuant to section 18 of such Act [25 U.S.C. 478] to determine if such Act should be applicable to the tribe.

(b) Adoption of constitution

Upon written request of the General Council, the Secretary shall conduct an election pursuant to section 16 of the Act approved on June 18, 1934 (43 Stat. 987; 25 U.S.C. 476), for the purpose of adopting a new constitution for the tribe.

(Pub. L. 99–398, § 4, Aug. 27, 1986, 100 Stat. 850.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 566c. Hunting, fishing, trapping, and water rights

Nothing in this subchapter shall affect in any manner any hunting, fishing, trapping, gathering, or water right of the tribe and its members.

(Pub. L. 99–398, § 5, Aug. 27, 1986, 100 Stat. 850.)

§ 566d. Transfer of land to be held in trust

The Secretary shall accept real property for the benefit of the tribe if conveyed or otherwise transferred to the Secretary. Such property shall be subject to all valid existing rights including liens, outstanding taxes (local and State), and mortgages. Subject to the conditions

imposed by this section, the land transferred shall be taken in the name of the United States in trust for the tribe and shall be part of their reservation. The transfer of real property authorized by this section shall be exempt from all local, State, and Federal taxation as of the date of transfer.

(Pub. L. 99–398, § 6, Aug. 27, 1986, 100 Stat. 850.)

§ 566e. Criminal and civil jurisdiction

The State shall exercise criminal and civil jurisdiction within the boundaries of the reservation, in accordance with section 1162 of title 18 and section 1360 of title 28, respectively.

(Pub. L. 99–398, § 7, Aug. 27, 1986, 100 Stat. 850.)

§ 566f. Economic development

(a) Plan for economic self-sufficiency

The Secretary shall—

(1)(A) enter into negotiations with the Executive Committee of the General Council with respect to establishing a plan for economic development for the tribe; and

(B) in accordance with this section and not later than two years after August 27, 1986, develop such a plan.

(2) Upon the approval of such plan by the General Council (and after consultation with the State and local officials pursuant to subsection (b) of this section), the Secretary shall submit such plan to the Congress.

(b) Consultation with State and local officials required

To assure that legitimate State and local interests are not prejudiced by the proposed economic self-sufficiency plan, the Secretary shall notify and consult with the appropriate officials of the State and all appropriate local governmental officials in the State. The Secretary shall provide complete information on the proposed plan to such officials, including the restrictions on such proposed plan imposed by subsection (c) of this section. During any consultation by the Secretary under this subsection, the Secretary shall provide such information as the Secretary may possess, and shall request comments and additional information on the extent of any State or local service to the tribe.

(c) Restrictions to be contained in plan

Any plan developed by the Secretary under subsection (a) of this section shall provide that—

(1) any real property transferred by the tribe or any member to the Secretary shall be taken and held in the name of the United States for the benefit of the tribe;

(2) any real property taken in trust by the Secretary pursuant to such plan shall be subject to—

(A) all legal rights and interests in such land existing at the time of the acquisition of such land by the Secretary, including any lien, mortgage, or previously levied and outstanding State or local tax; and

(B) foreclosure or sale in accordance with the laws of the State pursuant to the terms of any valid obligation in existence at the time of the acquisition of such land by the Secretary; and

(3) any real property transferred pursuant to such plan shall be exempt from Federal, State, and local taxation of any kind.

(d) Appendix to plan submitted to Congress

The Secretary shall append to the plan submitted to the Congress under subsection (a) of this section a detailed statement—

(1) naming each individual and official consulted in accordance with subsection (b) of this section;

(2) summarizing the testimony received by the Secretary pursuant to any such consultation; and

(3) including any written comments or reports submitted to the Secretary by any party named in paragraph (1).

(Pub. L. 99–398, § 8, Aug. 27, 1986, 100 Stat. 850.)

§ 566g. Definitions

For the purposes of this subchapter the following definitions apply:

(1) The term ''tribe'' means the Klamath Tribe consisting of the Klamath and Modoc Tribes of Oregon and the Yahooskin Band of Snake Indians.

(2) The term ''member'' means those persons eligible for enrollment under the Constitution and Bylaws of the Klamath Tribe.

(3) The term ''Secretary'' means the Secretary of the Interior or his designated representative.

(4) The term ''State'' means the State of Oregon.

(5) The term ''Constitution and Bylaws'' means the Constitution and Bylaws of the Klamath Tribe of Indians in effect on August 27, 1986.

(6) The term ''General Council'' means the governing body of the tribe under the Constitution and Bylaws.

(Pub. L. 99–398, § 9, Aug. 27, 1986, 100 Stat. 851.)

§ 566h. Regulations

The Secretary may make such rules and regulations as are necessary to carry out the purposes of this subchapter.

(Pub. L. 99–398, § 10, Aug. 27, 1986, 100 Stat. 852.)

SUBCHAPTER XV—SHOSHONE TRIBE: DISTRIBUTION OF JUDGMENT FUND

§ 571. Membership roll; preparation

The Secretary of the Interior is authorized and directed, with the advice and consent of the business council of the Shoshone Tribe of the Wind River Reservation in Wyoming, to prepare a roll showing the members of said tribe living on July 27, 1939, and such roll shall form the basis for the distribution of the judgment fund of said tribe created as the result of the passage of the Act of June 25, 1938 (52 Stat. 1114–1156), and accrued interest thereon.

(July 27, 1939, ch. 387, § 1, 53 Stat. 1128.)

REFERENCES IN TEXT

Act of June 25, 1938, referred to in text, provided for an appropriation for payment of judgments rendered by the court of claims and reported to the 75th Congress in

Senate Document Numbered 191, and House Documents Numbered 661 and 686. House Document No. 661 listed a judgment in favor of the Shoshone Tribe of Indians of the Wind River Reservation in Wyoming, in the sum of $4,408,444.23, with interest on a part thereof to the date of payment, for the taking of land.

§ 572. Payments to individuals; expenditure of payments

There shall be credited on the books of the Office of Indian Affairs the sum of $2,450 to each member of said tribe whose name appears on the roll provided for in section 571 of this title, and out of such sum so credited the Secretary of the Interior is authorized to make available immediately to each individual member of the tribe the sum of $100; and, under such rules and regulations as he may prescribe, the sum of $1,350 to each adult and the sum of $500 to each minor for the following purposes: Purchase of land, improvement of lands to be acquired or already held by the Indian, for the erection and improvement of suitable homes, the purchase of building material, farming equipment, livestock, feed, food, seed, grain, tools, machinery, implements, household goods, bedding, clothing, and any other equipment or supplies necessary to enable the Indians to fit themselves for or to engage in farming, livestock, industry, or such other pursuits or vocations, including education, as will enable them to become self-supporting: *Provided, however*, That the funds of the aged, infirm, decrepit, and incapacitated members may be used for their proper maintenance and support in the discretion of the Secretary of the Interior. The remainder of the share of each adult individual Indian, including accrued interest, shall be made available under such rules and regulations as the Secretary of the Interior may prescribe, and the remainder of the share of each minor Indian shall, with accrued interest, be held intact until such Indian reaches the age of eighteen years, when it shall be available under the same conditions as herein provided for adults. As herein used the term ''adult'' shall include the members of the tribe eighteen years of age or over, and the term ''minor'' shall include all members less than eighteen years of age. On the death of any enrolled member, adult or minor, the sum on deposit to his credit shall be available for expenditure for the benefit of his heirs for the purposes herein authorized.

(July 27, 1939, ch. 387, § 2, 53 Stat. 1128.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of the Interior, with certain exceptions, to the Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 573. Uses of judgment fund

(a) Purchase of lands

Not to exceed $1,000,000 of the said judgment fund, or interest thereon, shall be available for expenditure upon the request of the tribe and with the approval of the Secretary of the Interior, for the purchase of lands in the manner prescribed in section 576 of this title.

(b) Loan fund

The sum of $125,000 of said judgment fund, or interest thereon, shall, at the request of the tribe and with the approval of the Secretary of the Interior, be set aside as a loan fund for making loans to individual members, or groups of members, of said tribe under such rules and regulations as may be prescribed by the Secretary of the Interior.

(c) Productive enterprises

The remainder of said judgment fund, including interest thereon, after making the segregation provided for in section 572 of this title, and after setting aside the respective amounts authorized by this section, shall be available for appropriation, upon the recommendation of the Secretary of the Interior, and with the consent of the tribe, for purposes of benefit to the tribe, including the establishment and administration of productive enterprises for the benefit of said tribe, and any income derived from such enterprises shall be credited to the Shoshone tribal judgment fund: *Provided*, That should such enterprises also benefit the Arapaho Tribe repayment proportionate to the benefit to the Arapaho Tribe shall be made into the Shoshone judgment fund by the Arapaho Tribe out of such tribal income as the Arapaho Tribe may enjoy.

(July 27, 1939, ch. 387, § 3, 53 Stat. 1129.)

§ 574. Consolidation of lands

The Secretary of the Interior is authorized and directed to establish land-use districts within the diminished and ceded portions of the Wind River Indian Reservation, Wyoming, and, under such rules and regulations as he may prescribe, to effect the consolidation of Indian and privately owned lands within said districts through exchange, relinquishment, donation, assignment, or purchase of lands or interests therein, including water rights or surface rights to lands, improvements thereon and improvements on undisposed-of ceded lands, to the end that the respective Indian and non-Indian land holdings may be consolidated for more beneficial use. Exchanges of lands hereunder shall be made on the basis of equal value, and the value of improvements on lands to be relinquished to the Indians or by Indians, to non-Indians shall be given due consideration, and allowance made therefor in the valuation of lieu lands. This section shall apply to tribal land, and trust or otherwise restricted Indian allotments, whether the allottees be living or deceased. In all transactions involving tribal Indian land, the consent of the Shoshone and Arapaho Tribes shall first be obtained. Title to all lands or interests therein acquired by the Government through exchange of tribal land shall be taken in the name of the United States in trust for the Shoshone and Arapaho Tribes of Indians of the Wind River Reservation, Wyoming. Title to lands exchanged for individual Indian allotments, or purchased for individual Indians with restricted funds shall be taken by the United States in trust for the individual Indian allottee or heir. The right herein granted individual Indians to acquire lands by purchase with restricted funds or by exchange shall not extend to lands on the ceded or opened portion of the reservation.

(July 27, 1939, ch. 387, § 4, 53 Stat. 1129.)

§ 574a. Acquisition of lands on Wind River Reservation

(a) Authority to hold lands in trust for individual tribe

The Secretary of the Interior is hereby authorized to acquire individually in the name of the United States in trust for the benefit of the Eastern Shoshone Tribe of the Wind River Reservation or the Northern Arapaho Tribe of the Wind River Reservation, as appropriate, lands or other rights when the individual assets of only one of the tribes is used to acquire such lands or other rights.

(b) Lands remain part of joint Reservation subject to exclusive tribal control

Any lands acquired under subsection (a) of this section within the exterior boundaries of the Wind River Reservation shall remain a part of the Reservation and subject to the joint tribal laws of the Reservation, except that the lands so acquired shall be subject to the exclusive use and control of the tribe for which such lands were acquired.

(c) Income

The income from lands acquired under subsection (a) of this section shall be credited to the tribe for which such lands were acquired.

(d) Savings provision

Nothing in this section shall be construed to prevent the joint acquisition of lands for the benefit of the Eastern Shoshone Tribe of the Wind River Reservation and the Northern Arapaho Tribe of the Wind River Reservation.

(Pub. L. 103–435, § 15, Nov. 2, 1994, 108 Stat. 4573.)

§ 575. Restoration of lands

The Secretary of the Interior is directed to restore to tribal ownership all undisposed-of surplus or ceded lands within the land use districts which are not at present under lease or permit to non-Indians; and, further, to restore to tribal ownership the balance of said lands progressively as and when the non-Indian owned lands within a given land use district are acquired by the Government for Indian use pursuant to the provisions of sections 571 to 577 of this title. All such restorations shall be subject to valid existing rights and claims: *Provided*, That no restoration to tribal ownership shall be made of any lands within any reclamation project heretofore authorized within the diminished or ceded portions of the reservation.

(July 27, 1939, ch. 387, § 5, 53 Stat. 1129.)

LANDS CEDED FOR RIVERTON PROJECT

Act Aug. 15, 1953, ch. 509, § 4, 67 Stat. 613, set out as a note under section 611 of this title, provided that all lands of the Wind River Indian Reservation ceded for the Riverton reclamation project in Wyoming and not used for such project were restored to the ownership of the Arapaho and Shoshone Tribes.

§ 576. Purchase of lands; reimbursement of expenditures

The sum of $1,000,000 authorized in section 573 of this title for use in carrying out the land purchase and consolidation program hereinbefore authorized shall remain available until expended and any amount expended shall be reimbursed with interest at 4 per centum per annum to the Shoshone Tribe of Indians of the Wind River Reservation from joint funds to the credit of the Shoshone and Arapaho Tribes of the Wind River Reservation or from future accruals to said joint fund, as and when said funds accrue. Title to all land purchases made hereunder shall be taken in the name of the United States in trust for the Shoshone and Arapaho Tribes of Indians of the Wind River Reservation, Wyoming. All purchases of lands or interests therein made pursuant to this section shall receive the approval of the Shoshone and Arapaho Tribal Councils or of the business committees thereof.

(July 27, 1939, ch. 387, § 6, 53 Stat. 1130.)

§ 577. Liability of judgment funds for debts

In no event shall any portion of the Shoshone judgment fund become liable, payable, or subject to any debt or debts contracted prior to July 27, 1939, by any Indian of the Shoshone Tribe except debts to the United States or to the tribe.

(July 27, 1939, ch. 387, § 7, 53 Stat. 1130.)

§ 581. Disposition of funds

The funds on deposit in the Treasury of the United States to the credit of the Shoshone Nation or Tribe of Indians and the Shoshone-Bannock Tribes that were appropriated by the Act of June 19, 1968 (82 Stat. 239), to pay a judgment in the sum of $15,700,000 entered by the Indian Claims Commission in consolidated dockets numbered 326–D, 326–E, 326–F, 326–G, 326–H, 366, and 367, and the interest thereon, after deducting attorneys' fees, litigation expenses, and other appropriation deductions, shall be apportioned by the Secretary of the Interior to the Shoshone Tribe of the Wind River Reservation, Wyoming, the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho, and the Northwest Band of Shoshone Indians (hereinafter the "three groups"), as set forth in sections 581 to 590 of this title.

(Pub. L. 92–206, § 1, Dec. 18, 1971, 85 Stat. 737.)

REFERENCES IN TEXT

Act of June 19, 1968, referred to in text, is Pub. L. 90–352, June 19, 1968, 82 Stat. 239, which provided for supplemental appropriation for fiscal year ending June 30, 1968, and was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 582. Shoshone-Bannock Tribes of the Fort Hall Reservation; credit of funds

The sum of $500,000, and the interest thereon, less attorneys' fees and other appropriate deductions all in the proportion that the $500,000 bears to the $15,700,000, shall be credited to the Shoshone-Bannock Tribes of the Fort Hall Reservation for claims of the tribes enumerated in dockets numbered 326–D, 326–E, 326–F, 326–G, and 366.

(Pub. L. 92–206, § 2, Dec. 18, 1971, 85 Stat. 737.)

§ 583. Northwestern Bands of Shoshone Indians; credit of funds

The sum of $1,375,000 plus the earned interest thereon less $181,732 shall be credited to the Northwestern Bands of Shoshone Indians for claims of the bands enumerated in dockets numbered 326–H, and 367.

(Pub. L. 92–206, § 3, Dec. 18, 1971, 85 Stat. 737.)

§ 584. Apportionment of remaining funds; Shoshone-Bannock Tribes of the Fort Hall Reservation and the Shoshone Tribe of the Wind River Reservation

The remainder of the award shall be apportioned between the Shoshone-Bannock Tribes of the Fort Hall Reservation and the Shoshone Tribe of the Wind River Reservation in accordance with an agreement entered into between the Shoshone-Bannock Tribes and the Shoshone Tribe of the Wind River Reservation in May 1965, approved by the Associate Commissioner of Indian Affairs in December 1965.

(Pub. L. 92–206, § 4, Dec. 18, 1971, 85 Stat. 737.)

§ 585. Membership rolls; preparation; eligibility for enrollment; application; finality of determination

For the purpose of apportioning the award in accordance with sections 581 to 590 of this title, membership rolls, duly approved by the Secretary of the Interior, shall be prepared for each of the three groups, as follows:

(a) The governing body of the Shoshone Tribe of the Wind River Reservation and the governing body of the Shoshone-Bannock Tribes, each shall, with the assistance of the Secretary, bring current the membership rolls of their respective tribes, to include all persons born prior to and alive on December 18, 1971, who are enrolled or eligible to be enrolled in accordance with the membership requirements of their respective tribes.

(b) The proposed roll of the Northwestern Bands of Shoshone Indians entitled to participate in the distribution of the judgment funds shall be prepared by the governing officers of said Northwestern Bands, with the assistance of the Secretary of the Interior, within six months after December 18, 1971, authorizing distribution of said funds. The roll shall include all persons who meet all of the following requirements of eligibility:

(1) They were born prior to and alive on December 18, 1971;

(2) Either their names appear on one of the following Indian census rolls of the Washakie Sub-Agency of the Fort Hall jurisdiction:

(a) Roll dated January 1, 1937, by F. A. Gross, Superintendent of the Fort Hall Reservation.

(b) Roll dated January 1, 1940, by F. A. Gross, Superintendent of the Fort Hall Reservation.

(c) Roll dated March 10, 1954.

(d) Roll dated April 21, 1964.

or they possess one-quarter Shoshone Indian blood and they are descendants of those appearing on at least one of said rolls;

(3) They are not recognized as members of the Shoshone-Bannock Tribes of the Fort Hall Reservation, the Shoshone Tribe of the Wind River Reservation, or any other Indian Tribe; and

(4) They shall elect not to participate in any settlement of claims pending before the Indian Claims Commission in docket 326–J, Shoshone-Goshute, and docket 326–K, Western Shoshone.

The proposed roll shall be published in the Federal Register, and in a newspaper of general circulation in the State of Utah. Any person claiming membership rights in the Northwestern Bands of Shoshone Indians, or any interest in said judgment funds, or a representative of the Secretary on behalf of any such person, within sixty days from the date of publication in the Federal Register, or in the newspaper of general circulation, as hereinbefore provided, whichever publication date is last, may file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such proposed roll. The Secretary shall review such appeals, and his decision thereon shall be final and conclusive. After disposition of all such appeals to the Secretary, the roll of the Northwestern Bands of Shoshone Indians shall be published in the Federal Register and such roll shall be final.

(Pub. L. 92–206, § 5, Dec. 18, 1971, 85 Stat. 737.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in par. (4), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 586. Northwestern Band of Shoshone Indians; payment to enrollees; heirs or legatees; trust for minors and persons under legal disability

The funds apportioned to the Northwestern Band of Shoshone Indians, less attorney's fees, and expenses due the attorneys representing the Northwestern Band under an approved contract, effective March 1, 1968, shall be placed to its credit in the United States Treasury and shall be distributed equally to the members whose names appear on the final roll and in accordance with the provisions of sections 581 to 590 of this title.

(a) The per capita shares shall be determined on the basis of the number of persons listed on the proposed roll published as hereinbefore provided and the number of persons on whose behalf an appeal has been taken to the Secretary contesting omission from such proposed roll. The share of those persons excluded from the final roll by reason of the decision of the Secretary on appeal shall be distributed equally to the persons included on the final roll.

(b) The Secretary shall distribute a share payable to a living enrollee directly to such enrollee. The per capita share of a deceased enrollee shall be paid to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive. A share or interest therein payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under legal disability shall be paid in accordance with such procedures, includ-

ing the establishment of trusts, as the Secretary determines appropriate to protect the best interest of such persons.

(Pub. L. 92–206, § 6, Dec. 18, 1971, 85 Stat. 738.)

§ 587. Funds apportioned to Shoshone-Bannock Tribes of the Fort Hall Reservation

(a) Distribution to enrollees

The funds apportioned to the Shoshone-Bannock Tribes of the Fort Hall Reservation shall be placed to their credit in the United States Treasury. Seventy-five percent of such funds shall be distributed per capita to all persons born on or before and living on December 18, 1971, who are duly enrolled on the roll prepared in accordance with section 585(a) of this title.

(b) Determination of per capita share

The per capita shares shall be determined on the basis of the number of persons eligible for per capitas and the number of persons rejected for per capitas who have taken a timely appeal. The shares of those persons whose appeals are denied shall revert to the Shoshone-Bannock Tribes to be expended for any purpose designated by the tribal governing body and approved by the Secretary.

(c) Trust for minors and persons under legal disability

Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons.

(d) Remaining funds

The funds remaining after provision is made for the per capita distribution may be used, advanced, expended, invested, or reinvested for any purpose authorized by the tribal governing body and approved by the Secretary of the Interior.

(Pub. L. 92–206, § 7, Dec. 18, 1971, 85 Stat. 738.)

§ 588. Shoshone Tribe of the Wind River Reservation; distribution of funds

The funds apportioned to the Shoshone Tribe of the Wind River Reservation shall be placed to its credit in the United States Treasury and shall be distributed in accordance with the provisions of the Act of May 19, 1947, as amended (61 Stat. 102; 25 U.S.C. 611–613).

(Pub. L. 92–206, § 8, Dec. 18, 1971, 85 Stat. 739.)

REFERENCES IN TEXT

Act of May 19, 1947, referred to in text, is act May 19, 1947, ch. 80, 61 Stat. 102, as amended, which is classified generally to subchapter XIX (§ 611 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

§ 589. Tax exemption

Any funds distributed per capita under provisions of sections 581 to 590 of this title shall not be subject to Federal or State income tax.

(Pub. L. 92–206, § 9, Dec. 18, 1971, 85 Stat. 739.)

§ 590. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 581 to 590 of this title.

(Pub. L. 92–206, § 10, Dec. 18, 1971, 85 Stat. 739.)

§ 590a. Shoshone-Bannock Tribes of the Fort Hall Reservation; credit of funds

The funds on deposit in the United States Treasury to the credit of the Lemhi Tribe, represented by the Shoshone-Bannock Tribes of Indians of the Fort Hall Reservation, Idaho, appropriated by the Act of May 25, 1971 (Public Law 92–18), to pay a judgment of $4,500,000 entered by the Indian Claims Commission in docket numbered 326–I, and interest thereon less attorneys' fees and expenses shall be credited to the Shoshone-Bannock Tribes of the Fort Hall Reservation for the claims of said tribes enumerated in docket numbered 326–I.

(Pub. L. 92–442, § 1, Sept. 29, 1972, 86 Stat. 743.)

REFERENCES IN TEXT

Act of May 25, 1971, referred to in text, is Pub. L. 92–18, May 25, 1971, 85 Stat. 40, known as the Second Supplemental Appropriation Act, 1971, which was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 590b. Disposition of funds

The funds credited to the Shoshone-Bannock Tribes of the Fort Hall Reservation pursuant to section 590a of this title, may be advanced, deposited, expended, invested, or reinvested for any purposes that are authorized by the tribal governing body and approved by the Secretary of the Interior.

(Pub. L. 92–442, § 2, Sept. 29, 1972, 86 Stat. 744.)

§ 590c. Tax exemption; trusts for minors and persons under legal disability

None of the funds distributed per capita to members of the tribes under the provisions of sections 590a to 590c of this title shall be subject to Federal or State income taxes. A share or interest payable to enrollees less than eighteen years of age or under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines appropriate to protect the best interest of such persons.

(Pub. L. 92–442, § 3, Sept. 29, 1972, 86 Stat. 744.)

SUBCHAPTER XVI—CHIPPEWA TRIBE OF MINNESOTA

§ 591. Reservation of Chippewa National Forest lands for Minnesota Chippewa Tribe

Subject to the payments prescribed by section 592 of this title the following-described lands are hereby eliminated from the Chippewa National Forest and permanently reserved for the use of the Minnesota Chippewa Tribe without in any manner affecting existing reserves for church, cemetery, and other purposes, or individual rights or interest in said lands: South half

northwest quarter southwest quarter, southeast quarter southwest quarter, section 12; northwest quarter northwest quarter, west half northeast quarter northwest quarter, south half northwest quarter, west half southwest quarter, lots 2, 4, 5, and 6, section 13; northeast quarter southeast quarter, section 14; lots 11, 12, 13, 3, 4, 6, 7, 8, and 9, section 24, township 142 north, range 31 west, fifth principal meridian, Minnesota, excepting a tract containing approximately one and ninety one-hundredths acres, being that portion of lot 4, section 13, township 142 north, range 31 west, beginning at angle point 1, lot 5, section 13, township 142 north, range 31 west; thence north thirty-three degrees forty-two minutes east one hundred and twenty-nine and five-tenths feet; thence south eighty-nine degrees forty-eight minutes east two hundred and thirty-one and four-tenths feet; thence south one degree fifty-four minutes west eighty-five and two-tenths feet; thence south nine degrees thirty-one minutes east two hundred and five and two-tenths feet; thence south nine degrees no minutes west eighty and four-tenths feet; thence south forty-one degrees nineteen minutes west one hundred and nineteen and four-tenths feet to angle point 4, lot 5; thence along the boundary of lot 5, north fifty-one degrees no minutes west one hundred and twenty and one-tenth feet to angle point 5, lot 5, north thirty-seven degrees forty-five minutes east one hundred and twenty and one-tenth feet to angle point 6, lot 5, north fifty-one degrees no minutes west two hundred and eighty-seven and one-tenth feet to angle point 1, lot 5, and point of beginning.

(June 8, 1940, ch. 285, § 1, 54 Stat. 254.)

§ 592. Withdrawal of tribal funds to reimburse United States; consent of Minnesota Chippewa Tribe; disposition of receipts

The Secretary of the Interior is hereby authorized to withdraw from the Minnesota Chippewa tribal fund now held in trust in the Treasury of the United States a sufficient sum to reimburse the United States for the land and timber thereon, the value of the land to be calculated at $1.25 per acre, and the value of the timber to be ascertained by the Secretary of Agriculture after the same has been examined and appraised under his supervision: *Provided, however*, That the transaction contemplated in this section and section 591 of this title shall be effected only with the consent of the Minnesota Chippewa Tribe expressed through the body authorized to represent it: *And provided further*, That all money received by the United States under the authority of this subchapter shall be deposited in the Treasury of the United States, and the same is hereby appropriated for the acquisition of forest land within the Chippewa National Forest under the provisions of the Act approved March 1, 1911, as amended (U.S.C., title 16 secs. 513, 519, 521).

(June 8, 1940, ch. 285, § 2, 54 Stat. 254.)

REFERENCES IN TEXT

Act approved March 1, 1911, referred to in text, is act Mar. 1, 1911, ch. 186, 36 Stat. 961, as amended, popularly known as the Weeks Law, which is classified to sections 480, 500, 513 to 519, 521, 552, and 563 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 552 of Title 16 and Tables.

§ 593. Exchanges of allotted, restricted, and tribal lands for Chippewa National Forest lands

Exchanges of Indian allotted, restricted, and tribal lands for lands in the Chippewa National Forest are hereby authorized. In order to consummate exchanges involving allotted and restricted Indian lands, the Secretary of the Interior is hereby authorized to accept relinquishments or conveyances of Indian lands, which lands shall thereupon become a part of the Chippewa National Forest, and to issue trust patents to the Indians for the lands received by them in exchange: *Provided*, That with the consent of the Indians involved title to the lands received in any such exchange may be taken in the name of the tribe, in which case the transfer of title shall be evidenced by an order of the Secretary of Agriculture transferring the lands to the Secretary of the Interior in trust for the Minnesota Chippewa Tribe: *Provided further*, That exchanges involving tribal lands shall be made only with the consent of the Indians and shall be evidenced by appropriate orders of transfer executed by the Secretary of Agriculture and the Secretary of the Interior: *And provided further*, That the land exchanges authorized herein shall be made on the basis of lands of equal value, and no exchange shall be made unless it is first approved by the Secretary of Agriculture.

(June 8, 1940, ch. 285, § 3, 54 Stat. 255.)

§ 594. Distribution of judgment funds; Mississippi Bands; Pillager and Lake Winnibigoshish Bands

The funds on deposit in the Treasury of the United States to the credit of the Minnesota Chippewa Tribe of Indians on behalf of the Mississippi Bands and the Pillager and Lake Winnibigoshish Bands of Chippewa Indians that were appropriated by the Act of October 31, 1965, to pay a judgment by the Indian Claims Commission in docket 18–B, and the interest thereon, after payment of attorney fees and expenses, may be advanced or expended for any purpose that is authorized by the tribal governing bodies of the Minnesota Chippewa Tribe and the White Earth, Leech Lake, and Mille Lacs Reservations with whom the members of the Mississippi Bands and Pillager and Lake Winnibigoshish Bands of Chippewa Indians are affiliated, and approved by the Secretary of the Interior. Only those persons who are descendants of the Mississippi Bands and the Pillager and Lake Winnibigoshish Bands of Chippewa Indians who were born on or prior to and living on September 27, 1967 and who meet the requirements for membership in the Minnesota Chippewa Tribe shall be entitled to share in the use or distribution of the funds. Any part of such funds that may be distributed per capita to the members of the tribe shall not be subject to the Federal or State income tax.

(Pub. L. 90–94, § 1, Sept. 27, 1967, 81 Stat. 230.)

REFERENCES IN TEXT

Act of October 31, 1965, referred to in text, is Pub. L. 89–309, Oct. 31, 1965, 79 Stat. 1133. That portion of the

act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, was terminated on Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

CODIFICATION

Section was not enacted as part of act June 8, 1940, ch. 285, 54 Stat. 254, which comprises this subchapter.

§ 594a. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this section and section 594 of this title.

(Pub. L. 90–94, § 2, Sept. 27, 1967, 81 Stat. 230.)

CODIFICATION

Section was not enacted as part of act June 8, 1940, ch. 285, 54 Stat. 254, which comprises this subchapter.

SUBCHAPTER XVII—YAKIMA TRIBES

§ 601. Membership roll; preparation; persons entitled to enrollment

The Secretary of the Interior is authorized and directed, with the advice and consent of the Yakima Tribal Council, to prepare a roll showing the members of the Yakima Tribes living on August 9, 1946, which roll shall be kept current and shall constitute the official membership roll of the Yakima Tribes for all purposes. No person who is enrolled with any other tribe of Indians or who has received an allotment of land on any other reservation shall be enrolled under the provisions of this subchapter. The following shall be placed on the roll:

(a) All living persons who received allotments on the Yakima Reservation, except by fraud.

(b) All living persons who are of the blood of the fourteen original Yakima Tribes, parties to the treaty of June 9, 1855 (12 Stat. 951), and who have received allotments on the public domain within the area ceded to the United States by the Yakima Tribes by the treaty of 1855.

(c) All living persons who have maintained a domicile continuously from January 1, 1941, until August 9, 1946, on the Yakima Reservation or within the area ceded by the treaty of June 9, 1855, (12 Stat. 951), and who are (1) descendants of persons who received allotments on the Yakima Reservation, except by fraud, or (2) descendants of persons of the blood of the fourteen original Yakima Tribes who received allotments on the public domain within the area ceded by the said treaty of 1855. All living children born after January 1, 1941, but prior to August 9, 1946, to a person entitled to enrollment under this subsection shall likewise be entitled to enrollment under this subsection.

(d) All children of one-fourth or more blood of the Yakima Tribes born after August 9, 1946, to a parent who is an enrolled member and maintains a domicile on the Yakima Reservation or within the area ceded by the treaty of June 9, 1855, at the time of the birth of the child.

(Aug. 9, 1946, ch. 933, § 1, 60 Stat. 968.)

REDESIGNATION OF YAKIMA INDIAN NATION TO YAKAMA INDIAN NATION

Pub. L. 103–435, § 17, Nov. 2, 1994, 108 Stat. 4573, provided that:

"(a) REDESIGNATION.—The Confederated Tribes and Bands of the Yakima Indian Nation shall be known and designated as the 'Confederated Tribes and Bands of the Yakama Indian Nation'.

"(b) REFERENCES.—Any reference in a law (including any regulation), map, document, paper, or other record of the United States to Confederated Tribes and Bands of the Yakima Indian Nation referred to in subsection (a) shall be deemed to be a reference to the 'Confederated Tribes and Bands of the Yakama Indian Nation'."

§ 602. Application to Tribal Council on exclusion from roll; minors and incompetent persons

Any person of one-fourth or more of the blood of the Yakima Tribes who may be excluded from enrollment under the provisions of section 601 of this title may apply for membership at any time and be enrolled upon the approval of the application by a two-thirds vote of the Yakima Tribal Council. Applications for enrollment under this section on behalf of minors and persons mentally incompetent may be filed by any enrolled member of the Yakima Tribes.

(Aug. 9, 1946, ch. 933, § 2, 60 Stat. 969.)

§ 603. Correction of membership roll

Corrections in the roll prepared hereunder, by striking therefrom the name of any person erroneously placed on the roll or by adding to the roll the name of any person erroneously omitted therefrom, may be made at any time by the Yakima Tribal Council.

(Aug. 9, 1946, ch. 933, § 3, 60 Stat. 969.)

REFERENCES IN TEXT

Hereunder, referred to in text, means act Aug. 9, 1946, ch. 933, 60 Stat. 968, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

§ 604. Loss of membership and removal from roll

Every person whose name appears on the roll prepared hereunder who holds no vested right, title, or interest in or to any restricted or trust land on the Yakima Reservation or within the area ceded by the treaty of June 9, 1855, and who has failed to maintain any tribal affiliations or a residence on the reservation or within the ceded area for a period of five consecutive years, shall no longer be considered a member of the Yakima Tribes, and his name shall be removed from the rolls. It shall be the duty of the Yakima Tribal Council to determine, subject to review by the Secretary of the Interior, loss of membership in each case.

(Aug. 9, 1946, ch. 933, § 4, 60 Stat. 969.)

REFERENCES IN TEXT

Hereunder, referred to in text, means act Aug. 9, 1946, ch. 933, 60 Stat. 968, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

§ 605. Expulsion of members; review by Secretary

The Yakima Tribal Council may adopt and enforce ordinances, subject to review by the Secretary of the Interior, governing the expulsion of members for any cause deemed by the council to be sufficient.

(Aug. 9, 1946, ch. 933, § 5, 60 Stat. 969.)

§ 606. Back pay and annuities on enrollment of new members

No person whose name shall after August 9, 1946, be placed on the roll of the Yakima Tribes shall be entitled to any back annuities or per capita payments made to the members of the tribes out of tribal funds which were authorized to be paid to the members of the tribes before such person's name shall have been placed upon such roll.

(Aug. 9, 1946, ch. 933, § 6, 60 Stat. 969.)

§ 607. Divestment of inheritance of non-members

(a) Procedure

A person who is not an enrolled member of the Yakima Tribes with one-fourth degree or more blood of such tribes shall not be entitled to receive by devise or inheritance any interest in trust or restricted land within the Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951), if, while the decedent's estate is pending before the Examiner of Inheritance, the Yakima Tribes pay to the Secretary of the Interior, on behalf of such person, the fair market value of such interest as determined by the Secretary of the Interior after appraisal. The interest for which payment is made shall be held by the Secretary in Trust for the Yakima Tribes.

(b) Time of election

On request of the Yakima Tribes the Examiner of Inheritance shall keep an estate pending for not less than two years from the date of decedent's death.

(c) Interest of surviving spouse

When a person who is prohibited by subsection (a) of this section from acquiring any interest by devise or inheritance is a surviving spouse of the decedent, a life estate in one-half of the interest acquired by the Yakima Tribes shall, on the request of such spouse, be reserved for that spouse and the value of such life estate so reserved shall be reflected in the Secretary's appraisal under subsection (a) of this section.

(Aug. 9, 1946, ch. 933, § 7, 60 Stat. 969; Pub. L. 91–627, § 1, Dec. 31, 1970, 84 Stat. 1874.)

AMENDMENTS

1970—Pub. L. 91–627 designated existing provisions as subsec. (a), substituted provisions authorizing the Yakima Tribes to pay to Secretary of the Interior the fair market value, as determined by the Secretary after appraisal, of any interest in trust or restricted land within the specified areas which a person not an enrolled member of the Yakima Tribes with one-fourth degree or more blood of such tribes was to receive by devise or inheritance, for provisions limiting the inheritance of trust land on the Yakima Reservation to enrolled members of the Yakima Tribes of one-fourth or more blood of such tribes and to surviving spouses who are enrolled members but possess less than one-fourth degree of Yakima blood, with such surviving spouses authorized to inherit a life estate in not more than one-half the property, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 2 of Pub. L. 91–627 provided that: "The provisions of section 7 of the Act of August 9, 1946, as amended by this Act [this section], shall apply to all estates pending before the Examiner of Inheritance on the date of this Act [Dec. 31, 1970], and to all future estates, but shall not apply to any estate heretofore closed."

§ 608. Purchase, sale, and exchange of land

(a) Authority of Secretary; manner and place

The Secretary of the Interior is authorized in his discretion, to—

(1) purchase for the Yakima Tribes, with any funds of such tribes, and to otherwise acquire by gift, exchange, or relinquishment, any lands or interest in lands or improvements thereon within the Yakima Indian Reservation or within the area ceded to the United States by the Treaty of June 9, 1855;

(2) sell or approve sales of any tribal trust lands, any interest therein or improvements thereon, such sales being limited to agencies of the Federal, State, or local governments for recreational, educational, civic, or other public purposes, and to individual members of the tribes;

(3) exchange any tribal trust lands, including interests therein or improvements thereon, for any lands situated within such reservation or the area ceded to the United States by the treaty of June 9, 1855; and

(b) Multiple ownership of land

Where lands are held in multiple ownership, the Secretary is authorized to sell and exchange such lands to other Indians or the Yakima Tribes only if the sale or exchange is authorized in writing by the owners of at least a majority interest in such lands; except that no greater percentage of approval of individual Indians shall be required under sections 608 to 608c of this title than in any other statute of general application approved by Congress.

(c) Acquisitions to be held in trust

Lands and interests in lands acquired by the Secretary pursuant to subsection (a)(1) of this section and for the benefit of the Yakima Indian Nation pursuant to section 465 of this title shall be held in trust by the United States for the benefit of the Yakima Indian Nation.

(d) Terms and conditions

The Secretary shall obtain the advice and consent of the Yakima tribal council before entering into any of the above transactions involving the acquisition or disposition of tribal land. The terms and conditions of any such transaction, including the price at which any land is so purchased or sold and the valuation of any lands so exchanged, shall be mutually agreed upon by the Secretary, the Yakima tribal council, and the individual Indian or Indians concerned. Any such exchange of lands shall be effected on the basis of approximately equal consideration with due allowance for the value of improvements in determining the value of such lands.

(July 28, 1955, ch. 423, § 1, 69 Stat. 392; Pub. L. 88–540, § 1, Aug. 31, 1964, 78 Stat. 747; Pub. L. 100–581, title II, § 213, Nov. 1, 1988, 102 Stat. 2941; Pub. L. 101–301, § 1(a)(3), (b), May 24, 1990, 104 Stat. 206.)

CODIFICATION

Section was not enacted as part of act Aug. 9, 1946, ch. 933, 60 Stat. 968, which comprises this subchapter.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–301, § 1(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''In all cases in which the Secretary is acquiring for the Yakima Tribes lands or interests in lands presently held in trust or under restrictions for the benefit of an individual Indian, title shall be taken in the name of the United States in trust for the Yakima Tribes. In all cases in which land being purchased is presently held by the grantor in fee simple, title shall be taken for and held by the Yakima Tribes in fee and such land shall not, by reason of its being owned by the tribes, be exempt from taxation in accordance with the laws of the State of Washington.''

Pub. L. 101–301, § 1(a)(3), repealed Pub. L. 100–581, § 213. See 1988 Amendment note below.

1988—Subsec. (c). Pub. L. 100–581, § 213, which directed the general amendment of subsec. (c) of Pub. L. 88–540, cited as a credit to this section, was repealed by Pub. L. 101–301, § 1(a)(3).

1964—Pub. L. 88–540 amended section generally, and among other changes, permits acquisitions by gift or relinquishment, acquisition of any land within the reservation or area ceded to the United States by the treaty of June 9, 1855, sale of tribal land not only to tribe members, but also to Federal, State, or local government for recreational, educational, civic, or other public purposes, exchange of tribal land for any land within the reservation or the ceded area, lands held in multiple ownership to be sold or exchanged upon the written authorization of owners of at least a majority interest in the lands or any lesser percentage that may be provided in a statute of general application, and title to land in fee status acquired by the tribes to be taken in fee status.

§ 608a. Sale of tribal trust lands, etc.

(a) Title subsequent to sale

Title to tribal trust lands, interests, improvements, or rights sold by the Secretary to individual members of the Yakima Tribes or exchanged by the Secretary for lands held under trust patent or other restrictions against alienation by individual members of the tribes and other Indians or for lands in heirship status shall be held by the United States in trust for the individual Indian or Indians concerned.

(b) Credit of proceeds to tribal funds

Sums derived from the sale of tribal trust lands interests, improvements, and rights shall be credited to the tribal funds of the Yakima Tribes.

(July 28, 1955, ch. 423, § 2, 69 Stat. 393; Pub. L. 88–540, § 2, Aug. 31, 1964, 78 Stat. 748.)

CODIFICATION

Section was not enacted as part of act Aug. 9, 1946, ch. 933, 60 Stat. 968, which comprises this subchapter.

AMENDMENTS

1964—Subsec. (a). Pub. L. 88–540 struck out provisions that title to lands, interests, improvements, or rights acquired under section 608 of this title by the Secretary for the Yakima Tribes through purchase or exchange shall be held by the United States in trust for the Yakima Tribes.

§ 608b. Rights of lessee

(a) No transaction entered into under sections 608 to 608c of this title shall affect, without the consent of the lessee, any lease of lands, interests, improvements, or rights involved in such transaction, or any right of the lessee with respect to extension or renewal of such lease, which is in existence at the time such transaction is entered into.

(b) Repealed, Pub. L. 88–540, § 3, Aug. 31, 1964, 78 Stat. 748.

(July 28, 1955, ch. 423, § 3, 69 Stat. 393; Pub. L. 88–540, § 3, Aug. 31, 1964, 78 Stat. 748.)

CODIFICATION

Section was not enacted as part of act Aug. 9, 1946, ch. 933, 60 Stat. 968, which comprises this subchapter.

AMENDMENTS

1964—Subsec. (b). Pub. L. 88–540 repealed subsec. (b) which provided: ''Nothing in sections 608–608c of this title shall affect the existing status of any lands, interests, improvements, or rights with respect to taxation.''

§ 608c. Regulations

The Secretary is authorized to prescribe such regulations as may be necessary to carry out the purposes of sections 608 to 608c of this title.

(July 28, 1955, ch. 423, § 4, 69 Stat. 393.)

CODIFICATION

Section was not enacted as part of act Aug. 9, 1946, ch. 933, 60 Stat. 968, which comprises this subchapter.

§ 609. Action to determine title to judgment fund; claim of Confederated Tribes of the Colville Reservation; jurisdiction of Court of Claims

The Confederated Tribes of the Colville Reservation, acting through the chairman of its business council, and the Yakima Tribes of Indians of the Yakima Reservation, acting through the chairman of its tribal council, for and on behalf of said tribes and each and all their constituent tribal groups, are each hereby authorized to commence or defend in the United States Court of Claims an action against each other making claims to a share in the funds that are on deposit in the Treasury of the United States to pay a judgment of the Indian Claims Commission dated April 5, 1965, in dockets numbered 161, 222, and 224, and the interest on said funds; and jurisdiction is hereby conferred upon said court to hear such claims and to render judgment and decree thereon making such division of such funds and the interest on such funds, as may be just and fair in law and equity, between the Confederated Tribes of the Colville Reservation and its constituent tribal groups on the one hand, and the Yakima Tribes of Indians of the Yakima Reservation and its constituent tribal groups on the other hand.

(Pub. L. 90–278, § 1, Mar. 30, 1968, 82 Stat. 69.)

REFERENCES IN TEXT

The United States Court of Claims, referred to in text, and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

The Indian Claims Commission, referred to in text, was terminated on Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

CODIFICATION

Section was not enacted as part of act Aug. 9, 1946, ch. 933, 60 Stat. 968, which comprises this subchapter.

§ 609a. Tax exemption

Any part of such funds that may be distributed per capita to the members of the tribes shall not be subject to Federal or State income tax.

(Pub. L. 90–278, § 2, Mar. 30, 1968, 82 Stat. 69.)

CODIFICATION

Section was not enacted as part of act Aug. 9, 1946, ch. 933, 60 Stat. 968, which comprises this subchapter.

§ 609b. Disposition of judgment fund; deductions; advances, expenditures, investments, or reinvestments for authorized purposes

The funds appropriated by the Act of October 31, 1965 (79 Stat. 1133, 1152), to pay judgments to the Yakima Tribes of the Yakima Reservation in Indian Claims Commission docket numbered 47–A and 162, and by the Act of July 22, 1969 (83 Stat. 49), in consolidated dockets 47 and 164, together with interests thereon, after payment of attorney fees and litigation expenses, may be advanced, expended, invested, or reinvested for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior.

(Pub. L. 91–413, § 1, Sept. 25, 1970, 84 Stat. 865.)

REFERENCES IN TEXT

Act of October 31, 1965, referred to in text, is Pub. L. 89–309, Oct. 31, 1965, 79 Stat. 1133, 1152. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

Act of July 22, 1969, referred to in text, is Pub. L. 91–47, July 22, 1969, 83 Stat. 49. That portion of the act which appropriated the funds referred to was not classified to the Code.

CODIFICATION

Section was not enacted as part of act Aug. 9, 1946, ch. 933, 60 Stat. 968, which comprises this subchapter.

§ 609b–1. Tax exemption; trusts and other procedures for protection of minors and persons under legal disability

Any part of such funds that may be distributed per capita under the provisions of section 609b of this title and this section shall not be subject to Federal or State income tax; and any per capita share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines will adequately protect the best interest of such persons.

(Pub. L. 91–413, § 2, Sept. 25, 1970, 84 Stat. 865.)

CODIFICATION

Section was not enacted as part of act Aug. 9, 1946, ch. 933, 60 Stat. 968, which comprises this subchapter.

§ 609c. Disbursement of minor's share of judgment funds

(a) Definitions

For purposes of this section and section 609c–1 of this title, the term—

(1) ''tribe'' means the Confederated Tribes and Bands of the Yakama Indian Nation or the Apache Tribe of the Mescalero Reservation;

(2) ''tribal governing body'' means the governing body of a tribe or a committee of the members of such body designated by such body for purposes of this section and section 609c–1 of this title;

(3) ''Secretary'' means the Secretary of the Interior acting through (unless otherwise determined by the Secretary) the Superintendent of the Bureau of Indian Affairs Agency serving the tribe involved;

(4) ''minor'' means a member of a tribe, or descendant of a member of a tribe, who has not attained the age of eighteen years and who has a minor's share;

(5) ''minor's share'' means the per capita share of a judgment award, and the investment income accruing thereto, which is held in trust by the Secretary for a minor; and

(6) ''parent'' means the biological or adoptive parent or parents, or other legal guardian, of a minor.

(b) Disbursement to parent of minor

Notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466) [25 U.S.C. 1401 et seq.], the Act of March 12, 1968 (82 Stat. 47), or any other law, or any regulation or plan promulgated pursuant thereto, the minor's share of judgment funds heretofore or hereafter awarded by the Indian Claims Commission or the United States Court of Claims to a tribe may be disbursed to a parent of such minor pursuant to this section and section 609c–1 of this title.

(c) Disbursements under plan for best interest of minor

The minor's share of judgment funds may be disbursed in such amounts deemed necessary by such parent for the best interest of the minor for the minor's health, education, welfare, and emergencies under a plan governing such funds for each minor (or a plan governing funds of all minors in a family) approved by the Secretary and the tribal governing body of the minor's tribe.

(d) Monthly reports

The Secretary shall provide a monthly report to each tribal governing body which has approved one or more plans pursuant to subsection (c) of this section. Each such report shall include the amount and purpose of every disbursement made during each month under such plans.

(Pub. L. 95–433, § 1, Oct. 10, 1978, 92 Stat. 1047; Pub. L. 103–435, § 17(b), Nov. 2, 1994, 108 Stat. 4573.)

REFERENCES IN TEXT

Act of October 19, 1973, referred to in subsec. (b), is Pub. L. 93–134, Oct. 19, 1973, 87 Stat. 466, as amended, known as the Indian Tribal Judgment Funds Use or Distribution Act, which is classified generally to chapter 16 (§ 1401 et seq.) of this title. For complete classi-

fication of this Act to the Code, see section 1401(c) of this title and Tables.

Act of March 12, 1968, referred to in subsec. (b), is Pub. L. 90–266, which authorized the consolidation and use of funds in favor of the Apache Tribe of the Mescalero Reservation, and was not classified to the Code.

The Indian Claims Commission, referred to in subsec. (b), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

The United States Court of Claims, referred to in subsec. (b), and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–435 substituted ''Confederated Tribes and Bands of the Yakama Indian Nation'' for ''Confederated Tribes and Bands of the Yakima Indian Nation''.

§ 609c–1. Tax exemption; eligibility for Federal assistance without regard to payments

Any part of any of the judgment funds referred to in section 609c of this title that may be distributed per capita to, or held in trust for the benefit of, the members of a tribe, including minor's shares, shall not be subject to Federal or State income tax, and the per capita payment shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act [42 U.S.C. 301 et seq.], or any other Federal or federally assisted program.

(Pub. L. 95–433, § 2, Oct. 10, 1978, 92 Stat. 1047.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

SUBCHAPTER XVIII—SWINOMISH TRIBE

§ 610. Purchase of lands within, adjacent to, or in close proximity to boundaries of Swinomish Indian Reservation

The Secretary of the Interior is authorized to purchase with funds made available by the Swinomish Indian Tribal Community any land or interest in land within, adjacent to, or in close proximity to the boundaries of the Swinomish Indian Reservation.

(Pub. L. 90–534, § 1, Sept. 28, 1968, 82 Stat. 884.)

§ 610a. Sale or exchange of lands; money equalization payments

Any land or interest in land now owned or hereafter acquired by or in trust for the Swinomish Indian Tribal Community may be sold or exchanged for other land or interest in land within, adjacent to, or in close proximity to the boundaries of the Swinomish Indian Reservation, and the land values involved in an exchange must be equal or be equalized by the payment of money.

(Pub. L. 90–534, § 2, Sept. 28, 1968, 82 Stat. 884.)

§ 610b. Title to lands; tax exemption; prohibition of restrictions

Title to any land acquired pursuant to this subchapter shall be taken in the name of the United States in trust for the Swinomish Indian Tribal Community and shall be nontaxable if the land is within the boundaries of the Swinomish Indian Reservation, and title shall be taken in the name of the Community subject to no restrictions on alienation, taxation, management, or use if the land is outside such boundaries.

(Pub. L. 90–534, § 3, Sept. 28, 1968, 82 Stat. 884.)

§ 610c. Mortgages or deeds in trust; law governing mortgage foreclosure or sale; United States as party; removal of cases: appeals

The Swinomish Indian Tribal Community may, with the approval of the Secretary of the Interior, execute mortgages or deeds of trust to land the title to which is held by the community, or by the United States in trust for the community. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the State of Washington. The United States shall be an indispensable party to, and may be joined in, any such proceeding involving trust land with the right to remove the action to the United States district court for the district in which the land is situated, according to the procedure in section 1446 of title 28, and the United States shall have the right to appeal from any order of remand entered in such action.

(Pub. L. 90–534, § 4, Sept. 28, 1968, 82 Stat. 884.)

§ 610d. Moneys or credits for tribal purposes

Any moneys or credits received or credited to the Swinomish Indian Tribal Community from the sale, exchange, mortgage, or granting of any security interest in any tribal land may be used for tribal purposes.

(Pub. L. 90–534, § 5, Sept. 28, 1968, 82 Stat. 884.)

§ 610e. Assignment of income

The Swinomish Indian Tribal Community may assign any income due it, subject to approval of the Secretary of the Interior. Such approval may be given in general terms or may be limited to specified assignments.

(Pub. L. 90–534, § 7, Sept. 28, 1968, 82 Stat. 884.)

SUBCHAPTER XIX—SHOSHONE AND ARAPAHO TRIBES OF WYOMING

§ 611. Division of trust fund on deposit in United States Treasury to joint credit of both tribes

The Secretary of the Interior is authorized and directed to divide the trust funds on deposit in the Treasury of the United States to the joint credit of the Shoshone and Arapaho Tribes of the Wind River Reservation, Wyoming, including the unexpended balance of the treaty funds arising under section 12 of the Act of June 7, 1897 (30 Stat. 93), between the Shoshone Tribe and

the Arapaho Tribe, crediting one-half of the total amount in the principal account to a principal trust fund account and one-half of the total amount in the interest account to an interest trust fund account for each tribe: *Provided*, That in dividing the funds there shall be taken into consideration in determining the amount to be credited to each tribe the outstanding loans made from joint trust funds to the Indians of each tribe.

(May 19, 1947, ch. 80, §1, 61 Stat. 102.)

REFERENCES IN TEXT

Section 12 of the Act of June 7, 1897 (30 Stat. 93), referred to in text, is act June 7, 1897, ch. 3, §12, 30 Stat. 93, which was not classified to the Code.

WIND RIVER INDIAN RESERVATION; MINERAL RIGHTS

Pub. L. 85–780, Aug. 27, 1958, 72 Stat. 935, provided: ''That, from and after the effective date of this Act [Aug. 27, 1958], all of the right, title, and interest of the United States in all minerals, including oil and gas, the Indian title, to which was extinguished by the Act of August 15, 1953 (67 Stat. 592; Public Law 284, Eighty-third Congress, first session [set out as a note under this section]), entitled 'An Act to provide compensation to the Shoshone and Arapahoe Tribes of Indians for certain lands of the Riverton reclamation project within the ceded portion of the Wind River Indian Reservation, and for other purposes', is hereby declared to be held by the United States in trust for the Shoshone and Arapahoe Tribes and, notwithstanding any other provision of law, said minerals, including oil and gas, subject to the provisions of section 2 of this Act, shall be administered and leased in accordance with the provisions of the Act of May 11, 1938 (ch. 198, 52 Stat. 347 [sections 396a to 396g of this title]). The gross proceeds received by the United States from such minerals either before or after the date of this Act shall be deposited to the credit of the Shoshone and Arapahoe Tribes in accordance with the provisions of the Act of May 19, 1947 (61 Stat. 102), as amended [this subchapter], and any of such gross proceeds that have been credited to miscellaneous receipts in the Treasury of the United States in accordance with the provisions of section 5 of the Act of August 15, 1953 (67 Stat. 592 [set out as a note under this section]), shall be transferred on the books of the Treasury to the credit of such tribes.

''SEC. 2. Notwithstanding any other provision of law, (1) all mineral leases, including oil and gas leases, covering any of the minerals referred to in section 1 hereof, which have heretofore been issued by the Secretary of the Interior on a noncompetitive basis, shall be subject to renewal at the end of the primary five-year term thereof for a term that extends to a date that is five years from the date of this Act [Aug. 27, 1958] and shall not be subject to renewal or further extension except in any case where, at the expiration of said extended term, oil or gas is being produced under the lease in paying quantities, and (2) the Secretary of the Interior shall process in accordance with the Mineral Leasing Act of February 25, 1920 (ch. 85, 41 Stat. 437), as amended [section 181 et seq. of Title 30, Mineral Lands and Mining], and the regulations issued thereunder, all oil and gas lease offers covering any of the oil and gas referred to in section 1 hereof which were filed on or before December 31, 1957: *Provided*, That any oil and gas lease issued pursuant to such lease offers shall be for a single term of five years commencing with the effective date of the lease and shall not be subject to renewal or extension except in any case where at the expiration of said five-year term, oil or gas is being produced under the lease in paying quantities.

''Any oil or gas lease referred to in subparagraph (1) of this section and any oil or gas lease which may hereafter be issued pursuant to the lease offers referred to in subparagraph (2) of this section shall be subject to the provisions of section 1 (1) of the Act of July 29, 1954 (ch. 644, 68 Stat. 583), amendatory of the second paragraph of section 17 of the Mineral Leasing Act of February 25, 1920 (ch. 85, 41 Stat. 443), as amended [section 226 of title 30].''

WIND RIVER INDIAN RESERVATION; COMPENSATION FOR LANDS OF THE RIVERTON RECLAMATION PROJECT

Act Aug. 15, 1953, ch. 509, 67 Stat. 592, provided that: ''There is hereby authorized to be transferred in the Treasury of the United States from funds now or hereafter made available for carrying on the functions of the Bureau of Reclamation and to be placed to the credit of the Shoshone and Arapahoe Tribes of Indians of the Wind River Indian Reservation in Wyoming, the sum of $1,009,500, said sum shall be credited to and expended for the benefit of said tribes and their members as provided by the Act of May 19, 1947 (61 Stat. 102), as amended by the Act of August 30, 1951 (65 Stat. 208), and by the Act of July 17, 1953 (Public Law 132, Eighty-third Congress) [this subchapter], and as may be hereinafter amended, and shall be deemed to constitute full, complete, and final compensation, except as provided in section 5 of this Act, for terminating and extinguishing all of the right, title, estate, and interest, including minerals, gas and oil, of said Indian tribes and their members of, in and to the lands, interests in lands, and any and all past and future damages arising out of the cession to the United States, pursuant to the Act of March 3, 1905 (33 Stat. 1016) of that part of the former Wind River Indian Reservation lying within * * * the proposed exterior boundaries of the Riverton reclamation project, Fremont County, Wyoming * * *''.

* * * * *

''* * * *Provided*, That any member, or the heirs or assignees of any member, of either of said tribes, who on the 24th day of July 1952, had an existing and valid assignment on any part of the above-described land, shall have the right, at his or her option, within one year after the date of enactment of this Act [Aug. 15, 1953] to enter into a contract with the United States, by and through the Bureau of Reclamation, for the purchase, at a price and on terms satisfactory to the Secretary of the Interior, of all or any contiguous part of such assignment, and upon final payment of the purchase price therefor, a fee patent accordingly shall be issued to such assignee, subject to reservations of all oil, gas, and minerals to the United States, and subject to section 5 of this Act, and if any part of the land so selected shall contain land irrigable under the Riverton reclamation project, then said patented land shall be subject to all irrigation charges, taxes, and liens imposed by Federal or State law, to the same extent and in like manner as other lands of the Riverton reclamation project: *Provided further*, That all existing contracts relating to irrigation charges, with respect to such irrigable land, shall remain in full force and effect: *And provided further*, That nothing in this Act shall be construed to affect the rights and interests in and to any land embraced within the tract described herein that has been allotted to an individual member of either of the said tribes which, on the date of enactment of this Act [Aug. 15, 1953], is held by the United States in trust for such member or his or her heirs.

''SEC. 2. Subject only to the existing rights and interests which are not extinguished and terminated by this Act, all unentered and vacant lands within the area described in section 1 hereof, are hereby restored to the public domain for administration, use, occupancy, and disposal under the reclamation and public land laws of the United States: *Provided*, That the sale or other disposition of such lands shall be at rates and upon terms and conditions approved by the Secretary of the Interior: *Provided further*, That the average price of all such lands disposed of by sale shall be not less than $6.25 per acre.

''SEC. 3. The sum transferred to the credit of the Shoshone and Arapahoe Tribes of Indians as aforesaid and

the expenses of carrying out the provisions of this Act shall be nonreimbursable and nonreturnable under the reclamation laws of the United States. The net proceeds derived from the disposal of said lands shall be covered into the general fund of the Treasury or into the reclamation fund as the Secretary of the Interior shall find appropriate in the light of the source from which the funds transferred or expended in carrying out this Act are derived.

''SEC. 4. Subject to any outstanding rights and interests, all of the ceded lands of the Wind River Reservation withdrawn pursuant to the Act of June 17, 1902, for the development of the Riverton reclamation project, Wyoming, not included within the boundaries of the tract described in section 1 of this Act, are hereby restored to the ownership of said tribes to the same extent as the ownership provided by the Act of July 27, 1939 (53 Stat. 1128) [sections 571 to 577 of this title], with respect to vacant lands ceded to the United States under the provisions of the Act of March 3, 1905 (33 Stat. 1016), but not subsequently withdrawn for reclamation purposes: *Provided*, That the compensation authorized in section 1 hereof shall also be deemed to release the United States from any and all claims for damages whatsoever arising out of withdrawal of lands herein restored to tribal ownership.

''SEC. 5. Notwithstanding any other provision of law, the United States shall deposit in the Treasury of the United States to the credit of said tribes, to be available for expenditure for the benefit of said tribes and their members, as provided by the Act of May 19, 1947 (61 Stat. 102), as amended by the Act of August 30, 1951 (65 Stat. 208), and by the Act of July 17, 1953 (Public Law 132, Eighty-third Congress) [this subchapter], and as may be hereinafter amended, 90 per centum of the gross receipts of the United States, as they are received from time to time, from all leases, bonuses, royalties, or other proceeds derived under the mining and mineral-leasing laws of the United States from any and all lands in which all rights and interests of the tribes are terminated and extinguished by the terms and conditions of section 1 of this Act and which are embraced within the boundaries of the tract described in said section 1. Notwithstanding any other provision of law the remaining 10 per centum of such gross receipts shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts.

''SEC. 6. Should this Act become law subsequent to June 30, 1954, there is hereby reserved to the Shoshone and Arapahoe Tribes the privilege of rejecting, within one hundred and twenty days after the date of the Act [Aug. 15, 1953], the terms and conditions of its sections 1, 4, and 5. If those terms and conditions are rejected, no part of the Act shall become effective.

''SEC. 7. The Secretary of the Interior is authorized to perform any and all acts to carry out the provisions and purposes of this Act.''

§ 612. Establishment of trust fund for each tribe; transfer of funds; interest; crediting of revenues, receipts, and proceeds of judgments

The Secretary of the Treasury, upon request of the Secretary of the Interior, is authorized and directed to establish a trust fund account for each tribe and shall make such transfer of funds on the books of his department as may be necessary to effect the purpose of section 611 of this title: *Provided*, That interest shall accrue on the principal fund only, at the rate of 4 per centum per annum, and shall be credited to the interest trust fund accounts established by this section: *Provided further*, That all future revenues and receipts derived from the Wind River Reservation under any and all laws, and the proceeds from any judgment for money against the United States hereafter paid jointly to the Shoshone and Arapahoe Tribes of the Wind River Reservation, shall be divided in accordance with section 611 of this title and credited to the principal trust fund accounts established herein; and the proceeds from any judgment for money against the United States hereafter paid to either of the tribes singly shall be credited to the appropriate principal trust fund account.

(May 19, 1947, ch. 80, § 2, 61 Stat. 102; Aug. 30, 1951, ch. 367, § 1, 65 Stat. 208; Pub. L. 85–610, § 1, Aug. 8, 1958, 72 Stat. 541.)

AMENDMENTS

1958—Pub. L. 85–610 substituted ''Secretary of the Treasury'' for ''Comptroller of the United States'', required division of future receipts from Reservation and proceeds from judgments paid jointly to Tribes, and provided for manner of crediting proceeds from judgments paid to either of Tribes.

1951—Act Aug. 30, 1951, substituted ''any'' for ''existing'' before ''law'' in second proviso.

§ 613. Advances or expenditures from tribal funds; emergency and educational loans; payments to individuals of tribes; per capita payments not subject to liens or claims; exception

Notwithstanding any other provision of existing law, the trust funds credited to the Shoshone Tribe and the Arapahoe Tribe, respectively, under the provisions of this subchapter shall be available for expenditure or for advance to the tribes for such purposes as may be requested by the business council of the tribe concerned and approved by the Secretary of the Interior, or such official as may be designated by him: *Provided*, That the Secretary of the Interior is directed to make available out of the trust funds of the Shoshone Tribe the sum of $7,500 for the purpose of making emergency and educational loans on the authority and responsibility of the Shoshone Tribe, through its business council, without liability to the United States and free from regulation or approval by the Secretary of the Interior: *Provided further*, That, commencing as soon after August 8, 1958 as the Secretary of the Interior determines may be practicable in order to change from the existing quarterly payment system, but not later than January 1, 1959, 85 per centum of said trust funds shall be paid per capita to the members of the respective tribes in equal monthly installments on the first day of each month, or as near thereto as practicable, or with the approval of the Secretary of the Interior, at such more frequent intervals as the tribes may request. The amount of the monthly payments during any one calendar year shall be determined by the Secretary of the Interior on the basis of estimated anticipated income for that calendar year: *Provided further*, That the Secretary may increase or decrease the amount of the monthly payments in the light of actual receipts during the calendar year, and in order to avoid the omission of a payment or a reduction in the amount that would cause unnecessary hardship the Secretary may permit the total monthly payments for a year to exceed 85 per centum of the actual receipts for that year and deduct the excess from the receipts of the following or succeeding years before determining the amount of the monthly payments for such succeeding years: *Provided*

further, That said per capita payments shall not be subject to any lien or claim of any nature against any of the members of said tribes unless the business council of such member shall consent thereto in writing, except as to reimbursable Treasury loans made to individual members of either tribe which may be due to the United States, and except as to irrigation charges owed by individual Indians to the United States with respect to lands for which water is requested and received by said individual Indians, and with respect to lands that are determined by the Secretary of the Interior to be properly classified under existing law on the basis of the survey undertaken by the Secretary after the amendment of this section on July 25, 1956 (70 Stat. 642): *Provided further*, That quarterly per capita payments under this subchapter shall continue without interruption until the monthly per capita payments are put into effect on or before January 1, 1959.

(May 19, 1947, ch. 80, § 3, 61 Stat. 102; Aug. 30, 1951, ch. 367, § 2, 65 Stat. 209; July 17, 1953, ch. 223, 67 Stat. 179; Aug. 9, 1955, ch. 638, 69 Stat. 557; July 25, 1956, ch. 723, § 1, 70 Stat. 642; Pub. L. 85–610, § 2, Aug. 8, 1958, 72 Stat. 541.)

AMENDMENTS

1958—Pub. L. 85–610 substituted ''business council'' for ''tribal council'', to authorize $7,500 for emergency and educational loans, permitted monthly payments instead of quarterly payments and allowed for payments at more frequent intervals if the tribes so request, required the Secretary to determine the amount of monthly payments during any calendar year on the basis of estimated anticipated income for that calendar year, provided for increases and decreases in monthly payments and omitted provisions which related to authority of the Secretary to protect and conserve funds payable to minors and incompetents.

1956—Act July 25, 1956, increased per capita payments from 80 to 85 percent, extended period of payments from May 19, 1957, to May 19, 1959, subjected per capita payments to irrigation charges with respect to lands that are determined by the Secretary of the Interior to to be properly classified under existing law on the basis of a survey, and inserted provisions relating to authority of the Secretary to protect and conserve funds payable to minors and incompetents.

1955—Act Aug. 9, 1955, permitted quarterly per capita payments instead of semiannual payments.

1953—Act July 17, 1953, increased per capita distribution from two-thirds to 80 per centum.

1951—Act Aug. 30, 1951, substituted ''ten'' for ''five'' before ''years'' in first proviso.

PER CAPITA PAYMENTS AFTER MAY 19, 1959

Section 2 of act July 25, 1956, directed Secretary of the Interior to report to Congress before Jan. 1, 1958, in order to determine the conditions under which per capita payments could be authorized after May 19, 1959, (1) recommendations regarding any new authority, if any, needed to protect adequately the interests of minors and incompetent Indians, (2) results of a survey and reclassification of the lands that should be removed from the irrigation project, and (3) adequacy of tribal contribution to cost of administering the reservation.

SUBCHAPTER XX—PUEBLO AND CANONCITO NAVAJO INDIANS

§ 621. Portions of tribal lands to be held in trust by the United States; remainder to become part of the public domain

Title to the lands and the improvements thereon, lying and situated within the State of New Mexico, which have been acquired by the United States under authority of title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), the Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115), section 55 of title I of the Act of August 24, 1935 (49 Stat. 750, 781), the Bankhead-Jones Farm Tenant Act (50 Stat. 522, 525) and subsequent emergency relief appropriation Acts administrative jurisdiction over which has heretofore been transferred by the President from the Secretary of Agriculture to the Secretary of the Interior, to be administered through the Commissioner of Indian Affairs for the benefit of the Indians, by Executive Orders Numbered 7792, 7975, 8255, 8471, 8696, and 8472 and that title to the public domain lands and improvements thereon, lying and situated within the State of New Mexico, which were withdrawn in aid of proposed legislation by the Secretary of the Interior on December 23, 1938, and May 31, 1939, and now in use by Pueblo or Canoncito Navajo Indians, excepting those portions thereof used by the United States for administrative purposes, is declared to be in the United States of America in trust for the respective tribes, bands, or groups of Indians occupying and using same as a part of their respective existing reservations, subject to valid existing rights. The remainder of the aforesaid land is declared to be a part of the public domain of the United States and shall be transferred by the Secretary of the Interior to the Bureau of Land Management for administration under the provisions of the Act of Congress of June 28, 1934, generally known as Taylor Grazing Act [43 U.S.C. 315 et seq.] (48 Stat. 1269, as amended). The boundaries and descriptions of the areas to become Indian lands and those which are to be transferred to the Bureau of Land Management are set out in sections III and IV, respectively, of the memorandum of information which is attached to and a part of the report of the Secretary of the Interior to the Senate Committee on Interior and Insular Affairs on this subchapter, and such boundaries and descriptions are adopted as part of this subchapter and shall be published in the Federal Register: *Provided*, That before said boundaries and descriptions are published in the Federal Register as herein provided, the Secretary of the Interior may correct any clerical errors in section III of said memorandum of information and shall revise the same so as to define the areas on that portion of the lands conveyed by this subchapter and known as Bell Rock Mesa used and occupied respectively by the Laguna Pueblo Indians and the Canoncito Navajo Indians.

(Aug. 13, 1949, ch. 425, § 1, 63 Stat. 604.)

REFERENCES IN TEXT

The National Industrial Recovery Act, referred to in text, is act June 16, 1933, ch. 90, 48 Stat. 195, as amended. Title II of the Act was classified principally to subchapter I (§ 401 et seq.) of chapter 8 of former Title 40, Public Buildings, Property, and Works, and was terminated June 30, 1943, by act June 27, 1942, ch. 450, § 1, 56 Stat. 410. Provisions of title II of the Act which were classified to former Title 40 were repealed by Pub. L. 107–217, § 6(b), Aug. 21, 2002, 116 Stat. 1304. For complete classification of this Act to the Code, see Tables.

The Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115), referred to in text, is act Apr. 8, 1935,

ch. 48, 49 Stat. 115, which was set out as a note under section 728 of Title 15, Commerce and Trade.

Section 55 of title I of the Act of August 24, 1935 (49 Stat. 750, 781), referred to in text, is section 5 of act Aug. 24, 1935, ch. 641, title I, 49 Stat. 781, which was not classified to the Code but was listed in the Supplementary Legislation note under section 721 of Title 15.

The Bankhead-Jones Farm Tenant Act (50 Stat. 522, 525), referred to in text, is act July 22, 1937, ch. 517, 50 Stat. 522, as amended, which is classified generally to chapter 33 (§ 1000 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1000 of Title 7 and Tables.

The Taylor Grazing Act, referred to in text, is act June 28, 1934, ch. 865, 48 Stat. 1269, as amended, which is classified principally to subchapter I (§ 315 et seq.) of chapter 8A of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 315 of Title 43 and Tables.

CHANGE OF NAME

Committee on Interior and Insular Affairs of the Senate abolished and replaced by Committee on Energy and Natural Resources of the Senate, Effective Feb. 11, 1977. See Rule XXV of Standing Rules of the Senate, as amended by Senate Resolution No. 4, Ninety-fifth Congress (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977. Section 105 of Senate Resolution No. 4 established a temporary Select Committee on Indian Affairs having jurisdiction over matters relating to Indian affairs (such matters previously having been within the jurisdiction of the Committee on Interior Ninety-eighth Congress, established the Select Committee on Indian Affairs as a permanent committee of the Senate, and section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress, redesignated the Select Committee on Indian Affairs as the Committee on Indian Affairs.

§ 622. Exchange of tribal lands; title to lands

For the purpose of consolidation of Indian lands the Secretary of the Interior is authorized, under such regulations as he may prescribe, to exchange any lands or interests therein, including improvements and water rights with the consent of the Pueblo or Navajo tribal authorities for other lands, water rights, and improvements of similar value in the area set apart for the Pueblos and Canoncito Navajos or in the areas declared to be public domain or within any public domain within New Mexico. Title to all lands acquired under the provisions of this subchapter shall be taken in the name of the United States in trust for the respective Pueblo Indians and the Navajo Canoncito group.

(Aug. 13, 1949, ch. 425, § 2, 63 Stat. 605.)

§ 623. Disbursement of deposits in the United Pueblos Agency

The funds now on deposit in the United Pueblos Agency in ''special deposits'' which have accrued from issuance of livestock-crossing permits and fees collected for grazing permits on the lands which have been under the jurisdiction of the Department of the Interior shall be expended or disbursed for the benefit of the Indians under such rules and regulations as the Secretary of the Interior may prescribe.

(Aug. 13, 1949, ch. 425, § 3, 63 Stat. 605.)

§ 624. Exchange of lands

(a) Authorization of Secretary; manner and place

For the purpose of improving the land tenure pattern and consolidating Pueblo Indian lands, the Secretary of the Interior is authorized, under such regulations as he may prescribe, to acquire by exchange any lands or interests therein, including improvements and water rights, within the Pueblo land consolidation areas, and to convey in exchange therefor not to exceed an equal value of unappropriated public lands within the State of New Mexico, or, with the consent of the Pueblo authorities any Pueblo tribal lands or interest therein, including improvements and water rights.

(b) Reservation of minerals, easements, or rights of use

Either party to an exchange under this section may reserve minerals, easements, or rights of use.

(c) Execution of title documents

The Secretary may execute any title documents necessary to effect the exchanges authorized by this section.

(d) Title to lands

Title to all lands acquired under the provisions of this section shall be taken in the name of the United States in trust for the respective Pueblo Indian tribes.

(Pub. L. 87–231, § 10, Sept. 14, 1961, 75 Stat. 505.)

CODIFICATION

Section was not enacted as part of act Aug. 13, 1949, ch. 425, 63 Stat. 604, which comprises this subchapter.

SUBCHAPTER XXI—NAVAJO AND HOPI TRIBES: REHABILITATION

§ 631. Basic program for conservation and development of resources; projects; appropriations

In order to further the purposes of existing treaties with the Navajo Indians, to provide facilities, employment, and services essential in combating hunger, disease, poverty, and demoralization among the members of the Navajo and Hopi Tribes, to make available the resources of their reservations for use in promoting a self-supporting economy and self-reliant communities, and to lay a stable foundation on which these Indians can engage in diversified economic activities and ultimately attain standards of living comparable with those enjoyed by other citizens, the Secretary of the Interior is authorized and directed to undertake, within the limits of the funds from time to time appropriated pursuant to this subchapter, a program of basic improvements for the conservation and development of the resources of the Navajo and Hopi Indians, the more productive employment of their manpower, and the supplying of means to be used in their rehabilitation, whether on or off the Navajo and Hopi Indian Reservations. Such program shall include the following projects for which capital expenditures in the amount shown after each project listed in the following subsections and totaling $108,570,000 are authorized to be appropriated:

(1) Soil and water conservation and range improvement work, $10,000,000.

(2) Completion and extension of existing irrigation projects, and completion of the investigation to determine the feasibility of the proposed San Juan-Shiprock irrigation project, $9,000,000.

(3) Surveys and studies of timber, coal, mineral, and other physical and human resources, $500,000.

(4) Development of industrial and business enterprises, $1,000,000.

(5) Development of opportunities for off-reservation employment and resettlement and assistance in adjustments related thereto, $3,500,000.

(6) Relocation and resettlement of Navajo and Hopi Indians (Colorado River Indian Reservation), $5,750,000.

(7) Roads and trails, $40,000,000; of which not less than $20,000,000 shall be (A) available for contract authority for such construction and improvement of the roads designated as route 1 and route 3 on the Navajo and Hopi Indian Reservations as may be necessary to bring the portion of such roads located in any State up to at least the secondary road standards in effect in such State, and (B) in addition to any amounts expended on such roads under the $20,000,000 authorization provided under this clause prior to amendment.

(8) Telephone and radio communications systems, $250,000.

(9) Agency, institutional, and domestic water supply, $2,500,000.

(10) Establishment of a revolving loan fund, $5,000,000.

(11) Hospital buildings and equipment, and other health conservation measures, $4,750,000.

(12) School buildings and equipment, and other educational measures, $25,000,000.

(13) Housing and necessary facilities and equipment, $820,000.

(14) Common service facilities, $500,000.

Funds so appropriated shall be available for administration, investigations, plans, construction, and all other objects necessary for or appropriate to the carrying out of the provisions of this subchapter. Such further sums as may be necessary for or appropriate to the annual operation and maintenance of the projects herein enumerated are also authorized to be appropriated. Funds appropriated under these authorizations shall be in addition to funds made available for use on the Navajo and Hopi Reservations, or with respect to Indians of the Navajo Tribes, out of appropriations heretofore or hereafter granted for the benefit, care, or assistance of Indians in general, or made pursuant to other authorizations now in effect.

(Apr. 19, 1950, ch. 92, § 1, 64 Stat. 44; Pub. L. 85–740, Aug. 23, 1958, 72 Stat. 834.)

AMENDMENTS

1958—Pub. L. 85–740 substituted $108,570,000 for $88,570,000 in opening par., and, in cl. (7), increased from $20,000,000 to $40,000,000 the amount authorized for roads and trails, of which not less than $20,000,000 shall be available for contract authority to bring routes 1 and 3 on the Navajo and Hopi Indian reservations up to secondary road standards in the State.

CONTRACT AUTHORITY; APPROPRIATIONS

Pub. L. 85–740 provided in part that the contract authority and appropriations authorized by the amendment to clause (7) of this section shall be in addition to sums apportioned to Indian reservations or to the State of Arizona under the Federal Highway Act, as amended and supplemented.

§ 632. Character and extent of administration; time limit; reports on use of funds

The foregoing program shall be administered in accordance with the provisions of this subchapter and existing laws relating to Indian affairs, shall include such facilities and services as are requisite for or incidental to the effectuation of the projects herein enumerated, shall apply sustained-yield principles to the administration of all renewable resources, and shall be prosecuted in a manner which will provide for completion of the program, so far as practicable, within ten years from April 19, 1950. An account of the progress being had in the rehabilitation of the Navajo and Hopi Indians, and of the use made of the funds appropriated to that end under this subchapter, shall be included in each annual report of the work of the Department of the Interior submitted to the Congress during the period covered by the foregoing program.

(Apr. 19, 1950, ch. 92, § 2, 64 Stat. 45.)

§ 633. Preference in employment; on-the-job training

Navajo and Hopi Indians shall be given, whenever practicable, preference in employment on all projects undertaken pursuant to this subchapter, and, in furtherance of this policy may be given employment on such projects without regard to the provisions of the civil-service and classification laws. To the fullest extent possible, Indian workers on such projects shall receive on-the-job training in order to enable them to become qualified for more skilled employment.

(Apr. 19, 1950, ch. 92, § 3, 64 Stat. 45.)

REFERENCES IN TEXT

The civil service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in text, are classified generally to chapter 51 (§ 5101 et seq.) and subchapter III (§ 5331 et seq.) of chapter 53 of Title 5.

§ 634. Loans to Tribes or individual members; loan fund

The Secretary of the Interior is authorized, under such regulations as he may prescribe, to make loans from the loan fund authorized by section 631 of this title to the Navajo Tribe, or any member or association of members thereof, or to the Hopi Tribe, or any member of association of members thereof, for such productive purposes as, in his judgment, will tend to promote the better utilization of the manpower and resources of the Navajo or Hopi Indians. Sums collected in repayment of such loans and sums collected as interest or other charges thereon shall be credited to the loan fund, and shall be available for the purpose for which the fund was established.

(Apr. 19, 1950, ch. 92, § 4, 64 Stat. 45.)

INDIAN REVOLVING LOAN FUND

Certain funds to be administered as a single Indian Revolving Loan Fund after Apr. 12, 1974, see section 1461 of this title.

§ 635. Disposition of lands

(a) Lease of restricted lands; renewals

Any restricted Indian lands owned by the Navajo Tribe, members thereof, or associations of such members, or by the Hopi Tribe, members thereof, or associations of such members, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, or business purposes, including the development or utilization of natural resources in connection with operations under such leases. All leases so granted shall be for a term of not to exceed twenty-five years, but may include provisions authorizing their renewal for an additional term of not to exceed twenty-five years, and shall be made under such regulations as may be prescribed by the Secretary. Restricted allotments of deceased Indians may be leased under this section, for the benefit of their heirs or devisees, in the circumstances and by the persons prescribed in section 380 of this title. Nothing contained in this section shall be construed to repeal or affect any authority to lease restricted Indian lands conferred by or pursuant to any other provision of law.

(b) Lease, sale, or other disposition of lands owned in fee simple by Navajo Tribe

Notwithstanding any other provision of law, land owned in fee simple by the Navajo Tribe may be leased, sold, or otherwise disposed of by the sole authority of the Navajo Tribal Council, in any manner that similar land in the State in which such land is situated may be leased, sold, or otherwise disposed of by private landowners, and such disposition shall create no liability on the part of the United States.

(c) Transfer of unallotted lands to tribally owned or municipal corporations

The Secretary of the Interior is authorized to transfer, upon request of the Navajo Tribal Council, to any corporation owned by the tribe and organized pursuant to State law, or to any municipal corporation organized under State law, legal title to or a leasehold interest in any unallotted lands held for the Navajo Indian Tribe, and thereafter the United States shall have no responsibility or liability for, but on request of the tribe shall render advice and assistance in, the management, use, or disposition of such lands.

(Apr. 19, 1950, ch. 92, § 5, 64 Stat. 46; Pub. L. 86–505, § 1, June 11, 1960, 74 Stat. 199.)

AMENDMENTS

1960—Pub. L. 86–505 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

§ 636. Adoption of constitution by Navajo Tribe; method; contents

In order to facilitate the fullest possible participation by the Navajo Tribe in the program authorized by this subchapter, the members of the tribe shall have the right to adopt a tribal constitution in the manner herein prescribed. Such constitution may provide for the exercise by the Navajo Tribe of any powers vested in the tribe or any organ thereof by existing law, together with such additional powers as the members of the tribe may, with the approval of the Secretary of the Interior, deem proper to include therein. Such constitution shall be formulated by the Navajo Tribal Council at any regular meeting, distributed in printed form to the Navajo people for consideration, and adopted by secret ballot of the adult members of the Navajo Tribe in an election held under such regulations as the Secretary may prescribe, at which a majority of the qualified votes cast favor such adoption. The constitution shall authorize the fullest possible participation of the Navajos in the administration of their affairs as approved by the Secretary of the Interior and shall become effective when approved by the Secretary. The constitution may be amended from time to time in the same manner as herein provided for its adoption, and the Secretary of the Interior shall approve any amendment which in the opinion of the Secretary of the Interior advances the development of the Navajo people toward the fullest realization and exercise of the rights, privileges, duties, and responsibilities of American citizenship.

(Apr. 19, 1950. ch. 92, § 6, 64 Stat. 46.)

§ 637. Use of Navajo tribal funds

Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter placed to the credit of the Navajo Tribe of Indians in the United States Treasury shall be available for such purposes as may be designated by the Navajo Tribal Council and approved by the Secretary of the Interior.

(Apr. 19, 1950, ch. 92, § 7, 64 Stat. 46.)

§ 638. Participation by Tribal Councils; recommendations

The Tribal Councils of the Navajo and Hopi Tribes and the Indian communities affected shall be kept informed and afforded opportunity to consider from their inception plans pertaining to the program authorized by this subchapter. In the administration of the program, the Secretary of the Interior shall consider the recommendations of the tribal councils and shall follow such recommendations whenever he deems them feasible and consistent with the objectives of this subchapter.

(Apr. 19, 1950, ch. 92, § 8, 64 Stat. 46.)

§ 639. Repealed. Pub. L. 104–193, title I, § 110(u), Aug. 22, 1996, 110 Stat. 2175

Section, acts Apr. 19, 1950, ch. 92, § 9, 64 Stat. 47; Oct. 30, 1972, Pub. L. 92–603, title III, § 303(c), 86 Stat. 1484; Dec. 31, 1973, Pub. L. 93–233, § 19(a), 87 Stat. 974, related to additional Social Security contributions to States for State expenditures for aid to dependent children to Navajo and Hopi Indians.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see

section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

§ 640. Repealed. Pub. L. 93–531, § 26, Dec. 22, 1974, 88 Stat. 1723

Section, act Apr. 19, 1950, ch. 92, § 10, 64 Stat. 47, established Joint Committee on Navajo-Hopi Indian Administration, with function of making a continuous study of programs for administration and rehabilitation of Navajo and Hopi Indians.

EFFECTIVE DATE OF REPEAL

Section 26 of Pub. L. 93–531 provided that the repeal is effective as of the close of business December 31, 1974.

§ 640a. Diné College; purpose

It is the purpose of sections 640a to 640c–3 of this title to assist the Navajo Nation in providing education to the members of the tribe and other qualified applicants through a community college, established by that tribe, known as Diné College.

(Pub. L. 92–189, § 2, Dec. 15, 1971, 85 Stat. 646; Pub. L. 110–315, title IX, § 946(a), Aug. 14, 2008, 122 Stat. 3468.)

CODIFICATION

Section was not enacted as part of act Apr. 19, 1950, ch. 92, 64 Stat. 44, which comprises this subchapter.

AMENDMENTS

2008—Pub. L. 110–315 substituted ''Navajo Nation'' for ''Navajo Tribe of Indians'' and ''Diné College'' for ''the Navajo Community College''.

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–315, title IX, § 945, Aug. 14, 2008, 122 Stat. 3468, provided that: ''This subpart [subpart 2 (§§ 945, 946) of part E of title IX of Pub. L. 110–315, amending this section and sections 640b to 640c–3 of this title] may be cited as the 'Navajo Nation Higher Education Act of 2008'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–471, title II, § 201, Oct. 17, 1978, 92 Stat. 1329, provided that: ''This title [enacting section 640c–1 of this title, amending section 640c of this title and enacting provisions set out as notes under this section and section 640c–1 of this title] may be cited as the 'Navajo Community College Assistance Act of 1978'.''

SHORT TITLE

Section 1 of Pub. L. 92–189 provided: ''That this Act [sections 640a to 640c–3 of this title] may be cited as the 'Navajo Community College Act'.''

EXPANSION OF NAVAJO COMMUNITY COLLEGE

Pub. L. 95–471, title II, § 202, Oct. 17, 1978, 92 Stat. 1329, provided that: ''The Congress after careful study and deliberation, finds that—

''(1) the Navajo Tribe constitutes the largest American Indian tribe in the United States;

''(2) the Navajo Tribe has, through its duly constituted tribal council and representatives, established a community college within the boundaries of the reservation;

''(3) the population of the Navajo Tribe and the best area of the Navajo reservation requires that the Navajo Community College expand to better serve the needs of such population; and

''(4) the Congress has already recognized the need for this institution by the passage of the Navajo Community College Act [sections 640a to 640c–3 of this title].''

§ 640b. Grants

The Secretary of the Interior is authorized to make grants to the Navajo Nation to assist the tribe in the construction, maintenance, and operation of Diné College. Such college shall be designed and operated by the Navajo Nation to insure that the Navajo people and other qualified applicants have educational opportunities which are suited to their unique needs and interests.

(Pub. L. 92–189, § 3, Dec. 15, 1971, 85 Stat. 646; Pub. L. 110–315, title IX, § 946(b), Aug. 14, 2008, 122 Stat. 3468.)

CODIFICATION

Section was not enacted as part of act Apr. 19, 1950, ch. 92, 64 Stat. 44, which comprises this subchapter.

AMENDMENTS

2008—Pub. L. 110–315, in first sentence, inserted ''the'' before ''Interior'' and substituted ''Navajo Nation'' for ''Navajo Tribe of Indians'' and ''Diné College'' for ''the Navajo Community College'', and, in second sentence, substituted ''Navajo Nation'' for ''Navajo Tribe'' and ''Navajo people'' for ''Navajo Indians''.

§ 640c. Study of facilities needs

(a) Contents; report to Congress

The Secretary shall conduct a detailed survey and study of the academic facilities needs of Dine[1] College, and shall report to the Congress not later than October 31, 2010, the results of such survey and study. Such report shall include any recommendations or views submitted by the governing body of such College and by the governing body of the Navajo Nation, and shall include detailed recommendations by the Secretary as to the number, type, and cost of academic facilities which are required, ranking each such required facility by relative need.

(b) Funding

Funds to carry out the purposes of this section may be drawn from general administrative appropriations to the Secretary made after October 1, 2007.

(c) Inventory

No later than March 1991, an inventory prepared by Diné College identifying repairs, alterations, and renovations to facilities required to meet health and safety standards shall be submitted to the Secretary and appropriate committees of Congress. Within 60 days following the receipt of such inventory, the Secretary shall review the inventory, evaluating the needs identified, and transmit the written comments of the Department of the Interior to the appropriate committees of Congress, together with the Department's evaluation prepared by the health and safety division of the Bureau of Indian Affairs.

(Pub. L. 92–189, § 4, Dec. 15, 1971, 85 Stat. 646; Pub. L. 95–471, title II, § 203(a), Oct. 17, 1978, 92 Stat. 1330; Pub. L. 101–477, § 2(b), Oct. 30, 1990, 104 Stat. 1153; Pub. L. 110–315, title IX, § 946(c), Aug. 14, 2008, 122 Stat. 3468.)

CODIFICATION

Section was not enacted as part of act Apr. 19, 1950, ch. 92, 64 Stat. 44, which comprises this subchapter.

[1] So in original. Probably should be ''Diné''.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–315, § 946(c)(1)(B), which directed substitution of ''Navajo Nation'' for ''Navajo Tribe'' in second sentence, was executed by making the substitution for ''Navajo tribe'', to reflect the probable intent of Congress.

Pub. L. 110–315, § 946(c)(1)(A), in first sentence, substituted ''Dine College'' for ''the Navajo Community College'' and ''October 31, 2010'' for ''August 1, 1979''.

Subsec. (b). Pub. L. 110–315, § 946(c)(2), substituted ''October 1, 2007'' for ''October 17, 1978''.

Subsec. (c). Pub. L. 110–315, § 946(c)(3), substituted ''Diné College'' for ''the Navajo Community College'' in first sentence.

1990—Subsec. (c). Pub. L. 101–477 added subsec. (c).

1978—Pub. L. 95–471 substituted provisions relating to a detailed survey, study, and report and funding for this section for provisions authorizing appropriations for grants under sections 640a to 640c of this title.

DEFINITIONS

The definitions in section 1801 of this title apply to this section.

§ 640c–1. Authorization of appropriations

(a) Construction grants

(1) For the purpose of making construction grants under sections 640a to 640c–3 of this title, there are authorized to be appropriated such sums as are necessary for fiscal years 2009 through 2014.

(2) Sums appropriated pursuant to this subsection for construction shall, unless otherwise provided in appropriations Acts, remain available until expended.

(3) Sums described in paragraph (2) shall be used to provide grants for construction activities, including the construction of buildings, water and sewer facilities, roads, information technology and telecommunications infrastructure, classrooms, and external structures (such as walkways).

(b) Diné College grants

(1) There are authorized to be appropriated for grants to Diné College such sums as are necessary for fiscal years 2009 through 2014 to pay the cost of—

(A) the maintenance and operation of the College, including—

(i) basic, special, developmental, vocational, technical, and special handicapped education costs;

(ii) annual capital expenditures, including equipment needs, minor capital improvements and remodeling projects, physical plant maintenance and operation costs, and exceptions and supplemental need account; and

(iii) summer and special interest programs;

(B) major capital improvements, including internal capital outlay funds and capital improvement projects;

(C) mandatory payments, including payments due on bonds, loans, notes, or lease purchases;

(D) supplemental student services, including student housing, food service, and the provision of access to books and services; and

(E) improving and expanding the College, including by providing, for the Navajo people and others in the community of the College—

(i) higher education programs;

(ii) career and technical education;

(iii) activities relating to the preservation and protection of the Navajo language, philosophy, and culture;

(iv) employment and training opportunities;

(v) economic development and community outreach; and

(vi) a safe learning, working, and living environment.

(2) The Secretary shall make payments, pursuant to grants under this subsection, in advance installments of not less than 40 per centum of the funds available for allotment, based on anticipated or actual numbers of full-time equivalent Indian students or such other factors as determined by the Secretary. Adjustments for overpayments and underpayments shall be applied to the remainder of such funds and such remainder shall be delivered no later than July 1 of each year.

(c) Funding requirements

The Secretary of the Interior is authorized and directed to establish by rule procedures to insure that all funds appropriated under sections 640a to 640c–3 of this title are properly identified for grants to Diné College and that such funds are not commingled with appropriations historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

(Pub. L. 92–189, § 5, as added Pub. L. 95–471, title II, § 203(a), Oct. 17, 1978, 92 Stat. 1330; amended Pub. L. 96–374, title XIII, § 1351(a), (b), Oct. 3, 1980, 94 Stat. 1501; Pub. L. 98–192, § 14, Dec. 1, 1983, 97 Stat. 1343; Pub. L. 99–428, § 7, Sept. 30, 1986, 100 Stat. 983; Pub. L. 100–297, title V, § 5401, Apr. 28, 1988, 102 Stat. 414; Pub. L. 101–477, § 2(a), Oct. 30, 1990, 104 Stat. 1153; Pub. L. 102–325, title XIII, § 1301(d), July 23, 1992, 106 Stat. 797; Pub. L. 105–244, title IX, § 902, Oct. 7, 1998, 112 Stat. 1829; Pub. L. 110–315, title IX, § 946(d), Aug. 14, 2008, 122 Stat. 3468.)

CODIFICATION

Section was not enacted as part of act Apr. 19, 1950, ch. 92, 64 Stat. 44, which comprises this subchapter.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–315, § 946(d)(1)(A), substituted ''such sums as are necessary for fiscal years 2009 through 2014'' for ''$2,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years''.

Subsec. (a)(3). Pub. L. 110–315, § 946(d)(1)(B), added par. (3).

Subsec. (b)(1). Pub. L. 110–315, § 946(d)(2)(A), in introductory provisions, substituted ''Diné College'' for ''the Navajo Community College'' and ''such sums as are necessary for fiscal years 2009 through 2014 to pay the cost of—'' for '', for each fiscal year, an amount necessary to pay expenses incurred for—''.

Subsec. (b)(1)(A). Pub. L. 110–315, § 946(d)(2)(B), substituted ''College'' for ''college'' in introductory provisions, semicolons for commas at end of cls. (i) and (iii), and ''; and'' for '', and'' at end of cl. (ii).

Subsec. (b)(1)(B). Pub. L. 110–315, § 946(d)(2)(C), substituted semicolon for comma at end.

Subsec. (b)(1)(E). Pub. L. 110–315, § 946(d)(2)(D)–(F), added subpar. (E).

Subsec. (c). Pub. L. 110–315, § 946(d)(3), substituted ''Diné College'' for ''the Navajo Community College''.

1998—Subsec. (a)(1). Pub. L. 105–244 substituted ''1999'' for ''1993''.

1992—Subsec. (a)(1). Pub. L. 102–325 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purpose of making construction grants under sections 640a to 640c–3 of this title, there are hereby authorized to be appropriated such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992.''

1990—Subsec. (a)(1). Pub. L. 101–477 substituted ''1990, 1991, and 1992'' for ''1987, 1988, 1989, and 1990''.

1988—Subsec. (b)(1). Pub. L. 100–297 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''There is further authorized to be appropriated for grants to the Navajo Community College, for each fiscal year beginning on or after October 1, 1979, an amount equal to the amount necessary for operation and maintenance of the college, including, but not limited to, administrative, academic, and operations and maintenance costs.''

1986—Subsec. (a)(1). Pub. L. 99–428, § 7(1), substituted ''each of the fiscal years 1987, 1988, 1989, and 1990'' for ''the fiscal year beginning October 1, 1984, and for the three succeeding fiscal years''.

Subsec. (b)(1). Pub. L. 99–428, § 7(2), substituted ''for each fiscal year'' for ''for any fiscal year''.

1983—Subsec. (a)(1). Pub. L. 98–192 substituted ''October 1, 1984'' for ''October 1, 1979''.

1980—Subsec. (a)(1). Pub. L. 96–374, § 1351(a), substituted ''three succeeding fiscal years'' for ''two succeeding fiscal years''.

Subsec. (b)(1). Pub. L. 96–374, § 1351(b), added par. (1). Former par. (1), which authorized an appropriation for the Navajo Community College of $4,000 for each full-time equivalent student which the Secretary estimated would be in attendance during the year, was struck out.

Subsec. (b)(2), (3). Pub. L. 96–374, § 1351(b), redesignated par. (3) as (2). Former par. (2), which placed an upper limit on grants under this subsection, was struck out.

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.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100–297, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of Title 20, Education.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–374 effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96–374, set out as a note under section 1001 of Title 20, Education.

FISCAL YEAR BEGINNING OCTOBER 1, 1978

Section 203(b) of Pub. L. 95–471 provided that nothing in title II of Pub. L. 95–471, the Navajo Community College Assistance Act of 1978, shall be deemed to authorize appropriations for the fiscal year beginning Oct. 1, 1978.

DEFINITIONS

The definitions in section 1801 of this title apply to this section.

§ 640c–2. Effect on other laws

(a) Except as specifically provided by law, eligibility for assistance under sections 640a to 640c–3 of this title shall not, by itself, preclude the eligibility of Diné College to receive Federal financial assistance under any program authorized under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.] or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

(b) Notwithstanding any other provision of law, funds provided under sections 640a to 640c–3 of this title to Diné College may be treated as non-Federal, private funds of the College for purposes of any provision of Federal law which requires that non-Federal or private funds of the College be used in a project or for a specific purpose.

(Pub. L. 92–189, § 6, as added Pub. L. 96–374, title XIII, § 1351(c), Oct. 3, 1980, 94 Stat. 1501; amended Pub. L. 100–297, title V, § 5403(b), Apr. 28, 1988, 102 Stat. 416; Pub. L. 110–315, title IX, § 946(e), Aug. 14, 2008, 122 Stat. 3469.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

CODIFICATION

Section was not enacted as part of act Apr. 19, 1950, ch. 92, 64 Stat. 44, which comprises this subchapter.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–315, § 946(e)(1), substituted ''Diné College'' for ''the Navajo Community College''.

Subsec. (b). Pub. L. 110–315 substituted ''Diné College'' for ''the Navajo Community College'' and ''College be used'' for ''college be used''.

1988—Pub. L. 100–297 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100–297, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of Title 20, Education.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96–374, set out as an Effective Date of 1980 Amendment note under section 1001 of Title 20, Education.

§ 640c–3. Payments; interest

(a) Notwithstanding any other provision of law, the Secretary of the Interior shall not, in disbursing funds provided under sections 640a to 640c–3 of this title, use any method of payment which was not used during fiscal year 1987 in the disbursement of funds provided under sections 640a to 640c–3 of this title.

(b)(1)(A) Notwithstanding any provision of law other than subparagraph (B), any interest or investment income that accrues on any funds provided under sections 640a to 640c–3 of this title after such funds are paid to Diné College and before such funds are expended for the purpose for which such funds were provided under sections 640a to 640c–3 of this title shall be the property of Diné College and shall not be taken into account by any officer or employee of the Federal Government in determining whether to provide assistance, or the amount of assistance, to Diné College under any provision of Federal law.

(B) All interest or investment income described in subparagraph (A) shall be expended by Diné College by no later than the close of the fiscal year succeeding the fiscal year in which such interest or investment income accrues.

(2) Funds provided under sections 640a to 640c–3 of this title may only be invested by Diné College in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States.

(Pub. L. 92–189, § 7, as added Pub. L. 100–297, title V, § 5402(b), Apr. 28, 1988, 102 Stat. 415; amended Pub. L. 110–315, title IX, § 946(f), Aug. 14, 2008, 122 Stat. 3469.)

CODIFICATION

Section was not enacted as part of act Apr. 19, 1950, ch. 92, 64 Stat. 44, which comprises this subchapter.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–315 substituted ''Diné College'' for ''the Navajo Community College'' wherever appearing.

EFFECTIVE DATE

For effective date and applicability of section, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of Title 20, Education.

SUBCHAPTER XXII—NAVAJO AND HOPI TRIBES: SETTLEMENT OF RIGHTS AND INTERESTS

§ 640d. Mediator

(a) Appointment; duties; qualifications; termination of duties

Within thirty days after December 22, 1974, the Director of the Federal Mediation and Conciliation Service shall appoint a Mediator (hereinafter referred to as the ''Mediator'') who shall assist in the negotiations for the settlement and partition of the relative rights and interests, as determined by the decision in the case of Healing v. Jones (210 F. Supp. 125, D. Ariz., 1962, aff'd 363 U.S. 758, 1963) (hereinafter referred to as the ''Healing case''), of the Hopi and Navajo Tribes (hereinafter referred to as the ''tribes'') to and in lands within the reservation established by the Executive order of December 16, 1882, except land management district no. 6 (such lands hereinafter referred to as the ''joint use area''). The Mediator shall not have any interest, direct or indirect, in the settlement of the interests and rights set out in this subsection. The duties of the Mediator shall cease upon the entering of a full agreement into the records of the supplemental proceedings pursuant to section 640d–2 of this title or the submission of a report to the District Court after a default in negotiations or a partial agreement pursuant to section 640d–3 of this title.

(b) Nature of proceedings

The proceedings in which the Mediator shall be acting under the provisions of this subchapter shall be the supplemental proceedings in the Healing case now pending in the United States District Court for the District of Arizona (hereinafter referred to as ''the District Court'').

(c) Interagency committee

(1) The Mediator is authorized to request from any department, agency, or independent instrumentality of the Federal Government any information, personnel, service, or materials he deems necessary to carry out his responsibilities under the provisions of this subchapter. Each such department, agency, or instrumentality is authorized to cooperate with the Mediator and to comply with such requests to the extent permitted by law, on a reimbursable or nonreimbursable basis.

(2) To facilitate the expeditious and orderly compilation and development of factual information relevant to the negotiating process, the President shall, within fifteen days of December 22, 1974, establish an interagency committee chaired by the Secretary of the Interior (hereinafter referred to as the ''Secretary'') to develop relevant information and to respond to the requests of the Mediator.

(d) Liaison with Secretary

The Secretary shall appoint a full-time representative as his liaison with the Mediator to facilitate the provision of information and assistance requested by the Mediator from the Department of the Interior.

(e) Staff assistants and consultants

The Mediator may retain the services of such staff assistants and consultants as he shall deem necessary, subject to the approval of the Director of the Federal Mediation and Conciliation Service.

(Pub. L. 93–531, § 1, Dec. 22, 1974, 88 Stat. 1712.)

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–180, § 1, Dec. 2, 1991, 105 Stat. 1230, provided that: ''This Act [amending sections 640d–11 and 640d–24 of this title and section 5315 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under section 640d–11 of this title] may be cited as the 'Navajo-Hopi Relocation Housing Program Reauthorization Act of 1991'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–666, § 1, Nov. 16, 1988, 102 Stat. 3929, provided that: ''This Act [enacting sections 640d–29 and 640d–30 of this title, amending sections 640d–7, 640d–9 to 640d–14, 640d–22, 640d–24, 640d–25, and 640d–28 of this title, and enacting provisions set out as a note under section 640d–11 of this title] may be cited as the 'Navajo and Hopi Indian Relocation Amendments of 1988'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–305, § 1, July 8, 1980, 94 Stat. 929, provided: ''That this Act [enacting sections 640d–25 to 640d–28 of this title and amending sections 640d–4, 640d–7, 640d–9 to 640d–12, 640d–14, 640d–18, 640d–22, and 640d–24 of this title] may be cited as the 'Navajo and Hopi Indian Relocation Amendments Act of 1980'.''

NAVAJO-HOPI LAND DISPUTE SETTLEMENT ACT OF 1996

Pub. L. 104–301, Oct. 11, 1996, 110 Stat. 3649, as amended by Pub. L. 105–256, § 3, Oct. 14, 1998, 112 Stat. 1897, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Navajo-Hopi Land Dispute Settlement Act of 1996'.

''SEC. 2. FINDINGS.

''The Congress finds that—

''(1) it is in the public interest for the Tribe, Navajos residing on the Hopi Partitioned Lands, and the United States to reach a peaceful resolution of the longstanding disagreements between the parties under the Act commonly known as the 'Navajo-Hopi

Land Settlement Act of 1974' (Public Law 93–531; 25 U.S.C. 640d et seq.);

''(2) it is in the best interest of the Tribe and the United States that there be a fair and final settlement of certain issues remaining in connection with the Navajo-Hopi Land Settlement Act of 1974, including the full and final settlement of the multiple claims that the Tribe has against the United States;

''(3) this Act, together with the Settlement Agreement executed on December 14, 1995, and the Accommodation Agreement (as incorporated by the Settlement Agreement), provide the authority for the Tribe to enter agreements with eligible Navajo families in order for those families to remain residents of the Hopi Partitioned Lands for a period of 75 years, subject to the terms and conditions of the Accommodation Agreement;

''(4) the United States acknowledges and respects—

''(A) the sincerity of the traditional beliefs of the members of the Tribe and the Navajo families residing on the Hopi Partitioned Lands; and

''(B) the importance that the respective traditional beliefs of the members of the Tribe and Navajo families have with respect to the culture and way of life of those members and families;

''(5) this Act, the Settlement Agreement, and the Accommodation Agreement provide for the mutual respect and protection of the traditional religious beliefs and practices of the Tribe and the Navajo families residing on the Hopi Partitioned Lands;

''(6) the Tribe is encouraged to work with the Navajo families residing on the Hopi Partitioned Lands to address their concerns regarding the establishment of family or individual burial plots for deceased family members who have resided on the Hopi Partitioned Lands; and

''(7) neither the Navajo Nation nor the Navajo families residing upon Hopi Partitioned Lands were parties to or signers of the Settlement Agreement between the United States and the Hopi Tribe.

''SEC. 3. DEFINITIONS.

''Except as otherwise provided in this Act, for purposes of this Act, the following definitions shall apply:

''(1) ACCOMMODATION.—The term 'Accommodation' has the meaning provided that term under the Settlement Agreement.

''(2) HOPI PARTITIONED LANDS.—The term 'Hopi Partitioned Lands' means lands located in the Hopi Partitioned Area, as defined in section 168.1(g) of title 25, Code of Federal Regulations (as in effect on the date of enactment of this Act [Oct. 11, 1996]).

''(3) NAVAJO PARTITIONED LANDS.—The term 'Navajo Partitioned Lands' has the meaning provided that term in the proposed regulations issued on November 1, 1995, at 60 Fed. Reg. 55506.

''(4) NEW LANDS.—The term 'New Lands' has the meaning provided that term in section 700.701(b) of title 25, Code of Federal Regulations.

''(5) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(6) SETTLEMENT AGREEMENT.—The term 'Settlement Agreement' means the agreement between the United States and the Hopi Tribe executed on December 14, 1995.

''(7) TRIBE.—The term 'Tribe' means the Hopi Tribe.

''(8) NEWLY ACQUIRED TRUST LANDS.—The term 'newly acquired trust lands' means lands taken into trust for the Tribe within the State of Arizona pursuant to this Act or the Settlement Agreement.

''SEC. 4. RATIFICATION OF SETTLEMENT AGREEMENT.

''The United States approves, ratifies, and confirms the Settlement Agreement.

''SEC. 5. CONDITIONS FOR LANDS TAKEN INTO TRUST.

''The Secretary shall take such action as may be necessary to ensure that the following conditions are met prior to taking lands into trust for the benefit of the Tribe pursuant to the Settlement Agreement:

''(1) SELECTION OF LANDS TAKEN INTO TRUST.—

''(A) PRIMARY AREA.—In accordance with section 7(a) of the Settlement Agreement, the primary area within which lands acquired by the Tribe may be taken into trust by the Secretary for the benefit of the Tribe under the Settlement Agreement shall be located in northern Arizona.

''(B) REQUIREMENTS FOR LANDS TAKEN INTO TRUST IN THE PRIMARY AREA.—Lands taken into trust in the primary area referred to in subparagraph (A) shall be—

''(i) land that is used substantially for ranching, agriculture, or another similar use; and

''(ii) to the extent feasible, in contiguous parcels.

''(2) ACQUISITION OF LANDS.—Before taking any land into trust for the benefit of the Tribe under this section, the Secretary shall ensure that—

''(A) at least 85 percent of the eligible Navajo heads of household (as determined under the Settlement Agreement) have entered into an accommodation or have chosen to relocate and are eligible for relocation assistance (as determined under the Settlement Agreement); and

''(B) the Tribe has consulted with the State of Arizona concerning the lands proposed to be placed in trust, including consulting with the State concerning the impact of placing those lands into trust on the State and political subdivisions thereof resulting from the removal of land from the tax rolls in a manner consistent with the provisions of part 151 of title 25, Code of Federal Regulations.

''(3) PROHIBITION.—The Secretary may not, pursuant to the provisions of this Act and the Settlement Agreement, place lands, any portion of which are located within or contiguous to a 5-mile radius of an incorporated town or city (as those terms are defined by the Secretary) in northern Arizona, into trust for benefit of the Tribe without specific statutory authority.

''(4) EXPEDITIOUS ACTION BY THE SECRETARY.—Consistent with all other provisions of this Act, the Secretary is directed to take lands into trust under this Act expeditiously and without undue delay.

''SEC. 6. ACQUISITION THROUGH CONDEMNATION OF CERTAIN INTERSPERSED LANDS.

''(a) IN GENERAL.—

''(1) ACTION BY THE SECRETARY.—

''(A) IN GENERAL.—The Secretary shall take action as specified in subparagraph (B), to the extent that the Tribe, in accordance with section 7(b) of the Settlement Agreement—

''(i) acquires private lands; and

''(ii) requests the Secretary to acquire through condemnation interspersed lands that are owned by the State of Arizona and are located within the exterior boundaries of those private lands in order to have both the private lands and the State lands taken into trust by the Secretary for the benefit of the Tribe.

''(B) ACQUISITION THROUGH CONDEMNATION.—With respect to a request for an acquisition of lands through condemnation made under subparagraph (A), the Secretary shall, upon the recommendation of the Tribe, take such action as may be necessary to acquire the lands through condemnation and, with funds provided by the Tribe, pay the State of Arizona fair market value for those lands in accordance with applicable Federal law, if the conditions described in paragraph (2) are met.

''(2) CONDITIONS FOR ACQUISITION THROUGH CONDEMNATION.—The Secretary may acquire lands through condemnation under this subsection if—

''(A) that acquisition is consistent with the purpose of obtaining not more than 500,000 acres of land to be taken into trust for the Tribe;

''(B) the State of Arizona concurs with the United States that the acquisition is consistent with the interests of the State; and

''(C) the Tribe pays for the land acquired through condemnation under this subsection.

''(b) DISPOSITION OF LANDS.—If the Secretary acquires lands through condemnation under subsection (a), the Secretary shall take those lands into trust for the Tribe in accordance with this Act and the Settlement Agreement.

''(c) PRIVATE LANDS.—The Secretary may not acquire private lands through condemnation for the purpose specified in subsection (a)(2)(A).

''SEC. 7. ACTION TO QUIET POSSESSION.

''If the United States fails to discharge the obligations specified in section 9(c) of the Settlement Agreement with respect to voluntary relocation of Navajos residing on Hopi Partitioned Lands, or section 9(d) of the Settlement Agreement, relating to the implementation of sections 700.137 through 700.139 of title 25, Code of Federal Regulations, on the New Lands, including failure for reason of insufficient funds made available by appropriations or otherwise, the Tribe may bring an action to quiet possession that relates to the use of the Hopi Partitioned Lands after February 1, 2000, by a Navajo family that is eligible for an accommodation, but fails to enter into an accommodation.

''SEC. 8. PAYMENT TO STATE OF ARIZONA.

''(a) AUTHORIZATION OF APPROPRIATIONS.—Subject to subsection (b), there are authorized to be appropriated to the Department of the Interior $250,000 for fiscal year 1998, to be used by the Secretary of the Interior for making a payment to the State of Arizona.

''(b) PAYMENT.—The Secretary shall make a payment in the amount specified in subsection (a) to the State of Arizona after an initial acquisition of land from the State has been made by the Secretary pursuant to section 6.

''SEC. 9. 75-YEAR LEASING AUTHORITY.

''[Amended section 415 of this title.]

''SEC. 10. REAUTHORIZATION OF THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM.

''[Amended section 640d–24 of this title.]

''SEC. 11. EFFECT OF THIS ACT ON CASES INVOLVING THE NAVAJO NATION AND THE HOPI TRIBE.

''Nothing in this Act or the amendments made by this Act shall be interpreted or deemed to preclude, limit, or endorse, in any manner, actions by the Navajo Nation that seek, in court, an offset from judgments for payments received by the Hopi Tribe under the Settlement Agreement.

''SEC. 12. WATER RIGHTS.

''(a) IN GENERAL.—

''(1) WATER RIGHTS.—Subject to the other provisions of this section, newly acquired trust lands shall have only the following water rights:

''(A) The right to the reasonable use of groundwater pumped from such lands.

''(B) All rights to the use of surface water on such lands existing under State law on the date of acquisition, with the priority date of such right under State law.

''(C) The right to make any further beneficial use on such lands of surface water which is unappropriated on the date each parcel of newly acquired trust lands is taken into trust. The priority date for the right shall be the date the lands are taken into trust.

''(2) RIGHTS NOT SUBJECT TO FORFEITURE OR ABANDONMENT.—The Tribe's water rights for newly acquired trust lands shall not be subject to forfeiture or abandonment arising from events occurring after the date the lands are taken into trust.

''(b) RECOGNITION AS VALID USES.—

''(1) GROUNDWATER.—With respect to water rights associated with newly acquired trust lands, the Tribe, and the United States on the Tribe's behalf, shall recognize as valid all uses of groundwater which may be made from wells (or their subsequent replacements) in existence on the date each parcel of newly acquired trust land is acquired and shall not object to such groundwater uses on the basis of water rights associated with the newly acquired trust lands. The Tribe, and the United States on the Tribe's behalf, may object only to the impact of groundwater uses on newly acquired trust lands which are initiated after the date the lands affected are taken into trust and only on grounds allowed by the State law as it exists when the objection is made. The Tribe, and the United States on the Tribe's behalf, shall not object to the impact of groundwater uses on the Tribe's right to surface water established pursuant to subsection (a)(1)(C) when those groundwater uses are initiated before the Tribe initiates its beneficial use of surface water pursuant to subsection (a)(1)(C).

''(2) SURFACE WATER.—With respect to water rights associated with newly acquired trust lands, the Tribe, and the United States on the Tribe's behalf, shall recognize as valid all uses of surface water in existence on or prior to the date each parcel of newly acquired trust land is acquired and shall not object to such surface water uses on the basis of water rights associated with the newly acquired trust lands, but shall have the right to enforce the priority of its rights against all junior water rights the exercise of which interfere with the actual use of the Tribe's senior surface water rights.

''(3) RULE OF CONSTRUCTION.—Nothing in paragraph (1) or (2) shall preclude the Tribe, or the United States on the Tribe's behalf, from asserting objections to water rights and uses on the basis of the Tribe's water rights on its currently existing trust lands.

''(c) APPLICABILITY OF STATE LAW ON LANDS OTHER THAN NEWLY ACQUIRED LANDS.—The Tribe, and the United States on the Tribe's behalf, further recognize that State law applies to water uses on lands, including subsurface estates, that exist within the exterior boundaries of newly acquired trust lands and that are owned by any party other than the Tribe.

''(d) ADJUDICATION OF WATER RIGHTS ON NEWLY ACQUIRED TRUST LANDS.—The Tribe's water rights on newly acquired trust lands shall be adjudicated with the rights of all other competing users in the court now presiding over the Little Colorado River Adjudication, or if that court no longer has jurisdiction, in the appropriate State or Federal court. Any controversies between or among users arising under Federal or State law involving the Tribe's water rights on newly acquired trust lands shall be resolved in the court now presiding over the Little Colorado River Adjudication, or, if that court no longer has jurisdiction, in the appropriate State or Federal court. Nothing in this subsection shall be construed to affect any court's jurisdiction: *Provided*, That the Tribe shall administer all water rights established in subsection (a).

''(e) PROHIBITION.—Water rights for newly acquired trust lands shall not be used, leased, sold, or transported for use off of such lands or the Tribe's other trust lands: *Provided*, That the Tribe may agree with other persons having junior water rights to subordinate the Tribe's senior water rights. Water rights for newly acquired trust lands can only be used on those lands or other trust lands of the Tribe located within the same river basin tributary to the main stream of the Colorado River.

''(f) SUBSURFACE INTERESTS.—On any newly acquired trust lands where the subsurface interest is owned by any party other than the Tribe, the trust status of the surface ownership shall not impair any existing right of the subsurface owner to develop the subsurface interest and to have access to the surface for the purpose of such development.

''(g) STATUTORY CONSTRUCTION WITH RESPECT TO WATER RIGHTS OF OTHER FEDERALLY RECOGNIZED INDIAN TRIBES.—Nothing in this section shall affect the water rights of any other federally recognized Indian tribe with a priority date earlier than the date the newly acquired trust lands are taken into trust.

"(h) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to determine the law applicable to water use on lands owned by the United States, other than on the newly acquired trust lands. The granting of the right to make beneficial use of unappropriated surface water on the newly acquired trust lands with a priority date such lands are taken into trust shall not be construed to imply that such right is a Federal reserved water right. Nothing in this section or any other provision of this Act shall be construed to establish any Federal reserved right to groundwater. Authority for the Secretary to take land into trust for the Tribe pursuant to the Settlement Agreement and this Act shall be construed as having been provided solely by the provisions of this Act."

EXECUTIVE ORDER NO. 11829

Ex. Ord. No. 11829, Jan. 6, 1975, 40 F.R. 1497, as amended by Ex. Ord. No. 11853, Apr. 17, 1975, 40 F.R. 17537, which established the Hopi-Navajo Land Settlement Interagency Committee and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, § 11, Aug. 17, 1982, 47 F.R. 36099, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 640d–1. Negotiating teams

(a) Appointment; time; membership and certification; nature of authority

Within thirty days after December 22, 1974, the Secretary shall communicate in writing with the tribal councils of the tribes directing the appointment of a negotiating team representing each tribe. Each negotiating team shall be composed of not more than five members to be certified by appropriate resolution of the respective tribal council. Each tribal council shall promptly fill any vacancies which may occur on its negotiating team. Notwithstanding any other provision of law, each negotiating team, when appointed and certified, shall have full authority to bind its tribe with respect to any other matter concerning the joint use area within the scope of this subchapter.

(b) Failure to select and certify

In the event either or both of the tribal councils fail to select and certify a negotiating team within thirty days after the Secretary communicates with the tribal council under subsection (a) of this section or to select and certify a replacement member within thirty days of the occurrence of a vacancy, the provisions of section 640d–3(a)[1] of this title shall become effective.

(c) First negotiating session; time and place; chairman; suggestions for procedure, agenda, and resolution of issues in controversy

Within fifteen days after formal certification of both negotiating teams to the Mediator, the Mediator shall schedule the first negotiating session at such time and place as he deems appropriate. The negotiating sessions, which shall be chaired by the Mediator, shall be held at such times and places as the Mediator deems appropriate. At such sessions, the Mediator may, if he deems it appropriate, put forward his own suggestions for procedure, the agenda, and the resolution of the issues in controversy.

[1] See References in Text note below.

(d) Failure to attend two consecutive sessions or bargain in good faith

In the event either negotiating team fails to attend two consecutive sessions or, in the opinion of the Mediator, either negotiating team fails to bargain in good faith or an impasse is reached, the provisions of section 640d–3(a)[1] of this title shall become effective.

(e) Disagreements within team

In the event of a disagreement within a negotiating team the majority of the members of the team shall prevail and act on behalf of the team unless the resolution of the tribal council certifying the team specifically provides otherwise.

(Pub. L. 93–531, § 2, Dec. 22, 1974, 88 Stat. 1712.)

REFERENCES IN TEXT

Section 640d–3 of this title, referred to in subsecs. (b) and (d), was amended by Pub. L. 98–620, title IV, § 402(27), Nov. 8, 1984, 98 Stat. 3359, by striking out subsec. (b) and redesignating subsec. (a) as the entire section.

§ 640d–2. Implementation of agreements

(a) Full agreement

If, within one hundred and eighty days after the first session scheduled by the Mediator under section 640d–1(c) of this title, full agreement is reached, such agreement shall be put in such form as the Mediator determines best expresses the intent of the tribes and shall then be submitted to the Secretary and the Attorney General of the United States for their comments as they relate to the interest of the United States in the proceedings. These comments are to be submitted to the Mediator and the negotiating teams within thirty days. The negotiating teams and the Mediator shall then consider the comments and, if agreement can still be reached on terms acceptable to the negotiating teams and the Mediator within sixty days of receipt by him of the comments, the agreement shall be put in final written form and shall be signed by the members of the negotiating teams and the Mediator. The Mediator shall then cause the agreement to be entered into the records of the supplemental proceedings in the Healing case. The provisions of the agreement shall be reviewed by the District Court, modified where necessary, and put into effect immediately thereafter.

(b) Partial agreement

If, within the one hundred and eighty day period referred to in subsection (a) of this section, a partial agreement has been reached between the tribes and they wish such partial agreement to go into effect, they shall follow the procedure set forth in subsection (a) of this section. The partial agreement shall then be considered by the Mediator in preparing his report, and the District Court in making a final adjudication, pursuant to section 640d–3 of this title.

(c) Consistency with existing law

For the purpose of this section, the negotiating teams may make any provision in the agreement or partial agreement not inconsistent with existing law. No such agreement or any provision in it shall result in a taking by the United

States of private property compensable under the Fifth Amendment of the Constitution of the United States.

(Pub. L. 93–531, § 3, Dec. 22, 1974, 88 Stat. 1713.)

§ 640d–3. Default or failure to reach agreement; recommendations to District Court; final adjudication

If the negotiating teams fail to reach full agreement within the time period allowed in section 640d–2(a) of this title or if one or both of the tribes are in default under the provisions of section 640d–1(b) or (d) of this title, the Mediator, within ninety days thereafter, shall prepare and submit to the District Court a report containing his recommendations for the settlement of the interests and rights set out in section 640d(a) of this title which shall be most reasonable and equitable in light of the law and circumstances and consistent with the provisions of this subchapter. Following the District Court's review of the report and recommendations (which are not binding thereon) and any further proceedings which the District Court may schedule, the District Court is authorized to make a final adjudication, including partition of the joint use area, and enter the judgments in the supplemental proceedings in the Healing case.

(Pub. L. 93–531, § 4, Dec. 22, 1974, 88 Stat. 1713; Pub. L. 98–620, title IV, § 402(27), Nov. 8, 1984, 98 Stat. 3359.)

AMENDMENTS

1984—Pub. L. 98–620 struck out designation ''(a)'' before ''If the negotiating'', and struck out subsec. (b) which provided that any proceedings as authorized in this section had to be assigned for hearing at the earliest possible date, would take precedence over all other matters pending on the docket of the District Court at that time, and had to be expedited in every way by the Court.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 640d–4. Authorized recommendations for facilitation of agreement or report to District Court; discretionary nature of recommendations

(a) For the purpose of facilitating an agreement pursuant to section 640d–2 of this title or preparing a report pursuant to section 640d–3 of this title, the Mediator is authorized—

(1) notwithstanding the provisions of section 211 of this title, to recommend that, subject to the consent of the Secretary, there be purchased or otherwise acquired additional lands for the benefit of either tribe from the funds of either tribe or funds under any other authority of law;

(2) to recommend that, subject to the consent of the Secretary, there be undertaken a program of restoration of lands lying within the joint use area, employing for such purpose funds authorized by this subchapter, funds of either tribe, or funds under any other authority of law;

(3) to recommend that, subject to the consent of the Secretary, there be undertaken a program for relocation of members of one tribe from lands which may be partitioned to the other tribe in the joint use area;

(4) Repealed. Pub. L. 93–531, § 30(a), as added Pub. L. 96–305, § 11, July 8, 1980, 94 Stat. 934.

(5) to make any other recommendations as are in conformity with this subchapter and the Healing case to facilitate a settlement.

(b) The authorizations contained in subsection (a) of this section shall be discretionary and shall not be construed to represent any directive of the Congress.

(Pub. L. 93–531, § 5, Dec. 22, 1974, 88 Stat. 1714; Pub. L. 93–531, § 30(a), as added Pub. L. 96–305, § 11, July 8, 1980, 94 Stat. 934.)

AMENDMENTS

1980—Subsec. (a)(4). Pub. L. 96–305 struck out par. (4) which authorized the Mediator to recommend, in exceptional cases where necessary to prevent hardship, a limited tenure for residential use, not exceeding a life estate, and a phased relocation of members of one tribe from lands which may be partitioned to the other tribe in the joint use area.

§ 640d–5. Considerations and guidelines for preparation of report by Mediator and final adjudication by District Court

The Mediator in preparing his report, and the District Court in making the final adjudication, pursuant to section 640d–3 of this title, shall consider and be guided by the decision of the Healing case, under which the tribes have joint, undivided, and equal interests in and to all of the joint use area; by any partial agreement reached by the parties under section 640d–2(b) of this title; by the last best offer for a complete settlement as a part of the negotiating process by each of the tribes; and by the following:

(a) The rights and interests, as defined in the Healing case, of the Hopi Tribe in and to that portion of the reservation established by the Executive order of December 16, 1882, which is known as land management district no. 6 (hereinafter referred to as the ''Hopi Reservation'') shall not be reduced or limited in any manner.

(b) The boundary lines resulting from any partitioning of lands in the joint use area shall be established so as to include the higher density population areas of each tribe within the portion of the lands partitioned to such tribe to minimize and avoid undue social, economic, and cultural disruption insofar as practicable.

(c) In any division of the surface rights to the joint use area, reasonable provision shall be made for the use of and right of access to identified religious shrines for the members of each tribe on the reservation of the other tribe where such use and access are for religious purposes.

(d) In any partition of the surface rights to the joint use area, the lands shall, insofar as is practicable, be equal in acreage and quality: *Provided*, That if such partition results in a lesser amount of acreage, or value, or both to one tribe such differential shall be fully and finally compensable to such tribe by the other tribe. The value of the land for the purposes of this subsection shall be based on not less than its value with improvements and its grazing capacity

fully restored: *Provided further*, That, in the determination of compensation for any such differential, the Federal Government shall pay any difference between the value of the particular land involved in its existing state and the value of such land in a fully restored state which results from damage to the land which the District Court finds attributable to a failure of the Federal Government to provide protection where such protection is or was required by law or by the demands of the trust relationship.

(e) Any lands partitioned to each tribe in the joint use area shall, where feasible and consistent with the other provisions of this section, be contiguous to the reservation of each such tribe.

(f) Any boundary line between lands partitioned to the two tribes in the joint use area shall, insofar as is practicable, follow terrain which will facilitate fencing or avoid the need for fencing.

(g) Any claim the Hopi Tribe may have against the Navajo Tribe for an accounting of all sums collected by the Navajo Tribe since September 17, 1957, as trader license fees or commissions, lease rental, or proceeds, or other similar charges for doing business or for damages in the use of lands within the joint use area, shall be for a one-half share in such sums.

(h) Any claim the Hopi Tribe may have against the Navajo Tribe for the determination and recovery of the fair value of the grazing and agricultural use of the lands within the joint use area by the Navajo Tribe and its individual members, since September 28, 1962, shall be for one-half of such value.

(Pub. L. 93–531, § 6, Dec. 22, 1974, 88 Stat. 1714.)

§ 640d–6. Joint ownership and management of coal, oil, gas and other minerals within or underlying partitioned lands; division of proceeds

Partition of the surface of the lands of the joint use area shall not affect the joint ownership status of the coal, oil, gas, and all other minerals within or underlying such lands. All such coal, oil, gas, and other minerals within or underlying such lands shall be managed jointly by the two tribes, subject to supervision and approval by the Secretary as otherwise required by law, and the proceeds therefrom shall be divided between the tribes, share and share alike.

(Pub. L. 93–531, § 7, Dec. 22, 1974, 88 Stat. 1715.)

§ 640d–7. Determination of tribal rights and interests in land

(a) Authorization to commence and defend actions in District Court

Either tribe, acting through the chairman of its tribal council for and on behalf of the tribe, is each hereby authorized to commence or defend in the District Court an action against the other tribe and any other tribe of Indians claiming any interest in or to the area described in the Act of June 14, 1934, except the reservation established by the Executive Order of December 16, 1882, for the purpose of determining the rights and interests of the tribes in and to such lands and quieting title thereto in the tribes.

(b) Allocation of land to respective reservations upon determination of interests

Lands, if any, in which the Navajo Tribe or Navajo individuals are determined by the District Court to have the exclusive interest shall continue to be a part of the Navajo Reservation. Lands, if any, in which the Hopi Tribe, including any Hopi village or clan thereof, or Hopi individuals are determined by the District Court to have the exclusive interest shall thereafter be a reservation for the Hopi Tribe. Any lands in which the Navajo and Hopi Tribes or Navajo or Hopi individuals are determined to have a joint or undivided interest shall be partitioned by the District Court on the basis of fairness and equity and the area so partitioned shall be retained in the Navajo Reservation or added to the Hopi Reservation, respectively.

(c) Actions for accounting, fair value of grazing, and claims for damages to land; determination of recovery; defenses

(1) Either as a part of or in a proceeding supplementary to the action authorized in subsection (a) of this section, either tribe, through the chairman of its tribal council for and on behalf of the tribe, including all villages, clans, and individual members thereof, may prosecute or defend an action for the types of relief, including interest, specified in section 640d–17 of this title, including all subsections thereof, against the other tribe, through its tribal chairman in a like representative capacity, and against the United States as to the types of recovery specified in subsection (a)(3) of section 640d–17 of this title and subject to the same provisions as contained in said subsection, such action to apply to the lands in issue in the reservation established by the Act of June 14, 1934 (48 Stat. 960).

(2) In the event the Hopi Tribe or Navajo Tribe is determined to have any interest in the lands in issue, the right of either tribe to recover hereunder shall be based upon that percentage of the total sums collected, use made, waste committed, and other amounts of recovery, which is equal to the percentage of lands in issue in which either tribe is determined to have such interest.

(3) Neither laches nor the statute of limitations shall constitute a defense to such proceedings if they are either prosecuted as a part of the action authorized by this section or in a proceeding supplemental thereto, if instituted not later than twenty-four months following a final order of partition and exhaustion of appeals in an action filed pursuant to this section.

(d) Denial of Congressional interest in merits of conflicting claims; liability of United States

Nothing in this section shall be deemed to be a Congressional determination of the merits of the conflicting claims to the lands that are subject to adjudication pursuant to this section, or to affect the liability of the United States, if any, under litigation now pending before the Indian Claims Commission.

(e) Payment of legal fees, court costs and other expenses

The Secretary of the Interior is authorized to pay any or all appropriate legal fees, court

costs, and other related expenses arising out of, or in connection with, the commencing of, or defending against, any action brought by the Navajo, San Juan Southern Paiute or Hopi Tribe under this section.

(f) Provision of attorney fees for San Juan Southern Paiute Tribe

(1) Any funds made available for the San Juan Southern Paiute Tribe to pay for attorney's fees shall be paid directly to the tribe's attorneys of record until such tribe is acknowledged as an Indian tribe by the United States: *Provided*, That the tribe's eligibility for such payments shall cease once a decision by the Secretary of the Interior declining to acknowledge such tribe becomes final and no longer appealable.

(2) Nothing in this subsection shall be interpreted as a congressional acknowledgement of the San Juan Southern Paiute as an Indian tribe or as affecting in any way the San Juan Southern Paiute Tribe's Petition for Recognition currently pending with the Secretary of the Interior.

(3) There is hereby authorized to be appropriated not to exceed $250,000 to pay for the legal expenses incurred by the Southern Paiute Tribe on legal action arising under this section prior to November 16, 1988.

(Pub. L. 93–531, § 8, Dec. 22, 1974, 88 Stat. 1715; Pub. L. 96–305, § 2, July 8, 1980, 94 Stat. 929; Pub. L. 100–666, § 9, Nov. 16, 1988, 102 Stat. 3933.)

REFERENCES IN TEXT

Act of June 14, 1934, referred to in subsecs. (a) and (c)(1), is act June 14, 1934, ch. 521, 48 Stat. 960, which was not classified to the Code.

The Indian Claims Commission, referred to in subsec. (d), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

AMENDMENTS

1988—Subsec. (e). Pub. L. 100–666, § 9(a), inserted ", San Juan Southern Paiute" after "Navajo".

Subsec. (f). Pub. L. 100–666, § 9(b), added subsec. (f).

1980—Subsec. (c). Pub. L. 96–305 substituted provision authorizing, as part of the determination of tribal rights and interests in land, actions for accounting, fair value of grazing, and claims for damages, specifying the formula for determining recovery, and limiting defenses for provision authorizing exchange of reservation lands.

§ 640d–8. Allotments in severalty to Paiute Indians now located on lands; issue of patents declaring United States as trustee

Notwithstanding any other provision of this subchapter, the Secretary is authorized to allot in severalty to individual Paiute Indians, not now members of the Navajo Tribe, who are located within the area described in the Act of June 14, 1934 (48 Stat. 960), and who were located within such area, or are direct descendants of Paiute Indians who were located within such area, on the date of such Act, land in quantities as specified in section 331[1] of this title, and patents shall be issued to them for such lands having the legal effect and declaring that the United States holds such land in trust for the sole use and benefit of each allottee and, following his death, of his heirs according to the laws of the State of Arizona.

(Pub. L. 93–531, § 9, Dec. 22, 1974, 88 Stat. 1716.)

REFERENCES IN TEXT

Act of June 14, 1934, referred to in text, is act June 14, 1934, ch. 521, 48 Stat. 960, which was not classified to the Code.

Section 331 of this title, referred to in text, was repealed by Pub. L. 106–462, title I, § 106(a)(1), Nov. 7, 2000, 114 Stat. 2007.

§ 640d–9. Partitioned or other designated lands

(a) Lands to be held in trust for Navajo Tribe; exception

Subject to the provisions of sections 640d–8 and 640d–16(a) of this title, any lands partitioned to the Navajo Tribe pursuant to sections 640d–2 and 640d–3 of this title and the lands described in the Act of June 14, 1934 (48 Stat. 960), except the lands as described in section 640d–7 of this title, shall be held in trust by the United States exclusively for the Navajo Tribe and as a part of the Navajo Reservation.

(b) Lands to be held in trust for Hopi Tribe

Subject to the provisions of sections 640d–8 and 640d–16(a) of this title, any lands partitioned to the Hopi Tribe pursuant to sections 640d–2 and 640d–3 of this title and the lands as described in section 640d–7 of this title shall be held in trust by the United States exclusively for the Hopi Tribe and as a part of the Hopi Reservation.

(c) Protection of rights and property of individuals subject to relocation

The Secretary shall take such action as may be necessary in order to assure the protection, until relocation, of the rights and property of individuals subject to relocation pursuant to this subchapter, or any judgment of partition pursuant thereto, including any individual authorized to reside on land covered by a life estate conferred pursuant to section 640d–28 of this title.

(d) Protection of benefits and services of individuals subject to relocation

With respect to any individual subject to relocation, the Secretary shall take such action as may be necessary to assure that such individuals are not deprived of benefits or services by reason of their status as an individual subject to relocation.

(e) Tribal jurisdiction over partitioned lands

(1)[1] Lands partitioned pursuant to this subchapter, whether or not the partition order is subject to appeal, shall be subject to the jurisdiction of the tribe to whom partitioned and the laws of such tribe shall apply to such partitioned lands under the following schedule:

(A) Effective ninety days after July 8, 1980, all conservation practices, including grazing control and range restoration activities, shall be coordinated and executed with the concurrence of the tribe to whom the particular lands in question have been partitioned, and all such grazing and range restoration matters

[1] See References in Text note below.

[1] So in original. No par. (2) has been enacted.

on the Navajo Reservation lands shall be administered by the Bureau of Indian Affairs Navajo Area Office and on the Hopi Reservation lands by the Bureau of Indian Affairs Phoenix Area Office, under applicable laws and regulations.

(B) Notwithstanding any provision of law to the contrary, each tribe shall have such jurisdiction and authority over any lands partitioned to it and all persons located thereon, not in conflict with the laws and regulations referred to in paragraph (A) above, to the same extent as is applicable to those other portions of its reservation. Such jurisdiction and authority over partitioned lands shall become effective April 18, 1981.

The provisions of this subsection shall be subject to the responsibility of the Secretary to protect the rights and property of life tenants and persons awaiting relocation as provided in subsections (c) and (d) of this section.

(Pub. L. 93–531, § 10, Dec. 22, 1974, 88 Stat. 1716; Pub. L. 96–305, § 3, July 8, 1980, 94 Stat. 929; Pub. L. 100–666, § 6, Nov. 16, 1988, 102 Stat. 3932; Pub. L. 111–18, § 1, May 8, 2009, 123 Stat. 1611.)

REFERENCES IN TEXT

Act of June 14, 1934, referred to in subsec. (a), is act June 14, 1934, ch. 521, 48 Stat. 960, which was not classified to the Code.

AMENDMENTS

2009—Subsec. (f). Pub. L. 111–18 struck out subsec. (f), which related to development of lands in litigation.

1988—Subsec. (f). Pub. L. 100–666 designated existing provisions as par. (1) and added pars. (2) and (3).

1980—Subsecs. (c) to (f). Pub. L. 96–305 added subsecs. (c) to (f).

§ 640d–10. Resettlement lands for Navajo Tribe

(a) Transfer of lands under jurisdiction of Bureau of Land Management; State and private land exchanges; valuation; acquired private lands; lands to be held in trust

The Secretary is authorized and directed to—

(1) transfer not to exceed two hundred and fifty thousand acres of lands under the jurisdiction of the Bureau of Land Management within the State[1] of Arizona and New Mexico to the Navajo Tribe: *Provided*, That, in order to facilitate such transfer, the Secretary is authorized to exchange such lands for State or private lands of equal value or, if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands transferred out of Federal ownership. The Secretary shall try to reduce the payment to as small an amount as possible.

(2)[2] on behalf of the United States, accept title to not to exceed one hundred and fifty thousand acres of private lands acquired by the Navajo Tribe. Title thereto shall be taken in the name of the United States in trust for the benefit of the Navajo Tribe as a part of the Navajo Reservation.

Subject to the provisions of the following sentences of this subsection, all rights, title and interests of the United States in the lands described in paragraph (1), including such interests the United States as lessor has in such lands under the Mineral Leasing Act of 1920, as amended [30 U.S.C. 181 et seq.], will, subject to existing leasehold interests, be transferred without cost to the Navajo Tribe and title thereto shall be taken by the United States in trust for the benefit of the Navajo Tribe as a part of the Navajo Reservation. So long as selected lands coincide with pending noncompetitive coal lease applications under the Mineral Leasing Act of 1920, as amended, the Secretary may not transfer any United States interests in such lands until the noncompetitive coal lease applications have been fully adjudicated. If such adjudication results in issuance of Federal coal leases to the applicants, such transfer shall be subject to such leases. The leaseholders rights and interests in such coal leases will in no way be diminished by the transfer of the rights, title and interests of the United States in such lands to the Navajo Tribe. If any selected lands are subject to valid claims located under the Mining Law of 1872 the transfer of the selected lands may be made subject to those claims.

(2)[2] Those interests in lands acquired in the State of New Mexico by the Navajo Tribe pursuant to subsection 2[3] of this section shall be subject to the right of the State of New Mexico to receive the same value from any sales, bonuses, rentals, royalties and interest charges from the conveyance, sale, lease, development, and production of coal as would have been received had the subsurface interest in such lands remained with the United States and been leased pursuant to the Mineral Lands Leasing Act of 1920, as amended [30 U.S.C. 181 et seq.], or any successor Act; or otherwise developed. The State's interest shall be accounted for in the same manner as it would have been if a lease had issued pursuant to the Mineral Lands Leasing Act of 1920, as amended.

(b) Proximity of lands to be transferred or acquired to Navajo Reservation; lands to be used for exchanges

A border of any parcel of land so transferred or acquired shall be within eighteen miles of the present boundary of the Navajo Reservation: *Provided*, That, except as limited by subsection (g) of this section, Bureau of Land Management lands anywhere within the States of Arizona and New Mexico may be used for the purpose of exchanging for lands within eighteen miles of the present boundary of the reservation.

(c) Selection of lands to be transferred or acquired; time period; consultation; restriction of New Mexico lands

Lands to be so transferred or acquired shall, for a period of three years after July 8, 1980, be selected by the Navajo Tribe after consultation with the Commissioner: *Provided*, That, at the

[1] So in original. Probably should be "States".

[2] So in original. Two pars. designated (2) have been enacted.

[3] So in original. Probably should be "paragraph (1)".

end of such period, the Commissioner shall have the authority to select such lands after consultation with the Navajo Tribe: *Provided further*, That not to exceed thirty-five thousand acres of lands so transferred or acquired shall be selected within the State of New Mexico.

(d) Progress and status of land transfer program; reports to Congressional committees

The Commissioner, in consultation with the Secretary, shall within sixty days following the first year of enactment of this subsection report to the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs, on the progress of the land transfer program authorized in subsection (a) of this section. Sixty days following the second year of enactment of this subsection the Commissioner, in consultation with the Secretary, shall submit a report to the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs giving the status of the land transfer program authorized in subsection (a) of this section, making any recommendations that the Commissioner deems necessary to complete the land transfer program.

(e) Entitlement lands payments

Payments being made to any State or local government pursuant to the provisions of chapter 69 of title 31, on any lands transferred pursuant to subsection (a)(1) of this section shall continue to be paid as if such transfer had not occurred.

(f) Acquisition of title to surface and subsurface interest; time period; public notice; report to Congressional committees; rights of subsurface owner

(1) For a period of three years after July 8, 1980, the Secretary shall not accept title to lands acquired pursuant to subsection (a)(2)[4] of this section unless fee title to both surface and subsurface has been acquired or the owner of the subsurface interest consents to the acceptance of the surface interest in trust by the Secretary.

(2) If, ninety days prior to the expiration of such three year period, the full entitlement of private lands has not been acquired by the Navajo Tribe and accepted by the Secretary in trust for the Navajo Tribe under the restrictions of paragraph (1) of this subsection, the Commissioner, after public notice, shall, within thirty days, make a report thereon to the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs.

(3) In any case where the Secretary accepts, in trust, title to the surface of lands acquired pursuant to subsection (a)(2)[4] of this section where the subsurface interest is owned by third parties, the trust status of such surface ownership and the inclusion of the land within the Navajo Reservation shall not impair any existing right of the subsurface owner to develop the subsurface interest and to have access to the surface for the purpose of such development.

(g) Lands not available for transfer

No public lands lying north and west of the Colorado River in the State of Arizona shall be available for transfer under this section.

(h) Administration of lands transferred or acquired

The lands transferred or acquired pursuant to this section shall be administered by the Commissioner until relocation under the Commission's[5] plan is complete and such lands shall be used solely for the benefit of Navajo families residing on Hopi-partitioned lands as of December 22, 1974: *Provided*, That the sole authority for final planning decisions regarding the development of lands acquired pursuant to this subchapter shall rest with the Commissioner until such time as the Commissioner has discharged his statutory responsibility under this subchapter.

(i) Negotiations regarding land exchanges or leases

The Commissioner shall have authority to enter into negotiations with the Navajo and Hopi Tribes with a view to arranging and carrying out land exchanges or leases, or both, between such tribes; and lands which may be acquired or transferred pursuant to this section may, with the approval of the Commissioner, be included in any land exchange between the tribes authorized under section 640d–22 of this title.

(Pub. L. 93–531, § 11, Dec. 22, 1974, 88 Stat. 1716; Pub. L. 96–305, § 4, July 8, 1980, 94 Stat. 930; Pub. L. 98–603, title I, § 106, Oct. 30, 1984, 98 Stat. 3157; Pub. L. 100–666, §§ 4(b), 8, Nov. 16, 1988, 102 Stat. 3930, 3933.)

REFERENCES IN TEXT

The Mineral Leasing Act of 1920, as amended, and the Mineral Lands Leasing Act of 1920, as amended, referred to in subsec. (a), are act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, known as the Mineral Leasing Act, which is classified generally to chapter 3A (§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

The Mining Law of 1872, referred to in subsec. (a), is act May 10, 1872, ch. 152, 17 Stat. 91, as amended. That act was incorporated into the Revised Statutes as R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344, which are classified to sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of Title 30. For complete classification of R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344 to the Code, see Tables.

The first year of enactment of this subsection and the second year of enactment of this subsection, referred to in subsec. (d), probably mean the first and second year after the date of enactment of this subsection, which was July 8, 1980.

Subsection (a)(2) of this section, referred to in subsec. (f)(1), (3), means the first paragraph (2) of subsec. (a), relating to acceptance of title to private lands.

CODIFICATION

In subsec. (e), ''chapter 69 of title 31'' substituted for ''the Act of October 20, 1976 (90 Stat. 2662; 31 U.S.C. 1601 et seq.)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1988—Subsecs. (c), (d), (f)(2). Pub. L. 100–666, § 4(b), substituted ''Commissioner'' for ''Commission'' wherever appearing.

[4] See References in Text note below.

[5] So in original. Probably should be ''Commissioner's''.

Subsec. (h). Pub. L. 100–666, §§ 4(b), 8, substituted ''by the Commissioner'' for ''by the Commission'' and ''December 22, 1974: *Provided*, That the sole authority for final planning decisions regarding the development of lands acquired pursuant to this subchapter shall rest with the Commissioner until such time as the Commissioner has discharged his statutory responsibility under this subchapter'' for ''July 8, 1980, who are awaiting relocation under this subchapter''.

Subsec. (i). Pub. L. 100–666, § 4(b), substituted ''Commissioner'' for ''Commission'' in two places.

1984—Subsec. (a). Pub. L. 98–603, § 106(2), inserted provisions relating to transfer without cost to the Navajo Tribe with title taken by the United States in trust for the benefit of the Navajo Tribe as part of the Navajo Reservation of all rights, title, and interests of the United States in the lands described in par. (1), subject to existing leaseholds.

Subsec. (a)(1). Pub. L. 98–603, § 106(1), struck out provisions requiring transfer of lands without cost to the Navajo Tribe with title taken by the United States in trust for the benefit of the Navajo Tribe as part of the Navajo Reservation.

Subsec. (a)(2). Pub. L. 98–603, § 106(3), added the par. (2) relating to interests in lands acquired in New Mexico.

1980—Subsec. (a). Pub. L. 96–305 substituted provision authorizing the Secretary to transfer not more than 250,000 acres of land under the jurisdiction of the Bureau of Land Management to the Navajo Tribe, at no cost to the Navajo Tribe, and in order to facilitate this transfer, exchange Bureau of Land Management land, at equal valuation, for State and private land, and to accept title to not more than 150,000 acres of private lands acquired by the Navajo Tribe, with title to both the transferred and privately acquired lands to be held by the United States in trust for the benefit of the Navajo Tribe for provision authorizing the Secretary to transfer not more than 250,000 acres of land under the jurisdiction of the Bureau of Land Management to the Navajo Tribe providing the Navajo Tribe pay the fair market value of the land transferred and providing that title to the transferred land be held by the United States for the benefit of the Navajo Tribe.

Subsec. (b). Pub. L. 96–305 substituted provision requiring a border of any parcel of land transferred or acquired to be within 18 miles of the present boundary of the Navajo Reservation and providing that, with the exception of the lands unavailable for transfer, any Bureau of Land Management lands within Arizona and New Mexico be available for exchange for lands within 18 miles of the present boundary of the reservation for provision authorizing the United States to take in trust for the benefit of the Navajo Tribe any private lands acquired by the Navajo Tribe which are contiguous or adjacent to the Navajo Reservation and restricting the total acreage of lands transferred or acquired to not more than 250,000 acres.

Subsecs. (c) to (i). Pub. L. 96–305 added subsecs. (c) to (i).

CHANGE OF NAME

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

Select Committee on Indian Affairs of the Senate redesignated Committee on Indian Affairs of the Senate by section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress.

§ 640d–11. Office of Navajo and Hopi Indian Relocation

(a) Establishment; Commissioner

There is hereby established as an independent entity in the executive branch the Office of Navajo and Hopi Indian Relocation which shall be under the direction of the Commissioner on Navajo and Hopi Relocation (hereinafter in this subchapter referred to as the ''Commissioner'').

(b) Appointment; term of office; compensation

(1) The Commissioner shall be appointed by the President by and with the advice and consent of the Senate.

(2) The term of office of the Commissioner shall be 2 years. An individual may be appointed Commissioner for more than one term. The Commissioner serving at the end of a term shall continue to serve until his or her successor has been confirmed in accordance with paragraph (1) of this subsection.

(3) The Commissioner shall be a full-time employee of the United States, and shall be compensated at the rate of basic pay payable for level IV of the Executive Schedule.

(c) Transfer of powers, duties, and funds to Commissioner

(1)(A) Except as otherwise provided by the Navajo and Hopi Indian Relocation Amendments of 1988, the Commissioner shall have all the powers and be responsible for all the duties that the Navajo and Hopi Indian Relocation Commission had before November 16, 1988.

(B) All funds appropriated to the Navajo and Hopi Indian Relocation Commission before the date on which the first Commissioner on Navajo and Hopi Indian Relocation is confirmed by the Senate that have not been expended on such date shall become available to the Office of Navajo and Hopi Indian Relocation on such date and shall remain available without fiscal year limitation.

(2) There are hereby transferred to the Commissioner, on January 31, 1989—

(A) all powers and duties of the Bureau of Indian Affairs derived from Public Law 99–190 (99 Stat. at 1236) that relate to the relocation of members of the Navajo Tribe from lands partitioned to the Hopi Tribe, and

(B) all funds appropriated for activities relating to such relocation pursuant to Public Law 99–190 (99 Stat. at 1236): *Provided*, That such funds shall be used by the Commissioner for the purpose for which such funds were appropriated to the Bureau of Indian Affairs. (B)[1]: *Provided further*, That for administrative purposes such funds shall be maintained in a separate account.

(d) Powers of Commissioner

(1) Subject to such rules and regulations as may be adopted by the Office of Navajo and Hopi Indian Relocation, the Commissioner shall have the power to—

(A) appoint and fix the compensation of such staff and personnel as the Commissioner deems necessary in accordance with the provisions of title 5 governing appointments in the competitive service, but at rates not in excess of a position classified above a GS–15 of the General Schedule under section 5108 of such title; and

(B) procure temporary and intermittent services to the same extent as is authorized by

[1] So in original. The period followed by the designation ''(B)'' probably should not appear.

section 3109 of title 5, but at rates not to exceed $200 a day for individuals.

(2) The authority of the Commissioner to enter into contracts for the provision of legal services for the Commissioner or for the Office of Navajo and Hopi Indian Relocation shall be subject to the availability of funds provided for such purpose by appropriations Acts.

(3) There are authorized to be appropriated for each fiscal year $100,000 to fund contracts described in paragraph (2).

(e) Administrative, fiscal, and housekeeping services; implementation of relocation plan; reasonable assistance by Federal departments or agencies; report to Congress

(1) The Commissioner is authorized to provide for the administrative, fiscal, and housekeeping services of the Office of Navajo and Hopi Indian Relocation and is authorized to call upon any department or agency of the United States to assist him in implementing the relocation plan, except that the control over and responsibility for completing relocation shall remain in the Commissioner. In any case in which the Office calls upon any such department or agency for assistance under this section, such department or agency shall provide reasonable assistance so requested.

(2) On failure of any agency to provide reasonable assistance as required under paragraph (1) of this subsection, the Commissioner shall report such failure to the Congress.

(f) Termination

The Office of Navajo and Hopi Indian Relocation shall cease to exist when the President determines that its functions have been fully discharged.

(Pub. L. 93–531, § 12, Dec. 22, 1974, 88 Stat. 1716; Pub. L. 96–305, § 5, July 8, 1980, 94 Stat. 932; Pub. L. 100–666, § 4(a), Nov. 16, 1988, 102 Stat. 3929; Pub. L. 100–696, title IV, § 406, Nov. 18, 1988, 102 Stat. 4592; Pub. L. 102–180, § 3(a)–(c), Dec. 2, 1991, 105 Stat. 1230.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (b)(3), is set out in section 5315 of Title 5, Government Organization and Employees.

The Navajo and Hopi Indian Relocation Amendments of 1988, referred to in subsec. (c)(1)(A), is Pub. L. 100–666, Nov. 16, 1988, 102 Stat. 3929, which enacted sections 640d–29 and 640d–30 of this title, amended sections 640d–7, 640d–9 to 640d–14, 640d–22, 640d–24, 640d–25, and 640d–28 of this title, and enacted provisions set out as a note under sections 640d and 640d–11 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 640d of this title and Tables.

Public Law 99–190, referred to in subsec. (c)(2), is Pub. L. 99–190, Dec. 19, 1985, 99 Stat. 1185. The provisions of Pub. L. 99–190 (99 Stat. 1236) relating to the relocation of members of the Navajo Tribe are not classified to the Code. For complete classification of Pub. L. 99–190 to the Code, see Tables.

The provisions of title 5 governing appointments in the competitive service, referred to in the subsec. (d)(1)(A), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1991—Subsec. (b)(2). Pub. L. 102–180, § 3(a), inserted at end ''The Commissioner serving at the end of a term shall continue to serve until his or her successor has been confirmed in accordance with paragraph (1) of this subsection.''

Subsec. (b)(3). Pub. L. 102–180, § 3(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Commissioner shall be a full time employee of the United States and shall be paid at the rate of GS–18 of the General Schedule under section 5332 of title 5.''

Subsec. (d)(1). Pub. L. 102–180, § 3(c), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Commissioner shall have the power to—

''(A) appoint and fix the compensation of such staff and personnel as he deems necessary, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

''(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, but at rates not to exceed $200 a day for individuals.''

1988—Pub. L. 100–666 amended section generally, substituting subsecs. (a) to (f) relating to the Office of Navajo and Hopi Indian Relocation, for former subsecs. (a) to (j) which related to the Navajo and Hopi Relocation Commission.

1980—Subsec. (g)(1). Pub. L. 96–305, § 5(1), inserted ''an independent legal counsel,'' after ''an Executive Director,''.

Subsec. (h). Pub. L. 96–305, § 5(2), substituted provision authorizing Commission to provide for its own administrative, fiscal, and housekeeping services for provision authorizing Department of the Interior, on a nonreimbursable basis, to furnish necessary administrative and housekeeping services for Commission.

Subsecs. (i), (j). Pub. L. 96–305, § 5(3), added subsec. (i) and redesignated former subsec. (i) as (j).

SEPARATION OR REDUCTION IN GRADE OR COMPENSATION OF EMPLOYEE

Section 3(d) of Pub. L. 102–180 provided that: ''The amendments made by this section [amending this section and section 5315 of Title 5, Government Organization and Employees] shall not cause any employee of the Office of Navajo and Hopi Indian Relocation to be separated or reduced in grade or compensation for 12 months after the date of enactment of this Act [Dec. 2, 1991].''

POSITIONS IN SENIOR EXECUTIVE SERVICE

Section 3(e) of Pub. L. 102–180 provided that: ''The position of Executive Director of the Office of Navajo and Hopi Indian Relocation and Deputy Executive Director of such Office shall on and after the date of the enactment of this Act [Dec. 2, 1991], be in the Senior Executive Service.''

EMPLOYEES OF OFFICE AS GOVERNMENT EMPLOYEES

Section 3(f) of Pub. L. 102–180 provided that: ''Any employee of the Office of Navajo and Hopi Indian Relocation on the date of the enactment of this Act [Dec. 2, 1991], shall be considered an employee as defined in section 2105 of title 5, United States Code.''

CONTINUATION OF RELOCATION COMMISSION AND RETENTION OF EXISTING COMMISSIONERS PENDING CONFIRMATION OF COMMISSIONER; TRANSFER OF EXISTING PERSONNEL; CHANGE OF NAME

Section 4(c) of Pub. L. 100–666 provided that:

''(1) Notwithstanding any other provisions of law or any amendment made by this Act [see Short Title of 1988 Amendment note under section 640d of this title]—

''(A) the Navajo and Hopi Indian Relocation Commission shall—

''(i) continue to exist until the date on which the first Commissioner is confirmed by the Senate,

''(ii) have the same structure, powers and responsibilities such Commission had before the enactment of this Act [Nov. 16, 1988], and

''(iii) assume responsibility for the powers and duties transferred to such Commissioner under section 12(c)(2) of Public Law 93–531 [25 U.S.C. 640d–11(c)(2)], as amended by this Act, until the Commissioner is confirmed,

''(B) the existing Commissioners shall serve until the new Commissioner is confirmed by the Senate, and

''(C) the existing personnel of the Commission shall be transferred to the new Office of Navajo and Hopi Indian Relocation.

''(2) The Navajo and Hopi Relocation Commission shall become known as the Office of Navajo and Hopi Indian Relocation on the date on which the first Commissioner is confirmed by the Senate.''

§ 640d–12. Report concerning relocation of households and members of each tribe

(a) By no later than the date that is 6 months after the date on which the first Commissioner is confirmed by the Senate, the Commissioner shall prepare and submit to the Congress a report concerning the relocation of households and members thereof of each tribe and their personal property, including livestock, from lands partitioned to the other tribe pursuant to this subchapter.

(b) The report required under subsection (a) of this section shall contain, among other matters, the following:

(1) the names of all members of the Navajo Tribe who reside within the areas partitioned to the Hopi Tribe and the names of all members of the Hopi Tribe who reside within the areas partitioned to the Navajo Tribe;

(2) the names of all other members of the Navajo Tribe, and other members of the Hopi Tribe, who are eligible for benefits provided under this subchapter and who have not received all the benefits for which such members are eligible under this subchapter; and

(3) the fair market value of the habitations and improvements owned by the heads of households identified by the Commissioner is[1] being among the persons named in clause (1) of this subsection.

(Pub. L. 93–531, § 13, Dec. 22, 1974, 88 Stat. 1717; Pub. L. 96–305, § 6, July 8, 1980, 94 Stat. 932; Pub. L. 100–666, § 4(d), Nov. 16, 1988, 102 Stat. 3931; Pub. L. 101–121, title I, § 120, Oct. 23, 1989, 103 Stat. 722.)

AMENDMENTS

1989—Subsec. (b)(4). Pub. L. 101–121 struck out cl. (4) which required a report on how funds in the Navajo Rehabilitation Trust Funds would be expended to carry out the purposes described in section 640d–30(d) of this title.

1988—Pub. L. 100–666 amended section generally, substituting subsecs. (a) and (b) for former subsecs. (a) to (c).

1980—Subsec. (c)(5). Pub. L. 96–305 substituted ''ninety'' for ''thirty''.

[1] So in original. Probably should be ''as''.

§ 640d–13. Relocation of households and members

(a) Authorization; time of completion; prohibition of further settlement of nonmembers without written approval; limit on grazing of livestock

Consistent with section 640d–7 of this title and the order of the District Court issued pursuant to section 640d–2 or 640d–3 of this title, the Commissioner is authorized and directed to relocate pursuant to section 640d–7 of this title and such order all households and members thereof and their personal property, including livestock, from any lands partitioned to the tribe of which they are not members. The relocation shall take place in accordance with the relocation plan and shall be completed by the end of five years from the date on which the relocation plan takes effect. No further settlement of Navajo individuals on the lands partitioned to the Hopi Tribe pursuant to this subchapter or on the Hopi Reservation shall be permitted unless advance written approval of the Hopi Tribe is obtained. No further settlement of Hopi individuals on the lands partitioned to the Navajo Tribe pursuant to this subchapter or on the Navajo Reservation shall be permitted unless advance written approval of the Navajo Tribe is obtained. No individual shall hereafter be allowed to increase the number of livestock he grazes on any area partitioned pursuant to this subchapter to the tribe of which he is not a member, nor shall he retain any grazing rights in any such area subsequent to his relocation therefrom.

(b) Additional payments to heads of household; time

In addition to the payments made pursuant to section 640d–14 of this title, the Commissioner shall make payments to heads of households identified in the report prepared pursuant to section 640d–12 of this title upon the date of relocation of such households, as determined by the Commissioner, in accordance with the following schedule:

(1) the sum of $5,000 to each head of a household who, prior to the expiration of one year after the effective date of the relocation plan, contracts with the Commissioner to relocate;

(2) the sum of $4,000 to each head of a household who is not eligible for the payment provided for in clause (1) of this subsection but who, prior to the expiration of two years after the effective date of the relocation plan, contracts with the Commissioner to relocate;

(3) the sum of $3,000 to each head of a household who is not eligible for the payments provided for in clause (1) or (2) of this subsection but who, prior to the expiration of three years after the effective date of the relocation plan, contracts with the Commissioner to relocate; and

(4) the sum of $2,000 to each head of a household who is not eligible for the payments provided for in clause (1), (2), or (3) of this subsection but who, prior to the expiration of four years after the effective date of the relocation plan, contracts with the Commissioner to relocate.

(c) Payments to or for any person moving into partitioned area after May 29, 1974

No payment shall be made pursuant to this section to or for any person who, after May 29, 1974, moved into an area partitioned pursuant to section 640d–7 of this title or section 640d–2 or 640d–3 of this title to a tribe of which he is not a member.

(Pub. L. 93–531, § 14, Dec. 22, 1974, 88 Stat. 1718; Pub. L. 100–666, § 4(b), Nov. 16, 1988, 102 Stat. 3930.)

AMENDMENTS

1988—Subsecs. (a), (b). Pub. L. 100–666 substituted ''Commissioner'' for ''Commission'' wherever appearing.

§ 640d–14. Relocation housing

(a) Purchase of habitation and improvements from head of household; fair market value

The Commissioner shall purchase from the head of each household whose household is required to relocate under the terms of this subchapter the habitation and other improvements owned by him on the area from which he is required to move. The purchase price shall be the fair market value of such habitation and improvements as determined under section 640d–12(b)(2)[1] of this title.

(b) Reimbursement for moving expenses; payment for replacement dwelling; limitations

In addition to the payments made pursuant to subsection (a) of this section, the Commissioner shall:

(1) reimburse each head of a household whose household is required to relocate pursuant to this subchapter for the actual reasonable moving expenses of the household as if the household members were displaced persons under section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894) [42 U.S.C. 4622];

(2) pay to each head of a household whose household is required to relocate pursuant to this subchapter an amount which, when added to the fair market value of the habitation and improvements purchased under subsection (a) of this section, equals the reasonable cost of a decent, safe, and sanitary replacement dwelling adequate to accommodate such household: *Provided*, That the additional payment authorized by this paragraph (2) shall not exceed $17,000 for a household of three or less and not more than $25,000 for a household of four or more, except that the Commissioner may, after consultation with the Secretary of Housing and Urban Development, annually increase or decrease such limitations to reflect changes in housing development and construction costs, other than costs of land, during the preceding year: *Provided further*, That the additional payment authorized by this subsection shall be made only to a head of a household required to relocate pursuant to this subchapter who purchases and occupies such replacement dwelling not later than the end of the two-year period beginning on the date on which he receives from the Commissioner final payment for the habitation and improvements purchased under subsection (a) of this section, or on the date on which such household moves from such habitation, whichever is the later date. The payments made pursuant to this paragraph (2) shall be used only for the purpose of obtaining decent, safe, and sanitary replacement dwellings adequate to accommodate the households relocated pursuant to this subchapter.

(c) Establishment of standards consistent with other laws; payments to or for any person moving into partitioned area after specified time

In implementing subsection (b) of this section, the Commissioner shall establish standards consistent with those established in the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894) [42 U.S.C. 4601 et seq.]. No payment shall be made pursuant to this section to or for any person who, later than one year prior to December 22, 1974, moved into an area partitioned pursuant to section 640d–7 of this title or section 640d–2 or 640d–3 of this title to a tribe of which he is not a member.

(d) Methods of payment

The Commissioner shall be responsible for the provision of housing for each household eligible for payments under this section in one of the following manners:

(1) Should any head of household apply for and become a participant or homebuyer in a mutual help housing or other homeownership opportunity project undertaken under the United States Housing Act of 1937 (50 Stat. 888) as amended [42 U.S.C. 1437 et seq.], or in any other federally assisted housing program now or hereafter established, the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section shall be paid to the local housing agency or sponsor involved as a voluntary equity payment and shall be credited against the outstanding indebtedness or purchase price of the household's home in the project in a manner which will accelerate to the maximum extent possible the achievement by that household of debt free homeownership.

(2) Should any head of household wish to purchase or have constructed a dwelling which the Commissioner determines is decent, safe, sanitary, and adequate to accommodate the household, the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section shall be paid to such head of household in connection with such purchase or construction in a manner which the Commissioner determines will assure the use of the funds for such purpose.

(3) Should any head of household not make timely arrangements for relocation housing, or should any head of household elect and enter into an agreement to have the Commissioner construct or acquire a home for the household, the Commissioner may use the

[1] See References in Text note below.

amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section for the construction or acquisition (including enlargement or rehabilitation if necessary) of a home and related facilities for such household: *Provided*, That, the Commissioner may combine the funds for any number of such households into one or more accounts from which the costs of such construction or acquisition may be paid on a project basis and the funds in such account or accounts shall remain available until expended: *Provided further*, That the title to each home constructed or acquired by the Commissioner pursuant to this paragraph shall be vested in the head of the household for which it was constructed or acquired upon occupancy by such household, but this shall not preclude such home being located on land held in trust by the United States.

(e) Disposal of acquired dwellings and improvements

The Commissioner is authorized to dispose of dwellings and other improvements acquired or constructed pursuant to this subchapter in such manner, including resale of such dwellings and improvements to members of the tribe exercising jurisdiction over the area at prices no higher than the acquisition or construction costs, as best effects section 640d–7 of this title and the order of the District Court pursuant to section 640d–2 or 640d–3 of this title.

(f) Preferential treatment for heads of households of Navajo Tribe evicted from Hopi Reservation by judicial decision; restriction

Notwithstanding any other provision of law to the contrary, the Commissioner shall on a preferential basis provide relocation assistance and relocation housing under subsections (b), (c), and (d) of this section to the head of each household of members of the Navajo Tribe who were evicted from the Hopi Indian Reservation as a consequence of the decision in the case of United States v. Kabinto (456 F.2d 1087 (1972)): *Provided*, That such heads of households have not already received equivalent assistance from Federal agencies.

(g) Appeals of eligibility determinations

Notwithstanding any other provision of law, appeals from any eligibility determination of the Relocation Commission, irrespective of the amount in controversy, shall be brought in the United States District Court for the District of Arizona.

(Pub. L. 93–531, § 15, Dec. 22, 1974, 88 Stat. 1719; Pub. L. 96–305, § 7, July 8, 1980, 94 Stat. 932; Pub. L. 100–666, §§ 4(b), 10, Nov. 16, 1988, 102 Stat. 3930, 3934.)

REFERENCES IN TEXT

Section 640d–12 of this title, referred to in subsec. (a), was amended generally by Pub. L. 100–666, § 4(d), Nov. 16, 1988, 102 Stat. 3931, and as so amended, section 640d–12(b)(2) does not relate to fair market value of habitations and improvements. Provisions formerly contained in section 640d–12(b)(2) are covered in section 640d–12(b)(3).

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894), referred to in subsec. (c), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified generally to chapter 61 (§ 4601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of Title 42 and Tables.

The United States Housing Act of 1937, referred to in subsec. (d)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

AMENDMENTS

1988—Subsecs. (a) to (f). Pub. L. 100–666, § 4(b), substituted "Commissioner" for "Commission" wherever appearing.

Subsec. (g). Pub. L. 100–666, § 10, added subsec. (g).

1980—Subsec. (f). Pub. L. 96–305 added subsec. (f).

§ 640d–15. Payment of fair rental value for use of lands subsequent to date of partition

(a) Payment by Navajo Tribe

The Navajo Tribe shall pay to the Hopi Tribe the fair rental value as determined by the Secretary for all use by Navajo individuals of any lands partitioned to the Hopi Tribe pursuant to sections 640d–7 and 640d–2 or 640d–3 of this title subsequent to the date of the partition thereof.

(b) Payment by Hopi Tribe

The Hopi Tribe shall pay to the Navajo Tribe the fair rental value as determined by the Secretary for all use by Hopi individuals of any lands partitioned to the Navajo Tribe pursuant to sections 640d–7 and 640d–2 or 640d–3 of this title subsequent to the date of the partition thereof.

(Pub. L. 93–531, § 16, Dec. 22, 1974, 88 Stat. 1720.)

§ 640d–16. Title, possession, and enjoyment of lands

(a) Covered lands; jurisdiction of respective tribes over nonmembers

Nothing in this subchapter shall effect the title, possession, and enjoyment of lands heretofore allotted to Hopi and Navajo individuals for which patents have been issued. Such Hopi individuals living on the Navajo Reservation shall be subject to the jurisdiction of the Navajo Tribe and such Navajo individuals living on the Hopi Reservation shall be subject to the jurisdiction of the Hopi Tribe.

(b) Relocation of Federal employees

Nothing in this subchapter shall require the relocation from any area partitioned pursuant to this subchapter of the household of any Navajo or Hopi individual who is employed by the Federal Government within such area or to prevent such employees or their households from residing in such areas in the future: *Provided*, That any such Federal employee who would, except for the provisions of this subsection, be relocated under the terms of this subchapter may elect to be so relocated.

(Pub. L. 93–531, § 17, Dec. 22, 1974, 88 Stat. 1720.)

§ 640d–17. Actions for accounting, fair value of grazing, and claims for damages to land

(a) Authorization to commence and defend actions in District Court

Either tribe, acting through the chairman of its tribal council, for and on behalf of the tribe, including all villages, clans, and individual members thereof, is hereby authorized to commence or defend in the District Court an action or actions against the other tribe for the following purposes if such action or actions are not settled pursuant to section 640d–2 or 640d–3 of this title:

(1) for an accounting of all sums collected by either tribe since the 17th day of September 1957 as trader license fees or commissions, lease proceeds, or other similar charges for the doing of business or the use of lands within the joint use area, and judgment for one-half of all sums so collected, and not paid to the other tribe, together with interest at the rate of 6 per centum per annum compounded annually;

(2) for the determination and recovery of the fair value of the grazing and agricultural use by either tribe and its individual members since the 28th day of September 1962 of the undivided one-half interest of the other tribe in the lands within the joint use area, together with interest at the rate of 6 per centum per annum compounded annually, notwithstanding the fact that the tribes are tenants in common of such lands; and

(3) for the adjudication of any claims that either tribe may have against the other for damages to the lands to which title was quieted as aforesaid by the United States District Court for the District of Arizona in such tribes, share and share alike, subject to the trust title of the United States, without interest, notwithstanding the fact that such tribes are tenants in common of such lands: *Provided*, That the United States may be joined as a party to such an action and, in such case, the provisions of sections 1346(a)(2) and 1505 of title 28 shall not be applicable to such action.

(b) Defenses

Neither laches nor the statute of limitations shall constitute a defense to any action authorized by this subchapter for existing claims if commenced within two years from December 22, 1974, or one hundred and eighty days from the date of issuance of an order of the District Court pursuant to section 640d–2 or 640d–3 of this title, whichever is later.

(c) Further original, ancillary or supplementary actions to insure quiet enjoyment

Either tribe may institute such further original, ancillary, or supplementary actions against the other tribe as may be necessary or desirable to insure the quiet and peaceful enjoyment of the reservation lands of the tribes by the tribes and the members thereof, and to fully accomplish all objects and purposes of this subchapter. Such actions may be commenced in the District Court by either tribe against the other, acting through the chairman of its tribal council, for and on behalf of the tribe, including all villages, clans, and individual members thereof.

(d) United States as party; judgments as claims against the United States

Except as provided in clause (3) of subsection (a) of this section, the United States shall not be an indispensable party to any action or actions commenced pursuant to this section. Any judgment or judgments by the District Court in such action or actions shall not be regarded as a claim or claims against the United States.

(e) Remedies

All applicable provisional and final remedies and special proceedings provided for by the Federal Rules of Civil Procedure and all other remedies and processes available for the enforcement and collection of judgments in the district courts of the United States may be used in the enforcement and collection of judgments obtained pursuant to the provisions of this subchapter.

(Pub. L. 93–531, § 18, Dec. 22, 1974, 88 Stat. 1721.)

§ 640d–18. Reduction of livestock within joint use area

(a) Institution of conservation practices

Notwithstanding any provision of this subchapter, or any order of the District Court pursuant to section 640d–2 or 640d–3 of this title, the Secretary is authorized and directed to immediately commence reduction of the numbers of all the livestock now being grazed upon the lands within the joint use area and complete such reductions to carrying capacity of such lands, as determined by the usual range capacity standards as established by the Secretary after December 22, 1974. The Secretary is directed to institute such conservation practices and methods within such area as are necessary to restore the grazing potential of such area to the maximum extent feasible.

(b) Survey location of monuments and fencing of boundaries

The Secretary, upon the date of issuance of an order of the District Court pursuant to sections 640d–7 and 640d–2 or 640d–3 of this title, shall provide for the survey location of monuments, and fencing of boundaries of any lands partitioned pursuant to sections 640d–7 and 640d–2 or 640d–3 of this title.

(c) Completion of surveying, monumenting, and fencing operations and livestock reduction program

(1) Surveying, monumenting, and fencing as required by subsection (b) of this section shall be completed within twelve months after July 8, 1980, with respect to lands partitioned pursuant to section 640d–3 of this title and within twelve months after a final order of partition with respect to any lands partitioned pursuant to section 640d–7 of this title.

(2) The livestock reduction program required under subsection (a) of this section shall be completed within eighteen months after July 8, 1980.

(Pub. L. 93–531, § 19, Dec. 22, 1974, 88 Stat. 1721; Pub. L. 96–305, § 8, July 8, 1980, 94 Stat. 932.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–305 added subsec. (c).

§ 640d–19. Perpetual use of Cliff Spring as shrine for religious ceremonial purposes; boundary; piping of water for use by residents

The members of the Hopi Tribe shall have perpetual use of Cliff Spring as shown on USGS 7½ minute Quad named Toh Ne Zhonnie Spring, Arizona, Navajo County, dated 1968; and located 1,250 feet west and 200 feet south of the intersection of 36 degrees, 17 minutes, 30 seconds north latitude and 110 degrees, 9 minutes west longitude, as a shrine for religious ceremonial purposes, together with the right to gather branches of fir trees growing within a 2–mile radius of said spring for use in such religious ceremonies, and the further right of ingress, egress, and regress between the Hopi Reservation and said spring. The Hopi Tribe is hereby authorized to fence said spring upon the boundary line as follows:

Beginning at a point on the 36 degrees, 17 minutes, 30 seconds north latitude 500 feet west of its intersection with 110 degrees, 9 minutes west longitude, the point of beginning;

thence north 46 degrees west, 500 feet to a point on the rim top at elevation 6,900 feet;

thence southwesterly 1,200 feet (in a straight line) following the 6,900 feet contour;

thence 46 degrees east, 600 feet;

thence north 38 degrees east, 1,300 feet to the point of beginning, 23.8 acres more or less: *Provided*, That, if and when such spring is fenced, the Hopi Tribe shall pipe the water therefrom to the edge of the boundary as hereinabove described for the use of residents of the area. The natural stand of fir trees within such 2–mile radius shall be conserved for such religious purposes.

(Pub. L. 93–531, § 20, Dec. 22, 1974, 88 Stat. 1722.)

§ 640d–20. Use and right of access to religious shrines on reservation of other tribe

Notwithstanding anything contained in this subchapter to the contrary, the Secretary shall make reasonable provision for the use of and right of access to identified religious shrines for the members of each tribe on the reservation of the other tribe where such use and access are for religious purposes.

(Pub. L. 93–531, § 21, Dec. 22, 1974, 88 Stat. 1722.)

§ 640d–21. Payments not to be considered as income for eligibility under any other Federal or federally assisted program or for assistance under Social Security Act or for revenue purposes

The availability of financial assistance or funds paid pursuant to this subchapter may not be considered as income or resources or otherwise utilized as the basis (1) for denying a household or member thereof participation in any federally assisted housing program or (2) for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled to under the Social Security Act [42 U.S.C. 301 et seq.] or any other Federal or federally assisted program. None of the funds provided under this subchapter shall be subject to Federal or State income taxes.

(Pub. L. 93–531, § 22, Dec. 22, 1974, 88 Stat. 1722.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

§ 640d–22. Authorization for exchange of reservation lands; availability of additional relocation benefits; restrictions

The Navajo and Hopi Tribes are hereby authorized to exchange lands which are part of their respective reservations. In the event that the tribes should negotiate and agree on an exchange of lands pursuant to authority granted herein the Commissioner shall make available 125 per centum of the relocation benefits provided in sections 640d–13 and 640d–14 of this title to members of either tribe living on land to be exchanged to other than his or her own tribe, except that such benefits shall be available only if, within one hundred and eighty days of the agreement, a majority of the adult members of the tribe who would be eligible to relocate from exchanged lands sign a contract with the Commissioner to relocate within twelve months of the agreement or such later time as determined by the Commissioner and such additional benefits shall only be paid to those who actually relocate within such period.

(Pub. L. 93–531, § 23, Dec. 22, 1974, 88 Stat. 1722; Pub. L. 96–305, § 9, July 8, 1980, 94 Stat. 933; Pub. L. 100–666, § 4(b), Nov. 16, 1988, 102 Stat. 3930.)

AMENDMENTS

1988—Pub. L. 100–666 substituted ''Commissioner'' for ''Commission'' wherever appearing.

1980—Pub. L. 96–305 inserted provision authorizing the Commission, in the event that the tribes agree on an exchange of lands, to make available 125 per centum of the relocation benefits provided in sections 640d–13 and 640d–14 of this title to members of either tribe living on lands to be exchanged to other than his or her own tribe, provided that within 180 days of the agreement, a majority of the adult members of the tribe who would be eligible to relocate from exchanged lands contract with the Commission to relocate within 12 months of the agreement or such later time as the Commission determines and to pay these additional benefits only to those who actually relocate within such period.

§ 640d–23. Separability

If any provision of this subchapter, or the application of any provision to any person, entity or circumstance, is held invalid, the remainder of this subchapter shall not be affected thereby.

(Pub. L. 93–531, § 24, Dec. 22, 1974, 88 Stat. 1722.)

§ 640d–24. Authorization of appropriations

(a) Purposes; amounts

(1) For the purpose of carrying out the provisions of section 640d–14 of this title, there is hereby authorized to be appropriated not to exceed $31,500,000.

(2) For the purpose of carrying out the provisions of section 640d–18(a) of this title, there is hereby authorized to be appropriated not to exceed $10,000,000.

(3) For the purpose of carrying out the provisions of section 640d–18(b) of this title, there is hereby authorized to be appropriated not to exceed $500,000.

(4) For the purpose of carrying out the provisions of section 640d–13(b) of this title, there is hereby authorized to be appropriated not to exceed $13,000,000.

(5) There is hereby authorized to be appropriated annually not to exceed $4,000,000 for the expenses of the Commissioner.

(6) There is hereby authorized to be appropriated not to exceed $500,000 for the services and expenses of the Mediator and the assistants and consultants retained by him: *Provided*, That, any contrary provision of law notwithstanding, until such time as funds are appropriated and made available pursuant to this authorization, the Director of the Federal Mediation and Conciliation Service is authorized to provide for the services and expenses of the Mediator from any other appropriated funds available to him and to reimburse such appropriations when funds are appropriated pursuant to this authorization, such reimbursement to be credited to appropriations currently available at the time of receipt thereof.

(7) For the purpose of carrying out the provisions of subsection (i) of section 640d–28 of this title, there is authorized to be appropriated, effective in fiscal year 1981, not to exceed $1,000,000 annually.

(8) For the purposes of carrying out the provisions of section 640d–14 of this title, there is authorized to be appropriated not to exceed $30,000,000 for each of fiscal years 2003 through 2008.

(b) Availability of sums

The funds appropriated pursuant to the authorizations provided in this subchapter shall remain available until expended.

(Pub. L. 93–531, § 25, Dec. 22, 1974, 88 Stat. 1722; Pub. L. 96–40, July 30, 1979, 93 Stat. 318; Pub. L. 96–305, § 10, July 8, 1980, 94 Stat. 933; Pub. L. 98–48, July 13, 1983, 97 Stat. 244; Pub. L. 100–666, §§ 2, 4(b), Nov. 16, 1988, 102 Stat. 3929, 3930; Pub. L. 102–180, § 2, Dec. 2, 1991, 105 Stat. 1230; Pub. L. 104–15, § 1, June 21, 1995, 109 Stat. 189; Pub. L. 104–301, § 10, Oct. 11, 1996, 110 Stat. 3652; Pub. L. 108–204, title I, § 102, Mar. 2, 2004, 118 Stat. 543.)

AMENDMENTS

2004—Subsec. (a)(8). Pub. L. 108–204 substituted ''for each of fiscal years 2003 through 2008'' for ''annually for fiscal years 1995, 1996, 1997, 1998, 1999, and 2000''.

1996—Subsec. (a)(8). Pub. L. 104–301 substituted ''1996, 1997, 1998, 1999, and 2000'' for ''1996, and 1997''.

1995—Subsec. (a)(8). Pub. L. 104–15 substituted ''1995, 1996, and 1997'' for ''1989, 1990, 1991, 1992, 1993, 1994, and 1995''.

1991—Subsec. (a)(8). Pub. L. 102–180 substituted ''1991, 1992, 1993, 1994, and 1995'' for ''and 1991''.

1988—Subsec. (a)(4). Pub. L. 100–666, § 2(1), substituted ''$13,000,000'' for ''$7,700,000''.

Subsec. (a)(5). Pub. L. 100–666, § 4(b), substituted ''Commissioner'' for ''Commission''.

Subsec. (a)(8). Pub. L. 100–666, § 2(2), substituted ''$30,000,000 annually for fiscal years 1989, 1990, and 1991'' for ''$15,000,000 annually for fiscal years 1983 through 1987''.

1983—Subsec. (a)(4). Pub. L. 98–48, § 1, substituted ''$7,700,000'' for ''$5,500,000''.

Subsec. (a)(8). Pub. L. 98–48, § 2, added par. (8).

1980—Subsec. (a)(5). Pub. L. 96–305, § 10(a), substituted ''$4,000,000'' for ''$1,000,000''.

Subsec. (a)(7). Pub. L. 96–305, § 10(b), added par. (7).

1979—Subsec. (a)(5). Pub. L. 96–40 substituted ''$1,000,000'' for ''$500,000''.

§ 640d–25. Discretionary fund to expedite relocation efforts

(a) Authorization of appropriations

To facilitate and expedite the relocation efforts of the Commissioner, there is hereby authorized to be appropriated annually, effective in fiscal year 1981, not to exceed $6,000,000 as a discretionary fund.

(b) Authorized uses

Funds appropriated under the authority of subsection (a) of this section may be used by the Commissioner for grants, contracts, or expenditures which significantly assist the Commissioner or assist the Navajo Tribe or Hopi Tribe in meeting the burdens imposed by this subchapter.

(c) Funding and construction of Hopi high school and medical center

The Secretary of the Interior and the Secretary of Health and Human Services, as appropriate, shall assign the highest priority, in the next fiscal year after July 8, 1980, to the funding and construction of the Hopi high school and Hopi medical center consistent with any plans already completed and approved by appropriate agencies of the respective departments.

(Pub. L. 93–531, § 27, as added Pub. L. 96–305, § 11, July 8, 1980, 94 Stat. 933; amended Pub. L. 100–666, §§ 3, 4(b), Nov. 16, 1988, 102 Stat. 3929, 3930.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–666, § 4(b), substituted ''Commissioner'' for ''Commission''.

Subsec. (b). Pub. L. 100–666, § 3, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Such funds may only be used by the Commission to—

''(1) match or pay not to exceed 30 per centum of any grant, contract, or other expenditure of the Federal Government, State or local government, tribal government or chapter, or private organization for the benefit of the Navajo or Hopi Tribe, if such grant, contract, or expenditure would significantly assist the Commission in carrying out its responsibilities or assist either tribe in meeting the burdens imposed by this subchapter;

''(2) engage or participate, either directly or by contract, in demonstration efforts to employ innovative energy or other technologies in providing housing and related facilities and services in the relocation and resettlement of individuals under this subchapter.

Not to exceed 5 per centum of such funds may be used for the administrative expenses of the Commission in carrying out this section.''

§ 640d–26. Implementation requirements

(a) Environmental impact provisions

No action taken pursuant to, in furtherance of, or as authorized by this subchapter, shall be deemed a major Federal action for purposes of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4321 et seq.].

(b) Transfer of public lands

Any transfer of public lands pursuant to this subchapter shall be made notwithstanding the provisions of sections 1782 and 1752(g) of title 43.

(Pub. L. 93–531, § 28, as added Pub. L. 96–305, § 11, July 8, 1980, 94 Stat. 933.)

REFERENCES IN TEXT

National Environmental Policy Act of 1969, as amended, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§ 640d–27. Attorney fees, costs and expenses for litigation or court action

(a) Payment by Secretary; authorization of appropriations

In any litigation or court action between or among the Hopi Tribe, the Navajo Tribe and the United States or any of its officials, departments, agencies, or instrumentalities, arising out of the interpretation or implementation of this subchapter, as amended, the Secretary shall pay, subject to the availability of appropriations, attorney's fees, costs and expenses as determined by the Secretary to be reasonable. For each tribe, there is hereby authorized to be appropriated not to exceed $120,000 in fiscal year 1981, $130,000 in fiscal year 1982, $140,000 in fiscal year 1983, $150,000 in fiscal year 1984, and $160,000 in fiscal year 1985, and each succeeding year thereafter until such litigation or court action is finally completed.

(b) Award by court; reimbursement to Secretary

Upon the entry of a final judgment in any such litigation or court action, the court shall award reasonable attorney's fees, costs and expenses to the party, other than the United States or its officials, departments, agencies, or instrumentalities, which prevails or substantially prevails, where it finds that any opposing party has unreasonably initiated or contested such litigation. Any party to whom such an award has been made shall reimburse the United States out of such award to the extent that it has received payments pursuant to subsection (a) of this section.

(c) Excess difference between award of court and award of Secretary treated as final judgment of Court of Claims

To the extent that any award made to a party against the United States pursuant to subsection (b) of this section exceeds the amount paid to such party by the United States pursuant to subsection (a) of this section, such difference shall be treated as if it were a final judgment of the Court of Claims under section 2517 of title 28.

(d) Litigation or court actions applicable

This section shall apply to any litigation or court action pending upon July 8, 1980, in which a final order, decree, judgment has not been entered, but shall not apply to any action authorized by section 640d–7 or 640d–17(a) of this title.

(Pub. L. 93–531, § 29, as added Pub. L. 96–305, § 11, July 8, 1980, 94 Stat. 934.)

REFERENCES IN TEXT

The Court of Claims, referred to in subsec. (c), and the Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 640d–28. Life estates

(a) Omitted

(b) Application for lease; contents; filing date; extension

Any Navajo head of household who desires to do so may submit an application for a life estate lease to the Commissioner. Such application shall contain such information as the Commissioner may prescribe by regulation, such regulation to be promulgated by the Commissioner within ninety days of July 8, 1980. To be considered, such application must be filed with the Commissioner on or before April 1, 1981: *Provided*, That the Commissioner may, for good cause, grant an extension of one hundred and eighty days.

(c) Application groupings

Upon receipt of applications filed pursuant to this section, the Commissioner shall group them in the following order:

(A) Applicants who are determined to be at least 50 per centum disabled as certified by a physician approved by the Commissioner. Such applicants shall be ranked in the order of the severity of their disability.

(B) Applicants who are not at least 50 per centum disabled shall be ranked in order of their age with oldest listed first and the youngest listed last: *Provided*, That, if any applicant physically resides in quarter quad Nos. 78 NW, 77 NE, 77 NW, 55 SW, or 54 SE as designated on the Mediator's partition map, such applicant shall be given priority over another applicant of equal age.

(C) Applicants who did not, as of December 22, 1974, and continuously thereafter, maintain a separate place of abode and actually remain domiciled on Hopi partitioned lands, and who, but for this subsection would be required to relocate, shall be rejected by the Commissioner.

(D) Applicants who were not at least forty-nine years of age on December 22, 1974, or are not at least 50 per centum disabled, shall also be rejected by the Commissioner.

(d) Number of leases; priorities

The Commissioner shall have authority to award life estate leases to not more than one hundred and twenty applicants with first priority being given to applicants listed pursuant to subsection (c)(A) of this section and the next priority being given to the applicants listed pursuant to subsection (c)(B) of this section, in order of such listing.

(e) Area; allowable livestock; assistance by Secretary in feeding livestock

Each life estate lease shall consist of a fenced area not exceeding ninety acres of land which

shall include the life tenant's present residence and may be used by the life tenant to feed not to exceed twenty-five sheep units per year or equivalent livestock. The Secretary, under existing authority, shall make available to life estate tenants such assistance during that tenure, as may be necessary to enable such tenant to feed such livestock at an adequate nutritional level.

(f) Individuals permitted to reside; regulations

No person may reside on a life estate other than the life tenant, his or her spouse, and minor dependents, and/or such persons who are necessarily present to provide for the care of the life tenant. The Commissioner shall promulgate regulations to carry out the intent of this subsection.

(g) Termination

The life estate tenure shall end by voluntary relinquishment, or at the death of the life tenant or the death of his or her spouse, whichever occurs last: *Provided*, That each survivorship right shall apply only to those persons who were lawfully married to each other on or before July 8, 1980.

(h) Relocation benefits upon voluntary relinquishment; compensation upon death of life tenant or surviving spouse; relocation of dependents

Nothing in this section shall be construed as prohibiting any such applicant who receives a life estate lease under this section from relinquishing, prior to its termination, such estate at any time and voluntarily relocating. Upon voluntary relinquishment of such estate, by such means or instrument as the Secretary shall prescribe, such applicant shall be entitled to relocation benefits from the Secretary comparable to those provided by section 640d–14 of this title. For life estates terminated by the death of the life tenant or his or her surviving spouse, compensation shall be paid to the estate of the deceased life tenant or surviving spouse based on the fair market value of the habitation and improvements at the time of the expiration of such tenure and not before. Such payment shall be in lieu of any other payment pursuant to subsection (a) of section 640d–14 of this title. Assistance provided pursuant to section 640d–14(b) of this title, shall be paid to any head of household lawfully residing on such life estate pursuant to subsection (f) of this section who is required to move by the termination of such life estate by the death of the life tenant and his or her surviving spouse and who does not maintain a residence elsewhere. Compensation under section 640d–14(a) of this title shall be paid and distributed in accordance with the last will and testament of the life tenant or surviving spouse or, in the event no valid last will and testament is left, compensation shall be paid and distributed to his or her heirs in accordance with existing Federal law. Upon termination of a life estate by whatever means, the dependents residing with the individuals having such life estate so terminated shall have ninety days following such termination within which to relocate.

(i) Payment of fair market rental value

The Secretary shall pay, on an annual basis, the fair market rental value of such life estate leases to the tribe to whom the lands leased were partitioned.

(j) Improvements

Nothing in this subchapter or any other law shall be construed to prevent a life tenant from making reasonable improvements on the life estate which are related to the residence and agricultural purposes of the life tenancy.

(k) Additional leases for Hopi heads of household

The Commissioner is authorized to grant not to exceed ten additional life estate leases to Hopi heads of household residing on Navajo-partitioned lands under such terms of this section as may be appropriate.

(Pub. L. 93–531, § 30, as added Pub. L. 96–305, § 11, July 8, 1980, 94 Stat. 934; amended Pub. L. 100–666, § 4(b), Nov. 16, 1988, 102 Stat. 3930.)

CODIFICATION

Subsec. (a) provided for the repeal of section 640d–4(a)(4) of this title.

AMENDMENTS

1988—Subsecs. (b) to (d), (f), (k). Pub. L. 100–666 substituted ''Commissioner'' for ''Commission'' wherever appearing.

§ 640d–29. Restrictions on lobbying; exception

(a) Except as provided in subsection (b) of this section, no person or entity who has entered into a contract with the Commissioner to provide services under this subchapter may engage in activities designed to influence Federal legislation on any issue relating to the relocation required under this subchapter.

(b) Subsection (a) of this section shall not apply to the Navajo Tribe or the Hopi Tribe, except that such tribes shall not spend any funds received from the Office in any activities designed to influence Federal legislation.

(Pub. L. 93–531, § 31, as added Pub. L. 100–666, § 5, Nov. 16, 1988, 102 Stat. 3931.)

§ 640d–30. Navajo Rehabilitation Trust Fund

(a) Establishment

There is hereby established in the Treasury of the United States a trust fund to be known as the ''Navajo Rehabilitation Trust Fund'', which shall consist of the funds transferred under subsection (b) of this section and of the funds appropriated pursuant to subsection (f) of this section and any interest or investment income accrued on such funds.

(b) Deposit of income into Fund

All of the net income derived by the Navajo Tribe from the surface and mineral estates of lands located in New Mexico that are acquired for the benefit of the Navajo Tribe under section 640d–10 of this title shall be deposited into the Navajo Rehabilitation Trust Fund.

(c) Secretary as trustee; investment of funds

The Secretary shall be the trustee of the Navajo Rehabilitation Trust Fund and shall be responsible for investment of the funds in such Trust Fund.

(d) Availability of funds; purposes

Funds in the Navajo Rehabilitation Trust Fund, including any interest or investment ac-

cruing thereon, shall be available to the Navajo Tribe, with the approval of the Secretary, solely for purposes which will contribute to the continuing rehabilitation and improvement of the economic, educational, and social condition of families, and Navajo communities, that have been affected by—

(1) the decison[1] in the Healing case, or related proceedings,

(2) the provision[2] of this subchapter, or

(3) the establishment by the Secretary of the Interior of grazing district number 6 as land for the exclusive use of the Hopi Tribe.

(e) Conceptual framework for expenditure of funds

By December 1, 1989, the Secretary of the Interior, with the advice of the Navajo Tribe and the Office of Navajo and Hopi Indian Relocation, shall submit to the Congress a conceptual framework for the expenditure of the funds authorized for the Navajo Rehabilitation Trust Fund. Such framework is to be consistent with the purposes described in subsection (d) of this section.

(f) Termination of Trust Fund

The Navajo Rehabilitation Trust Fund shall terminate when, upon petition by the Navajo Tribe, the Secretary determines that the goals of the Trust Fund have been met and the United States has been reimbursed for funds appropriated under subsection (f) of this section. All funds in the Trust Fund on such date shall be transferred to the general trust funds of the Navajo Tribe.

(g) Authorization of appropriations; reimbursement of General Fund

There is hereby authorized to be appropriated for the Navajo Rehabilitation Trust Fund not[3] exceed $10,000,000 in each of fiscal years 1990, 1991, 1992, 1993, 1994 and 1995. The income from the land referred to in subsection (b) of this section shall be used to reimburse the General Fund of the United States Treasury for amounts appropriated to the Fund.

(Pub. L. 93–531, § 32, as added Pub. L. 100–666, § 7, Nov. 16, 1988, 102 Stat. 3932; amended Pub. L. 101–121, title I, § 120, Oct. 23, 1989, 103 Stat. 722.)

CODIFICATION

Another section 32 of Pub. L. 93–531 was enacted by Pub. L. 100–696, title IV, § 407, Nov. 18, 1988, 102 Stat. 4593, and is classified to section 640d–31 of this title.

AMENDMENTS

1989—Subsecs. (e) to (g). Pub. L. 101–121 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

§ 640d–31. Residence of families eligible for relocation assistance

Nothing in this subchapter prohibits the Commissioner from providing relocation assistance to families certified as eligible, regardless of their current place of residence, with funds appropriated to implement this subchapter.

(Pub. L. 93–531, § 32, as added Pub. L. 100–696, title IV, § 407, Nov. 18, 1988, 102 Stat. 4593.)

CODIFICATION

Another section 32 of Pub. L. 93–531 was enacted by Pub. L. 100–666, § 7, Nov. 16, 1988, 102 Stat. 3932, and is classified to section 640d–30 of this title.

SUBCHAPTER XXIII—HOPI TRIBE: INDUSTRIAL PARK

§ 641. Congressional findings and declaration of purpose

For the purpose of assisting in the economic advancement and contributing to the general welfare of the Hopi Indian Tribe of Arizona, the Congress hereby finds it to be fitting and appropriate to provide the Hopi Tribal Council with certain powers of self-determination that are necessary to enable the Hopi people to carry out the effective development and operation of the Hopi Industrial Park, which is located in the counties of Navajo and Coconino in the State of Arizona.

(Pub. L. 91–264, § 1, May 22, 1970, 84 Stat. 260.)

§ 642. Powers of Tribal Council

The Hopi Tribal Council shall have the following powers:

(a) Sale of lands

To sell any part of the lands within the Hopi Industrial Park.

(b) Mortgages or deeds of trust; law governing mortgage foreclosure or sale; United States as party; removal of cases; appeals

To execute mortgages upon, or deeds of trust to, the lands within said Hopi Industrial Park. Such lands shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed to trust in accordance with the laws of the State of Arizona. The United States shall be an indispensable party to, and may be joined in, any such proceeding involving said lands with the right to remove the action to the United States district court for the district in which the land is situated, according to the procedure in section 1446 of title 28, and the United States shall have the right to appeal from any order of remand entered in such action.

(c) Pledge of revenue or other income to secure indebtedness for development of park; law governing action to enforce pledge; United States as party

To pledge any revenue or other income from lands within said Hopi Industrial Park, and the improvements situated thereon, and any other revenue or income that may be available to the Hopi Tribe without regard to source, to secure any indebtedness of the Hopi Tribe incurred in the development of said Hopi Industrial Park, and any action to enforce said pledge shall be in accordance with the laws of the State of Arizona, and the United States shall be an indispensable party thereto to the same extent and under the same conditions as hereinbefore provided in the case of mortgage foreclosures.

[1] So in original. Probably should be "decision".

[2] So in original. Probably should be "provisions".

[3] So in original. Probably should be "not to".

(d) Issuance of bonds and payment of costs thereof; sale of bonds at public or private sale

To issue bonds for and on behalf of the Hopi Tribe, and pay the costs thereof, to accomplish the purposes of this subchapter, in one or more series, in such denomination or denominations, maturing at such time or times, and in such amount or amounts, bearing interest at such rate or rates, in such form either coupon or registered, to be executed in such manner, payable in such medium of payment, at such place or places, subject to such terms of redemption, with or without premium, and containing such other restrictive terms as may be provided by tribal ordinance. Such bonds may be sold at not less than par at either public or private sale and shall be fully negotiable.

(e) Appointment of bank or trust company as trustee for purposes of authorization and creation of issue of bonds; authority to commence action to enforce obligations to tribe without joining United States as party

To appoint a bank or trust company with its home office in the State of Arizona having an officially reported combined capital, surplus, undivided profits and reserves aggregating not less than $10,000,000 as trustee for all of the purposes provided in the ordinance authorizing and creating any issue of bonds. Any trustee so appointed may be authorized to commence an action for and on behalf of, or on relation of, the Hopi Tribe to enforce any obligation to the tribe pledged to secure payment of the bonds without joining the United States as a party thereto.

(f) Entering business ventures as shareholder, or as limited partner with corporation, firm or person operating within park

To enter into any business venture as a shareholder of a corporation issuing nonassessable stock, or as a limited partner with any corporation, firm or person operating within said Hopi Industrial Park.

(g) Lease of lands and improvements thereon

To lease lands within the Hopi Industrial Park, any other tribal lands, and the improvements thereon, in accordance with the provisions of Federal laws.

(Pub. L. 91–264, § 2, May 22, 1970, 84 Stat. 260.)

§ 643. Council's powers subject to approval by Secretary

The exercise of all powers granted the Hopi Tribal Council by this subchapter shall be subject to the approval of the Secretary of the Interior, or his duly authorized representatives.

(Pub. L. 91–264, § 3, May 22, 1970, 84 Stat. 261.)

§ 644. Bonds as valid and binding obligations

Bonds issued by authority of this subchapter and bearing the signatures of tribal officers in office on the date of the signing thereof shall be valid and binding obligations, not withstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon have ceased to be officers of the Hopi Tribal Council.

(Pub. L. 91–264, § 4, May 22, 1970, 84 Stat. 261.)

§ 645. Exemption from taxation

All bonds issued by the Hopi Tribal Council for and on behalf of the Hopi Tribe and the interest provided in said bonds shall be exempt from taxation to the same extent they would have been exempt if the bonds had been issued by the State of Arizona or a political subdivision thereof.

(Pub. L. 91–264, § 5, May 22, 1970, 84 Stat. 261.)

§ 646. Exempted securities

Any securities issued by the Hopi Tribal Council (including any guarantee by such council), and any securities guaranteed by the council as to both principal and interest, shall be deemed to be exempted securities within the meaning of sections 77c(a)(2) and 78e(a)(12) of title 15, and shall be exempt from all registration requirements of Acts of May 27, 1933, and June 6, 1934.

(Pub. L. 91–264, § 6, May 22, 1970, 84 Stat. 261.)

REFERENCES IN TEXT

Acts of May 27, 1933, and June 6, 1934, referred to in text, were in the original ''said Acts'', meaning act May 27, 1933, ch. 38, 48 Stat. 74, as amended, and act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which are known as the Securities Act of 1933 and the Securities Exchange Act of 1934, respectively. Act May 27, 1933, is classified generally to chapter 2A (§ 77a et seq.) of Title 15, Commerce and Trade, and act June 6, 1934, is classified principally to chapter 2B (§ 78a et seq.) of Title 15. For complete classification of these Acts to the Code, see Tables.

SUBCHAPTER XXIV—HUALAPAI TRIBE

§ 647. Disposition of judgment fund; deductions; advances, expenditures, investments or reinvestments for authorized purposes

The unexpended balance of funds on deposit in the Treasury of the United States to the credit of the Hualapai Tribe of Indians that were appropriated to pay a judgment granted by the Indian Claims Commission in dockets Numbered 90 and 122, and the interest thereon, less payment of attorney fees and expenses, may be advanced, expended, invested or reinvested for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior.

(Pub. L. 91–400, § 1, Sept. 16, 1970, 84 Stat. 838.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 648. Tax exemption

Any part of such funds that may be distributed to members of the tribe shall not be subject to Federal or State income tax.

(Pub. L. 91–400, § 2, Sept. 16, 1970, 84 Stat. 838.)

§ 649. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 91–400, § 3, Sept. 16, 1970, 84 Stat. 838.)

SUBCHAPTER XXV—INDIANS OF CALIFORNIA

§ 651. "Indians of California" defined

For the purposes of this subchapter the Indians of California shall be defined to be all Indians who were residing in the State of California on June 1, 1852, and their descendants now living in said State.

(May 18, 1928, ch. 624, § 1, 45 Stat. 602.)

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–294, § 1, Oct. 27, 1998, 112 Stat. 2818, provided that: "This Act [amending provisions set out as a note below] may be cited as the 'Advisory Council on California Indian Policy Extension Act of 1998'."

ADVISORY COUNCIL ON CALIFORNIA INDIAN POLICY ACT OF 1992

Pub. L. 102–416, Oct. 14, 1992, 106 Stat. 2131, as amended by Pub. L. 104–109, § 14, Feb. 12, 1996, 110 Stat. 766; Pub. L. 105–294, § 3, Oct. 27, 1998, 112 Stat. 2818, provided for the establishment of Advisory Council on California Indian Policy, consisting of 18 members, to develop list of tribes, to conduct a study of policies and programs affecting California Indians, to submit a report on the study no later than 36 months after first meeting of the Council, and to work with Congress, the Secretary, the Secretary of Health and Human Services, and the California Indian tribes, to implement the Council's proposals and recommendations, authorized the Council to appoint staff, hold hearings, establish task forces, accept funding from sources other than Federal government, and secure information from other Federal agencies, provided for termination of the Council on Mar. 31, 2000, and authorized $700,000 in appropriations to carry out the provisions of this Act.

REPORT TO CONGRESS

Act June 8, 1954, ch. 271, § 2, 68 Stat. 240, directed Secretary of the Interior to transmit to Congress on or before Aug. 31, 1955, a full and complete report of funds used and purposes accomplished to carry out provisions of this Act [amending section 657 of this title] and act approved May 18, 1928 (45 Stat. 602), as amended by acts of April 29, 1930 (46 Stat. 259); and June 30, 1948 (62 Stat. 1166); and May 24, 1950 (64 Stat. 189) [this subchapter].

§ 652. Claims against United States for appropriated lands; submission to United States Court of Federal Claims; appeal; grounds for relief

All claims of whatsoever nature the Indians of California as defined in section 651 of this title may have against the United States by reason of lands taken from them in the State of California by the United States without compensation, or for the failure or refusal of the United States to compensate them for their interest in lands in said State which the United States appropriated to its own purposes without the consent of said Indians, may be submitted to the United States Court of Federal Claims by the attorney general of the State of California acting for and on behalf of said Indians for determination of the equitable amount due said Indians from the United States; and jurisdiction is conferred upon the United States Court of Federal Claims,[1] to hear and determine all such equitable claims of said Indians against the United States and to render final decree thereon.

It is declared that the loss to the said Indians on account of their failure to secure the lands and compensation provided for in the eighteen unratified treaties is sufficient ground for equitable relief.

(May 18, 1928, ch. 624, § 2, 45 Stat. 602; Pub. L. 97–164, title I, § 150, Apr. 2, 1982, 96 Stat. 46; Pub. L. 100–352, § 6(b), June 27, 1988, 102 Stat. 663; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Pub. L. 102–572 substituted "United States Court of Federal Claims" for "United States Claims Court" in two places.

1988—Pub. L. 100–352 struck out ", with the right of either party to appeal to the United States Court of Appeals for the Federal Circuit" before ", to hear and determine".

1982—Pub. L. 97–164 substituted "United States Claims Court" for "Court of Claims" and for "Court of Claims of the United States" and substituted "United States Court of Appeals for the Federal Circuit" for "Supreme Court of the United States".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 653. Statutes of limitations unavailable against claims; amount of decree; set-off

If any claim or claims be submitted to said courts, they shall settle the equitable rights therein, notwithstanding lapse of time or statutes of limitation or the fact that the said claim or claims have not been presented to any other tribunal, including the commission created by the Act of March 3, 1851 (Ninth Statutes at Large, page 631): *Provided*, That any decree for said Indians shall be for an amount equal to the just value of the compensation provided or proposed for the Indians in those certain eighteen unratified treaties executed by the chiefs and head men of the several tribes and bands of Indians of California and submitted to the Senate of the United States by the President of the United States for ratification on the 1st day of June, 1852, including the lands described therein at $1.25 per acre. Any payment which may have been made by the United States or moneys heretofore or hereafter expended to date of award for the benefit of the Indians of California, made under specific appropriations for the support, education, health, and civilization of Indians in California, including purchases of land, shall not be pleaded as an estoppel but may be pleaded by way of set-off.

[1] So in original. The comma probably should not appear.

(May 18, 1928, ch. 624, § 3, 45 Stat. 602.)

REFERENCES IN TEXT

Act of March 3, 1851, referred to in text, is act Mar. 3, 1851, ch. 41, 9 Stat. 631, which was not classified to the Code.

§ 654. Claims presented by petition; filing date; amendment; signature and verification; official letters, documents, etc., furnished

The claims of the Indians of California under the provisions of this subchapter shall be presented by petition, which shall be filed within three years after May 18, 1928. Said petition shall be subject to amendment. The petition shall be signed and verified by the attorney general of the State of California. Verification may be upon information and belief as to the facts alleged. Official letters, papers, documents, and public records, or certified copies thereof, may be used in evidence and the departments of the Government shall give the said attorney access to such papers, correspondence, or furnish such certified copies of record as may be necessary in the premises free of cost.

(May 18, 1928, ch. 624, § 4, 45 Stat. 602.)

§ 655. Reimbursement of State of California for necessary costs and expenses

In the event that the court renders judgment against the United States under the provisions of this subchapter, it shall decree such amount as it finds reasonable to be paid to the State of California to reimburse the State for all necessary costs and expenses incurred by said State, other than attorney fees: *Provided*, That no reimbursement shall be made to the State of California for the services rendered by its attorney general.

(May 18, 1928, ch. 624, § 5, 45 Stat. 602.)

§ 656. Judgment amount deposited in Treasury to credit of Indians; interest rate; use of fund

The amount of any judgment shall be placed in the Treasury of the United States to the credit of the Indians of California and shall draw interest at the rate of 4 per centum per annum and shall be thereafter subject to appropriation by Congress for educational, health, industrial, and other purposes for the benefit of said Indians, including the purchase of lands and building of homes, and no part of said judgment shall be paid out in per capita payments to said Indians: *Provided*, That the Secretary of the Treasury is authorized and directed to pay to the State of California, out of the proceeds of the judgment when appropriated, the amount decreed by the court to be due said State, as provided in section 655 of this title.

(May 18, 1928, ch. 624, § 6, 45 Stat. 603.)

§ 657. Revision of roll of Indians

The Secretary of the Interior, under such regulations as he may prescribe, is authorized and directed to revise the roll of the Indians of California, as defined in section 651 of this title, which was approved by him on May 16, 1933, in the following particulars: (a) By adding to said roll the names of persons who filed applications for enrollment as Indians of California on or before May 18, 1932, and who, although determined to be descendants of the Indians residing in the State of California on June 1, 1852, were denied enrollment solely on the ground that they were not living in the State of California on May 18, 1928, and who were alive on May 24, 1950; (b) by adding to said roll the names of persons who are descendants of the Indians residing in the State of California on June 1, 1852, and who are the fathers, mothers, brothers, sisters, uncles, or aunts of persons whose names appear on said roll, and who were alive on May 24, 1950, irrespective of whether such fathers, mothers, brothers, sisters, uncles, or aunts were living in the State of California on May 18, 1928; (c) by adding to said roll the names of persons born since May 18, 1928, and living on May 24, 1950, who are the children or other descendants of persons whose names appear on said roll, or of persons whose names are eligible for addition to said roll under clauses (a) or (b) of this section, or of persons dying prior to May 24, 1950, whose names would have been eligible for addition to said roll under clauses (a) or (b) of this section if such persons had been alive on May 24, 1950; and (d) by removing from said roll the names of persons who have died since May 18, 1928, and prior to May 24, 1950. Persons entitled to enrollment under clause (a) of this section shall be enrolled by the Secretary of the Interior without further application. Persons claiming to be entitled to enrollment under clauses (b) or (c) of this section shall, within one year after May 24, 1950, make an application in writing to the Secretary of the Interior for enrollment, unless they have previously filed such an application under this section. For the purposes of clause (d) of this section, when the Secretary of the Interior is satisfied that reasonable and diligent efforts have been made to locate a person whose name is on said roll and that such person cannot be located, he may presume that such person died prior to May 24, 1950, and his presumption shall be conclusive. The Secretary of the Interior shall prepare not less than five hundred copies of an alphabetical list of the Indians of California whose names appear on the roll approved on May 16, 1933, giving the name, address, and age at time of enrollment of each such enrollee, together with such other factual information, if any, as the Secretary may deem advisable as tending to identify each enrollee, and shall distribute copies of this list to the various communities of California Indians. The Indians of California in each community may elect a committee of three enrollees who may aid the enrolling agent in any matters relating to the revision of said roll. After the expiration of the period allowed by this section for filing applications, the Secretary of the Interior shall have until June 30, 1955, to approve and promulgate the revised roll of the Indians of California provided for in this section. Upon such approval and promulgation, the roll shall be closed and thereafter no additional names shall be added thereto.

(May 18, 1928, ch. 624, § 7, 45 Stat. 603; Apr. 29, 1930, ch. 222, 46 Stat. 259; June 30, 1948, ch. 765, § 1, 62 Stat. 1166; May 24, 1950, ch. 196, § 1, 64 Stat. 189; June 8, 1954, ch. 271, § 1, 68 Stat. 240.)

AMENDMENTS

1954—Act June 8, 1954, inserted sentence providing for presumption of death, for purposes of cl. (d), after failure to locate, and extended to June 30, 1955, time for approving and promulgating revised roll.

1950—Act May 24, 1950, permitted revision of roll to include certain classes of Indians not previously eligible for inclusion.

1948—Act June 30, 1948, amended section generally to permit Secretary of the Interior to revise roll of Indians.

1930—Act Apr. 29, 1930, increased time within which an Indian could make application to be enrolled, and increased time within which Secretary of the Interior could alter and revise roll.

APPROPRIATIONS

Section 2 of act June 30, 1948, authorized $25,000 for the Secretary of the Interior to be used to defray the expense incurred in revising the roll as provided for in this section.

§ 658. Distribution of $150 from fund to each enrolled Indian

Notwithstanding the provisions of section 656 of this title, the Secretary of the Interior, under such regulations as he may prescribe, is authorized and directed to distribute per capita the sum of $150 to each Indian of California living on May 24, 1950, who is now or may hereafter be enrolled under sections 651 and 657 of this title. The Secretary of the Interior may, in his discretion, make such distribution from time to time to persons on the roll of the Indians of California approved on May 16, 1933, as he identifies such enrollees, before the completion of the revised roll provided for in section 657 of this title. The Secretary of the Interior is authorized to withdraw from the fund on deposit in the Treasury of the United States arising from the judgment in favor of the Indians of California entered by the Court of Claims on December 4, 1944, and appropriated for them by section 203 of the Act of April 25, 1945 (59 Stat. 77), such sums as may be necessary to make the per capita payments required by this section, including not to exceed $15,000 for the purpose of defraying the expenses incident to carrying out the provisions of sections 657 and 658 of this title. Such payments shall be made out of the accumulated interest on such judgment fund and so much of the principal thereof as is necessary to complete the payments. The money paid to enrollees pursuant to this section shall not be subject to any lien or claim of any nature against any such persons, except for debts owing to the United States.

(May 24, 1950, ch. 196, § 2, 64 Stat. 190.)

REFERENCES IN TEXT

The Court of Claims, referred to in text, and the Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

Section 203 of the Act of April 25, 1945, referred to in text, is section 203 of act Apr. 25, 1945, ch. 95, title II, 59 Stat. 94, which was not classified to the Code.

CODIFICATION

Section was not enacted as part of act May 18, 1928, ch. 624, 45 Stat. 602, which comprises this subchapter.

§ 659. Distribution of judgment fund

(a) Preparation of Indian roll

The Secretary of the Interior shall prepare a roll of persons of Indian blood who apply for inclusion thereon and (i) whose names or the name of a lineal or collateral relative appears on any of the approved rolls heretofore prepared pursuant to this subchapter and the amendments thereto or (ii) who can establish, to the satisfaction of the Secretary, lineal or collateral relationship to an Indian who resided in California on June 1, 1852, and (iii) who were born on or before and were living on September 21, 1968.

(b) Contents

The roll so prepared shall indicate, as nearly as possible, the group or groups of Indians of California with which the ancestors of each enrollee were affiliated on June 1, 1852. If the affiliation of an enrollee's ancestors on that date is unknown, it shall be presumed to be the same as that of the ancestors' relatives whose affiliation is known unless there is sound reason to believe otherwise. Applicants whose ancestry is derived partly from one of the groups named in section 660(b) of this title and partly from another group of Indians in California shall elect the affiliation to be shown for them on the roll.

(c) Application for enrollment

Application for enrollment shall be filed with the Area Director of the Bureau of Indian Affairs, Sacramento, California, on forms prescribed for that purpose.

(Pub. L. 90–507, § 1, Sept. 21, 1968, 82 Stat. 860.)

CODIFICATION

Section was not enacted as part of act May 18, 1928, ch. 624, 45 Stat. 602, which comprises this subchapter.

§ 660. Equal share distribution of 1964 appropriation

(a) Persons covered; amounts

The Secretary shall distribute to each person whose name appears on the roll prepared pursuant to section 659 of this title, except those whose ancestry is derived from one or more of the groups named in subsection (b) of this section, an equal share of the moneys which were appropriated by the Act of October 7, 1964 (78 Stat. 1033), in satisfaction of the judgment of the Indian Claims Commission in consolidated dockets numbered 31, 37, 80, 80–D, and 347, plus the interest earned thereon, minus attorneys fees, litigation expenses (including the reimbursement of funds expended under authority of the Acts of July 1, 1946 (60 Stat. 348), August 4, 1955 (69 Stat. 460), and July 14, 1960 (74 Stat. 512)), a proper share of the costs of roll preparation, and such amounts as may be required to effect the distribution.

(b) Persons excepted

Persons whose ancestry is derived solely from one or more of the following groups and persons of mixed ancestry who elected to share, other

than as heirs or legatees of enrollees, in any award granted to any of the following groups shall not share in the funds distributed pursuant to subsection (a) of this section: Northern Paiute, Southern Paiute, Mohave, Quechan (Yuma), Chemehuevi, Shoshone, Washoe, Klamath, Modoc, and Yahooskin Band of Snakes.

(Pub. L. 90–507, § 2, Sept. 21, 1968, 82 Stat. 860.)

REFERENCES IN TEXT

Act of October 7, 1964, referred to in subsec. (a), is act Oct. 7, 1964, Pub. L. 88–635, 78 Stat. 1033, known as the Supplemental Appropriation Act, 1965. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in subsec. (a), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

Acts of July 1, 1946, August 4, 1955, and July 14, 1960, referred to in subsec. (a), are, respectively, act July 1, 1946, ch. 529, 60 Stat. 348, known as the Interior Department Appropriation Act, 1947, act Aug. 4, 1955, ch. 541, 69 Stat. 450, known as the Supplemental Appropriation Act, 1956, and act July 14, 1960, Pub. L. 86–651, 74 Stat. 509, known as the Supplemental Appropriation Act, 1961. Those portions of the acts which appropriated the funds referred to were not classified to the Code.

CODIFICATION

Section was not enacted as part of act May 18, 1928, ch. 624, 45 Stat. 602, which comprises this subchapter.

§ 661. Equal share distribution of undistributed balance of 1945 appropriation

(a) Persons covered; amounts

The Secretary shall distribute to each person whose name appears on the roll prepared pursuant to section 659 of this title regardless of group affiliation an equal share of the undistributed balance of the moneys appropriated in satisfaction of the judgment of the Court of Claims in the case of The Indians of California against United States (102 Court of Claims 837; 59 Stat. 94), plus the interest earned thereon, including the reimbursed moneys and unexpended balances of the funds established by the Acts of July 1, 1946 (60 Stat. 348), August 4, 1955 (69 Stat. 460), and July 14, 1960 (74 Stat. 512), minus a proper share of the costs of roll preparation and such amounts as may be necessary to effect the distribution.

(b) Credit to judgment account

The Secretary of the Treasury is authorized and directed to credit to the judgment account referred to in subsection (a) of this section, for distribution as a part of such account, the sum of $83,275, plus interest at 4 per centum per annum from December 4, 1944, which sum represents the value of sixty-six thousand six hundred and twenty acres of land erroneously used as an offset against said judgment.

(Pub. L. 90–507, § 3, Sept. 21, 1968, 82 Stat. 860; Pub. L. 91–64, Aug. 25, 1969, 83 Stat. 105.)

REFERENCES IN TEXT

The moneys appropriated in satisfaction of the judgment of the Court of Claims in the case of The Indians of California against United States (102 Court of Claims 837; 59 Stat. 94), referred to in subsec. (a), are the moneys appropriated by act Apr. 25, 1945, ch. 95, 59 Stat. 77, known as the First Deficiency Appropriations Act, 1945. That portion of the act which appropriated the moneys referred to was not classified to the Code.

The Court of Claims, referred to in text, and the Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

Acts of July 1, 1946, August 4, 1955, and July 14, 1960, referred to in subsec. (a), are, respectively, act July 1, 1946, ch. 529, 60 Stat. 348, known as the Interior Department Appropriation Act, 1947, act Aug. 4, 1955, ch. 541, 69 Stat. 450, known as the Supplemental Appropriation Act, 1956, and act July 14, 1960, Pub. L. 86–651, 74 Stat. 509, known as the Supplemental Appropriation Act, 1961. Those portions of the acts which appropriated the funds referred to were not classified to the Code.

CODIFICATION

Section was not enacted as part of act May 18, 1928, ch. 624, 45 Stat. 602, which comprises this subchapter.

AMENDMENTS

1969—Pub. L. 91–64 designated existing provisions as subsec. (a) and added subsec. (b).

§ 662. Heirs of deceased enrollees; tax exemption

Each share distributable to an enrollee under sections 660 and 661 of this title shall be paid directly to the enrollee or, if he is deceased at the time of distribution, to his heirs or legatees unless the distributee is under twenty-one years of age or is otherwise under legal disability, in which case such disposition shall be made of the share as the Secretary determines will adequately protect the best interests of the distributee. Funds distributed under sections 659 to 663 of this title shall not be subject to Federal or State income taxes.

(Pub. L. 90–507, § 4, Sept. 21, 1968, 82 Stat. 861.)

CODIFICATION

Section was not enacted as part of act May 18, 1928, ch. 624, 45 Stat. 602, which comprises this subchapter.

§ 663. Rules and regulations; filing deadline

The Secretary is authorized to prescribe rules and regulations to carry out the provisions of sections 659 to 663 of this title, which rules and regulations shall include an appropriate deadline for the filing of applications for enrollment under section 659 of this title. The determinations of the Secretary regarding eligibility for enrollment, the affiliation of an applicant's ancestors, and the shares of the cost of roll preparation to be charged to each of the two funds referred to in sections 660 and 661 of this title shall be final. Not more than $325,000 in all shall be available under sections 659 to 663 of this title for the costs of roll preparation and of the distribution of shares.

(Pub. L. 90–507, § 5, Sept. 21, 1968, 82 Stat. 861.)

CODIFICATION

Section was not enacted as part of act May 18, 1928, ch. 624, 45 Stat. 602, which comprises this subchapter.

SUBCHAPTER XXVI—SOUTHERN UTE INDIAN TRIBE OF COLORADO

§ 668. Sale of lands held by the United States

Subject to the provisions of the Southern Ute Indian tribal constitution and the ordinances

and resolutions adopted thereunder, any lands that are held by the United States in trust for the Southern Ute Indian Tribe or that are subject to a restriction against alienation or taxation imposed by the United States, and that are not needed for Indian use, may be sold by the Southern Ute Indian Tribe, with the approval of the Secretary of the Interior, and such sales shall terminate the Federal trust or restrictions against alienation or taxation of the lands, except that the trust or restricted status of said lands may be retained, upon approval of the Secretary of the Interior, in any sale to a member of the tribe.

(Pub. L. 92–312, § 1, June 14, 1972, 86 Stat. 216.)

SOUTHERN UTE INDIAN RESERVATION IN COLORADO; CONFIRMATION OF RESERVATION BOUNDARIES

Pub. L. 98–290, May 21, 1984, 98 Stat. 201, provided that:

''CONGRESSIONAL PURPOSE

''SECTION 1. The purposes of this Act are—

''(1) to resolve uncertainty over the boundaries of the Southern Ute Indian Reservation and the status of unrestricted land on such reservation, and

''(2) to avoid long and costly litigation over issues dependent on reservation or Indian country status.

''INDIAN TRUST LAND DEFINED

''SEC. 2. For purposes of this Act, the term 'Indian trust land' means any land within the boundaries of the Southern Ute Indian Reservation which—

''(1) is held by the United States in trust for the benefit of the Southern Ute Indian Tribe or individual Indians, or

''(2) is owned by the United States and reserved for use or actually used in the administration of Indian affairs.

Any right-of-way bounded on both sides by Indian trust land shall be Indian trust land. Any other right-of-way shall not be Indian trust land.

''BOUNDARIES OF THE SOUTHERN UTE INDIAN RESERVATION DEFINED

''SEC. 3. The Southern Ute Indian Reservation in the State of Colorado is declared to have the following boundaries:

''(1) Bounded on the north by the southern boundary of the lands—

''(A) ceded to the United States by certain bands of Ute Indians under the Articles of Convention entered into on September 13, 1873, and ratified by the Act approved April 29, 1874 (18 Stat. 36), and

''(B) described in article I of such Articles of Convention.

''(2) Bounded on the south by the boundary line between the States of Colorado and New Mexico as described in article II of the treaty between the United States and the Ute Indians concluded March 2, 1868, and proclaimed November 6, 1868 (15 Stat. 619).

''(3) Bounded on the west by the eastern boundary of the Ute Mountain Ute Indian Reservation.

''(4) Bounded on the east by the southernmost 15 miles of the eastern boundary of the lands reserved to the Ute Indians by article II of the treaty between the United States and the Ute Indians concluded March 2, 1868, and proclaimed November 6, 1868 (15 Stat. 619), except that the lands east of such boundary in township 32 north, range 1 west, New Mexico principal meridian, that are held by the United States in trust for the benefit of the Southern Ute Indian Tribe are part of the Southern Ute Indian Reservation.

''JURISDICTION OVER RESERVATION

''SEC. 4. (a) Such territorial jurisdiction as the Southern Ute Indian Tribe has over persons other than Indians and the property of such persons shall be limited to Indian trust lands within the reservation.

''(b) Any person who is not an Indian and the property of any such person shall be subject to the jurisdiction of the United States under section 1152 of title 18, United States Code, only on Indian trust land.

''(c) Any law of the United States related to the sale, possession, introduction, or manufacture of alcoholic beverages or to trading with Indians within Indian country, or within the Indian reservation, shall apply, with respect to the Southern Ute Indian Reservation, only on Indian trust land.

''JURISDICTION OVER INCORPORATED MUNICIPALITIES WITHIN THE RESERVATION

''SEC. 5. The State of Colorado shall exercise criminal and civil jurisdiction within the boundaries of the town of Ignacio, Colorado, and any other municipality which may be incorporated under the laws of Colorado within the Southern Ute Indian Reservation, as if such State had assumed jurisdiction pursuant to the Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82 Stat. 79) [see 28 U.S.C. 1360 note].''

§ 669. Use of sale proceeds for purchase of real property only

All funds derived from the sale of lands pursuant to this subchapter shall be used only for the purchase of real property within the boundaries of the Southern Ute Indian Reservation. Title to any lands purchased with such funds and title to any lands reacquired by the tribe by foreclosure of a mortgage or deed of trust shall be taken in the name of the United States in trust for the Southern Ute Indian Tribe.

(Pub. L. 92–312, § 2, June 14, 1972, 86 Stat. 216.)

§ 670. Mortgage or deed of trust of lands sold; United States as party to all proceedings

Any tribal lands that may be sold pursuant to section 668 of this title may, with the approval of the Secretary of the Interior, be encumbered by a mortgage or deed of trust, and shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the State in which the land is located. The United States shall be an indispensable party to any such proceedings with the right of removal of the proceeding to the United States district court for the district in which the land is located, following the procedure in section 1446 of title 28, and the United States shall have the right to appeal from any order of remand in the proceeding.

(Pub. L. 92–312, § 3, June 14, 1972, 86 Stat. 216.)

SUBCHAPTER XXVII—UTE INDIANS OF UTAH

§ 671. Use of funds of the Ute Indian Tribe of the Uintah and Ouray Reservation for expenditure and per capita payments; regulations applicable to loans; restriction on attorney fees

Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the Ute Indian Tribe of the Uintah and Ouray Reservation may be expended or advanced for such purposes, including per capita payments, as may be designated by the Tribal Business Committee of said tribe and approved

by the Secretary of the Interior: *Provided*, That the aggregate amount of the expenditures and advances authorized by this section exclusive of per capita payments from interest shall not exceed 33⅓ per centum of such tribal funds now on deposit: *Provided further*, That with the exception of a $1,000 per capita payment which is authorized, no per capita payment shall be approved by the Secretary of the Interior from the principal of any judgment obtained under the Jurisdictional Act of June 28, 1938 (52 Stat. 1209), as amended, without further legislation: *Provided further*, That any funds advanced for loans by the tribe to individual Indians or associations of Indians shall be subject to regulations established for the making of loans from the revolving loan fund authorized by section 470 of this title: *Provided further*, That no part of the funds authorized to be expended or advanced by this section shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with the preparation or prosecution of the suit or suits in the Court of Claims which resulted in any or all of the judgments handed down by said court on July 13, 1950, unless approved by the said court in the proceeding now pending before said court for the adjudication of attorneys' fees, or to any agent or attorney on account of any contract for services rendered or to be rendered in the preparation of any suit against the United States.

(Aug. 21, 1951, ch. 338, § 1, 65 Stat. 193; June 29, 1954, ch. 412, 68 Stat. 321.)

REFERENCES IN TEXT

The Jurisdictional Act of June 28, 1938, referred to in text, is act June 28, 1938, ch. 776, 52 Stat. 1209, which was not classified to the Code.

The Court of Claims, referred to in text, and the Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1954—Act June 29, 1954, excepted from 33⅓ per centum limitation on expenditures and advances, per capita payments made from interest.

§ 672. Division of trust funds; ratification of resolution; crediting of shares; release of United States from liability in certain cases

The Secretary of the Interior is authorized and directed to divide the trust funds belonging to the Confederated Bands of Ute Indians and deposited in the United States Treasury pursuant to section 399 of this title, section 315j of title 43, and the Act of June 28, 1938 (52 Stat. 1211), as amended, including the interest thereon, by crediting 60 per centum to the Ute Indian Tribe of the Uintah and Ouray Reservation, consisting of the Uintah, Uncompahgre, and White River Utes, and 40 per centum to the Southern Utes, consisting of the Southern Utes of the Southern Ute Reservation and the Ute Mountain Tribe of the Ute Mountain Reservation. The resolution adopted June 1, 1950, by the members of the Uncompahgre, White River, and Uintah bands of Ute Indians compromising and settling all existing controversies between themselves as to ownership and distribution of any judgments which may be obtained against the United States and as to ownership of land within the Uintah and Ouray Reservation and income issuing therefrom by providing that the same shall become the tribal property of all the Indians of the Ute Indian Tribe of the Uintah and Ouray Reservation without regard to band derivation is ratified, approved and confirmed. The funds apportioned to the Southern Utes under this section shall be divided between the Southern Utes of the Southern Ute Reservation and the Ute Mountain Tribe of the Ute Mountain Reservation as agreed between said tribes. The shares of the respective groups shall be credited to the existing accounts established pursuant to sections 155 and 161a to 161d of this title. None of the funds involved herein shall be credited or distributed to the Ute Indian Tribe of the Uintah and Ouray Reservation, consisting of the Uintah, Uncompahgre, and White Rivers Utes, until the Uncompahgre and White River Banks present to the Secretary of the Interior a release satisfactory to him, relieving the United States of any liability resulting from the inclusion of the Uintah Band in the disposition or use of said trust funds.

(Aug. 21, 1951, ch. 338, § 2, 65 Stat. 194.)

REFERENCES IN TEXT

Act of June 28, 1938, referred to in text, is act June 28, 1938, ch. 776, 52 Stat. 1209, which was not classified to the Code.

§ 673. Repealed. Pub. L. 97–375, title I, § 108(b), Dec. 21, 1982, 96 Stat. 1820

Section, act Aug. 21, 1951, ch. 338, § 3, 65 Stat. 194, directed Secretary of the Interior to make a full and complete progress report to Congress of his activities and of expenditures authorized under section 671 of this title.

§ 674. Use of funds of the Ute Mountain Tribe of the Ute Mountain Reservation for expenditure and per capita payments; taxation of lands and funds; regulations applicable to loans

Notwithstanding any other provisions of existing laws, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the Ute Mountain Tribe of the Ute Mountain Reservation, may be expended or advanced for such purposes and in a manner, including per capita payments, the purchase of land or any interests therein or improvements thereon and water rights, as may be designated by the Ute Mountain Tribal Council and approved by the Secretary of the Interior: *Provided*, That the purchase of taxable lands under this authority shall not operate to remove such lands from the tax rolls: *Provided further*, That neither the transfer to the tribe of tribal funds, nor the distribution thereof to individual members of the tribe, as provided herein, from those funds consisting of compensation for lands acquired by the United States Government, shall be subject to Federal tax: *And provided further*, That any funds advanced for loans by the tribe

to individual Indians or associations of Indians shall be subject to regulations established for the making of loans from the revolving loan fund authorized by section 470 of this title.

(Aug. 12, 1953, ch. 406, § 1, 67 Stat. 540.)

§ 675. Restriction on payment of funds for agents' or attorneys' fees

No part of the funds authorized to be expended or advanced pursuant to section 674 of this title shall be paid or disbursed to or received by any agent or attorney on account of any contract for services rendered or to be rendered or expenses in the preparation of any suit against the United States.

(Aug. 12, 1953, ch. 406, § 2, 67 Stat. 540.)

§ 676. Use of funds of Southern Ute Tribe of Southern Ute Reservation for expenditure and per capita payments; regulations applicable to loans

Notwithstanding any other provisions of existing laws, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the Southern Ute Tribe of the Southern Ute Reservation, may be expended or advanced for such purposes and in a manner, including per capita payments the purchase of land or any interests therein or improvements thereon and water rights, as may be designated by the Southern Ute Tribal Council and approved by the Secretary of the Interior: *Provided*, That the purchase of taxable lands under this authority shall not operate to remove such lands from the tax rolls: *Provided further*, That neither the transfer to the tribe of tribal funds, nor the distribution thereof to individual members of the tribe, as provided herein, from those funds consisting of compensation for lands acquired by the United States Government, shall be subject to Federal tax: *Provided further*, That any funds advanced for loans by the tribe to individual Indians or associations of Indians shall be subject to regulations established for the making of loans from the revolving loan fund authorized by section 470 of this title: *And provided further*, That no part of the funds authorized to be expended or advanced by this section shall be paid or disbursed to or received by any agent or attorney on account of any contract for services rendered or to be rendered or expenses in the preparation of any suit against the United States.

(June 28, 1954, ch. 405, 68 Stat. 300.)

§ 676a. Distribution of judgment fund

The Secretary of the Interior is hereby authorized and directed to divide the trust fund belonging to the Confederated Bands of Ute Indians appropriated by the Second Supplemental Appropriations Act, 1965, and deposited in the United States Treasury pursuant to the final judgment entered in Indian Claims Commission docket numbered 327, including the interest thereon, by crediting 60 per centum to the Ute Indian Tribe of the Uintah and Ouray Reservation, and the Ute Distribution Corporation, to the Ute Mountain Tribe of the Ute Mountain Reservation,[1] 20 per centum to the Ute Mountain Tribe of the Ute Mountain Reservation, and 20 per centum for the Southern Ute Tribe of the Southern Ute Reservation. The portion of the trust fund, upon its division as herein directed, credited to the Ute Indian Tribe of the Uintah and Ouray Reservation, to the Ute Distribution Corporation, to the Ute Mountain Tribe of the Ute Mountain Reservation, and to the Southern Ute Tribe of the Southern Ute Reservation, shall be available for use in accordance with existing authorizations for use of funds of the tribes and the Ute Distribution Corporation, including the Act of August 21, 1951 (65 Stat. 193), as amended [25 U.S.C. 671–673], the Act of August 12, 1953 (67 Stat. 540) [25 U.S.C. 674, 675], the Act of June 28, 1954 (68 Stat. 300) [25 U.S.C. 676], and the Act of August 27, 1954 (68 Stat. 868), as amended [25 U.S.C. 677 et seq.]. Any part of such funds that may be distributed to the members of the tribe shall not be subject to Federal or State income taxes.

(Pub. L. 90–60, Aug. 1, 1967, 81 Stat. 164; Pub. L. 90–332, June 7, 1968, 82 Stat. 171.)

REFERENCES IN TEXT

The Second Supplemental Appropriations Act, 1965, referred to in text, is Pub. L. 89–16, Apr. 30, 1965, 79 Stat. 81. The trust fund appropriated by the Second Supplemental Appropriations Act, 1965, was provided for by title IV of the Act which was not classified to the Code.

Act of August 27, 1954, referred to in text, is act Aug. 27, 1954, ch. 1009, 68 Stat. 868, as amended, which is classified generally to subchapter XXVIII (§ 677 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1968—Pub. L. 90–332 inserted reference to Ute Mountain Tribe of Ute Mountain Reservation in provisions covering authorized uses of trust funds, inserted reference to Act August 12, 1953, and made minor changes in punctuation.

§ 676b. Distribution of judgment fund; deductions; availability for certain uses

The unexpended balance of funds on deposit in the Treasury to the credit of the Confederated Bands of Ute Indians appropriated by the Act of May 13, 1966 (80 Stat. 141), pursuant to the final judgment entered in Court of Claims case numbered 47567; and the funds on deposit to the credit of the Ute Tribe of the Uintah and Ouray Reservation, for and on behalf of the Uncompahgre Band of Ute Indians, that were appropriated by the Act of April 30, 1965 (79 Stat. 81), to pay a judgment by the Indians Claims Commission in docket numbered 349; and the interest thereon, less attorney fees and litigation expenses, shall be available for use by the respective tribes in accordance with the Act of August 21, 1951 (65 Stat. 193; 25 U.S.C. 672), the Act of August 12, 1953 (67 Stat. 540; 25 U.S.C. 674), the Act of June 28, 1954 (68 Stat. 300; 25 U.S.C. 676), and the Act of August 27, 1954 (68 Stat. 868; 25 U.S.C. 677), as amended.

(Pub. L. 91–420, § 1, Sept. 25, 1970, 84 Stat. 871.)

[1] So in original.

REFERENCES IN TEXT

Act of May 13, 1966, referred to in text, is act May 13, 1966, Pub. L. 89–426, 80 Stat. 141, which was not classified to the Code.

The Court of Claims, referred to in text, and the Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

Act of April 30, 1965, referred to in text, is act Apr. 30, 1965, Pub. L. 89–16, 79 Stat. 81, known as the Second Supplemental Appropriations Act, 1965. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

Act of August 27, 1954, referred to in text, is act Aug. 27, 1954, ch. 1009, 68 Stat. 868, as amended, which is classified generally to subchapter XXVIII (§ 677 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

§ 676b–1. Tax exemption

Any portion of the funds distributed per capita to the members of the respective tribes shall not be subject to Federal or State income tax.

(Pub. L. 91–420, § 2, Sept. 25, 1970, 84 Stat. 871.)

SUBCHAPTER XXVIII—UTE INDIANS OF UTAH: DISTRIBUTION OF ASSETS BETWEEN MIXED-BLOOD AND FULL-BLOOD MEMBERS; TERMINATION OF FEDERAL SUPERVISION OVER PROPERTY OF MIXED-BLOOD MEMBERS

§ 677. Purpose

The purpose of this subchapter is to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for termination of Federal supervision over their property.

(Aug. 27, 1954, ch. 1009, § 1, 68 Stat. 868.)

REPEAL OF INCONSISTENT LAWS

Section 29 of act Aug. 27, 1954, provided that: ''All Acts or parts of Acts, inconsistent with this Act [this subchapter] are hereby repealed insofar as they affect the tribe or its members.''

SEPARABILITY

Section 30 of act Aug. 27, 1954, provided that: ''If any provision of this Act [this subchapter], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.''

§ 677a. Definitions

For the purposes of this subchapter—

(a) ''Tribe'' means the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

(b) ''Full-blood'' means a member of the tribe who possesses one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half, excepting those who become mixed-bloods by choice under the provisions of section 677c of this title.

(c) ''Mixed-blood'' means a member of the tribe who does not possess sufficient Indian or Ute Indian blood to fall within the full-blood class as herein defined, and those who become mixed-bloods by choice under the provisions of section 677c of this title.

(d) ''Secretary'' means Secretary of the Interior.

(e) ''Superintendent'' means the Superintendent of the Uintah and Ouray Reservation, Utah.

(f) ''Asset'' means any property of the tribe, real, personal or mixed, whether held by the tribe or by the United States in trust for the tribe, or subject to a restriction against alienation imposed by the United States.

(g) ''Adult'' means a member of the tribe who has attained the age of twenty-one years.

(Aug. 27, 1954, ch. 1009, § 2, 68 Stat. 868.)

§ 677b. Method of determining Ute Indian blood

For the purposes of this subchapter Ute Indian blood shall be determined in accordance with the constitution and bylaws of the tribe and all tribal ordinances in force and effect on August 27, 1954.

(Aug. 27, 1954, ch. 1009, § 3, 68 Stat. 868.)

§ 677c. Transfer of members from full-blood roll to mixed-blood group; time; certification by Secretary

Any member of the tribe whose name appears on the proposed roll of full-blood members as provided in section 677g of this title and any person whose name is added to such proposed roll as the result of an appeal to the Secretary may apply to the Superintendent to become identified with and a part of the mixed-blood group: *Provided*, That such application is made within thirty days subsequent to the publication of such proposed roll or in the event of an appeal within thirty days subsequent to notification of the decision on said appeal: *And provided further*, That before such transfer is made upon the official rolls the Secretary shall first certify that, in his opinion, such change in status is not detrimental to the best interest of the person seeking such change.

(Aug. 27, 1954, ch. 1009, § 4, 68 Stat. 868.)

§ 677d. Restriction of tribe to full-blood members after publication of final rolls; non-interest of mixed-blood members; new membership

Effective on the date of publication of the final rolls as provided in section 677g of this title the tribe shall thereafter consist exclusively of full-blood members. Mixed-blood members shall have no interest therein except as otherwise provided in this subchapter. New membership in the tribe shall thereafter be controlled and determined by the constitution and bylaws of the tribe and ordinances enacted thereunder.

(Aug. 27, 1954, ch. 1009, § 5, 68 Stat. 868; Aug. 2, 1956, ch. 880, § 1, 70 Stat. 936.)

AMENDMENTS

1956—Act Aug. 2, 1956, provided for control and determination of new membership in the tribe in accordance with the constitution and bylaws of the tribe and ordinances enacted thereunder.

§ 677e. Organization of mixed-blood members; constitution and bylaws; representatives; actions in absence of organization

The mixed-blood members of the tribe, including those residing on and off the reservation, shall have the right to organize for their common welfare, and may adopt an appropriate constitution and bylaws which shall become effective when ratified by a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary under such rules and regulations as he may prescribe. Such constitution may provide for the selection of authorized representatives who shall have power to take any action that is required by this subchapter to be taken by the mixed-blood members as a group: *Provided*, That nothing herein contained shall be construed as requiring said mixed-blood Indians to so organize if such organization is by them deemed unnecessary. In the event no such approved organization is effected, any action taken by the adult mixed-blood members, by majority vote, whether in public meeting or by referendum, but in either event, after such notice as may be prescribed by the Secretary, shall be binding upon said mixed-blood members of the tribe for the purposes of this subchapter.

(Aug. 27, 1954, ch. 1009, § 6, 68 Stat. 868.)

§ 677f. Employment of legal counsel for mixed-blood members; fees

The mixed-blood members of the tribe as a group may employ legal counsel to accomplish the legal work required on behalf of said group under the terms of this subchapter, and for any other purpose by them deemed necessary or desirable; the choice of counsel and fixing of fees to be subject to the approval of the Secretary until Federal supervision over all of the members of said group and their property is terminated in the manner provided in section 677*o* of this title.

(Aug. 27, 1954, ch. 1009, § 7, 68 Stat. 869.)

§ 677g. Membership rolls of full-blood and mixed-blood members; preparation and initial publication; appeal from inclusion or omission from rolls; finality of determination; final publication; inheritable interest; future membership

The tribe shall have a period of thirty days from August 27, 1954 in which to prepare and submit to the Secretary a proposed roll of the full-blood members of the tribe, and a proposed roll of the mixed-blood members of the tribe, living on August 27, 1954. If the tribe fails to submit such proposed rolls within the time specified in this subchapter, the Secretary shall prepare such proposed rolls for the tribe. Said proposed rolls shall be published in the Federal Register, and in a newspaper of general circulation in each of the counties of Uintah and Duchesne in the State of Utah. Any person claiming membership rights in the tribe, or an interest in its assets, or a representative of the Secretary on behalf of any such person, within sixty days from the date of publication in the Federal Register, or in either of the papers of general circulation, as hereinbefore provided, whichever publication date is last, may file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from either of such proposed rolls. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals to the Secretary, and after all transfers have been made pursuant to section 677c of this title the roll of the full-blood members of the tribe, and the roll of the mixed-blood members of the tribe, shall be published in the Federal Register, and such rolls shall be final for the purposes of this subchapter, but said sections shall not be construed as granting any inheritable interest in tribal assets to full-blood members of the tribe or as preventing future membership in the tribe, after August 27, 1954, in the manner provided in the constitution and bylaws of the tribe.

(Aug. 27, 1954, ch. 1009, § 8, 68 Stat. 869; Aug. 2, 1956, ch. 880, § 2, 70 Stat. 936.)

AMENDMENTS

1956—Act Aug. 2, 1956, prohibited constructions of this subchapter granting inheritable interest in tribal assets to full-blood members of the tribe or preventing future membership in the tribe in accordance with its constitution and bylaws.

§ 677h. Sale or other disposition of certain described lands; funds; relief of United States from liability; assigned lands

The business committee of the tribe for and on behalf of the full-blood members of said tribe, and the duly authorized representatives for the mixed-blood members of said tribe, acting jointly, are authorized, subject to the approval of the Secretary, to sell, exchange, dispose of, and convey to any purchaser deemed satisfactory to said committee and representatives, any or all of the lands of said tribe described as follows, to wit:

Description	Section	Acres
Township 1 North, Range 1 East:		
NW/4 SW/4	35	40.00
Township 1 North, Range 1 West:		
W/2 NE/4	20	80.00
SE/4 SW/4	21	40.00
NE/4 NW/4; N/2 SW/4	28	120.00
Total		240.00
Township 2 North, Range 1 West:		
E/2 SW/4 NE/4	35	20.00
Township 1 South, Range 1 West:		
NW/4 SE/4	6	40.00
Lot 3	7	40.51
S/2 NE/4; NE/4 SE/4; W/2 SW/4 NW/4; W/2 NW/4 SW/4	16	160.00
E/2 SE/4	17	80.00
E/2 NE/4	20	80.00
SE/4 SE/4	29	40.00
Lot 2	30	40.26
SW/4 NW/4; SW/4 SE/4	35	80.00
SW/4 NE/4	36	40.00
Total		600.77

Description	Section	Acres
Township 1 South, Range 2 West:		
NW/4 SW/4	12	40.00
S/2 NE/4; N/2 SE/4	14	160.00
Total		200.00
Township 1 South, Range 3 West:		
SW/4 E/4	8	40.00
NW/4S NW/4	16	40.00
Total		80.00
Township 1 South, Range 8 West:		
W/2 SW/4	3	80.00
NE/4 SE/4	4	40.00
All	5	721.00
All	6	695.40
NE/4 NW/4	10	40.00
NE/4 SW/4	12	40.00
SW/4 NW/4	14	40.00
Total		1,656.40
Township 2 South, Range 1 West:		
S/2 SW/4; SE/4 SE/4	1	120.00
Lot 3; SE/4 NW/4	4	81.28
Lots 1 & 2; E/2 NW/4; W/2 NE/4	7	237.78
NW/4 NW/4	12	40.00
SE/4 NE/4	13	40.00
Total		519.06
Township 2 South, Range 1 East:		
Lot 2; SE/4 NW/4	18	79.71
Township 2 South, Range 2 West:		
S/2 S/2	2	160.00
N/2	12	320.00
Total		480.00
Township 2 South, Range 3 West:		
E/2 NE/4	17	80.00
NE/4 SW/4; S/2 SE/4	19	120.00
NW/4 SW/4	29	40.00
Lots 1 & 2; E/2 NW/4; NE/4	30	316.36
Lot 2; SE/4 NW/4	31	78.40
Total		634.76
Township 2 South, Range 4 West:		
SW/4 SW/4	1	40.00
SE/4 SW/4; SW/4 SE/4	9	80.00
W/2 NE/4	16	80.00
NE/4	28	160.00
N/2 SE/4	32	80.00
Lots 3 & 4; N/2 SW/4	33	167.31
NE/4 SW/4; N/2 SE/4; Lots 1 & 2	36	200.46
Total		807.77
Township 2 South, Range 5 West:		
NW/4	10	160.00
NE/4 NE/4	29	40.00
N/2 NE/4; SE/4 NE/4	33	120.00
W/2 NW/4; SE/4 NW/4; N/2 SW/4; SE/4 SW/4; S/2 SE/4	34	320.00
NW/4 SE/4	36	40.00
Total		680.00
Township 2 South, Range 7 West:		
NE/4 SE/4; SW/4 SW/4	13	80.00
NE/4 NE/4; SW/4 NW/4; N/2 SW/4; SE/4 SW/4; W/2 SE/4; SE/4 SE/4	14	320.00
W/2 NE/4; SE/4 NE/4	15	120.00
N/2 NE/4	23	80.00
N/2 N/2; SE/4 NE/4	24	200.00
Total		800.00
Township 2 South, Range 8 West:		
SE/4 SW/4	31	40.00
Township 3 South, Range 1 East:		
Lot 2; SE/4 NW/4; S/2 NE/4	7	158.12
N/2 SW/4; SW/4 NE/4; NW/4 SE/4	16	160.00
Lots 1, 2 & 3; NE/4 SW/4	18	155.35
E/2 NE/4	30	80.00
Total		553.47
Township 3 South, Range 2 East:		
Lot 8	6	35.49
SW/4 SW/4	25	40.00
SE/4 NW/4; E/2 SW/4	36	120.00
Total		195.49
Township 3 South, Range 1 West:		
N/2 SE/4	3	80.00
Lots 1–8, Incl	22	331.46
Lots 1–4, Incl.; S/2 N/2	23	338.28
Lots 1–4, Incl.; S/2 N/2	24	341.20
W/2 SE/4	25	80.00
Total		1,170.94
Township 3 South, Range 2 West:		
S/2 S/2	9	160.00
S/2 SE/4	7	80.00
SW/4 SW/4	8	40.00
W/2 SW/4	15	80.00
NE/4 SW/4; NW/4; SE/4	16	360.00
SW/4 SW/4	17	40.00
NE/4 NE/4	18	40.00
N/2 NE/4	21	80.00
N/2 NW/4	24	80.00
W/2 SW/4	33	80.00
Total		1,040.00
Township 3 South, Range 3 West:		
S/2 NW/4; NE/4 SW/4; N/2 SE/4	2	200.00
NW/4 SE/4; N/2 SW/4	17	120.00
All (Lots 1–4, Incl., E/2 W/2; E/2)	19	633.87
SW/4 SW/4	20	40.00
E/2 SW/4	21	80.00
N/2 NW/4; S/2 NE/4; NE/4 SE/4	29	200.00
W/2 NE/4; NE/4 NW/4; Lot 1	30	158.66
Total		1,432.53
Township 3 South, Range 4 West:		
SW/4 NW/4	11	40.00
S/2 SE/4; SE/4 SW/4; N/2 S/2	13	280.00
NE/4; NE/4 NW/4	24	200.00
SE/4 NE/4; W/2 NE/4; E/2 NW/4	26	200.00
E/2 NE/4	30	80.00
Total		800.00
Township 3 South, Range 5 West:		
Lots 1 & 2; SE/4 NE/4	3	118.86
Lot 4; SW/4 NW/4; W/2 SW/4; SE/4 SW/4	2	199.58
S/2 NE/4; N/2 SE/4	5	160.00
NW/4; W/2 NE/4; NE/4 SW/4; NW/4 SE/4	11	320.00
W/2 E/2	12	160.00
W/2 E/2	13	160.00
SW/4 NW/4; N/2 SW/4; SW/4 SW/4	21	160.00
E/2 NE/4	34	80.00
Total		1,358.44
Township 3 South, Range 7 West:		
Lots 3 & 4	7	66.55
S/2	13	320.00
NW/4 SW/4	16	40.00
E/2 SE/4; SW/4 SE/4; W/2 NW/4	17	200.00
E/2 NE/4; Lots 1 & 2	18	147.16
Total		773.71
Township 3 South, Range 8 West:		
E/2; NW/4; E/2 SW/4	35	560.00
S/2 S/2	1	160.00
SW/4	2	160.00
W/2 SE/4	3	80.00
Lots 3; SE/4 NW/4; NE/4 SW/4	6	120.04
SE/4	9	160.00
NE/4	10	160.00
S/2 NW/4	11	80.00
NW/4; SE/4	12	320.00
N/2 NE/4; SE/4 NE/4; SE/4; NE/4 NW/4	13	320.00
NE/4; S/2	14	480.00
S/2	15	320.00
W/2 NE/4; S/2 NW/4	27	160.00
Total		3,080.04
Township 3 South, Range 9 West:		
SW/4 NW/4; NW/4 SW/4	27	80.00
Township 4 South, Range 2 West:		
Lot 3; NE/4 SW/4; N/2 SE/4	7	159.70
E/2 NE/4; SW/4 NE/4	12	120.00
E/2 NW/4; SW/4 NW/4	16	120.00
SE/4 NE/4; NW/4; NW/4 SW/4; N/2 SE/4	17	320.00
Lot 1	18	39.91
SE/4, S/2 NE/4; S/2 SW/4	21	320.00
S/2	22	320.00
W/2 SW/4	23	80.00
Lot 4	26	6.89
Lots 1–4, Incl	27	26.59
Lots 1–4, Incl	28	126.64
Lots 1–6, Incl.; NE/4; E/2 NW/4	30	475.16

Description	Section	Acres
Total		2,114.89
Township 4 South, Range 3 West:		
Lot 10	2	40.90
E/2 NE/4; NE/4 SE/4	13	120.00
Lots 1 & 2; N/2 SE/4; SW/4; N/2	25	622.29
All	26	640.00
Lots 1–6, Incl.; NW/4 NW/4	35	237.96
Lot 1	36	25.75
Total		1,686.90
Township 4 South, Range 4 West:		
S/2	25	320.00
Township 4 South, Range 8 West:		
N/2	29	320.00
Township 4 South, Range 9 West:		
S/2	9	320.00
All	10	640.00
All	11	640.00
S/2	12	320.00
N/2; N/2 S/2; SE/4 SE/4	13	520.00
N/2	14	320.00
N/2	15	320.00
N/2	16	320.00
N/2	17	320.00
Lots 3 & 4; E/2 SW/4; SE/4	18	319.09
Lots 1 & 2; E/2 NW/4; NE/4	19	319.37
Total		4,358.46
Township 4 South, Range 10 West:		
S/2	13	320.00
SE/4 NW/4; E/2 SW/4	17	120.00
NE/4 NW/4	20	40.00
Total		480.00
Township 5 South, Range 7 West:		
S/2 SW/4	35	80.00
Township 5 South, Range 9 West:		
SE/4 NW/4; S/2 NE/4	34	120.00
SW/4 NW/4	35	40.00
Total		160.00
Township 6 South, Range 9 West:		
SW/4 SE/4	5	40.00
W/2 NE/4; NW/4 SE/4	8	120.00
Total		160.00
Grand total		27,043.34

All such sales, exchanges, or other dispositions shall be made upon such terms as said committee and said authorized representatives shall deem satisfactory and may be made pursuant to bids or at private sale, and all funds or other property derived from such sales, exchanges, or other dispositions shall be subject to the terms of this subchapter. Consent by the tribal business committee and said authorized representatives to the sale, exchange, or other disposal of the lands herein described shall relieve the United States of any liability resulting from such sale, exchange, or other disposition. The tribal business committee and said authorized representatives are further authorized to sell or dispose of tribal assigned lands to the assignees thereof under such terms and conditions as may be agreed upon by the said tribal business committee and said authorized representatives with the assignees, subject, however, to the approval of the Secretary.

(Aug. 27, 1954, ch. 1009, § 9, 68 Stat. 869.)

§ 677i. Division of assets; basis; prior alienation or encumbrance; partition by Secretary upon nonagreement; assistance; management of claims and rights; division of net proceeds; applicability of usual processes of the law to originally owned stock of corporate representative and to corporate distributions

The tribal business committee representing the full-blood group, and the authorized representatives of the mixed-blood group, within sixty days after the publication of the final membership roll, as provided in section 677g of this title, shall commence a division of the assets of the tribe that are then susceptible to equitable and practicable distribution. Such division shall be by agreement between them subject to the approval of the Secretary. Said division shall be based upon the relative number of persons comprising the final membership roll of each group. After such division the rights or beneficial interests in tribal property of each mixed-blood person whose name appears on the roll shall constitute an undivided interest in and to such property which may be inherited or bequeathed, but shall be subject to alienation or encumbrance before the transfer of title to such tribal property only as provided herein. Any contract made in violation of this section shall be null and void. If said groups are unable to agree upon said division within a period of twelve months from the date of such commencement, or any authorized extension of said period granted within the discretion of the Secretary, the Secretary is authorized to partition the assets of the tribe in such manner as in his opinion will be equitable and fair to both groups. Such partition shall give rise to no cause of action against the United States and the costs of such partition shall be paid by the tribe. The Secretary is authorized to provide such reasonable assistance as may be requested by both groups, or by either group, in formulation and execution of a plan for the division of said assets, including necessary technical services of Government employees at Fort Duchesne, Utah, and arranging for necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah, and political subdivisions thereof, and members of the tribe. All unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group, subject to such supervision by the Secretary as is otherwise required by law, and the net proceeds therefrom after deducting the costs chargeable to such management shall first be divided between the full-blood and mixed-blood groups in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds.

The stock of any corporation organized by the mixed-blood group for the purpose of empowering the officers of such corporation to act as the authorized representatives of said mixed-blood group in the joint management with the tribe

and in the distribution and[1] unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to mortgage, pledge, hypothecation, levy, execution, attachment or other similar process, while such stock remains in the ownership of the original stockholder or his heirs or legatees, but the interest of stockholders in any distribution by such corporation shall be subject to the usual processes of the law.

(Aug. 27, 1954, ch. 1009, § 10, 68 Stat. 873; Pub. L. 87–698, Sept. 25, 1962, 76 Stat. 597.)

REFERENCES IN TEXT

Herein, referred to in text, means act Aug. 27, 1954, ch. 1009, 68 Stat. 868, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1962—Pub. L. 87–698 inserted last paragraph providing that originally owned stock of corporate representative should not be subject to the usual processes of the law but that corporate distributions should be subject to them.

§ 677j. Advances or expenditures from tribal funds; restrictions on mixed-blood group until adoption of plan for terminating supervision

Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter deposited in the United States Treasury to the credit of the tribe or either group thereof, shall be available for advance to the tribe or the respective groups, or for expenditure, for such purposes, including per capita payments, as may be designated by the Tribal Business Committee for the full-blood members, and by the authorized agents of the mixed-blood members, and in either event subject to the approval of the Secretary: *Provided*, That the aggregate amount of the expenditures and advances authorized by this section for the mixed-blood group shall not exceed 50 per centum of the total funds of said mixed-blood group after such division, until said mixed-blood group has adopted a plan approved by the Secretary for termination of Federal supervision of said mixed-blood group, as required under section 677*l* of this title. After such termination of Federal supervision, per capita payments to the mixed-blood group shall not be subject to approval of the Secretary.

(Aug. 27, 1954, ch. 1009, § 11, 68 Stat. 873.)

§ 677k. Adjustment of debts in making per capita payments to mixed-blood members; execution of mortgages on property

Fifty per centum of all per capita payments to any individual mixed-blood member made pursuant to any division or distribution hereunder shall have deducted therefrom any sum or sums of money owed by such member to the tribe, whether due or to become due, unless in the opinion of the Secretary said debts are not adequately secured in which event the entire per capita payment shall be subject to such offset. Any other division, partition or distribution of property to any individual mixed-blood member made pursuant to this subchapter shall be subject to a mortgage to be made in favor of the tribe securing the payment of all sums of money owed by him to the tribe on the date of such division, partition or distribution to such individual mixed-blood member. The Secretary shall require the execution of any mortgage required under this section as a condition to any such division, partition or distribution.

(Aug. 27, 1954, ch. 1009, § 12, 68 Stat. 874.)

REFERENCES IN TEXT

Hereunder, referred to in text, means act Aug. 27, 1954, ch. 1009, 68 Stat. 868, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

§ 677*l*. Distribution to individual members of mixed-blood group; preparation and approval of plan; assistance; provisions permitted in plan

After the adoption of a plan for the division of the assets between the two groups, a plan for distribution of the assets of the mixed-blood group to the individual members thereof shall be prepared and ratified by a majority of said group, within the period of six months from such adoption and presented to the Secretary for approval. The Secretary is authorized to provide such reasonable assistance, including necessary technical service of Government employees at Fort Duchesne, Utah, and arranging for necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah and political subdivisions thereof, as may be required by the mixed-blood group in the preparation of such plan.

The plan for division of the assets among the members of the mixed-blood group may include:

(1) Complete disposition of all cash assets of said group, reserving, however, sufficient funds to cover—

(i) the proportionate share of said mixed-blood group in and to all expenses incurred in effecting the purposes of this subchapter, including, but not limited to, the necessary expense incurred under this section and section 677m of this title;

(ii) the just and proportionate share of the mixed-bloods in the expense incurred in the prosecution of the claims of the tribe, or the bands thereof, against the United States; and

(iii) the determinable and estimated administrative costs and expenses of any mixed-blood organization authorized by this subchapter, including lawful and reasonable salaries and fees of authorized agents, officers and employees of said mixed-blood group.

(2) Partition of the lands of the mixed-blood group, excepting all gas, oil, and mineral rights, to corporations, partnerships, or other legal entities, and to trustees, and the individual members of said groups, quality and quantity relatively considered, according to the respective rights and interests of the parties, lo-

[1] So in original. Probably should be "of".

cated so as to embrace, as far as practicable, any improvements lawfully made by the person or persons receiving such land. The value of the improvements made, under a valid lease or assignment from the tribe, shall be excluded from the valuation in making allotments to the lessee or assignee, and the land must be valued without regard to such improvements unless the lease or assignment, under which said improvements were made, provided that such improvements should become the property of the tribe. In the making of any partition due consideration shall be given to all of the rights and interests of the person or persons receiving the property, and all of the rights and interests of the other members of the tribe. Two or more of the members of said mixed-blood group may obtain their share of property as tenants in common, as joint tenants, or in any other lawful manner when such members agree among themselves as to the manner in which they desire to receive such title. When it appears that an equitable partition cannot be made among the members of said mixed-blood group without prejudice to the rights and interests of some of them, and yet a partition is directed by the group, the members of said group may voluntarily determine compensation to be made by one party to another on account of the inequity. In all cases where equity is agreed upon by the members of said mixed-blood group, such compensatory adjustment among the parties, according to the principles of equity, must be approved by the Secretary. In the event of a failure to agree upon an equitable compensatory adjustment among the parties the Secretary shall make such adjustment and his decision shall be final.

(3) Organization of corporations for the grazing of livestock, handling of water and water rights, and the shares therein may be issued to the members of said group in proportion to their interests in the assets of such corporations. When, in the opinion of said mixed-blood group, it is to the best interest of said group to transfer a portion of the assets of said group to a corporation or other legal entity for any purpose, the Secretary is authorized to make such transfer.

(4) A transfer of assets to one or more trustees designated by said group who shall hold title to all or any part of the property of said group for management or liquidation purposes under terms and conditions prescribed by said mixed-blood group. The Secretary is authorized to make such transfer, and approve the trustees, and the terms and conditions of the trust.

(5) Sale of any portion of the assets of said group subject to the approval of the Secretary. In addition to the sales herein otherwise authorized, authority is granted to the authorized representatives of said group to sell any property of said group when, in the opinion of the majority of said mixed-blood group, a practicable partition cannot be made, or for any other reason it is deemed to the best interests of the group, and the proceeds of such sales shall be distributed equitably among the members of said mixed-blood group; after deducting reasonable cost of sale and distribution.

(Aug. 27, 1954, ch. 1009, § 13, 68 Stat. 874.)

§ 677m. Procedure by Secretary if distribution not completed within seven years from August 27, 1954

In the event all the tribal assets, susceptible to equitable and practicable distribution, distributed to the mixed-blood group under the provisions of section 677i of this title, are not, within seven years from August 27, 1954, distributed to the individual mixed-blood members as contemplated in the plan to be adopted in accordance with the provisions of section 677*l* of this title, so as to effectively terminate Federal supervision over said assets, then the Secretary shall proceed to make such distribution in a manner, in his discretion, deemed fair and equitable to all members of said group, or convey such assets to a trustee for liquidation and distribution of the net proceeds, or convey such assets to the persons entitled thereto as tenants in common.

(Aug. 27, 1954, ch. 1009, § 14, 68 Stat. 875.)

§ 677n. Disposal by mixed-blood members of their individual interests in tribal assets; requisites and conditions

Any member of the mixed-blood group may dispose of his interest in the tribal assets prior to termination of Federal supervision, subject to the approval of the Secretary. In the event a member of the mixed-blood group determines to dispose of his interest in any of said real property at any time within ten years from August 27, 1954, he shall first offer it to the members of the tribe, and no sale of any interest, prior to termination of Federal supervision, shall be authorized without such offer to said members of the tribe in such form as may be approved by the Secretary. After termination of Federal supervision the requirement of such offer, in form to be approved by the Secretary, shall be a covenant to run with the land for said ten-year period, and shall be expressly provided in any patent or deed issued prior to the expiration of said period.

(Aug. 27, 1954, ch. 1009, § 15, 68 Stat. 876.)

§ 677*o*. Termination of restrictions on individually owned property of the mixed-blood group

(a) Transfer of control of trust property; removal of sales restrictions

When any mixed-blood member of the tribe has received his distributive share of the tribal assets distributed to the mixed-blood group under the provisions of section 677i of this title, whether such distribution is made in part or in whole to a corporation, partnership, or trusteeship in which he is interested, or otherwise, the Secretary is authorized and directed to immediately transfer to him unrestricted control of all other property held in trust for such mixed-blood member by the United States, and shall further remove all restrictions on the sale or encumbrance of trust or restricted property owned

by such member of the tribe, and Federal supervision of such member and his property shall thereby be terminated, except as to his remaining interest in tribal property in the form of any unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other tribal assets not susceptible to equitable and practicable distribution, all of which shall remain subject to the terms of this subchapter, notwithstanding anything contained herein to the contrary.

(b) Partition or sale by Secretary prior to removal of restrictions

Prior to the removal of restrictions in accordance with the provisions of subsection (a) of this section on land owned by more than one person, the Secretary may—

(1) upon request of any of the owners, partition the land and issue to each owner an unrestricted patent or deed for his individual share, unless such owner is a full-blood member of the tribe or other Indian who owns trust or restricted property, in which event a trust patent or restricted deed shall be issued and such trust may be terminated or such restrictions may be removed when the Secretary determines that the need therefor no longer exists;

(2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided*, That before a sale any one or more of the owners may elect to purchase the other interests in the land, or the tribe may elect to purchase the entire interest in the land, at not less than the appraised value thereof.

(Aug. 27, 1954, ch. 1009, § 16, 68 Stat. 876.)

REFERENCES IN TEXT

Herein, referred to in subsec. (a), means act Aug. 27, 1954, ch. 1009, 68 Stat. 868, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

§ 677p. Tax exemption; exceptions and time limits; valuation for income tax on gains or losses

No distribution of the assets made under the provisions of this subchapter shall be subject to any Federal or State income tax: *Provided*, That so much of any cash distribution made hereinunder as consists of a share of any interest earned on funds deposited in the Treasury of the United States shall not by virtue of this subchapter be exempt from individual income tax in the hands of the recipients for the year in which paid. Property distributed to the mixed-blood group pursuant to the terms of this subchapter shall be exempt from property taxes for a period of seven years from August 27, 1954, unless the original distributee parts with title thereto, either by deed, descent, succession, foreclosure of mortgage, sheriff's sale or other conveyance: *Provided*, That the mortgaging, hypothecation, granting of a right-of-way, or other similar encumbrance of said property shall not be construed as a conveyance subjecting said property to taxation under the provisions of this section. After seven years from August 27, 1954, all property distributed to the mixed-blood members of the tribe under the provisions of this subchapter, and all income derived therefrom by the individual, corporation, or other legal entity, shall be subject to the same taxes, State and Federal, as in the case of non-Indians; except that any corporation organized by the mixed-blood members for the purpose of aiding in the joint management with the tribe and in the distribution of unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets not susceptible to equitable and practicable distribution shall not be subject to corporate income taxes. Any valuation for purposes of Federal income tax on gains or losses shall take as the basis of the particular taxpayer the value of the property on the date title is transferred by the United States pursuant to this subchapter.

(Aug. 27, 1954, ch. 1009, § 17, 68 Stat. 876; Aug. 2, 1956, ch. 880, § 3, 70 Stat. 936.)

AMENDMENTS

1956—Act Aug. 2, 1956, included within exception clause provisions respecting exemption from corporate income taxes.

§ 677q. Applicability of decedents' estates laws to individual trust property of mixed-blood members

The laws of the United States with respect to probate of wills, determination of heirship, and the administration of estates shall apply to the individual trust property of mixed-blood members of the tribe until Federal supervision is terminated. Thereafter, the laws of the several States, Territories, possessions, and the District of Columbia within which such mixed-blood members reside at the time of their death shall apply.

(Aug. 27, 1954, ch. 1009, § 18, 68 Stat. 877.)

§ 677r. Indian claims unaffected

Nothing in this subchapter shall affect any claim heretofore filed against the United States by the tribe, or the individual bands comprising the tribe.

(Aug. 27, 1954, ch. 1009, § 19, 68 Stat. 877.)

§ 677s. Valid leases, permits, liens, etc., unaffected

Nothing in this subchapter shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved.

(Aug. 27, 1954, ch. 1009, § 20, 68 Stat. 877.)

§ 677t. Water rights

Nothing in this subchapter shall abrogate any water rights of the tribe or its members.

(Aug. 27, 1954, ch. 1009, § 21, 68 Stat. 877.)

§ 677u. Protection of minors, persons non compos mentis, and other members needing assistance; guardians

For the purposes of this subchapter, the Secretary shall protect the rights of members of the

tribe who are minors, non compos mentis, or, in the opinion of the Secretary, in need of assistance in conducting their affairs, by such means as he may deem adequate, but appointment of guardians pursuant to State laws, in any case, shall not be required until Federal supervision has terminated.

(Aug. 27, 1954, ch. 1009, § 22, 68 Stat. 877.)

§ 677v. Termination of Federal trust; publication; termination of Federal services; application of Federal and State laws

Upon removal of Federal restrictions on the property of each individual mixed-blood member of the tribe, the Secretary shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such individual is terminated. Thereafter, such individual shall not be entitled to any of the services performed for Indians because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

(Aug. 27, 1954, ch. 1009, § 23, 68 Stat. 877.)

§ 677w. Presentation of development program for full-blood group to eventually terminate Federal supervision

Within three months after August 27, 1954, the business committee of the tribe representing the full-blood group thereof shall present to the Secretary a development program calculated to assist in making the tribe and the members thereof selfsupporting, without any special Government assistance, with a view of eventually terminating all Federal supervision of the tribe and its members.

(Aug. 27, 1954, ch. 1009, § 24, 68 Stat. 877; Pub. L. 93–608, § 1(15), Jan. 2, 1975, 88 Stat. 1969.)

AMENDMENTS

1975—Pub. L. 93–608 struck out requirement of an annual progress report, through the Secretary, by the tribal business committee representing the full-blood group.

§ 677x. Citizenship status unaffected

Nothing in this subchapter, shall affect the status of the members of the tribe as citizens of the United States.

(Aug. 27, 1954, ch. 1009, § 25, 68 Stat. 877.)

§ 677y. Execution by Secretary of patents, deeds, etc.

The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments, as may be necessary or appropriate to carry out the provisions of this subchapter, or to establish a marketable and recordable title to any property disposed of pursuant to this subchapter.

(Aug. 27, 1954, ch. 1009, § 26, 68 Stat. 877.)

§ 677z. Rules and regulations; tribal or group referenda

The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of this subchapter, and may, in his discretion, provide for tribal or group referenda on matters pertaining to management or disposition of tribal or group assets.

(Aug. 27, 1954, ch. 1009, § 27, 68 Stat. 878.)

§ 677aa. Procedure by Secretary upon non-agreement between mixed-blood and full-blood groups

Whenever any action pursuant to the provisions of this subchapter requires the agreement of the mixed-blood and full-blood groups and such agreement cannot be reached, the Secretary is authorized to proceed in any manner deemed by him to be in the best interests of both groups.

(Aug. 27, 1954, ch. 1009, § 28, 68 Stat. 878.)

SUBCHAPTER XXIX—RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA

§ 681. Per capita payment to tribal members; rules and regulations

The Secretary of the Interior is authorized to withdraw as much as may be necessary from the fund on deposit in the Treasury of the United States arising from the proceeds of the sale of timber and lumber within the Red Lake Reservation in Minnesota, according to the provisions of the Act of May 18, 1916 (39 Stat. 137), to the credit of the Red Lake Indians in Minnesota, and to pay therefrom $100 to each member of the Red Lake Band of Chippewa Indians of Minnesota who is living on June 19, 1952. Such payment shall be made under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That such payment shall be made first from any funds on deposit in the Treasury of the United States to the credit of the Red Lake Band of the Chippewa Indians, of Minnesota, drawing interest at the rate of 5 per centum and thereafter from funds drawing 4 per centum.

(June 19, 1952, ch. 445, § 1, 66 Stat. 139.)

REFERENCES IN TEXT

Act of May 18, 1916, referred to in text, is act May 18, 1916, ch. 125, 39 Stat. 123. Provisions of the act relating to the sale of timber are set out at 39 Stat. 137 and were not classified to the Code.

§ 682. Payment free of liens or claims

No money paid to Indians under sections 681 to 683 of this title shall be subject to any lien or claim of attorneys or other persons. Before any payment is made under said sections, the Red Lake Band of Chippewa Indians of Minnesota shall, in such manner as may be prescribed by the Secretary of the Interior, ratify and accept the provisions of said sections.

(June 19, 1952, ch. 445, § 2, 66 Stat. 139.)

§ 683. Payments not "other income and resources"

Payments made under sections 681 to 683 of this title shall not be held to be ''other income

and resources'' as that term is used in sections 302(a)(7), 602(a)(7),[1] and 1202(a)(8) of title 42.

(June 19, 1952, ch. 445, § 3, 66 Stat. 140.)

REFERENCES IN TEXT

Section 602 of title 42, referred to in text, was repealed and a new section 602 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, subsec. (a)(7) no longer contains the term ''other income and resources''.

§ 684. Per capita payment to tribal members; installments; rules and regulations

The Secretary of the Interior is authorized to withdraw as much as may be necessary from the fund on deposit in the Treasury of the United States arising from the proceeds of the sale of timber and lumber within the Red Lake Reservation in Minnesota, according to the provisions of the Act of May 18, 1916 (39 Stat. 137), to the credit of the Red Lake Indians in Minnesota, and to pay therefrom $50 to each member of the Red Lake Band of Chippewa Indians of Minnesota who is living on August 27, 1954. Such payment shall be made in two installments of $25 each, the first to be made within thirty days of ratification by the Red Lake Band of Chippewa Indians of Minnesota as provided for in section 685 of this title, the second installment ninety days thereafter, and under such other rules and regulations as the Secretary of the Interior may prescribe.

(Aug. 27, 1954, ch. 1011, § 1, 68 Stat. 878.)

REFERENCES IN TEXT

Act of May 18, 1916, referred to in text, is act May 18, 1916, ch. 125, 39 Stat. 123. Provisions of the act relating to sale of timber are set out at 39 Stat. 137 and were not classified to the Code.

§ 685. Payment free of liens or claims

No money paid to Indians under sections 684 to 686 of this title shall be subject to any lien or claim of attorneys or other persons. Before any payment is made under said sections, the Red Lake Band of Chippewa Indians of Minnesota shall, in such manner as may be prescribed by the Secretary of the Interior, ratify and accept the provisions of said sections.

(Aug. 27, 1954, ch. 1011, § 2, 68 Stat. 879.)

§ 686. Payments not "other income and resources"

Payments made under sections 684 to 686 of this title shall not be held to be ''other income and resources'' as that term is used in sections 302(a)(7), 602(a)(7),[1] and 1202(a)(8) of title 42.

(Aug. 27, 1954, ch. 1011, § 3, 68 Stat. 879.)

REFERENCES IN TEXT

Section 602 of title 42, referred to in text, was repealed and a new section 602 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, subsec. (a)(7) no longer contains the term ''other income and resources''.

[1] See References in Text note below.

[1] See References in Text note below.

§ 687. Per capita payment to tribal members; rules and regulations

The Secretary of the Interior is authorized to withdraw as much as may be necessary from the fund on deposit in the Treasury of the United States arising from the proceeds of the sale of timber and lumber within the Red Lake Reservation in Minnesota, according to the provisions of the Act of May 18, 1916 (39 Stat. 137), to the credit of the Red Lake Indians in Minnesota, and to pay therefrom $100 to each member of the Red Lake Band of Chippewa Indians of Minnesota who is living on August 28, 1958. Such payment shall be made under such rules and regulations as the Secretary of the Interior may prescribe.

(Pub. L. 85–794, § 1, Aug. 28, 1958, 72 Stat. 958.)

REFERENCES IN TEXT

Act of May 18, 1916, referred to in text, is act May 18, 1916, ch. 125, 39 Stat. 123. Provisions of the act relating to sale of timber are set out at 39 Stat. 137 and were not classified to the Code.

PER CAPITA PAYMENTS FROM NET PROCEEDS

Section 4 of Pub. L. 85–794 amended the nineteenth paragraph of section 9 of act May 18, 1916, ch. 125, 39 Stat. 138, to read as follows: ''After the payment of all expenses connected with the administration of these lands as herein provided, the net proceeds therefrom shall be covered into the Treasury of the United States to the credit of the Red Lake Indians and draw interest at the rate of 4 per centum per annum. Any part of such fund or the interest thereon that is in excess of reserve and operating requirements, as determined by the Secretary of the Interior, may be distributed per capita to the members of the Red Lake Band upon request of the tribal council and approval by the Secretary.''

ADMINISTRATION OF RED LAKE INDIAN FOREST

Section 5 of Pub. L. 85–794, amended act May 18, 1916, ch. 125, § 9(17), 39 Stat. 137, to read as follows: ''The Red Lake Indian Forest shall be administered by the Secretary of the Interior in accordance with principles of scientific forestry that will encourage the production of successive timber crops for the benefit of the Indians of the Red Lake Band, and he is hereby authorized (a) to harvest, sell, and manufacture such marketable timber from any tribal lands within the Red Lake Indian Reservation as he may deem to be advisable and, if the timber is the growth of Red Lake Indian Forest, in keeping with the foregoing principles, (b) to establish nurseries and otherwise provide for the reforestation of said lands, (c) to construct and operate sawmills and other facilities for the manufacture into marketable products of the timber harvested from said lands, (d) to purchase, harvest, and manufacture such additional timber standing on or severed from any other lands, including lands outside the reservation, as in his opinion may contribute to the profitable operation of such sawmills and other facilities as a tribal enterprise, subject to such limitations on expenditures as may be prescribed in annual appropriations acts, and (e) to employ such persons and use such means as he may find necessary to carry out the purposes of the foregoing provisions. Any proceeds derived from sales of timber or timber products under this paragraph may be expended in payment of the expenses of any of the activities authorized by this paragraph including construction expenses.''

§ 688. Payment free of liens or claims

No money paid to Indians under sections 687 to 689 of this title shall be subject to any lien or claim of attorneys, or other persons.

(Pub. L. 85–794, § 2, Aug. 28, 1958, 72 Stat. 958.)

§ 689. Payments not "other income and resources"

Payments made under sections 687 to 689 of this title shall not be held to be ''other income and resources'' as that term is used in sections 302(a)(7), 602(a)(7),[1] and 1202(a)(8) of title 42.

(Pub. L. 85–794, § 3, Aug. 28, 1958, 72 Stat. 958.)

REFERENCES IN TEXT

Section 602 of title 42, referred to in text, was repealed and a new section 602 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, subsec. (a)(7) no longer contains the term ''other income and resources''.

§ 690. Distribution of judgment fund; tax exemption of per capita payments

The funds on deposit in the Treasury of the United States to the credit of the Red Lake Band of Chippewa Indians that were appropriated by the Act of June 9, 1964, to pay a judgment by the Indian Claims Commission in docket 18A, and the interest thereon, after payment of attorney fees and expenses, may be advanced or expended for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior. Any part of such funds that may be distributed per capita to the members of the tribe shall not be subject to Federal or State income tax.

(Pub. L. 88–663, Oct. 13, 1964, 78 Stat. 1093.)

REFERENCES IN TEXT

Act of June 9, 1964, referred to in text, is act June 9, 1964, Pub. L. 88–317, 78 Stat. 204, which was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

SUBCHAPTER XXX—WESTERN OREGON INDIANS: TERMINATION OF FEDERAL SUPERVISION

§ 691. Purpose

The purpose of this subchapter is to provide for the termination of Federal supervision over the trust and restricted property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, for the disposition of federally owned property acquired or withdrawn for the administration of the affairs of such Indians, and for a termination of Federal services furnished such Indians because of their status as Indians.

(Aug. 13, 1954, ch. 733, § 1, 68 Stat. 724.)

REPEAL OF INCONSISTENT LAWS

Section 19 of act Aug. 13, 1954, provided that: ''All Acts or parts of Acts inconsistent with this Act [this subchapter] are hereby repealed insofar as they affect a tribe or its members. The Act of June 18, 1934 (48 Stat. 948), as amended by the Act of June 15, 1935 (49 Stat. 378) [section 461 et seq. of this title], shall not apply to a tribe and its members after the date of the proclamation provided for in section 13 of this Act [section 703 of this title].''

SEPARABILITY

Section 20 of act Aug. 13, 1954, provided that: ''If any provision of this Act [this subchapter], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act [this subchapter] and the application of such provision to other persons or circumstances shall not be affected thereby.''

RESTORATION OF FEDERAL SUPERVISION

Federal supervision over certain tribes and bands of Indians has been restored as follows:

Confederated Tribes of Siletz Indians of Oregon, see section 711 et seq. of this title.

Cow Creek Bank of Umpqua Tribe of Oregon, see section 712 et seq. of this title.

Confederated Tribes of the Grand Ronde Community of Oregon, see section 713 et seq. of this title.

Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, see section 714 et seq. of this title.

Coquille Indian Tribe of Oregon, see section 715 et seq. of this title.

§ 692. Definitions

For the purposes of this subchapter:

(a) ''Tribe'' means any of the tribes, bands, groups, or communities of Indians located west of the Cascade Mountains in Oregon, including the following: Confederated Tribes of the Grand Ronde Community, Confederated Tribes of Siletz Indians, Alsea, Applegate Creek, Calapooya, Chaftan, Chempho, Chetco, Chetlessington, Chinook, Clackamas, Clatskanie, Clatsop, Clowwewalla, Coos, Cow Creek, Euchees, Galic Creek, Grave, Joshua, Karok, Kathlamet, Kusotony, Kwatami or Sixes, Lakmiut, Long Tom Creek, Lower Coquille, Lower Umpqua, Maddy, Mackanotin, Mary's River, Multnomah, Munsel Creek, Naltunnetunne, Nehalem, Nestucca, Northern Molalla, Port Orford, Pudding River, Rogue River, Salmon River, Santiam, Scoton, Shasta, Shasta Costa, Siletz, Siuslaw, Skiloot, Southern Molalla, Takelma, Tillamook, Tolowa, Tualatin, Tututui, Upper Coquille, Upper Umpqua, Willamette Tumwater, Yamhill, Yaquina, and Yoncalla;

(b) ''Secretary'' means the Secretary of the Interior.

(c) ''Lands'' means real property interest therein, or improvements thereon, and includes water rights.

(d) ''Tribal property'' means any real or personal property, including water rights, or any interest in real or personal property, that belongs to the tribe and either is held by the United States in trust for the tribe or is subject to a restriction against alienation imposed by the United States.

(Aug. 13, 1954, ch. 733, § 2, 68 Stat. 724.)

§ 693. Membership roll; preparation and initial publication; eligibility for enrollment; appeal from inclusion or omission from roll; finality of determination; final publication

Within ninety days after August 13, 1954, the Secretary shall publish in the Federal Register (1) a list of those tribes for which membership rolls will be required for the purposes of this subchapter, and (2) a list of those tribes for which no membership rolls will be required for the purposes of this subchapter. Each tribe on each list shall have a period of six months from

[1] See References in Text note below.

the date of publication of the notice in which to prepare and submit to the Secretary a proposed roll of the members of the tribe living on August 13, 1954, which shall be published in the Federal Register. In the absence of applicable law, or eligibility requirements in an approved constitution, bylaws, or membership ordinance, eligibility for enrollment shall be determined under such rules and regulations as the Secretary may prescribe. No person shall be enrolled on more than one tribal roll prepared pursuant to this subchapter. If a tribe on list one fails to submit such roll within the time specified in this section, the Secretary shall prepare a proposed roll for the tribe, which shall be published in the Federal Register. Any person claiming membership rights in the tribe or an interest in its assets, or a representative of the Secretary on behalf of any such person, may, within ninety days from the date of publication of the proposed roll, file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such roll. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals the roll of the tribe shall be published in the Federal Register and such roll shall be final for the purposes of this subchapter.

(Aug. 13, 1954, ch. 733, § 3, 68 Stat. 724.)

§ 694. Personal property rights; restrictions

Upon publication in the Federal Register of the final roll as provided in section 693 of this title, the rights or beneficial interests in tribal property of each person whose name appears on the roll shall constitute personal property which may be inherited or bequeathed, but shall not otherwise be subject to alienation or encumbrance before the transfer of title to such tribal property as provided in section 695 of this title without the approval of the Secretary. Any contract made in violation of this section shall be null and void.

(Aug. 13, 1954, ch. 733, § 4, 68 Stat. 725.)

§ 695. Tribal property

(a) Procedure for transfer

Upon request of a tribe, the Secretary is authorized within two years from August 13, 1954, to transfer to a corporation or other legal entity organized by the tribe in a form satisfactory to the Secretary title to all or any part of the tribal property, real and personal, or to transfer to one or more trustees designated by the tribe and approved by the Secretary, title to all or any part of such property to be held in trust for management or liquidation purposes under such terms and conditions as may be specified by the tribe and approved by the Secretary, or to sell all or any part of such property and make a pro rata distribution of the proceeds of sale among the members of the tribe after deducting, in his discretion, reasonable costs of sale and distribution.

(b) Property not transferred in accordance with recognized procedure; election to retain property

Title to any tribal property that is not transferred in accordance with the provisions of subsection (a) of this section shall be transferred by the Secretary to one or more trustees designated by him for the liquidation and distribution of assets among the members of the tribe under such terms and conditions as the Secretary may prescribe: *Provided*, That the trust agreement shall provide for the termination of the trust not more than three years from the date of such transfer unless the term of the trust is extended by order of a judge of a court of record designated in the trust agreement: *Provided further*, That the trust agreement shall provide that at any time before the sale of tribal property by the trustees the tribe may notify the trustees that it elects to retain such property and to transfer title thereto to a corporation, other legal entity, or trustee in accordance with the provisions of subsection (a) of this section, and that the trustees shall transfer title to such property in accordance with the notice from the tribe if it is approved by the Secretary.

(c) Compensation of agents or attorneys

The Secretary shall not approve any form of organization pursuant to subsection (a) of this section that provides for the transfer of stock or an undivided share in corporate assets as compensation for the services of agents or attorneys unless such transfer is based upon an appraisal of tribal assets that is satisfactory to the Secretary.

(d) Selection of trustees; approval by Secretary

When approving or disapproving the selection of trustees in accordance with the provisions of subsection (a) of this section, and when designating trustees pursuant to subsection (b) of this section, the Secretary shall give due regard to the laws of the State of Oregon that relate to the selection of trustees.

(Aug. 13, 1954, ch. 733, § 5, 68 Stat. 725.)

§ 696. Individual property

(a) Transfer of unrestricted control

The Secretary is authorized and directed to transfer within two years after August 13, 1954 to each member of each tribe unrestricted control of funds or other personal property held in trust for such member by the United States.

(b) Removal of restrictions on sales or encumbrances; fee simple title

All restrictions on the sale or encumbrance of trust or restricted land owned by members of the tribes (including allottees, purchasers, heirs, and devisees, either adult or minor) are removed two years after August 13, 1954 and the patents or deeds under which titles are then held shall pass the titles in fee simple, subject to any valid encumbrance. The titles to all interests in trust or restricted land acquired by members of the tribes by devise or inheritance two years or more after August 13, 1954 shall vest in such members in fee simple, subject to any valid encumbrance.

(c) Multiple land ownership; partition; sale; election to purchase; unlocated owners

Prior to the time provided in subsection (d)[1] of this section for the removal of restrictions on

[1] So in original. Probably should be subsection "(b)".

land owned by more than one member of a tribe, the Secretary may—

(1) upon request of any of the owners, partition the land and issue to each owner a patent or deed for his individual share that shall become unrestricted two years from August 13, 1954;

(2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided*, That any one or more of the owners may elect before a sale to purchase the other interests in the land at not less than the appraised value thereof, and the purchaser shall receive an unrestricted patent or deed to the land; and

(3) if the whereabouts of none of the owners can be ascertained, cause such lands to be sold and deposit the proceeds of sale in the Treasury of the United States for safekeeping.

(Aug. 13, 1954, ch. 733, § 6, 68 Stat. 725.)

§ 697. Property of deceased members

(a) Federal laws not applicable to probate

The Act of June 25, 1910 (36 Stat. 855), the Act of February 14, 1913 (37 Stat. 678), and other Acts amendatory thereto shall not apply to the probate of the trust and restricted property of the members of the tribes who die six months or more after August 13, 1954.

(b) State, etc., laws applicable to probate

The laws of the several States, Territories, possessions, and the District of Columbia with respect to the probate of wills, the determination of heirs, and the administration of decedents' estates shall apply to the individual property of members of the tribes who die six months or more after August 13, 1954.

(Aug. 13, 1954, ch. 733, § 7, 68 Stat. 726.)

REFERENCES IN TEXT

Act of June 25, 1910, referred to in subsec. (a), is act June 25, 1910, ch. 431, 36 Stat. 855, as amended, which enacted sections 47, 93, 151, 202, 337, 344a, 351, 352, 353, 372, 403, 406, 407, and 408 of this title, sections 6a–1 and 16a of Title 41, Public Contracts, and section 148 of Title 43, Public Lands, and amended sections 191, 312, 331, 333, and 336 of this title and sections 104 and 107 of former Title 18, Criminal Code and Criminal Procedure. Sections 104 and 107 of former title 18 were repealed and reenacted as sections 1853 and 1856 of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, 62 Stat. 683. For complete classification of this Act to the Code, see Tables.

Act of February 14, 1913, referred to in subsec. (a), is act Feb. 14, 1913, ch. 55, 37 Stat. 678, which amended section 373 of this title. For complete classification of this Act to the Code, see Tables.

§ 698. Transfer of federally owned property

The Secretary is authorized, in his discretion, to transfer to any tribe or any member or group of members thereof any federally owned property acquired, withdrawn, or used for the administration of the affairs of the tribes subject to this subchapter which he deems necessary for Indian use, or to transfer to a public or non-profit body any such property which he deems necessary for public use and from which members of the tribes will derive benefits.

(Aug. 13, 1954, ch. 733, § 8, 68 Stat. 726.)

§ 699. Taxes; initial exemption; taxes following distribution; valuation for capital gains or losses

No property distributed under the provisions of this subchapter shall at the time of distribution be subject to Federal or State income tax. Following any distribution of property made under the provisions of this subchapter, such property and any income derived therefrom by the individual, corporation, or other legal entity shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided*, That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity.

(Aug. 13, 1954, ch. 733, § 9, 68 Stat. 726.)

§ 700. Protection of minors, persons non compos mentis and other members needing assistance; guardians; other adequate means

Prior to the transfer of title to, or the removal of restrictions from, property in accordance with the provisions of this subchapter, the Secretary shall protect the rights of members of the tribes who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs by causing the appointment of guardians for such members in courts of competent jurisdiction, or by such other means as he may deem adequate.

(Aug. 13, 1954, ch. 733, § 10, 68 Stat. 726.)

§ 701. Advances or expenditures from tribal funds

Pending the completion of the property dispositions provided for in this subchapter, the funds now on deposit, or hereafter deposited in the Treasury of the United States to the credit of a tribe shall be available for advance to the tribe, or for expenditure, for such purposes as may be designated by the governing body of the tribe and approved by the Secretary.

(Aug. 13, 1954, ch. 733, § 11, 68 Stat. 726.)

§ 702. Execution by Secretary of patents, deeds, etc.

The Secretary shall have authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments as may be necessary or appropriate to carry out the provisions of this subchapter, or to establish a marketable and recordable title to any property disposed of pursuant to this subchapter.

(Aug. 13, 1954, ch. 733, § 12, 68 Stat. 727.)

§ 703. Termination of Federal trust

(a) Publication; termination of Federal services; application of Federal and State laws

Upon removal of Federal restrictions on the property of each tribe and individual members thereof, the Secretary shall publish in the Fed-

eral Register a proclamation declaring that the Federal trust relationship to the affairs of the tribe and its members has terminated. Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians, excluding statutes that specifically refer to the tribe and its members, shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

(b) Citizenship status unaffected

Nothing in this subchapter shall affect the status of the members of a tribe as citizens of the United States.

(c) Education and training program; purposes; subjects; transportation; subsistence; contracts; other education programs

Prior to the issuance of a proclamation in accordance with the provisions of this section, the Secretary is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.

(Aug. 13, 1954, ch. 733, § 13, 68 Stat. 727.)

§ 704. Omitted

CODIFICATION

Section, act Aug. 13, 1954, ch. 733, § 14, 68 Stat. 727, which revoked corporate charter of Confederated Tribes of Grand Ronde Community of Oregon and provided for termination of Federal power with regard to tribe, was omitted in view of Federal recognition and restoration of corporate charter of Confederated Tribes of Grand Ronde Community of Oregon by section 713b of this title.

§ 705. Offset of individual indebtedness; credit

The Secretary is authorized to set off against any indebtedness payable to the tribe or to the United States by an individual member of the tribe, or payable to the United States by the tribe, any funds payable to such individual or tribe under this subchapter and to deposit the amount set off to the credit of the tribe or the United States as the case may be.

(Aug. 13, 1954, ch. 733, § 15, 68 Stat. 727.)

§ 706. Indian claims unaffected

Nothing in this subchapter shall affect any claim heretofore filed against the United States by any tribe.

(Aug. 13, 1954, ch. 733, § 16, 68 Stat. 727.)

§ 707. Valid leases, permits, liens, etc., unaffected

Nothing in this subchapter shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved. Whenever any such instrument places in or reserves to the Secretary any powers, duties, or other functions with respect to the property subject thereto, the Secretary may transfer such functions, in whole or in part, to any Federal agency with the consent of such agency.

(Aug. 13, 1954, ch. 733, § 17, 68 Stat. 728.)

§ 708. Rules and regulations; tribal referenda

The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of this subchapter, and may in his discretion provide for tribal referenda on matters pertaining to management or disposition of tribal assets.

(Aug. 13, 1954, ch. 733, § 18, 68 Stat. 728.)

SUBCHAPTER XXX–A—SILETZ INDIAN TRIBE: RESTORATION OF FEDERAL SUPERVISION

§ 711. Definitions

For the purposes of this subchapter—

(1) the term ''tribe'' means the Confederated Tribes of Siletz Indians of Oregon;

(2) the term ''Secretary'' means the Secretary of the Interior or his authorized representative;

(3) the term ''Interim Council'' means the council elected pursuant to section 711c of this title;

(4) the term ''member'', when used with respect to the tribe, means a person enrolled on the membership roll of the tribe, as provided in section 711b of this title; and

(5) the term ''final membership roll'' means the final membership roll of the tribe published on July 20, 1956, on pages 5454–5462 of volume 21 of the Federal Register.

(Pub. L. 95–195, § 2, Nov. 18, 1977, 91 Stat. 1415.)

SHORT TITLE

Section 1 of Pub. L. 95–195 provided: ''That this Act [enacting this subchapter] may be cited as the 'Siletz Indian Tribe Restoration Act'.''

§ 711a. Federal recognition

(a) Extension; laws applicable; eligibility for Federal services and benefits

Federal recognition is hereby extended to the tribe, and the provisions of the Act of June 18, 1934 (48 Stat. 984) as amended [25 U.S.C. 461 et seq.], except as inconsistent with specific provisions of this subchapter, are made applicable to the tribe and the members of the tribe. The tribe and the members of the tribe shall be eligible for all Federal services and benefits furnished to federally recognized Indian tribes.

Notwithstanding any provision to the contrary in any law establishing such services or benefits, eligibility of the tribe and its members for such Federal services and benefits shall become effective upon November 18, 1977, without regard to the existence of a reservation for the tribe or the residence of members of the tribe on a reservation.

(b) Restoration of rights and privileges

Except as provided in subsection (c) of this section, all rights and privileges of the tribe and of members of the tribe under any Federal treaty, Executive order, agreement, or statute, or under any other authority, which were diminished or lost under the Act of August 13, 1954 (68 Stat. 724) [25 U.S.C. 691 et seq.], are hereby restored, and such Act shall be inapplicable to the tribe and to members of the tribe after November 18, 1977.

(c) Hunting, fishing or trapping rights and tribal reservations not restored

This subchapter shall not grant or restore any hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, to the tribe or any member of the tribe, nor shall it be construed as granting, establishing, or restoring a reservation for the tribe.

(d) Effect on property rights or obligations, contractual rights or obligations, or obligations for taxes

Except as specifically provided in this subchapter, nothing in this subchapter shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes already levied.

(Pub. L. 95–195, § 3, Nov. 18, 1977, 91 Stat. 1415.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in subsec. (a), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Act of August 13, 1954, referred to in subsec. (b), is act Aug. 13, 1954, ch. 733, 68 Stat. 724, which is classified generally to subchapter XXX (§ 691 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

§ 711b. Membership roll

(a) Opening; duty of Secretary, Interim Council, and tribal officials

The final membership roll is declared open. The Secretary, the Interim Council, and tribal officials under the tribal constitution and bylaws shall take such measures as will insure the continuing accuracy of the membership roll.

(b) Prerequisites for inclusion

(1) Until after the initial election of tribal officers under the tribal constitution and bylaws, a person shall be a member of the tribe and his name shall be placed on the membership roll if he is living and if—

(A) his name is listed on the final membership roll;

(B) he was entitled on August 13, 1954, to be on the final membership roll but his name was not listed on that roll; or

(C) he is a descendant of a person specified in subparagraph (A) or (B) and possesses at least one-fourth degree of blood of members of the tribe or their Siletz Indian ancestors.

(2) After the initial election of tribal officials under the tribal constitution and bylaws, the provisions of the tribal constitution and bylaws shall govern membership in the tribe.

(c) Verification of descendancy, age, and blood; appeal; finality of determination; possession of enrollment records and materials

(1) Before election of the Interim Council, verification of descendancy, age, and blood shall be made upon oath before the Secretary and his determination thereon shall be final.

(2) After election of the Interim Council and before the initial election of the tribal officials, verification of descendancy, age, and blood shall be made upon oath before the Interim Council, or its authorized representative. A member of the tribe, with respect to the inclusion of any name, and any person, with respect to the exclusion of his name, may appeal to the Secretary, who shall make a final determination of each such appeal within ninety days after an appeal has been filed with him. The determination of the Secretary with respect to an appeal under this paragraph shall be final.

(3) After the initial election of tribal officials, the provisions of the tribal constitution and bylaws shall govern the verification of any requirements for membership in the tribe, and the Secretary and the Interim Council shall deliver their records and files, and any other material relating to enrollment matters, to the tribal governing body.

(d) Franchisement

For purposes of sections 711c and 711d of this title, a member who is eighteen years of age or older is entitled and eligible to be given notice of, attend, participate in, and vote at, general council meetings and to nominate candidates for, to run for any office in, and to vote in, elections of members to the Interim Council and to other tribal councils.

(Pub. L. 95–195, § 4, Nov. 18, 1977, 91 Stat. 1416.)

§ 711c. Interim Council

(a) Nomination and election of members; notice; meetings; ballot requirements; approval by Secretary

Within forty-five days after November 18, 1977, the Secretary shall announce the date of a general council meeting of the tribe to nominate candidates for election to the Interim Council. Such general council meeting shall be held within sixty days after November 18, 1977. Within forty-five days after such general council meeting the Secretary shall hold an election by secret ballot, absentee balloting to be permitted, to elect nine members of the tribe to the Interim Council from among the nominees submitted to him from such general council meeting. The Secretary shall assure that notice of the time, place, and purpose of such meeting and election shall be provided to members described in section 711b(d) of this title at least fifteen days before such general meeting and election.

The ballot shall provide for write-in votes. The Secretary shall approve the Interim Council elected pursuant to this section if he is satisfied that the requirements of this section relating to the nominating and election process have been met. If he is not so satisfied, he shall hold another election under this section, with the general council meeting to nominate candidates for election to the Interim Council to be held within sixty days after such election.

(b) Powers of Council

The Interim Council shall represent the tribe and its members in the implementation of this subchapter and shall be the acting tribal governing body until tribal officials are elected pursuant to section 711d(c) of this title and shall have no powers other than those given to it in accordance with this subchapter. The Interim Council shall have full authority and capacity to receive grants from and to make contracts with the Secretary and the Secretary of Health and Human Services with respect to Federal services and benefits for the tribe and its members and to bind the tribal governing body as the successor in interest to the Interim Council for a period extending not more than six months after the date on which the tribal governing body takes office. Except as provided in the preceding sentence, the Interim Council shall have no power or authority after the time when the duly-elected tribal governing body takes office: *Provided*, That no authority to make payments under this subchapter shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Council vacancies; notice; meeting; election

Within thirty days after receiving notice of a vacancy on the Interim Council, the Interim Council shall hold a general council meeting for the purpose of electing a person to fill such vacancy. The Interim Council shall provide notice of the time, place, and purpose of such meeting and election to members described in section 711b(d) of this title at least ten days before such general meeting and election. The person nominated to fill such vacancy at the general council meeting who received the highest number of votes in the election shall fill such vacancy.

(Pub. L. 95–195, § 5, Nov. 18, 1977, 91 Stat. 1416; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (b), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 711d. Tribal constitution and bylaws

(a) Election; time and procedure

Upon the written request of the Interim Council, the Secretary shall conduct an election by secret ballot, pursuant to the provisions of section 476 of this title, for the purpose of adopting a constitution and bylaws for the tribes. The election shall be held within sixty days after the Secretary has—

(1) reviewed and updated the final membership roll for accuracy, in accordance with section 711b(a), (b)(1), and (c)(1) of this title,

(2) made a final determination of all appeals filed under section 711b(c)(2) of this title, and

(3) published in the Federal Register a certification copy of the membership roll of the tribe.

(b) Pre-election distribution of proposed constitution and bylaws and brief impartial description; consultation by Interim Council with members of tribe

The Interim Council shall draft and distribute to each member described in section 711b(d) of this title, no later than thirty days before the election under subsection (a) of this section, a copy of the proposed constitution and bylaws of the tribe, as drafted by the Interim Council, along with a brief, impartial description of the proposed constitution and bylaws. The members of the Interim Council may freely consult with members of the tribe concerning the text and description of the constitution and bylaws, except that such consultation may not be carried on within fifty feet of the polling places on the date of the election.

(c) Majority vote necessary for adoption of constitution and bylaws

In any election held pursuant to subsection (a) of this section, the vote of a majority of those actually voting shall be necessary and sufficient for the adoption of a tribal constitution and bylaws.

(d) Election of tribal officials provided for in constitution and bylaws; ballot requirements

Not later than one hundred and twenty days after the tribe adopts a constitution and bylaws, the Interim Council shall conduct an election by secret ballot for the purpose of electing the individuals who will serve as tribal officials as provided in the tribal constitution and bylaws. For the purpose of this election and notwithstanding any provision in the tribal constitution and bylaws to the contrary, absentee balloting shall be permitted.

(Pub. L. 95–195, § 6, Nov. 18, 1977, 91 Stat. 1417.)

§ 711e. Reservation

(a) Establishment

Any reservation for the tribe shall be established by an Act of Congress enacted after November 18, 1977.

(b) Plan; negotiation with tribe; approval by tribal officials; submittal to Congress

Inasmuch as the reservation of the tribe has been terminated, the Secretary shall negotiate with the tribe, or with representatives of the tribe chosen by the tribe, concerning the establishment of a reservation for the tribe and shall, in accordance with subsections (c) and (d) of this section and within two years after November 18, 1977, develop a plan for the establishment of a reservation for the tribe. Upon approval of such plan by the tribal officials elected under the tribal constitution and bylaws adopted pursuant to section 711d of this title, the Secretary shall submit such plan, in the form of proposed legislation, to the Congress.

(c) Notification and consultation

To assure that legitimate State and local interests are not prejudiced by the creation of a

reservation for the tribe, the Secretary, in developing a plan under subsection (b) of this section for the establishment of a reservation, shall notify and consult with all appropriate officials of the State of Oregon, all appropriate local governmental officials in the State of Oregon and any other interested parties. Such consultation shall include the following subjects:

(1) the size and location of the reservation;

(2) the effect the establishment of the reservation would have on State and local tax revenues;

(3) the criminal and civil jurisdiction of the State of Oregon with respect to the reservation and persons on the reservation;

(4) hunting, fishing, and trapping rights of the tribe and members of the tribe, on the reservation;

(5) the provision of State and local services to the reservation and to the tribe and members of the tribe on the reservation; and

(6) the provision of Federal services to the reservation and to the tribe and members of the tribe and the provision of services by the tribe to members of the tribe.

(d) Provisions of plan

Any plan developed under this section for the establishment of a reservation for the tribe shall provide that—

(1) any real property transferred by the tribe or members of the tribe to the Secretary shall be taken in the name of the United States in trust for the benefit of the tribe and shall be the reservation for the tribe;

(2) the establishment of such a reservation will not grant or restore to the tribe or any member of the tribe any hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, on such reservation;

(3) the Secretary shall not accept any real property in trust for the benefit of the tribe or its members unless such real property is located within Lincoln County, State of Oregon;

(4) any real property taken in trust by the Secretary for the benefit of the tribe or its members shall be subject to all rights existing at the time such property is taken in trust, including liens, outstanding Federal, State, and local taxes, mortgages, outstanding indebtedness of any kind, easements, and all other obligations, and shall be subject to foreclosure and sale in accordance with the laws of the State of Oregon;

(5) the transfer of any real property to the Secretary in trust for the benefit of the tribe or its members shall be exempt from all Federal, State, and local taxation, and all such real property shall, as of the date of such transfer, be exempt from Federal, State, and local taxation; and

(6) the State of Oregon shall have civil and criminal jurisdiction with respect to the reservation and persons on the reservation in accordance with section 1360 of title 28 and section 1162 of title 18.

(e) Statement

The Secretary shall append to the plan a detailed statement describing the manner in which the notification and consultation prescribed by subsection (c) of this section was carried out and shall include any written comments with respect to the establishment of a reservation for the tribe submitted to the Secretary by State and local officials and other interested parties in the course of such consultation.

(Pub. L. 95–195, § 7, Nov. 18, 1977, 91 Stat. 1418.)

AUTHORITY TO ERECT PERMANENT IMPROVEMENTS ON LAND ACQUIRED FOR CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON

Pub. L. 97–38, Aug. 14, 1981, 95 Stat. 938, provided: ''That, notwithstanding any other provision of law or regulation, the Attorney General shall approve any deed or other instrument which—

''(1) conveys to the United States the land described in section 2 of the Act entitled 'An Act to establish a reservation for the Confederated Tribes of Siletz Indians of Oregon', approved September 4, 1980 (94 Stat. 1073) [set out below], and

''(2) incorporates by reference the terms of the agreement entered into on September 18, 1980, by the city of Siletz, Oregon, the Confederated Tribes of Siletz Indians of Oregon, and the United States of America.

The Secretary of the Interior or the Confederated Tribes of Siletz Indians of Oregon may erect permanent improvements, improvements of a substantial value, or any other improvements authorized by law on such land after such land is conveyed to the United States.''

ESTABLISHMENT OF RESERVATION FOR CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON

Pub. L. 96–340, Sept. 4, 1980, 94 Stat. 1072, as amended by Pub. L. 103–435, § 3, Nov. 2, 1994, 108 Stat. 4567; Pub. L. 105–256, § 7, Oct. 14, 1998, 112 Stat. 1897, established a reservation for the Confederated Tribes of Siletz Indians of Oregon, particularly describing, subject to all valid liens, rights-of-way, agreements, licenses, permits, and easements as of Sept. 4, 1980, the parcel of land, consisting of approximately 3,630 acres in the State of Oregon as well as other parcels of land to be conveyed to the Secretary of the Interior, to be held in trust for the Confederated Tribes of Siletz Indians of Oregon, with all parcels of land subject to the provisions of section 461 et seq. of this title and the right of the Secretary of the Interior to establish, without compensation to such tribes, reasonable rights-of-way and easements to provide access to other Federal lands, no new or additional hunting, fishing, or trapping rights beyond the rights declared in the final judgment of the United States District Court in the action entitled Confederated Tribes of Siletz Indians of Oregon against State of Oregon, entered on May 2, 1980, be deemed, granted, or restored to the tribe or any member of the tribe, and civil and criminal jurisdiction, in accordance with section 1360 of Title 28, Judiciary and Judicial Procedure, and section 1162 of Title 18, Crimes and Criminal Procedure, to reside with the State of Oregon with respect to the reservation and any individual on the reservation.

§ 711f. Rules and regulations

The Secretary may make such rules and regulations as are necessary to carry out the purposes of this subchapter.

(Pub. L. 95–195, § 8, Nov. 18, 1977, 91 Stat. 1419.)

SUBCHAPTER XXX–B—COW CREEK BAND OF UMPQUA TRIBE OF OREGON

§ 712. Definitions

For the purposes of this subchapter—

(1) the term ''tribe'' means the Cow Creek Band of Umpqua Tribe of Indians; and

(2) the term ''member'', when used with respect to the tribe, means a person enrolled on the membership roll of the tribe in accordance with section 712c of this title.

(Pub. L. 97–391, § 2, Dec. 29, 1982, 96 Stat. 1960; Pub. L. 100–139, § 5(b), Oct. 26, 1987, 101 Stat. 827.)

AMENDMENTS

1987—Par. (1). Pub. L. 100–139 substituted ''Umpqua Tribe of Indians'' for ''Umpqua Tribe of Oregon''.

SHORT TITLE OF 1987 AMENDMENT

Section 1 of Pub. L. 100–139 provided: ''That this Act [amending this section and sections 712a to 712c of this title] may be cited as the 'Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987'.''

SHORT TITLE

Section 1 of Pub. L. 97–391 provided that: ''This Act [enacting this subchapter] may be cited as the 'Cow Creek Band of Umpqua Tribe of Indians Recognition Act'.''

§ 712a. Extension of Federal recognition, rights, and privileges

(a) Federal recognition

Notwithstanding any provision of the Act approved August 13, 1954 (25 U.S.C. 691 et seq.), or any other law, Federal recognition is extended to the Cow Creek Band of Umpqua Tribe of Indians. Except as otherwise provided in this subchapter, all laws and regulations of the United States of general application to Indians or nations, tribes, or bands of Indians which are not inconsistent with any specific provision of this subchapter shall be applicable to the tribe.

(b) Restoration of rights and privileges

All rights and privileges of the tribe and the members of the tribe under any Federal treaty, Executive order, agreement, or statute, or under any other Federal authority, which may have been diminished or lost under the Act approved August 13, 1954 (25 U.S.C. 691 et seq.), are restored, and the provisions of such subchapter shall be inapplicable to the tribe and to members of the tribe after December 29, 1982.

(c) Federal services and benefits

Notwithstanding any other provision of law, the tribe and members of the tribe shall be eligible for all Federal services and benefits furnished to federally recognized Indian tribes upon December 29, 1982, without regard to the existence of a reservation for the tribe or the residence of members of the tribe on a reservation.

(d) Effect on property rights and other obligations

Except as otherwise specifically provided in this subchapter, no provision contained in this subchapter shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes already levied.

(Pub. L. 97–391, § 3, Dec. 29, 1982, 96 Stat. 1960; Pub. L. 100–139, § 5(b), Oct. 26, 1987, 101 Stat. 827.)

REFERENCES IN TEXT

Act approved August 13, 1954, referred to in subsecs. (a) and (b), is act Aug. 13, 1954, ch. 733, 68 Stat. 724, which is classified generally to subchapter XXX (§ 691 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–139 substituted ''Umpqua Tribe of Indians'' for ''Umpqua Tribe of Oregon''.

§ 712b. Organization of tribe

(a) Organization and organic governing document

The tribe may organize for its common welfare and adopt an appropriate instrument, in writing, to govern the affairs of the tribe when acting in its governmental capacity. The tribe shall file with the Secretary of the Interior a copy of its organic governing document and any amendments thereto.

(b) New governing document or amendments or revisions of interim governing document; tribal election

Not less than one year following October 26, 1987, the tribe's governing body may propose a new governing document or amendments or revisions to the interim governing document, and the Secretary shall conduct a tribal election as to the adoption of that proposed document within one hundred twenty days from the date it is submitted to the Bureau of Indian Affairs.

(c) Approval of new governing document

The Secretary shall approve the new governing document if approved by a majority of the tribal voters unless he or she determines that such document is in violation of any laws of the United States.

(d) Interim governing document pending approval

Until the tribe adopts and the Secretary approves a new governing document, its interim governing document shall be the tribal bylaws entitled ''By-Laws of Cow Creek Band of Umpqua Tribe of Indians'' which bear an ''approved'' date of ''9–10–78,''.

(e) Governing body pending adoption of final document

Until the tribe adopts a final governing document, the tribe's governing body shall consist of its current board of directors elected at the tribe's annual meeting of August 10, 1986, or such new board members as are selected under election procedures of the interim governing document identified at subsection (d) of this section.

(Pub. L. 97–391, § 4, Dec. 29, 1982, 96 Stat. 1961; Pub. L. 100–139, § 7(a), Oct. 26, 1987, 101 Stat. 828.)

AMENDMENTS

1987—Pub. L. 100–139 amended section generally. Prior to amendment, section read as follows: ''The tribe may organize for its common welfare and adopt an appropriate instrument, in writing, to govern the affairs of the tribe when acting in its governmental capacity. The tribe shall file with the Secretary of the Interior a copy of its organic governing document and any amendments thereto.''

§ 712c. Tribal membership

(a) Membership

Until such time as the Secretary of the Interior publishes a tribal membership roll as man-

dated in subsection (b) of this section, the membership of the Cow Creek Band of Umpqua Tribe of Indians shall consist of all persons listed in the official tribal roll approved on September 13, 1980, by the tribe's Board of Directors, and their descendants. Following publication by the Secretary of the tribal membership roll mandated in subsection (b) of this section, the membership of the Cow Creek Band of Umpqua Tribe of Indians shall consist of all persons listed on such roll.

(b) Preparation of membership roll by Secretary; individuals to be included

Within three hundred and sixty-five days after October 26, 1987, the Secretary shall prepare in accordance with the regulations contained in part 61 of title 25 of the Code of Federal Regulations a tribal membership roll of the Cow Creek Band of Umpqua Tribe of Indians. Such roll shall include all Cow Creek descendants or other Indian individuals who were not members of any other federally recognized Indian tribe on July 30, 1987 and who—

(1) are listed on the tribal roll referred to in subsection (a) of this section;

(2) are the descendants of any individuals listed pursuant to paragraph (1) born on or prior to December 29, 1982; or

(3)(A) are the descendants of any individual considered to be a member of the Cow Creek Band of Umpqua Tribe of Indians for the purposes of the treaty entered between such Band and the United States on September 18, 1853; (B) have applied to the Secretary for inclusion in the roll pursuant to subsection (c) of this section; and (C) meet the requirements for membership provided in the tribe's governing documents.

(c) Regulations governing application process

The Secretary shall devise regulations governing the application process under which individuals may apply to have their names placed on the tribal roll pursuant to paragraph 3[1] of subsection (b) of this section.

(d) Limitation; tribal discretion; additional requirements

After publication of the roll in the Federal Register, the membership of the tribe shall be limited to the persons listed on such roll and their descendants: *Provided*, That the tribe, at its discretion, may subsequently grant tribal membership to any individual of Cow Creek Band of Umpqua ancestry who pursuant to tribal procedures, has applied for membership in the tribe and has been determined by the tribe to meet the tribal requirements for membership in the tribe: *Provided further*, That nothing in this subchapter shall be interpreted as restricting the tribe's power to impose additional requirements for future membership in the tribe upon the adoption of a new constitution or amendments thereto as provided in section 712b of this title.

(Pub. L. 97–391, § 5, Dec. 29, 1982, 96 Stat. 1961; Pub. L. 100–139, § 5(a), Oct. 26, 1987, 101 Stat. 826; Pub. L. 100–446, title I, Sept. 27, 1988, 102 Stat. 1794.)

[1] So in original. Probably should be paragraph ''(3)''.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–446 inserted ''Cow Creek descendants or other'' before ''Indian individuals''.

1987—Pub. L. 100–139 amended section generally. Prior to amendment, section read as follows:

''(a) Membership in the tribe shall consist of every individual—

''(1) whose name appears on the tribal roll in effect on December 29, 1982; or

''(2) who is a descendant of any individual described in paragraph (1).

''(b) Membership in the tribe pursuant to subsection (a) of this section shall not entitle an individual, who is not otherwise entitled, to participate in any distribution of funds pursuant to a judgment under the Act approved May 26, 1980 (94 Stat. 372).''

§ 712d. Rules

The Secretary of the Interior may make such rules as are necessary to carry out the provisions of this subchapter.

(Pub. L. 97–391, § 6, Dec. 29, 1982, 96 Stat. 1961.)

§ 712e. Certain property taken into trust

The Secretary of the Interior shall accept title to 2000 acres of real property and may accept title to any additional number of acres of real property located in Umpqua River watershed upstream from Scottsburg, Oregon, or the northern slope of the Rogue River watershed upstream from Agness, Oregon, if such real property is conveyed or otherwise transferred to the United States by or on behalf of the Tribe. The Secretary shall take into trust for the benefit of the Tribe all real property conveyed or otherwise transferred to the United States pursuant to this section. Real property taken into trust pursuant to this section shall become part of the Tribe's reservation, and shall be treated as on-reservation land for the purpose of processing acquisitions of real property into trust. Real property taken into trust pursuant to this section shall not be considered to have been taken into trust for gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)).

(Pub. L. 97–391, § 7, as added Pub. L. 105–256, § 9, Oct. 14, 1998, 112 Stat. 1898; amended Pub. L. 108–204, title I, § 104, Mar. 2, 2004, 118 Stat. 543.)

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in text, is Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (§ 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

2004—Pub. L. 108–204 inserted '', and shall be treated as on-reservation land for the purpose of processing acquisitions of real property into trust'' after ''part of the Tribe's reservation''.

SUBCHAPTER XXX–C—CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON

§ 713. Definitions

For the purposes of this subchapter—

(1) the term ''tribe'' means the Confederated Tribes of the Grand Ronde Community of Or-

egon considered as one tribe in accordance with section 713a of this title;

(2) the term ''Secretary'' means the Secretary of the Interior or his designated representative;

(3) the term ''Interim Council'' means the council which is established under, and the members of which are elected pursuant to, section 713c of this title;

(4) the term ''tribal governing body'' means the governing body which is established under, and the members of which are elected pursuant to, the tribal constitution and bylaws adopted in accordance with section 713d of this title; and

(5) the term ''member'', when used with respect to the tribe, means an individual enrolled on the membership roll of the tribe in accordance with section 713e of this title.

(Pub. L. 98–165, § 2, Nov. 22, 1983, 97 Stat. 1064.)

SHORT TITLE

Section 1 of Pub. L. 98–165 provided that: ''This Act [enacting this subchapter] may be cited as the 'Grand Ronde Restoration Act'.''

§ 713a. Consideration of Confederated Tribes of Grand Ronde Community as one tribe

The Confederated Tribes of the Grand Ronde Community of Oregon shall be considered as one tribal unit for purposes of Federal recognition and eligibility for Federal benefits under section 713b of this title, the establishment of tribal self-government under sections 713c and 713d of this title, the compilation of a tribal membership roll under section 713e of this title, and the establishment of a tribal reservation under section 713f of this title.

(Pub. L. 98–165, § 3, Nov. 22, 1983, 97 Stat. 1064.)

§ 713b. Restoration of Federal recognition, rights, and privileges

(a) Federal recognition

Notwithstanding any provision of the Act approved August 13, 1954 (25 U.S.C. 691 et seq.) or any other law, Federal recognition is extended to the Confederated Tribes of the Grand Ronde Community of Oregon and the corporate charter of such tribe issued pursuant to section 477 of this title and ratified by the tribe on August 22, 1936, is reinstated. Except as otherwise provided in this subchapter, all laws and regulations of the United States of general application to Indians or nations, tribes, or bands of Indians which are not inconsistent with any specific provision of this subchapter shall be applicable to the tribe.

(b) Restoration of rights and privileges

Except as provided in subsection (d) of this section, all rights and privileges of the tribe and the members of the tribe under any Federal treaty, Executive order, agreement, or statute, or under any other Federal authority, which may have been diminished or lost under the Act approved August 13, 1954 (25 U.S.C. 691 et seq.) are restored, and the provisions of such subchapter shall be inapplicable to the tribe and to members of the tribe after November 22, 1983.

(c) Federal services and benefits

Notwithstanding any other provision of law, the tribe and its members shall be eligible, on and after November 22, 1983, for all Federal services and benefits furnished to federally recognized Indian tribes without regard to the existence of a reservation for the tribe. In the case of Federal services available to members of federally recognized Indian tribes residing on or near a reservation, members of the tribe residing in the following counties of the State of Oregon shall be deemed to be residing on or near a reservation:

(1) Washington County.
(2) Marion County.
(3) Yamhill County.
(4) Polk County.
(5) Tillamook County.
(6) Multnomah County.

Any member residing in any such county shall continue to be eligible to receive any such Federal service notwithstanding the establishment of any reservation for the tribe in accordance with any plan prepared pursuant to section 713f of this title.

(d) No hunting, fishing or trapping rights restored

No hunting, fishing, or trapping rights of any nature of the tribe or of any member, including any indirect or procedural right or advantage over individuals who are not members, are granted or restored under this subchapter.

(e) Effect on property rights and other obligations

Except as otherwise specifically provided in this subchapter, no provision contained in this subchapter shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes already levied.

(Pub. L. 98–165, § 4, Nov. 22, 1983, 97 Stat. 1064.)

REFERENCES IN TEXT

Act approved August 13, 1954, referred to in subsecs. (a) and (b), is act Aug. 13, 1954, ch. 733, 68 Stat. 724, which is classified generally to subchapter XXX (§ 691 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

§ 713c. Interim Council

(a) Establishment

There is established an Interim Council of the tribe which shall be composed of nine members. The Interim Council shall represent the tribe and its members in the implementation of this subchapter and shall be the governing body of the tribe until the tribal governing body established in accordance with section 713d of this title first convenes.

(b) Nomination and election of Interim Council members

(1) Within forty-five days after November 22, 1983, the Secretary shall announce the date of a general council meeting of the tribe to nominate candidates for election to the Interim Council. Such general council meeting shall be held within fifteen days of such announcement.

(2) Within forty-five days after such general council meeting, the Secretary shall hold an

election by secret ballot to elect the members of the Interim Council from among the members nominated in such general council meeting. Absentee and write-in balloting shall be permitted.

(3) The Secretary shall approve the results of the Interim Council election conducted pursuant to this section if he is satisfied that the requirements of this section relating to the nomination and the election processes have been met. If he is not satisfied, he shall call for another general council meeting to be held within sixty days after such election to nominate candidates for election to the Interim Council and shall hold another election within forty-five days of such meeting.

(4) The Secretary shall take any action necessary to ensure that each member described in section 713e(d) of this title is given notice of the time, place, and purpose of each meeting and election held pursuant to this subsection at least ten days before such general meeting or election.

(c) Authority and capacity; termination

(1) The Interim Council shall have no powers other than those given it under this subchapter.

(2) With respect to any Federal service or benefit for which the tribe or any member is eligible, the Interim Council shall have full authority and capacity to receive grants and to enter into contracts.

(3)(A) Except as provided in subparagraph (B), the Interim Council and such Council's authority and capacity under this section shall cease to exist on the date the tribal governing body first convenes.

(B) With respect to any contractual right established and any obligation entered into by the Interim Council, such Council shall have the authority and capacity to bind the tribal governing body, as the successor in interest to the Interim Council, for a period of not more than six months beginning on the date such tribal governing body first convenes.

(d) Vacancy on Interim Council

Within thirty days after a vacancy occurs on the Interim Council and subject to the approval of the Secretary, the Interim Council shall hold a general council meeting to nominate a candidate for election to fill such vacancy and shall hold such election. The Interim Council shall provide notice of the time, place, and purpose of such meeting and election to members described in section 713e(d) of this title at least ten days before each such general meeting or election.

(Pub. L. 98–165, § 5, Nov. 22, 1983, 97 Stat. 1065.)

§ 713d. Tribal constitution and bylaws; tribal governing body

(a) Adoption of proposed constitution and bylaws; election: time and procedure

(1) The Interim Council shall be responsible for preparing the tribal constitution and bylaws which shall provide for, at a minimum, the establishment of a tribal governing body and tribal membership qualifications. Such proposed constitution and bylaws shall be adopted by the Interim Council no later than six months after November 22, 1983.

(2) Upon the adoption of the proposed tribal constitution and bylaws by the Interim Council, the Council shall request the Secretary, in writing, to schedule an election to approve or disapprove the adoption of such constitution and bylaws. The Secretary shall conduct an election by secret ballot in accordance with section 476 of this title.

(b) Notice and consultation

Not less than thirty days before any election scheduled pursuant to subsection (a) of this section, a copy of the proposed tribal constitution and bylaws, as adopted by the Interim Council, along with a brief and impartial description of the proposed constitution and bylaws shall be sent to each member eligible to participate in such election under section 713e(d) of this title. The members of the Interim Council may freely consult with members of the tribe concerning the text and description of the constitution and bylaws, except that such consultation may not be carried on within fifty feet of the polling places on the date of such election.

(c) Majority vote for adoption; procedure in event of failure to adopt proposed constitution

(1) In any election held pursuant to subsection (a) of this section, a vote of a majority of those actually voting shall be necessary and sufficient for the approval of the adoption of the tribal constitution and bylaws.

(2) If in any such election such majority does not approve the adoption of the proposed tribal constitution and bylaws, the Interim Council shall be responsible for preparing another tribal constitution and other bylaws in the same manner provided in this section for the first proposed constitution and bylaws. Such new proposed constitution and bylaws shall be adopted by the Interim Council no later than six months after the date of the election in which the first proposed constitution and bylaws failed of adoption. An election on the question of the adoption of the new proposal of the Interim Council shall be conducted in the same manner provided in subsection (a)(2) of this section for the election on the first proposed constitution and bylaws.

(d) Election of tribal governing body

Not later than one hundred and twenty days after the tribe approves the adoption of the tribal constitution and bylaws and subject to the approval of the Secretary, the Interim Council shall conduct an election, by secret ballot, to elect the tribal governing body established under such constitution and bylaws. Notwithstanding any provision of the tribal constitution and bylaws, absentee and write-in balloting shall be permitted in an election under this subsection.

(Pub. L. 98–165, § 6, Nov. 22, 1983, 97 Stat. 1066.)

§ 713e. Membership rolls; voting rights of member

(a) Membership roll established and opened

The membership roll of the tribe is established and open.

(b) Criteria governing eligibility

(1) Until the first election of the tribal governing body is held pursuant to section 713d(d) of

this title, any living individual may be enrolled on the membership roll of the tribe if—

(A) that individual's name was listed on the final membership roll of the tribe published on April 6, 1956, in volume 20, number 101, Federal Register, pages 3636 through 3642;

(B) that individual was entitled to be on the membership roll of the tribe on August 13, 1954, but was not listed; or

(C) that individual is a descendant of an individual, living or dead, described in subparagraph (A) or (B) and possesses at least one-fourth degree of blood of members of the tribe, living or dead, or individuals who are or would have been eligible to be members under this paragraph.

(2) After the first election of the tribal governing body is held pursuant to section 713d(d) of this title, the provisions of the constitution and bylaws adopted in accordance with section 713d(a) of this title shall govern membership in the tribe.

(c) Procedures for verification of eligibility

(1) Before the election of the members of the Interim Council is held pursuant to section 713c(b) of this title, verification of (A) descendancy, for purposes of enrollment, and (B) age, for purposes of voting rights under subsection (d) of this section, shall be made upon oath before the Secretary whose determination thereon shall be final.

(2) After the election of the members of the Interim Council is held pursuant to section 713c(b) of this title, but before the first election of the members of the tribal governing body is held pursuant to section 713d(d) of this title, the verification of descendancy and age shall be made upon oath before the Interim Council, or its authorized representative. An individual may appeal the exclusion of his name from the membership roll of the tribe to the Secretary, who shall make a final determination of each such appeal within ninety days after such an appeal has been filed with him. The determination of the Secretary with respect to such an appeal shall be final.

(3) After the first election of the members of the tribal governing body is held pursuant to section 713d(d) of this title, the provisions of the constitution and bylaws adopted in accordance with section 713d(a) of this title shall govern the verification of any requirements for membership in the tribe. The Interim Council and the Secretary shall deliver their records and files and any other material relating to the enrollment of tribal members to such tribal governing body.

(4) Not less than sixty days before the election under section 713d(a) of this title, the Secretary shall publish in the Federal Register a certified copy of the membership roll of the tribe as of the date of such publication. Such membership roll shall include the names of all individuals who were enrolled by the Secretary, either directly under paragraph (1) or pursuant to an appeal under paragraph (2), and by the Interim Council under paragraph (2).

(d) Voting rights of member

Each member who is eighteen years of age or older shall be eligible to attend, participate in, and vote at each general council meeting. Each such member may nominate candidates for any office, run for any office, and vote in any election of members to the Interim Council and to such other tribal governing body as may be established under the constitution and bylaws adopted in accordance with section 713d of this title.

(Pub. L. 98–165, § 7, Nov. 22, 1983, 97 Stat. 1067.)

§ 713f. Establishment of tribal reservation

(a) Plan for establishment of reservation

(1) Any reservation for the tribe shall be established by an Act of Congress enacted after November 22, 1983.

(2) The Secretary shall enter into negotiations with the tribal governing body with respect to establishing a reservation for the tribe and, in accordance with this section and within two years of November 22, 1983, develop a plan for the establishment of such a reservation. Upon the approval of such plan by the tribal governing body (and after consultation with interested parties pursuant to subsection (b) of this section), the Secretary shall submit such plan to the Clerk of the House of Representatives and the Secretary of the Senate for distribution to the committees of the respective Houses of the Congress with jurisdiction over the subject matter.

(b) Consultation with State and local officials required

To assure that legitimate State and local interests are not prejudiced by the proposed enlargement of the reservation, the Secretary shall notify and consult all appropriate officials of the State of Oregon, all appropriate local governmental officials in the State of Oregon, and any other interested party in developing any plan under subsection (a) of this section. The Secretary shall provide complete information on the proposed plan to such officials and interested parties, including the restrictions on such proposed plan imposed by subsection (c) of this section. During any consultation by the Secretary under this subsection, the Secretary shall provide such information as he may possess, and shall request comments and additional information, on the following subjects:

(1) The size and location of the proposed reservation.

(2) The anticipated effect of the establishment of the proposed reservation on State and local expenditures and tax revenues.

(3) The extent of any State or local service to the tribe, the reservation of the tribe, or members after the establishment of the proposed reservation.

(4) The extent of Federal services to be provided in the future to the tribe, the reservation of the tribe, or members.

(5) The extent of service to be provided in the future by the tribe to members residing on or off the reservation.

(c) Restrictions on plan

Any plan developed by the Secretary under subsection (a) of this section shall provide that—

(1) any real property transferred by the tribe or any member to the Secretary shall be taken

and held in the name of the United States for the benefit of the tribe and shall be a part of the reservation of the tribe;

(2) the establishment of the reservation shall not grant or restore to the tribe or any member any hunting, fishing, or trapping right of any kind on such reservation, including any indirect or procedural right or advantage over individuals who are not members of the tribe;

(3) the Secretary shall not accept any real property in trust for the benefit of the tribe or its members which is not located within the political boundaries of Polk, Yamhill, or Tillamook County, Oregon;

(4) any real property taken in trust by the Secretary pursuant to such plan shall be subject to—

(A) all legal rights and interests in such land existing at the time of the acquisition of such land by the Secretary, including any lien, mortgage, or previously levied and outstanding State or local tax, and

(B) foreclosure or sale in accordance with the laws of the State of Oregon pursuant to the terms of any valid obligation in existence at the time of the acquisition of such land by the Secretary;

(5) any real property transferred pursuant to such plan shall be exempt from Federal, State, and local taxation of any kind;

(6) the State of Oregon shall exercise criminal and civil jurisdiction over the reservation, and over the individuals on the reservation, in accordance with section 1162 of title 18 and section 1360 of title 28, respectively; and

(7) any Federal real property transferred for the benefit of the tribe, pursuant to any reservation plan developed under subsection (a) of this section, shall come only from available public lands administered under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), and from lands held in trust by the United States for the tribe or for individual Indians.

(d) Appendix to plan submitted to the Congress

The Secretary shall append to the plan submitted to the Congress under subsection (a) of this section a detailed statement—

(1) describing the manner in which the Secretary notified all interested parties in accordance with subsection (b) of this section;

(2) naming each individual and official consulted in accordance with subsection (b) of this section;

(3) summarizing the testimony received by the Secretary pursuant to any such consultation; and

(4) including any written comments or reports submitted to the Secretary by any party named in paragraph (2).

(Pub. L. 98–165, § 8, Nov. 22, 1983, 97 Stat. 1068.)

REFERENCES IN TEXT

The Federal Land Policy and Management Act of 1976, referred to in subsec. (c)(7), is Pub. L. 94–579, Oct. 21, 1976, 90 Stat. 2743, as amended, which is classified principally to chapter 35 (§ 1701 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON RESERVATION

Pub. L. 100–425, Sept. 9, 1988, 102 Stat. 1594, as amended by Pub. L. 100–581, title II, § 202, Nov. 1, 1988, 102 Stat. 2939; Pub. L. 101–301, § 4, May 24, 1990, 104 Stat. 207; Pub. L. 102–497, § 1, Oct. 24, 1992, 106 Stat. 3255; Pub. L. 103–263, § 5(a), May 31, 1994, 108 Stat. 708; Pub. L. 103–435, § 2, Nov. 2, 1994, 108 Stat. 4566; Pub. L. 105–256, § 2, Oct. 14, 1998, 112 Stat. 1896, established a reservation for Confederated Tribes of the Grand Ronde Community of Oregon, specifying hunting, fishing, and trapping rights and vesting civil and criminal jurisdiction in State of Oregon, directed treatment of certain lands as revested Oregon and California railroad grant lands, and provided economic development for the Tribes.

§ 713g. Regulations

The Secretary may promulgate such regulations as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 98–165, § 9, Nov. 22, 1983, 97 Stat. 1070.)

SUBCHAPTER XXX–D—CONFEDERATED TRIBES OF COOS, LOWER UMPQUA, AND SIUSLAW INDIANS: RESTORATION OF FEDERAL SUPERVISION

§ 714. Definitions

For the purposes of this subchapter—

(1) ''Tribe'' means the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians;

(2) ''Secretary'' means the Secretary of the Interior or his authorized representative;

(3) ''Interim Council'' means the tribal council of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, which serves pursuant to section 714c of this title; and

(4) ''member'' used with respect to the Tribe means a person enrolled on the membership roll of the Tribe provided for in section 714b of this title.

(Pub. L. 98–481, § 2, Oct. 17, 1984, 98 Stat. 2250.)

SHORT TITLE

Section 1 of Pub. L. 98–481 provided: ''That this Act [enacting this subchapter] may be cited as the 'Coos, Lower Umpqua, and Siuslaw Restoration Act'.''

§ 714a. Extension of Federal recognition, rights, and privileges

(a) Federal recognition

Federal recognition is hereby extended to the Tribe, and its members shall be eligible for all Federal services and benefits furnished to federally recognized tribes. Notwithstanding any provision to the contrary in any law establishing such services and benefits, eligibility of the Tribe and its members for such Federal services and benefits shall become effective on October 17, 1984, without regard to the existence of a reservation for the Tribe or the residence of the members of the Tribe on a reservation for such members who reside in the following counties of Oregon: Coos, Lane, Lincoln, Douglas, and Curry.

(b) Restoration of rights and privileges

Except as provided in subscription[1] (c) of this section, all rights and privileges of the Tribe

[1] So in original. Probably should be ''subsection''.

and of members of the Tribe under any Federal treaty, Executive order, agreement or statute, or under any other authority, which were diminished or lost under the Act of August 13, 1954 (25 U.S.C. 691, et seq.), are hereby restored and the provisions of that Act are inapplicable to the Tribe and to members of the Tribe on October 17, 1984.

(c) Hunting, fishing, or trapping rights not granted or restored

This subchapter shall not grant or restore any hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, to any member of the Tribe, nor shall any presumption be created by this subchapter as to the existence or nonexistence of such rights.

(d) Effect on property rights and other obligations

Except as specifically provided in this subchapter, nothing in this subchapter shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes already levied.

(Pub. L. 98–481, § 3, Oct. 17, 1984, 98 Stat. 2250.)

REFERENCES IN TEXT

Act approved August 13, 1954, referred to in subsec. (b), is act Aug. 13, 1954, ch. 733, 68 Stat. 724, which is classified generally to subchapter XXX (§ 691 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsecs. (a) and (b), ''on October 17, 1984,'' the date of enactment of Pub. L. 98–481, substituted for ''upon passage of this Act''.

§ 714b. Membership rolls

(a) Opening; duty of Interim Council and tribal officials

The membership roll is declared open. The Interim Council and tribal officials under the Tribe's constitution and bylaws shall take such measures as will insure the continuing accuracy of the membership roll.

(b) Criteria for enrollment

(1) Until a tribal constitution and bylaws are adopted, a person shall be a member of the Tribe and his name shall be placed on the membership roll if the individual is living and if—

(a) that individual's name was listed on the Tribe's Census Roll of 1940;

(b) that individual was entitled to be listed on the Tribe's Census Roll of January 1, 1940 but was not so listed. Any person placed on the membership roll must be listed on the January 1, 1940 Census Roll of the Grand Ronde-Siletz Indian Agency of nonreservation Indians as Coos, Lower Umpqua, or Siuslaw, be a descendant of such a person, or be a descendant of public domain allotee[1] of Western Oregon who was a member of one of these three tribes.

(c) that individual is a direct lineal descendant of an individual, living or dead, identified by subparagraph (a) or (b); and

(d) that individual or the lineal ancestor through whom he qualifies for membership under subparagraph (c) has never been an enrolled member of, or qualified for the payment of any money for the taking of land or otherwise through, any other Indian tribe, either federally recognized or acknowledged or not federally recognized or acknowledged.

(2) Until a tribal constitution and bylaws are adopted, a person shall be eligible for membership if the individual is living and meets the criteria established in subsections (b)(1)(a), (b) and (c) of this section. Such individual may submit an application for enrollment to the Interim Council for consideration and decision and the Interim Council shall place on the roll the name of all individuals who submitted an application and are meeting the criteria established under subsections (b)(1)(a), (b) and (c) of this section: *Provided*, That the Interim Council may reject the application of any person who is found to be a member or who is claiming membership in another Indian tribe. Nothing in this subchapter shall bar unsuccessful applicants for enrollment before the Interim Council from submitting an application for enrollment to the Tribe after the adoption of a tribal constitution and bylaws.

(3) After the adoption of a tribal constitution and bylaws, those documents shall govern membership in the Tribe.

(c) Verification of eligibility for enrollment; appeal; finality of determination; possession of enrollment records and materials

(1) Prior to any election pursuant to section 714d of this title, the Interim Council shall verify by tribal resolution the eligibility for enrollment and age of each member listed on the Tribe's membership roll, which resolution shall be forwarded to the Secretary.

(2) With regard to the exclusion of any name from the tribal membership roll, any member may appeal to the Secretary, who shall make a final determination of each such appeal within ninety days after an appeal has been filed with him. The determination of the Secretary with respect to such an appeal shall be final.

(d) Franchisement

A member who is eighteen years of age or older is entitled and eligible to be given notice of, attend, participate in, and vote at, general council meetings and to nominate candidates for, to run for any office in, and to vote in elections of members to the interim council[2] and to other tribal councils.

(Pub. L. 98–481, § 4, Oct. 17, 1984, 98 Stat. 2251.)

§ 714c. Interim Council

Until such time as a new tribal constitution and bylaws are adopted in accordance with section 714d of this title, the Tribe shall be governed by an Interim Council, the membership of which shall consist of the members of the current council of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, Incorporated or such new members as may be elected in accordance with election procedures followed

[1] So in original. Probably should be ''allottee''.

[2] So in original. Probably should be ''Interim Council''.

by the tribal corporate body prior to October 17, 1984.

(Pub. L. 98–481, § 5, Oct. 17, 1984, 98 Stat. 2252.)

§ 714d. Tribal constitution and bylaws

(a) Election; time and procedure

Upon the written request of the Interim Council, the Secretary shall conduct an election by secret ballot, pursuant to section 476 of this title, for the purpose of adopting a constitution and bylaws for the Tribe. The election shall be held after such written request and within sixty days after the Secretary has published in appropriate local media a certification copy of the Tribe's membership roll.

(b) Preelection distribution of proposed constitution and bylaws and brief, impartial description; consultation by Interim Council with members of Tribe

The Interim Council shall draft and distribute to each member described in section 714b(d) of this title, no later than thirty days before the election under subsection (a) of this section, a copy of the proposed constitution and bylaws of the Tribe, as proposed by the Interim Council, along with a brief, impartial description of the constitution and bylaws. The members of the Interim Council may freely consult with members of the Tribe, outside legal counsel and other consultants concerning the text and description of the constitution and bylaws, except that such consultation may not be carried on within fifty feet of the polling places on the date of the election.

(c) Majority vote necessary for adoption of constitution and bylaws

In any election held pursuant to subsection (a) of this section, the vote of a majority of those actually voting shall be necessary and sufficient for the adoption of a tribal constitution and bylaws: *Provided*, That the total vote cast shall not be less than thirty percent of those entitled to vote.

(d) Election of tribal officials provided for in constitution and bylaws; ballot requirements

Not later than one hundred and twenty days after the tribe[1] adopts a constitution and bylaws, the Interim Council shall conduct an election by secret ballot for the purpose of electing the individuals who will serve as tribal officials as provided in the tribal constitution and bylaws. For the purpose of this election and notwithstanding any provision in the tribal constitution and bylaws to the contrary, absentee balloting shall be permitted.

(Pub. L. 98–481, § 6, Oct. 17, 1984, 98 Stat. 2252.)

§ 714e. Reservation

(a) Establishment

A reservation shall be established by this subchapter at no cost to the Federal Government.

(b) Legal description

So long as the lands are offered to the Federal Government free of purchase cost, the Secretary shall accept the following lands in trust for the tribe[1] as a reservation:

(1) In Coos County, Oregon, a parcel containing 1.02 acres and described as parcel 3200 of section 106B of township 25 south, range 12 west, Willamette meridian.

(2) In Coos County, Oregon, a parcel described as lots 10–18, block 13, Empire Commercial tracts K73 2K 81, A. N. Foley Donation Land Claim Numbered 38, section 20 of township 25 south, range 13 west, Willamette meridian. The Secretary shall not accept this parcel into trust until the date that is 1 year after October 17, 1984. If before the end of the ninety day period, a person or entity other than the tribe[1] files a lawsuit in a court of competent jurisdiction claiming an interest in such parcel or portion thereof, the Secretary shall not accept the parcel into trust until the final adjudication of this lawsuit. Nothing in this subchapter shall be construed to the prejudice of any parties to such lawsuit or be construed to prevent a court of competent jurisdiction from partitioning such parcel in the adjudication of such lawsuit. Notwithstanding any other provision of law, the United States District Court for the District of Oregon shall be deemed to have jurisdiction over any lawsuit filed to determine the rights to the above described parcel of land.

(3) In Curry County, Oregon, a parcel described as the southeast quarter of the southeast quarter of the southwest quarter of section 11 of township 32 south, range 15 west, Willamette meridian.

(4) In Lane County, Oregon, a parcel described as beginning at the common corner to sections 23, 24, 25, and 26 township 18 south, range 12 west, Willamette Meridian; then west 25 links; then north 2 chains and 50 links; then east 25 links to a point on the section line between sections 23 and 24; then south 2 chains and 50 links to the place of origin, and containing .062 of an acre, more or less, situated and lying in section 23, township 18 south, range 12 west, of Willamette Meridian.

(c) State of Oregon; criminal and civil jurisdiction

The State of Oregon shall exercise criminal and civil jurisdiction over the reservation, and over the individuals on the reservation, in accordance with section 1162 of title 18 and section 1360 of title 28, respectively.

(Pub. L. 98–481, § 7, Oct. 17, 1984, 98 Stat. 2253; Pub. L. 105–256, § 5, Oct. 14, 1998, 112 Stat. 1897.)

AMENDMENTS

1998—Subsec. (b)(4). Pub. L. 105–256 added par. (4).

§ 714f. Regulations

The Secretary may promulgate such regulations as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 98–481, § 8, Oct. 17, 1984, 98 Stat. 2254.)

[1] So in original. Probably should be capitalized.

[1] So in original. Probably should be capitalized.

SUBCHAPTER XXX–E—COQUILLE INDIAN TRIBE OF OREGON: RESTORATION OF FEDERAL SUPERVISION

§ 715. Definitions

For the purposes of this subchapter—

(1) ''Tribe'' means the Coquille Indian Tribe consisting of the Upper Coquille and the Lower Coquille Tribes of Indians;

(2) ''Secretary'' means the Secretary of the Interior or his designated representative;

(3) ''Interim Council'' means the governing body of the Coquille Tribe which serves pursuant to section 715f of this title;

(4) ''Member'' means those persons eligible for enrollment under section 715e of this title and after the adoption of a tribal constitution, those persons added to the roll pursuant to such constitution;

(5) ''service area'' means the area composed of Coos, Curry, Douglas, Jackson, and Lane Counties in the State of Oregon;

(6) ''State'' means the State of Oregon; and

(7) ''Reservation'' means those lands subsequently acquired and held in trust by the Secretary for the benefit of the Tribe.

(Pub. L. 101–42, § 2, June 28, 1989, 103 Stat. 91.)

SHORT TITLE

Section 1 of Pub. L. 101–42 provided that: ''This Act [enacting this subchapter] may be cited as the 'Coquille Restoration Act'.''

§ 715a. Restoration of Federal recognition, rights, and privileges

(a) Federal recognition

Notwithstanding any provision of law, Federal recognition is hereby extended to the Coquille Indian Tribe. Except as otherwise provided herein, all laws and regulations of general application to Indians or nations, tribes, or bands of Indians that are not inconsistent with any specific provision of this subchapter shall be applicable to the Tribe and its Members.

(b) Restoration of rights and privileges

Except as provided in subsection (d) of this section, all rights and privileges of this Tribe and of its Members under any Federal treaty, Executive order, agreement or statute or under any other authority, which were diminished or lost under the Act of August 13, 1954 (68 Stat. 724) [25 U.S.C. 691 et seq.], are hereby restored and provisions of said Act shall be inapplicable to the Tribe and its Members after June 28, 1989.

(c) Federal services and benefits

Notwithstanding any other provision of law and without regard to the existence of a reservation, the Tribe and its Members shall be eligible, on and after June 28, 1989, for all Federal services and benefits furnished to federally recognized Indian tribes or their members. In the case of Federal services available to members of federally recognized tribes residing on a reservation, Members of the Tribe in the Tribe's service area shall be deemed to be residing on a reservation. Notwithstanding any other provision of law, the Tribe shall be considered an Indian tribe for the purpose of the Indian Tribal Government Tax Status Act (26 U.S.C. 7871).

(d) Hunting, fishing, trapping, and water rights

Nothing in this subchapter shall expand, reduce, or affect in any manner any hunting, fishing, trapping, gathering, or water right of the Tribe and its Members.

(e) Indian Reorganization Act applicability

The Act of June 18, 1934 (48 Stat. 984), as amended [25 U.S.C. 461 et seq.], shall be applicable to the Tribe and its Members.

(f) Certain rights not altered

Except as specifically provided in this subchapter, nothing in this subchapter shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes levied.

(Pub. L. 101–42, § 3, June 28, 1989, 103 Stat. 91.)

REFERENCES IN TEXT

Act of August 13, 1954, referred to in subsec. (b), is act Aug. 13, 1954, ch. 733, 68 Stat. 724, which is classified generally to subchapter XXX (§ 691 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

The Indian Tribal Government Tax Status Act, referred to in subsec. (c), probably means the Indian Tribal Governmental Tax Status Act of 1982, title II of Pub. L. 97–473, Jan. 14, 1983, 96 Stat. 2607, as amended, which is classified principally to subchapter C (§ 7871) of chapter 80 of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see Short Title of 1983 Amendments note set out under section 1 of Title 26 and Tables.

Act of June 18, 1934, referred to in subsec. (e), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 715b. Economic development

(a) Plan for economic development

The Secretary shall—

(1) enter into negotiations with the governing body of the Tribe with respect to establishing a plan for economic development for this Tribe;

(2) in accordance with this section and not later than two years after the adoption of a tribal constitution as provided in section 715g of this title, develop such a plan; and

(3) upon the approval of such plan by the governing body of the Tribe, submit such plan to the Congress.

(b) Restrictions to be contained in plan

Any proposed transfer of real property contained in the plan developed by the Secretary under subsection (a) of this section shall be consistent with the requirements of section 715c of this title.

(Pub. L. 101–42, § 4, June 28, 1989, 103 Stat. 92.)

§ 715c. Transfer of land to be held in trust

(a) Lands to be taken in trust

The Secretary shall accept any real property located in Coos and Curry Counties not to exceed one thousand acres for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary: *Provided*, That, at the time of such acceptance, there are no adverse legal claims on

such property including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe's service area pursuant to his authority under the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.].

(b) Lands to be part of reservation

Subject to the conditions imposed by this section, the land transferred shall be taken in the name of the United States in trust for the Tribe and shall be part of its reservation.

(c) Lands to be nontaxable

Any real property taken into trust for the benefit of the Tribe under this section shall be exempt from all local, State, and Federal taxation as of the date of transfer.

(d) Creation of Coquille Forest

(1) Definitions

In this subsection:

(A) the[1] term ''Coquille Forest'' means certain lands in Coos County, Oregon, comprising approximately 5,400 acres, as generally depicted on the map entitled ''Coquille Forest Proposal'', dated July 8, 1996.

(B) the[1] term ''Secretary'' means the Secretary of the Interior.

(C) the[1] term ''the Tribe'' means the Coquille Tribe of Coos County, Oregon.

(2) Map

The map described in subparagraph (d)(1)(A), and such additional legal descriptions which are applicable, shall be placed on file at the local District Office of the Bureau of Land Management, the Agency Office of the Bureau of Indian Affairs, and with the Senate Committee on Energy and Natural Resources and the House Committee on Resources.

(3) Interim period

From September 30, 1996, until two years after September 30, 1996, the Bureau of Land Management shall:

(A) retain Federal jurisdiction for the management of lands designated under this subsection as the Coquille Forest and continue to distribute revenues from such lands in a manner consistent with existing law; and,[2]

(B) prior to advertising, offering or awarding any timber sale contract on lands designated under this subsection as the Coquille Forest, obtain the approval of the Assistant Secretary for Indian Affairs, acting on behalf of and in consultation with the Tribe.

(4) Transition planning and designation

(A) During the two year interim period provided for in paragraph (3), the Assistant Secretary for Indian Affairs, acting on behalf of and in consultation with the Tribe, is authorized to initiate development of a forest management plan for the Coquille Forest. The Secretary, acting through the Director of the Bureau of Land Management, shall cooperate and assist in the development of such plan and in the transition of forestry management operations for the Coquille Forest to the Assistant Secretary for Indian Affairs.

(B) Two years after September 30, 1996, the Secretary shall take the lands identified under subparagraph (d)(1)(A) into trust, and shall hold such lands in trust, in perpetuity, for the Coquille Tribe. Such lands shall be thereafter designated as the Coquille Forest.

(C) So as to maintain the current flow of revenue from land subject to the Act entitled ''An Act relating to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant land situated in the State of Oregon'' (the O&C Act), approved August 28, 1937 (43 U.S.C. 1181a et seq.), the Secretary shall redesignate, from public domain lands within the tribe's service area, as defined in this subchapter, certain lands to be subject to the O&C Act. Lands redesignated under this subparagraph shall not exceed lands sufficient to constitute equivalent timber value as compared to lands constituting the Coquille Forest.

(5) Management

The Secretary of[3] Interior, acting through the Assistant Secretary for Indian Affairs, shall manage the Coquille Forest under applicable State and Federal forestry and environmental protection laws, and subject to critical habitat designations under the Endangered Species Act [16 U.S.C. 1531 et seq.], and subject to the standards and guidelines of Federal forest plans on adjacent or nearby Federal lands, now and in the future. The Secretary shall otherwise manage the Coquille Forest in accordance with the laws pertaining to the management of Indian Trust[4] lands and shall distribute revenues in accord with Public Law 101–630, 25 U.S.C. 3107.

(A) Unprocessed logs harvested from the Coquille Forest shall be subject to the same Federal statutory restrictions on export to foreign Nations[4] that apply to unprocessed logs harvested from Federal lands.

(B) Notwithstanding any other provision of law, all sales of timber from land subject to this subsection shall be advertised, offered and awarded according to competitive bidding practices, with sales being awarded to the highest responsible bidder.

(6) Indian Self-Determination Act agreement

No sooner than two years after September 30, 1996, the Secretary may, upon a satisfactory showing of management competence and pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.], enter into a binding Indian self-determination agreement (agreement) with the Coquille Indian Tribe. Such agreement may provide for the tribe to carry out all or a portion of the forest management for the Coquille Forest.

(A) Prior to entering such an agreement, and as a condition of maintaining such an agreement, the Secretary must find that the Coquille Tribe has entered into a binding memorandum of agreement (MOA) with the State of Oregon, as required under paragraph 7.[5]

[1] So in original. Probably should be capitalized.

[2] So in original. The comma probably should not appear.

[3] So in original. Probably should be followed by ''the''.

[4] So in original. Probably should not be capitalized.

[5] So in original. Probably should be paragraph ''(7)''.

(B) The authority of the Secretary to rescind the Indian self-determination agreement shall not be encumbered.

(i) The Secretary shall rescind the agreement upon a demonstration that the tribe and the State of Oregon are no longer engaged in a memorandum of agreement as required under paragraph 7.[5]

(ii) The Secretary may rescind the agreement on a showing that the Tribe has managed the Coquille Forest in a manner inconsistent with this subsection, or the Tribe is no longer managing, or capable of managing, the Coquille Forest in a manner consistent with this subsection.

(7) Memorandum of agreement

The Coquille Tribe shall enter into a memorandum of agreement (MOA) with the State of Oregon relating to the establishment and management of the Coquille Forest. The MOA shall include, but not be limited to, the terms and conditions for managing the Coquille Forest in a manner consistent with paragraph (5) of this subsection, preserving public access, advancing jointly-held resource management goals, achieving tribal restoration objectives and establishing a coordinated management framework. Further, provisions set forth in the MOA shall be consistent with federal[6] trust responsibility requirements applicable to Indian trust lands and paragraph (5) of this subsection.

(8) Public access

The Coquille Forest shall remain open to public access for purposes of hunting, fishing, recreation and transportation, except when closure is required by state[6] or federal[6] law, or when the Coquille Indian Tribe and the State of Oregon agree in writing that restrictions on access are necessary or appropriate to prevent harm to natural resources, cultural resources or environmental quality;[7] *Provided*, That the State of Oregon's agreement shall not be required when immediate action is necessary to protect archaeological resources.

(9) Jurisdiction

(A) The United States District Court for the District of Oregon shall have jurisdiction over actions against the Secretary arising out of claims that this subsection has been violated. Consistent with existing precedents on standing to sue, any affected citizen may bring suit against the Secretary for violations of this subsection, except that suit may not be brought against the Secretary for claims that the MOA has been violated. The Court has the authority to hold unlawful and set aside actions pursuant to this subsection that are arbitrary and capricious, an abuse of discretion, or otherwise an abuse of law.

(B) The United States District Court for the District of Oregon shall have jurisdiction over actions between the State of Oregon and the Tribe arising out of claims of breach of the MOA.

(C) Unless otherwise provided for by law, remedies available under this subsection shall be limited to equitable relief and shall not include damages.

(10) State regulatory and civil jurisdiction

In addition to the jurisdiction described in paragraph 7[5] of this subsection, the State of Oregon may exercise exclusive regulatory civil jurisdiction, including but not limited to adoption and enforcement of administrative rules and orders, over the following subjects:

(A) management, allocation and administration of fish and wildlife resources, including but not limited to establishment and enforcement of hunting and fishing seasons, bag limits, limits on equipment and methods, issuance of permits and licenses, and approval or disapproval of hatcheries, game farms, and other breeding facilities;[7] *Provided*, That nothing herein shall be construed to permit the State of Oregon to manage fish or wildlife habitat on Coquille Forest lands;

(B) allocation and administration of water rights, appropriation of water and use of water;

(C) regulation of boating activities, including equipment and registration requirements, and protection of the public's right to use the waterways for purposes of boating or other navigation;

(D) fills and removals from waters of the State, as defined in Oregon law;

(E) protection and management of the State's proprietary interests in the beds and banks of navigable waterways;

(F) regulation of mining, mine reclamation activities, and exploration and drilling for oil and gas deposits;

(G) regulation of water quality, air quality (including smoke management), solid and hazardous waste, and remediation of releases of hazardous substances;

(H) regulation of the use of herbicides and pesticides; and

(I) enforcement of public health and safety standards, including standards for the protection of workers, well construction and codes governing the construction of bridges, buildings, and other structures.

(11) Savings clause, State authority

(A) Nothing in this subsection shall be construed to grant tribal authority over private or State-owned lands.

(B) To the extend[8] that the State of Oregon is regulating the foregoing areas pursuant to a delegated Federal authority or a Federal program, nothing in this subsection shall be construed to enlarge or diminish the State's authority under such law.

(C) Where both the State of Oregon and the United States are regulating, nothing herein shall be construed to alter their respective authorities.

(D) To the extent that Federal law authorizes the Coquille Indian Tribe to assume regulatory authority over an area, nothing herein shall be construed to enlarge or diminish the tribe's[9] authority to do so under such law.

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[6] So in original. Probably should be capitalized.

[7] So in original. The semicolon probably should be a colon.

[8] So in original. Probably should be ''extent''.

[9] So in original. Probably should be capitalized.

(E) Unless and except to the extent that the tribe[9] has assumed jurisdiction over the Coquille Forest pursuant to Federal law, or otherwise with the consent of the State, the State of Oregon shall have jurisdiction and authority to enforce its laws addressing the subjects listed in subparagraph 10[10] of this subsection on the Coquille Forest against the Coquille Indian Tribe, its members and all other persons and entities, in the same manner and with the same remedies and protections and appeal rights as otherwise provided by general Oregon law. Where the State of Oregon and Coquille Indian Tribe agree regarding the exercise of tribal civil regulatory jurisdiction over activities on the Coquille Forest lands, the tribe[9] may exercise such jurisdiction as its[11] agreed upon.

(12) Conflict between laws

In the event of a conflict between Federal and State law under this subsection, Federal law shall control.

(Pub. L. 101–42, § 5, June 28, 1989, 103 Stat. 92; Pub. L. 104–208, div. B, title V, § 501, Sept. 30, 1996, 110 Stat. 3009–537.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in subsec. (a), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

The Act entitled ''An Act relating to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant land situated in the State of Oregon'' (the O&C Act), approved August 28, 1937 (43 U.S.C. 1181a et seq.), referred to in subsec. (d)(4)(C), is act Aug. 28, 1937, ch. 876, 50 Stat. 874, which enacted sections 1181a to 1181f of Title 43, Public Lands, repealed section 1174 of Title 43, and enacted provisions set out as a note under section 1181a of Title 43. For complete classification of this Act to the Code, see Tables.

The Endangered Species Act, referred to in subsec. (d)(5), probably means the Endangered Species Act of 1973, Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally to chapter 35 (§ 1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

Public Law 101–630, 25 U.S.C. 3107, referred to in subsec. (d)(5), is probably a reference to section 308 of Pub. L. 101–630, which is classified to section 3107 of this title.

The Indian Self-Determination Act, referred to in subsec. (d)(6), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–208 added subsec. (d).

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.

[10] So in original. Probably should be ''paragraph (10)''.

[11] So in original. Probably should be ''is''.

§ 715d. Criminal and civil jurisdiction

The State shall exercise criminal and civil jurisdiction within the boundaries of the reservation, in accordance with section 1162 of title 18, and section 1360 of title 28, respectively. Retrocession of such jurisdiction may be obtained pursuant to section 1323 of this title.

(Pub. L. 101–42, § 6, June 28, 1989, 103 Stat. 92.)

§ 715e. Membership rolls

(a) Compilation of tribal membership roll

Within one year of June 28, 1989, the Secretary shall compile a roll of the Coquille Indian Tribe.

(b) Criteria for enrollments

(1) Until a tribal constitution is adopted, a person shall be placed on the membership roll if the individual is living, is not an enrolled member of another federally recognized tribe, is of Coquille ancestry, possesses at least one-eighth or more of Indian blood quantum and if—

(A) that individual's name was listed on the Coquille roll compiled and approved by the Bureau of Indian Affairs on August 29, 1960;

(B) that individual was not listed on but met the requirements that had to be met to be listed on the Coquille roll compiled and approved by the Bureau of Indian Affairs on August 29, 1960; or

(C) that individual is a lineal descendant of an individual, living or dead, identified by subparagraph (A) or (B).

(2) After adoption of a tribal constitution, said constitution shall govern membership in the Tribe: *Provided*, That in addition to meeting any other criteria imposed in such tribal constitution, any person added to the roll has to be of Coquille Indian ancestry and cannot be a member of another federally recognized Indian tribe.

(c) Conclusive proof of Coquille ancestry and degree of Indian blood quantum

For the purpose of subsection (b) of this section, the Secretary shall accept any available evidence establishing Coquille ancestry and the required amount of Indian blood quantum. However, the Secretary shall accept as conclusive evidence of Coquille ancestry information contained in the Coquille roll compiled by the Bureau of Indian Affairs on August 29, 1960, and as conclusive evidence of Indian blood quantum the information contained in the January 1, 1940, census roll of nonreservation Indians of the Grand Ronde-Siletz Agency.

(Pub. L. 101–42, § 7, June 28, 1989, 103 Stat. 93.)

§ 715f. Interim government

Until a new tribal constitution and bylaws are adopted and become effective under section 715g of this title, the Tribe's governing body shall be an Interim Council. The initial membership of the Interim Council shall consist of the members of the Tribal Council of the Coquille Tribe on June 28, 1989, and the Interim Council shall continue to operate in the manner prescribed for the Tribal Council under the tribal bylaws adopted on April 23, 1979. Any new members filling vacancies on the Interim Council must meet the criteria for enrollment in section 715e(b) of

this title and be elected in the same manner as are Tribal Council members under the April 23, 1979, bylaws.

(Pub. L. 101–42, § 8, June 28, 1989, 103 Stat. 93.)

§ 715g. Tribal constitution

(a) Election; time and procedure

Upon the completion of the tribal membership roll and upon the written request of the Interim Council, the Secretary shall conduct, by secret ballot, an election for the purpose of adopting a constitution for the Tribe. Absentee balloting shall be permitted regardless of voter residence. In every other regard, the election shall be held according to section 476 of this title.

(b) Election of tribal officials; procedures

Not later than one hundred and twenty days after the Tribe adopts a constitution and bylaws, the Secretary shall conduct an election by secret ballot for the purpose of electing tribal officials as provided in the tribal constitution. Said election shall be conducted according to the procedures stated in paragraph[1] (a) of this section except to the extent that said procedures conflict with the tribal constitution.

(Pub. L. 101–42, § 9, June 28, 1989, 103 Stat. 93.)

§ 715h. Land and interests of Coquille Indian Tribe, Oregon

(a) In general

Subject to subsections (b), (c), and (d) notwithstanding any other provision of law (including regulations), the Coquille Indian Tribe of the State of Oregon (including any agent or instrumentality of the Tribe) (referred to in this section as the ''Tribe''), may transfer, lease, encumber, or otherwise convey, without further authorization or approval, all or any part of the Tribe's interest in any real property that is not held in trust by the United States for the benefit of the Tribe.

(b) Nonapplicability to certain conveyances

Subsection (a) shall not apply with respect to any transfer, encumbrance, lease, or other conveyance of any land or interest in land of the Tribe that occurred before January 1, 2007.

(c) Effect of section

Nothing in this section is intended to authorize the Tribe to transfer, lease, encumber, or otherwise convey, any lands, or any interest in any lands, that are held in trust by the United States for the benefit of the Tribe.

(d) Liability

The United States shall not be held liable to any party (including the Tribe or any agent or instrumentality of the Tribe) for any term of, or any loss resulting from the term of any transfer, lease, encumbrance, or conveyance of land made pursuant to this section unless the United States or an agent or instrumentality of the United States is a party to the transaction or the United States would be liable pursuant to any other provision of law. This subsection shall not apply to land transferred or conveyed by the Tribe to the United States to be held in trust for the benefit of the Tribe.

(Pub. L. 110–75, § 1, Aug. 13, 2007, 121 Stat. 724.)

CODIFICATION

Section was not enacted as part of the Coquille Restoration Act, which comprises this subchapter.

SUBCHAPTER XXXI—ALABAMA AND COUSHATTA INDIANS OF TEXAS: TERMINATION OF FEDERAL SUPERVISION

§ 721. Transfer of property to Texas

The Secretary of the Interior is authorized to convey to the State of Texas the lands held in trust by the United States for the tribe of Indians organized and known as the Alabama and Coushatta Tribes of Texas, located in Polk County, Texas; and such tribe is authorized to convey to the State of Texas the lands purchased for and deeded to the Alabama Indians in accordance with an act of the legislature of the State of Texas approved February 3, 1854, located in Polk County, Texas. All of the lands so conveyed shall be held by the State of Texas in trust for the benefit of the Indians of the Alabama and Coushatta Tribes of Texas, subject to such conditions regarding management and use as the State of Texas may prescribe and the disposition of such lands shall be subject to approval of a majority of the adult members of the Alabama and Coushatta Tribes of Texas.

(Aug. 23, 1954, ch. 831, § 1, 68 Stat. 768.)

§ 722. Termination of Federal trust; publication; termination of Federal services; admission to hospitals and schools

Upon the conveyance to the State of Texas of the lands held in trust by the United States for the Alabama and Coushatta Tribes of Texas, the Secretary of the Interior shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such tribe and its members has terminated. Thereafter such tribe and its members shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians: *Provided*, That after August 21, 1954 such Indians shall be eligible for admission, on the same terms that apply to other Indians, to hospitals and schools maintained by the United States.

(Aug. 23, 1954, ch. 831, § 2, 68 Stat. 769.)

§ 723. Termination of Federal powers over tribe

Effective on the date of the proclamation provided for in section 722 of this title, all powers of the Secretary of the Interior or any other officer of the United States to take, review, or approve any action under the constitution and bylaws of the Alabama and Coushatta Tribes of Texas approved on August 19, 1938, pursuant to the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.], are terminated. Any powers conferred upon the tribe by its constitution and bylaws that are inconsistent with the provisions of this subchapter are terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and by-

[1] So in original. Probably should be ''subsection''.

laws that is consistent with this subchapter without the participation of the Secretary or other officer of the United States in such action.

(Aug. 23, 1954, ch. 831, § 3, 68 Stat. 769.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 724. Cancellation of indebtedness

The indebtedness of the Alabama and Coushatta Tribes of Texas to the United States incurred under the provisions of the Act of May 29, 1928 (45 Stat. 883, 900), is canceled, effective on the date of the proclamation to be issued in accordance with the provisions of section 722 of this title.

(Aug. 23, 1954, ch. 831, § 4, 68 Stat. 769.)

REFERENCES IN TEXT

Act of May 29, 1928, referred to in text, is act May 29, 1928, ch. 853, 45 Stat. 883, known as the Second Deficiency Act, fiscal year, 1928. That portion of the act relating to indebtedness of Alabama and Coushatta Tribes is set out at 45 Stat. 900 and was not classified to the Code.

§ 725. Revocation of corporate charter

The corporate charter of the Alabama and Coushatta Tribes of Texas issued pursuant to the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.], ratified on October 17, 1939, is revoked, effective on the date of the proclamation to be issued in accordance with the provisions of section 722 of this title.

(Aug. 23, 1954, ch. 831, § 5, 68 Stat. 769.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 726. Applicability of Federal and State laws

On and after the date of the proclamation to be issued in accordance with the provisions of section 722 of this title, all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the Alabama and Coushatta Tribes of Texas or the members thereof, except as provided in said section and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

(Aug. 23, 1954, ch. 831, § 6, 68 Stat. 769.)

§ 727. Citizenship status unaffected

Nothing in this subchapter shall affect the status of the members of the tribes as citizens of the United States.

(Aug. 23, 1954, ch. 831, § 7, 68 Stat. 769.)

§ 728. Protection of Alabama and Coushatta Indians and conservation of resources after issuance of proclamation

The Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 387) [25 U.S.C. 461 et seq.], shall not apply to the tribe and its members after the date of the proclamation to be issued in accordance with the provisions of section 722 of this title.

(Aug. 23, 1954, ch. 831, § 8, 68 Stat. 769.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

SUBCHAPTER XXXI–A—ALABAMA AND COUSHATTA INDIAN TRIBES OF TEXAS: RESTORATION OF FEDERAL SUPERVISION

§ 731. Definitions

For purposes of this subchapter—

(1) the term ''tribe'' means the Alabama and Coushatta Indian Tribes of Texas (considered as one tribe in accordance with section 732 of this title);

(2) the term ''Secretary'' means the Secretary of the Interior or his designated representative;

(3) the term ''reservation'' means the Alabama and Coushatta Indian Reservation in Polk County, Texas, comprised of—

(A) the lands and other natural resources conveyed to the State of Texas by the Secretary pursuant to the provisions of section 721 of this title;

(B) the lands and other natural resources purchased for and deeded to the Alabama Indians in accordance with an act of the legislature of the State of Texas approved February 3, 1854; and

(C) lands subsequently acquired and held in trust by the Secretary for the benefit of the tribe;

(4) the term ''State'' means the State of Texas;

(5) the term ''constitution and bylaws'' means the constitution and bylaws of the tribe which were adopted on June 16, 1971; and

(6) the term ''Tribal Council'' means the governing body of the tribe under the constitution and bylaws.

(Pub. L. 100–89, title II, § 201, Aug. 18, 1987, 101 Stat. 669.)

SHORT TITLE

Section 1 of Pub. L. 100–89 provided that: ''This Act [enacting this subchapter and subchapter LXXVIII (§ 1300g et seq.) of this chapter and provisions set out below] may be cited as the 'Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act'.''

REGULATIONS

Section 2 of Pub. L. 100–89 provided that: ''The Secretary of the Interior or his designated representative may promulgate such regulations as may be necessary

to carry out the provisions of this Act [see Short Title note above].''

§ 732. Alabama and Coushatta Indian Tribes of Texas considered as one tribe

The Alabama and Coushatta Indian Tribes of Texas shall be considered as one tribal unit for purposes of this subchapter and any other law or rule of law of the United States.

(Pub. L. 100–89, title II, § 202, Aug. 18, 1987, 101 Stat. 670.)

§ 733. Restoration of Federal trust relationship; Federal services and assistance

(a) Federal trust relationship

The Federal recognition of the tribe and of the trust relationship between the United States and the tribe is hereby restored. The Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.], and all laws and rules of law of the United States of general application to Indians, to nations, tribes, or bands of Indians, or to Indian reservations which are not inconsistent with any specific provision contained in this subchapter shall apply to the members of the tribe, the tribe, and the reservation.

(b) Restoration of rights and privileges

All rights and privileges of the tribe and members of the tribe under any Federal treaty, Executive order, agreement, statute, or under any other authority of the United States which may have been diminished or lost under the Act approved August 23, 1954 [68 Stat. 768; 25 U.S.C. 721 et seq.], are hereby restored and such subchapter shall not apply to the tribe or to members of the tribe after August 18, 1987.

(c) Federal benefits and services

Notwithstanding any other provision of law, the tribe and the members of the tribe shall be eligible, on and after August 18, 1987, for all benefits and services furnished to federally recognized Indian tribes.

(d) Effect on property rights and other obligations

Except as otherwise specifically provided in this subchapter, the enactment of this subchapter shall not affect any property right or obligation or any contractual right or obligation in existence before August 18, 1987, or any obligation for taxes levied before August 18, 1987.

(Pub. L. 100–89, title II, § 203, Aug. 18, 1987, 101 Stat. 670.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in subsec. (a), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Act approved August 23, 1954, referred to in subsec. (b), was in the original a reference to the Act entitled ''An Act to provide for the termination of Federal supervision over the property of the Alabama and Coushatta Tribes of Indians of Texas, and the individual members thereof; and for other purposes'' and approved August 23, 1954, which is classified generally to subchapter XXXI (§ 721 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

§ 734. State and tribal authority

(a) State authority

Nothing in this Act shall affect the power of the State of Texas to enact special legislation benefitting the tribe, and the State is authorized to perform any services benefitting the tribe that are not inconsistent with the provisions of this Act.

(b) Current constitution and bylaws to remain in effect

Subject to the provisions of section 733(a) of this title, the constitution and bylaws of the tribe on file with the Committee on Natural Resources of the House of Representatives is hereby declared to be approved for the purposes of section 476 of this title except that all reference to the Texas Indian Commission shall be considered as reference to the Secretary of the Interior.

(c) Authority and capacity of Tribal Council

No provision contained in this subchapter shall affect the power of the Tribal Council to take any action under the constitution and bylaws described in subsection (b) of this section. The Tribal Council shall represent the tribe and its members in the implementation of this subchapter and shall have full authority and capacity—

(1) to enter into contracts, grant agreements, and other arrangements with any Federal department or agency;

(2) to administer or operate any program or activity under or in connection with any such contract, agreement, or arrangement, to enter into subcontracts or award grants to provide for the administration of any such program or activity, or to conduct any other activity under or in connection with any such contract, agreement, or arrangement; and

(3) to bind any tribal governing body selected under any new constitution adopted in accordance with section 735 of this title as the successor in interest to the Tribal Council.

(Pub. L. 100–89, title II, § 204, Aug. 18, 1987, 101 Stat. 670; Pub. L. 103–437, § 10(d), Nov. 2, 1994, 108 Stat. 4589.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 100–89, Aug. 18, 1987, 101 Stat. 666, known as the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, which enacted this subchapter and subchapter LXXVIII (§ 1300g et seq.) of this chapter and enacted provisions set out as notes under section 731 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 731 of this title and Tables.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–437 substituted ''Natural Resources of the House of Representatives'' for ''Interior and Insular Affairs''.

§ 735. Adoption of new constitution and bylaws

Upon written request of the tribal council,[1] the Secretary shall hold an election for the

[1] So in original. Probably should be ''Tribal Council,''.

members of the tribe for the purpose of adopting a new constitution and bylaws in accordance with section 476 of this title.

(Pub. L. 100–89, title II, § 205, Aug. 18, 1987, 101 Stat. 671.)

§ 736. Provisions relating to tribal reservation

(a) Federal reservation established

The reservation is hereby declared to be a Federal Indian reservation for the use and benefit of the tribe without regard to whether legal title to such lands is held in trust by the Secretary.

(b) Conveyance of land by State

The Secretary shall—

(1) accept any offer from the State to convey title to any lands held in trust by the State or the Texas Indian Commission for the benefit of the tribe to the Secretary, and

(2) shall hold such title, upon conveyance by the State, in trust for the benefit of the tribe.

(c) Conveyance of land by tribe

At the written request of the Tribal Council, the Secretary shall—

(1) accept conveyance by the tribe of title to any lands within the reservation which are held by the tribe to the Secretary, and

(2) hold such title, upon such conveyance by the tribe, in trust for the benefit of the tribe.

(d) Approval of deed by Attorney General

Notwithstanding any other provision of law or regulation, the Attorney General of the United States shall approve any deed or other instrument from the State or the tribe which conveys title to lands within the reservation to the United States.

(e) Permanent improvements authorized

Notwithstanding any other provision of law or rule of law, the Secretary or the tribe may erect permanent improvements, improvements of substantial value, or any other improvement authorized by law on the reservation without regard to whether legal title to such lands has been conveyed to the Secretary by the State or the tribe.

(f) Civil and criminal jurisdiction within reservation

The State shall exercise civil and criminal jurisdiction within the boundaries of the reservation as if such State had assumed such jurisdiction with the consent of the tribe under sections 1321 and 1322 of this title.

(Pub. L. 100–89, title II, § 206, Aug. 18, 1987, 101 Stat. 671.)

§ 737. Gaming activities

(a) In general

All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe. Any violation of the prohibition provided in this subsection shall be subject to the same civil and criminal penalties that are provided by the laws of the State of Texas. The provisions of this subsection are enacted in accordance with the tribe's request in Tribal Resolution No. T.C.–86–07 which was approved and certified on March 10, 1986.

(b) No State regulatory jurisdiction

Nothing in this section shall be construed as a grant of civil or criminal regulatory jurisdiction to the State of Texas.

(c) Jurisdiction over enforcement against members

Notwithstanding section 736(f) of this title, the courts of the United States shall have exclusive jurisdiction over any offense in violation of subsection (a) of this section that is committed by the tribe, or by any member of the tribe, on the reservation or on lands of the tribe. However, nothing in this section shall be construed as precluding the State of Texas from bringing an action in the courts of the United States to enjoin violations of the provisions of this section.

(Pub. L. 100–89, title II, § 207, Aug. 18, 1987, 101 Stat. 672.)

SUBCHAPTER XXXII—PAIUTE INDIANS OF UTAH: TERMINATION OF FEDERAL SUPERVISION

§ 741. Purpose

The purpose of this subchapter is to provide for the termination of Federal supervision over the trust and restricted property of certain tribes and bands of Indians located in the State of Utah and the individual members thereof, for the disposition of federally owned property acquired or withdrawn for the administration of the affairs of such Indians, and for a termination of Federal services furnished such Indians because of their status as Indians.

(Sept. 1, 1954, ch. 1207, § 1, 68 Stat. 1099.)

REPEAL OF INCONSISTENT LAWS

Section 20 of act Sept. 1, 1954, provided that: ''All Acts or parts of Acts inconsistent with this Act [this subchapter] are repealed insofar as they affect the tribe or its members. The Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378) [section 461 et seq. of this title], shall not apply to the tribe and its members after the date of the proclamation provided for in section 17 of this Act [section 757 of this title].''

SEPARABILITY

Section 21 of act Sept. 1, 1954, provided that: ''If any provision of this Act [this subchapter], or the application thereof, to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.''

§ 742. Definitions

For the purposes of this subchapter—

(a) ''Tribe'' means any of the following tribes or bands of Indians located in the State of Utah: Shivwits, Kanosh, Koosharem, and Indian Peaks Bands of the Paiute Indian Tribe.

(b) ''Secretary'' means the Secretary of the Interior.

(c) ''Lands'' means real property, interests therein, or improvements thereon, and includes water rights.

(d) ''Individual Indian'' means any individual Indian whose name appears on the final

roll prepared pursuant to section 743 of this title.

(e) ''Tribal property'' means any real or personal property, including water rights, or any interest in real or personal property, that belongs to the tribe and either is held by the United States in trust for the tribe or is subject to a restriction against alienation imposed by the United States,

(Sept. 1, 1954, ch. 1207, § 2, 68 Stat. 1100.)

§ 743. Membership roll; preparation and initial publication; appeal from inclusion or omission from roll; finality of determination; final publication

Each tribe shall have a period of six months from September 1, 1954, in which to prepare and submit to the Secretary a proposed roll of the members of the tribe living on September 1, 1954, which shall be published in the Federal Register. If a tribe fails to submit such roll within the time specified in this section, the Secretary shall prepare a proposed role[1] for the tribe, which shall be published in the Federal Register. Any person claiming membership rights in the tribe or an interest in its assets, or a representative of the Secretary on behalf of any such person, may, within sixty days from the date of publication of the proposed roll, file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such roll. The Secretary shall review such appeals and his decisions thereon shall be final and conclusive. After disposition of all such appeals by the Secretary, the roll of the tribe shall be published in the Federal Register, and such roll shall be final for the purposes of this subchapter.

(Sept. 1, 1954, ch. 1207, § 3, 68 Stat. 1100.)

§ 744. Personal property rights; restrictions

Upon publication in the Federal Register of the final roll as provided in section 743 of this title, the rights or beneficial interests in tribal property of each person whose name appears on the roll shall constitute personal property which may be inherited or bequeathed, but shall not otherwise be subject to alienation or encumbrance before the transfer of title to such tribal property as provided in section 745 of this title without the approval of the Secretary. Any contract made in violation of this section shall be null and void.

(Sept. 1, 1954, ch. 1207, § 4, 68 Stat. 1100.)

§ 745. Tribal property

(a) Procedure for transfer; compensation of agents or attorneys

The Secretary shall, within six months after the publication of each final membership roll, notify the tribe of the period of time during which the tribe may study means of disposition of tribal property, real and personal, under supervision of the United States. Such period shall not be less than three months and not more than two years, including any authorized extension of the original periods. The Secretary is authorized to provide such reasonable assistance as may be requested by the tribe in the formulation of a plan for the disposition or future control and management of the property, including necessary consultations with representatives of Federal departments and agencies, officials of the State of Utah and political subdivisions thereof, and members of the tribe. During such period, the tribe may elect—

(1) to apply to the Secretary for the transfer to a corporation or other legal entity organized by the tribe in a form satisfactory to the Secretary of title to all or any part of the tribal property, and the Secretary is authorized to make such transfer: *Provided*, That the Secretary of the Interior shall not approve any form of organization that provides for the transfer of stock or an undivided share in corporate assets as compensation for services of agents or attorneys unless such transfer is based upon an appraisal of tribal assets that is satisfactory to the Secretary;

(2) to apply to the Secretary for the transfer to one or more trustees designated by the tribe of title to all or any part of the tribal property, real and personal, the title to be held by such trustee for management or liquidation purposes under terms and conditions prescribed by the tribe, and the Secretary is authorized to make such transfer if he approves the trustees and the terms and conditions of the trust;

(3) to apply to the Secretary for the sale of all or any part of the tribal property, and for the pro rata distribution among the members of the tribe of all or any part of the proceeds of sale or of any other tribal funds, and the Secretary is authorized and directed to sell such property upon such terms and conditions as he deems proper and to make such distribution among the members of the tribe after deducting, in his discretion, reasonable costs of sale and distribution; and

(4) to apply to the Secretary for a division of all or any part of the tribal land into parcels for members and for public purposes, together with a general plan for the subdivision showing the approximate size, location, and number of parcels, and the Secretary is authorized to issue patents for that purpose.

(b) Property not transferred in accordance with recognized procedure

Title to any tribal property that is not transferred in accordance with the provisions of subsection (a) of this section shall be transferred by the Secretary either to all members of the tribe as tenants in common or to one or more trustees designated by him for the liquidation and distribution of assets among the members of the tribe under such terms and conditions as the Secretary may prescribe: *Provided*, That the trust agreement shall provide for the termination of the trust not more than three years from the date of such transfer unless the term of the trust is extended by order of a judge of a court of record designated in the trust agreement.

[1] So in original. Probably should be ''roll''.

(c) Selection of trustees; approval by Secretary; election to retain property

When approving or disapproving the selection of trustees in accordance with the provisions of subsection (a) of this section, and when designating trustees pursuant to subsection (b) of this section, the Secretary shall give due regard to the laws of the State of Utah that relate to the selection of trustees: *Provided further*, That the trust agreement shall provide that at any time before the sale of tribal property by the trustees the tribe may notify the trustees that it elects to retain such property and to transfer title thereto to a corporation, other legal entity, or trustee in accordance with the provisions of paragraphs (1) and (2) of subsection (a) of this section, and that the trustees shall transfer title to such property in accordance with the notice from the tribe if it is approved by the Secretary.

(d) Reservation of subsurface rights

Notwithstanding any other provision of this section, the Secretary is directed to reserve subsurface rights in tribal property from any sale or division of such property, and to require any trustee or trustees to whom title to tribal property is transferred to retain title to the subsurface rights in such property for not less than 10 years.

(Sept. 1, 1954, ch. 1207, § 5, 68 Stat. 1100.)

DISCONTINUANCE OF IRRIGATION WORKS; TRANSFER OF TITLE

Section 22 of act Sept. 1, 1954, provided that not later than two years after Sept. 1, 1954, the management and operation of irrigation works for Indian lands of the tribe by the Bureau of Indian Affairs was to be discontinued, and that, upon such discontinuance, the Secretary was to cancel the unpaid irrigation operation and maintenance assessments and reimbursable irrigation construction charges against such lands and transfer the title to such irrigation works to water users, water user's associations organized for such purpose, or to corporations organized, or trustees designated, as provided in this section.

§ 746. Individual property

(a) Transfer of unrestricted control

The Secretary is authorized and directed to transfer within two years after September 1, 1954 to each member of each tribe unrestricted control of funds or other personal property held in trust for such member by the United States.

(b) Removal of restrictions on sales or encumbrances; fee simple title

All restrictions on the sale or encumbrance of trust or restricted land owned by members of the tribe (including allottees, heirs, and devisees, either adult or minor) are removed two years after September 1, 1954, and the patents or deeds under which titles are then held shall pass the titles in fee simple, subject to any valid encumbrance: *Provided*, That the provisions of this subsection shall not apply to subsurface rights in such lands, and the Secretary is directed to transfer such subsurface rights to one or more trustees designated by him for management for a period not less than 10 years. The title to all interests in trust or restricted land acquired by members of the tribe by devise or inheritance two years or more after September 1, 1954 shall vest in such members in fee simple, subject to any valid encumbrance.

(c) Multiple land ownership; partition; sale; election to purchase; unlocated owner

Prior to the time provided in subsection (b) of this section for the removal of restrictions on land owned by more than one member of a tribe, the Secretary may—

(1) upon request of any of the owners, partition the land and issue to each owner a patent or deed for his individual share that shall become unrestricted two years from September 1, 1954;

(2) upon request of any of the owners and a finding by the Secretary that partition of all or any part of the land is not practicable, cause all or any part of the land to be sold at not less than the appraised value thereof and distribute the proceeds of sale to the owners: *Provided*, That any one or more of the owners may elect before a sale to purchase the other interests in the land at not less than the appraised value thereof, and the purchaser shall receive an unrestricted patent or deed to the land; and

(3) if the whereabouts of none of the owners can be ascertained, cause such lands to be sold and deposit the proceeds of sale in the Treasury of the United States for safekeeping.

(Sept. 1, 1954, ch. 1207, § 6, 68 Stat. 1101.)

§ 747. Property of deceased members

(a) Federal laws inapplicable to probate

The Act of June 25, 1910 (36 Stat. 855), the Act of February 14, 1913 (37 Stat. 678), and other Acts amendatory thereto shall not apply to the probate of the trust and restricted property of the members of a tribe who die six months or more after September 1, 1954.

(b) State, etc., laws applicable to probate

The laws of the several States, Territories, possessions, and the District of Columbia with respect to the probate of wills, the determination of heirs, and the administration of decedents' estates shall apply to the individual property of members of the tribe who die six months after September 1, 1954.

(Sept. 1, 1954, ch. 1207, § 7, 68 Stat. 1102.)

REFERENCES IN TEXT

Act of June 25, 1910, referred to in subsec. (a), is act June 25, 1910, ch. 431, 36 Stat. 855, as amended, which enacted sections 47, 93, 151, 202, 337, 344a, 351, 352, 353, 372, 403, 406, 407, and 408 of this title, sections 6a–1 and 16a of Title 41, Public Contracts, and section 148 of Title 43, Public Lands, and amended sections 191, 312, 331, 333, and 336 of this title and sections 104 and 107 of former Title 18, Criminal Code and Criminal Procedure. Sections 104 and 107 of former title 18 were repealed and reenacted as sections 1853 and 1856 of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, 62 Stat. 683. For complete classification of this Act to the Code, see Tables.

Act of February 14, 1913, referred to in subsec. (a), is act Feb. 14, 1913, ch. 55, 37 Stat. 678, which amended section 373 of this title. For complete classification of this Act to the Code, see Tables.

§ 748. Transfer of federally owned property

The Secretary is authorized, in his discretion, to transfer to a tribe or any member or group of

members thereof any federally owned property acquired, withdrawn, or used for the administration of the affairs of the tribe which he deems necessary for Indian use, or to transfer to a public or nonprofit body any such property which he deems necessary to public use and from which members of the tribes will derive benefit.

(Sept. 1, 1954, ch. 1207, § 8, 68 Stat. 1102.)

KANOSH INDIANS, UTAH

Act July 11, 1956, ch. 569, 70 Stat. 528, provided: "That the following-described public domain is hereby declared to be held by the United States in trust for the Kanosh Bank of the Paiute Indian Tribe in Utah, subject to the provisions of the Act of September 1, 1954 (68 Stat. 1099) [this subchapter], with respect to the termination of Federal supervision over all property of such Indians: The southeast quarter, east half northeast quarter, and the northwest quarter northeast quarter, section 35, township 22 south, range 5 west; the west half west half, section 14, and the east half east half, section 15, township 23 south, range 5 west, Salt Lake meridian, Utah, containing 600 acres."

§ 749. Taxes; initial exemption; taxes following distribution; valuation for capital gains and losses

No property distributed under the provisions of this subchapter shall at the time of distribution be subject to Federal or State income tax. Following any distribution of property made under the provisions of this subchapter, such property and any income derived therefrom by the individual, corporation, or other legal entity shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided*, That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity.

(Sept. 1, 1954, ch. 1207, § 9, 68 Stat. 1102.)

§ 750. Indian claims unaffected

Nothing contained in this subchapter shall deprive any Indian tribe, band, or other identifiable group of American Indians of any right, privilege, or benefit granted by the Indian Claims Commission Act of August 13, 1946 (ch. 959, 60 Stat. 1049) [25 U.S.C. 70 et seq.], including the right to pursue claims against the United States as authorized by said Act.

(Sept. 1, 1954, ch. 1207, § 10, 68 Stat. 1103.)

REFERENCES IN TEXT

The Indian Claims Commission Act of August 13, 1946, referred to in text, is act Aug. 13, 1946, ch. 959, 60 Stat. 1049, as amended, which was classified to section 2A (§ 70 et seq.) of this title and was omitted because of the termination of the Indian Claims Commission on Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 751. Valid leases, permits, liens, etc., unaffected

Nothing in this subchapter shall abrogate any valid lease, permit, license, right-of-way, lien, or other contract heretofore approved. Whenever any such instrument places in or reserves to the Secretary any powers, duties, or other functions with respect to the property subject thereto, the Secretary may transfer such functions, in whole or in part, to any Federal agency with the consent of such agency and may transfer such function, in whole or in part, to a State agency with the consent of such agency and the other party or parties to such instrument.

(Sept. 1, 1954, ch. 1207, § 11, 68 Stat. 1103.)

§ 752. Water rights

Nothing in this subchapter shall abrogate any water rights of a tribe or its members.

(Sept. 1, 1954, ch. 1207, § 12, 68 Stat. 1103.)

§ 753. Protection of minors, persons non compos mentis and other members needing assistance; guardians; other adequate means

Prior to the transfer of title to, or the removal of restrictions from, property in accordance with the provisions of this subchapter, the Secretary shall protect the rights of members of a tribe who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs by causing the appointment of guardians in courts of competent jurisdiction, or by such other means as he may deem adequate.

(Sept. 1, 1954, ch. 1207, § 13, 68 Stat. 1103.)

§ 754. Advances or expenditures from tribal funds

Pending the completion of the property dispositions provided for in this subchapter, the funds now on deposit, or hereafter deposited, in the United States Treasury to the credit of the tribe shall be available for advance to the tribe, or for expenditure, for such purposes as may be designated by the governing body of the tribe and approved by the Secretary.

(Sept. 1, 1954, ch. 1207, § 14, 68 Stat. 1103.)

§ 755. Execution by Secretary of patents, deeds, etc.

The Secretary shall have the authority to execute such patents, deeds, assignments, releases, certificates, contracts, and other instruments as may be necessary or appropriate to carry out the provisions of this subchapter, or to establish a marketable and recordable title to any property disposed of pursuant to this subchapter.

(Sept. 1, 1954, ch. 1207, § 15, 68 Stat. 1103.)

§ 756. Cancellation of indebtedness

The Secretary is authorized and directed to cancel any indebtedness payable to the United States by the tribe arising out of any loan made by the United States to such tribe, and any indebtedness, whether payable to the United States or to the tribe, arising out of a loan made from the proceeds thereof to an individual Indian.

(Sept. 1, 1954, ch. 1207, § 16, 68 Stat. 1103.)

§ 757. Termination of Federal trust

(a) Publication; termination of Federal services; application of Federal and State laws

Upon removal of Federal restrictions on the property of each tribe and individual members thereof, the Secretary shall publish in the Fed-

eral Register a proclamation declaring that the Federal trust relationship to the affairs of the tribe and its members has terminated. Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.

(b) Citizenship status unaffected

Nothing in this subchapter shall affect the status of the members of the tribe as citizens of the United States, or shall affect their rights, privileges, immunities, and obligations as such citizens.

(Sept. 1, 1954, ch. 1207, § 17, 68 Stat. 1103.)

§ 758. Status of Tribes

(a) Revocation of corporate charter

Effective on the date of the proclamation provided for in section 757 of this title, the corporate charter issued pursuant to the Act of June 18, 1934 (48 Stat. 984), as amended [25 U.S.C. 461 et seq.], to the Kanosh Band of Paiute Indians of the Kanosh Reservation, Utah, and ratified by the band on August 15, 1943, and to the Shivwits Band of Paiute Indians of the Shivwits Reservation, Utah, and ratified by the band on August 30, 1941, are revoked.

(b) Termination of Federal power

Effective on the date of the proclamation provided for in section 757 of this title, all powers of the Secretary or other officer of the United States to take, review, or approve any action under the constitution and bylaws of the tribe are terminated. Any powers conferred upon the tribe by such constitution which are inconsistent with the provisions of this subchapter are terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is consistent with this subchapter without the participation of the Secretary or other officer of the United States.

(Sept. 1, 1954, ch. 1207, § 18, 68 Stat. 1104.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in subsec. (a), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 759. Rules and regulations; tribal referenda

The Secretary is authorized to issue rules and regulations necessary to effectuate the purposes of this subchapter, and may in his discretion provide for tribal referenda on matters pertaining to management or disposition of tribal assets.

(Sept. 1, 1954, ch. 1207, § 19, 68 Stat. 1104.)

§ 760. Education and training program; purposes; subjects; transportation; subsistence; contracts; other education programs

Prior to the issuance of a proclamation in accordance with the provisions of section 757 of this title, the Secretary is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.

(Sept. 1, 1954, ch. 1207, § 23, 68 Stat. 1104.)

SUBCHAPTER XXXII–A—PAIUTE INDIANS OF UTAH: RESTORATION OF FEDERAL SUPERVISION

§ 761. Definitions

For the purposes of this subchapter—

(1) the term ''tribe'' means the Cedar, Shivwits, Kanosh, Koosharem, and Indian Peaks Bands of Paiute Indians of Utah;

(2) the term ''Secretary'' means the Secretary of the Interior or his authorized representative;

(3) the term ''Interim Council'' means the council elected pursuant to section 764 of this title;

(4) the term ''member'', when used with respect to the tribe, means a person enrolled on the membership roll of the tribe, as provided in section 763 of this title; and

(5) the term ''final membership roll'' means the final membership roll of the tribe published on April 15, 1955, on pages 2499 through 2503 of volume 20 of the Federal Register and on April 14, 1956, on pages 2453 through 2456 of volume 21 of the Federal Register.

(Pub. L. 96–227, § 2, Apr. 3, 1980, 94 Stat. 317; Pub. L. 109–126, § 4, Dec. 7, 2005, 119 Stat. 2547.)

AMENDMENTS

2005—Par. (1). Pub. L. 109–126 substituted ''Cedar'' for ''Cedar City''.

SHORT TITLE

Section 1 of Pub. L. 96–227 provided: ''That this act [enacting this subchapter] may be cited as the 'Paiute Indian Tribe of Utah Restoration Act'.''

§ 762. Federal restoration of supervision

(a) Trust relationship restored or confirmed; statutory provisions applicable; eligibility for Federal services and benefits

The Federal trust relationship is restored to the Shivwits, Kanosh, Koosharem, and Indian

Peaks Bands of Paiute Indians of Utah and restored or confirmed with respect to the Cedar Band of Paiute Indians of Utah. The provisions of the Act of June 18, 1934 (48 Stat. 984), as amended [25 U.S.C. 461 et seq.], except as inconsistent with specific provisions of this subchapter, are made applicable to the tribe and the members of the tribe. The tribe and the members of the tribe shall be eligible for all Federal services and benefits furnished to federally recognized Indian tribes. Notwithstanding any provision to the contrary in any law establishing such services or benefits, eligibility of the tribe and its members for such Federal services and benefits shall become effective April 3, 1980, without regard to the existence of a reservation for the tribe or the residence of members of the tribe on a reservation. For the purpose of providing for Federal services and benefits, the service area shall be Iron, Millard, Sevier, and Washington Counties, Utah, except that should lands in any other county be added to the reservation pursuant to section 766(c) of this title, the service area shall also include the area on or near the additions to the reservation.

(b) Restoration of rights and privileges

Except as provided in subsection (c) of this section, all rights and privileges of the tribe and of members of the tribe under any Federal treaty, Executive order, agreement, or statute, or under any other authority, which were diminished or lost under the Act of September 1, 1954 (68 Stat. 1099) [25 U.S.C. 741 et seq.], are hereby restored, and such Act shall be inapplicable to the tribe and to members of the tribe after April 3, 1980.

(c) Hunting, fishing, or trapping rights not restored

This subchapter shall not grant or restore any hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, to the tribe or any member of the tribe.

(d) Effect on property rights or obligations, contractual rights or obligations, or obligations for taxes

Except as specifically provided in this subchapter, nothing in this subchapter shall alter any property right or obligation, any contractual right or obligations, or any obligation for taxes already levied.

(Pub. L. 96–227, § 3, Apr. 3, 1980, 94 Stat. 317; Pub. L. 109–126, § 4, Dec. 7, 2005, 119 Stat. 2547.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in subsec. (a), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Act of September 1, 1954, referred to in subsec. (b), is act Sept. 1, 1954, ch. 1207, 68 Stat. 1099, which is classified generally to subchapter XXXII (§ 741 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–126 substituted ''Cedar'' for ''Cedar City''.

§ 763. Membership roll

(a) Opening; establishment of accuracy

The final membership roll is declared open. The Secretary, the Interim Council, and tribal officials under the tribal constitution and bylaws shall take such measures as will insure the continuing accuracy of the membership roll.

(b) Prerequisites for inclusion

(1) Until after the initial election of tribal officers under the tribal constitution and bylaws, a person shall be a member of the tribe and his name shall be placed on the membership roll if he is living and if—

(A) his name is listed on the final membership roll;

(B) he was entitled on September 1, 1954, to be on the final membership roll but his name was not listed on that roll;

(C) he is a descendant of a person specified in subparagraph (A) or (B) and possesses at least one-fourth degree of blood of members of the tribe or their Paiute Indian ancestors;

(D) his name is listed on the roll established pursuant to the Act of October 17, 1968 (82 Stat. 1147), for the disposition of judgment funds, as a member of the Cedar Band of Paiute Indians;

(E) he was entitled on October 17, 1968, to be on the judgment distribution roll as a member of the Cedar Band as specified in subparagraph (D) but his name was not listed on that roll; or

(F) he is a descendant of a person specified in subparagraph (D) or (E) and possesses at least one-fourth degree of blood of members of the tribe or their Paiute Indian ancestors.

(2) After the initial election of tribal officials under the tribal constitution and bylaws, the provisions of the tribal constitution and bylaws shall govern membership in the tribe.

(c) Verification of descendancy, age, and blood; procedures applicable

(1) Before election of the Interim Council, verification of descendancy, age, and blood shall be made upon oath before the Secretary and his determination thereon shall be final.

(2) After election of the Interim Council and before the initial election of the tribal officials, verification of descendancy, age, and blood shall be made upon oath before the Interim Council, or its authorized representative. A member of the tribe, with respect to the inclusion of any name, and any person, with respect to the exclusion of his name, may appeal to the Secretary, who shall make a final determination of each such appeal within ninety days after an appeal has been filed with him. The determination of the Secretary with respect to an appeal under this paragraph shall be final.

(3) After the initial election of tribal officials, the provisions of the tribal constitution and bylaws shall govern the verification of any requirements for membership in the tribe, and the Secretary and the Interim Council shall deliver their records and files, and other material relating to enrollment matters, to the tribal governing body.

(d) Participation in elections and voting rights

For purposes of section 764 and 765 of this title, a member who is eighteen years of age or

older is entitled and eligible to be given notice of, attend, participate in, and vote at, general council meetings and to nominate candidates for, to run for any office in, and to vote in, elections of members to the Interim Council and to other tribal councils.

(Pub. L. 96–227, § 4, Apr. 3, 1980, 94 Stat. 318; Pub. L. 109–126, § 4, Dec. 7, 2005, 119 Stat. 2547.)

REFERENCES IN TEXT

Act of October 17, 1968, referred to in subsec. (b)(1)(D), is Pub. L. 90–584, Oct. 17, 1968, 82 Stat. 1147, which is not classified to the Code.

AMENDMENTS

2005—Subsec. (b)(1)(D), (E). Pub. L. 109–126 substituted ''Cedar'' for ''Cedar City''.

§ 764. Interim Council

(a) Nomination and election of members; notice; meetings; ballot requirements; approval by Secretary

Within forty-five days after April 3, 1980, the Secretary shall announce the date of a general council meeting of the tribe to nominate candidates for election to the Interim Council. Such general council meeting shall be held within sixty days after April 3, 1980. Within forty-five days after such general council meeting the Secretary shall hold an election by secret ballot, absentee balloting to be permitted, to elect six members of the tribe to the Interim Council from among the nominees submitted to him from such general council meeting. The Secretary shall assure that notice of the time, place, and purpose of such meeting and election shall be provided to members described in section 763(d) of this title at least fifteen days before such general meeting and election. The ballot shall provide for write-in votes. The Secretary shall approve the Interim Council elected pursuant to this section if he is satisfied that the requirements of this section relating to the nominating and election process have been met. If he is not so satisfied, he shall hold another election under this section, with the general council meeting to nominate candidates for election to the Interim Council to be held within sixty days after such election.

(b) Powers and authorities

The Interim Council shall represent the tribe and its members in the implementation of this subchapter and shall be the acting tribal governing body until tribal officials are elected pursuant to section 765(c) of this title and shall have no powers other than those given to it in accordance with this subchapter. The Interim Council shall have full authority and capacity to receive grants from and to make contracts with the Secretary and the Secretary of Health and Human Services with respect to Federal services and benefits for the tribe and its members: *Provided*, That no authority to enter into contracts or to make payments under this subchapter shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts. The Interim Council shall have the authority to bind the tribal governing body as the successor in interest to the Interim Council for a period extending not more than six months after the date on which the tribal governing body takes office. Except as provided in the preceding sentence, the Interim Council shall have no power or authority after the time when the duly-elected tribal governing body takes office.

(c) Vacancies; notice; meeting; election

Within thirty days after receiving notice of a vacancy on the Interim Council, the Interim Council shall hold a general council meeting for the purpose of electing a person to fill such vacancy. The Interim Council shall provide notice of the time, place, and purpose of such meeting and election to members described in section 763(d) of this title at least ten days before such general meeting and election. The person nominated to fill such vacancy at the general council meeting who received the highest number of votes in the election shall fill such vacancy.

(Pub. L. 96–227, § 5, Apr. 3, 1980, 94 Stat. 319; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (b), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 765. Tribal constitution and bylaws

(a) Election; time and preconditions

Upon the written request of the Interim Council, the Secretary shall conduct an election by secret ballot, pursuant to the provisions of section 476 of this title, for the purpose of adopting a constitution and bylaws for the tribe. The election shall be held within sixty days after the Secretary has—

(1) reviewed and updated the final membership roll for accuracy, in accordance with sections 763(a), 763(b)(1), and 763(c)(1) of this title,

(2) made a final determination of all appeals filed under section 763(c)(2) of this title, and

(3) published in the Federal Register a certified copy of the membership roll of the tribe.

(b) Pre-election duties and functions of Interim Council

The Interim Council shall draft and distribute to each member described in section 763(d) of this title, no later than thirty days before the election under subsection (a) of this section, a copy of the proposed constitution and bylaws of the tribe, as drafted by the Interim Council, along with a brief and impartial description of the proposed constitution and bylaws. The members of the Interim Council may freely consult with members of the tribe concerning the text and description of the constitution and bylaws, except that such consultation may not be carried on within fifty feet of the polling places on the date of the election.

(c) Majority vote for adoption

In any election held pursuant to subsection (a) of this section, a vote of a majority of those actually voting shall be necessary and sufficient for the adoption of a tribal constitution and bylaws.

(d) Election of tribal officials pursuant to constitution and bylaws; ballot requirements

Not later than one hundred and twenty days after the tribe adopts a constitution and bylaws, the Interim Council shall conduct an election by secret ballot for the purpose of electing the individuals who will serve as tribal officials as provided in the tribal constitution and bylaws. For the purpose of this election and notwithstanding any provision in the tribal constitution and bylaws to the contrary, absentee balloting shall be permitted.

(Pub. L. 96–227, § 6, Apr. 3, 1980, 94 Stat. 319.)

§ 766. Tribal reservation

(a) Transfer of real property to Secretary; existing rights applicable and status of property subsequent to transfer; taxation

The Secretary, within one year following April 3, 1980, shall accept the real property of members of the tribe or bands if conveyed or otherwise transferred to him, and real property held for the benefit of members of the tribe or bands if conveyed or otherwise transferred to him by the owner or owners of such land held for the benefit of the bands. Such property shall be subject to all valid existing rights including, but not limited to, liens, outstanding taxes (local and State), and mortgages. The land transferred to the Secretary pursuant to this subsection shall be subject to foreclosure or sale pursuant to the terms of any valid existing obligation in accordance with the laws of the State of Utah. Subject to the conditions imposed by this subsection, the land transferred shall be taken in the name of the United States in trust for the tribe or bands to be held as Indian lands are held, and shall be part of their reservation. The transfer of real property authorized by this section shall be exempt from all local, State, and Federal taxation. All real property transferred under this section shall, as of the date of transfer, be exempt from all local, State, and Federal taxation.

(b) Exercise of civil and criminal jurisdiction by Utah

The State of Utah shall exercise civil and criminal jurisdiction with respect to the reservation and persons on the reservation as if it had assumed jurisdiction pursuant to the Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82 Stat. 79), and pursuant to sections 63–36–9 through 63–36–21 of the Utah State Code.

(c) Plan for enlargement of reservation; negotiation; development; scope and approval

Inasmuch as the Kanosh, Koosharem and Indian Peaks Bands of Paiute Indians lost land which had been their former reservations and the Cedar Band of Paiute Indians had never had a reservation, the Secretary shall negotiate with the tribe or bands, or with representatives of the tribe chosen by the tribe or bands, concerning the enlargement of the reservation for the tribe established pursuant to subsection (a) of this section and shall within two years after April 3, 1980, develop a plan for the enlargement of the reservation for the tribe. The plan shall include acquisition of not to exceed a total of fifteen thousand acres of land to be selected from available public, State, or private lands within Beaver, Iron, Millard, Sevier, or Washington Counties, Utah. Upon approval of such plan by the tribal officials elected under the tribal constitution and bylaws adopted pursuant to section 765 of this title, the Secretary shall submit such plan, in the form of proposed legislation, to the Congress.

(d) Notification and consultative requirements for enlargement plan

To assure that legitimate State and local interests are not prejudiced by the enlargement of the reservation for the tribe, the Secretary, in developing the plan under subsection (c) of this section for the enlargement of the reservation for the tribe, shall notify and consult with all appropriate officials of the State of Utah, all appropriate local government officials in the affected five county area in the State of Utah and any other interested parties. Such consultation shall include the following subjects:

(1) the size and location of the additions to the reservation;

(2) the effect the enlargement of the reservation would have on State and local tax revenues;

(3) the criminal and civil jurisdiction of the State of Utah with respect to the reservation and persons on the reservation;

(4) hunting, fishing, and trapping rights of the tribe, and members of the tribe, on the reservation;

(5) the provision of State and local services to the reservation and to the tribe and members of the tribe on the reservation; and

(6) the provision of Federal services to the reservation and to the tribe and members of the tribe and the provision of services by the tribe to members of the tribe.

(e) Contents of enlargement plan

Any plan developed under this section for the enlargement of the reservation for the tribe shall provide that—

(1) the enlargement of the reservation will not grant or restore to the tribe or any member of the tribe any hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, on such addition to the reservation;

(2) the Secretary shall not accept any real property in trust for the benefit of the tribe or bands unless such real property is located either within Beaver, Iron, Millard, Sevier, or Washington Counties, State of Utah;

(3) the transfer of any real property to the Secretary in trust for the benefit of the tribe or bands as an addition to the reservation shall be exempt from all Federal, State, and local taxation, and all such real property shall, as of the date of such transfer, be exempt from Federal, State, and local taxation; and

(4) the State of Utah shall exercise civil and criminal jurisdiction with respect to the addition to the reservation and persons on such lands as if it had assumed jurisdiction pursuant to the Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82

Stat. 79), and pursuant to sections 63–36–9 through 63–36–21 of the Utah State Code.

(f) Statement appended to enlargement plan respecting implementation of notification and consultative requirements

The Secretary shall append to the plan a detailed statement describing the manner in which the notification and consultation prescribed by subsection (d) of this section was carried out and shall include any written comments with respect to the enlargement of the reservation for the tribe submitted to the Secretary by State and local officials and other interested parties in the course of such consultation.

(Pub. L. 96–227, § 7, Apr. 3, 1980, 94 Stat. 320; Pub. L. 109–126, § 4, Dec. 7, 2005, 119 Stat. 2547.)

REFERENCES IN TEXT

Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82 Stat. 79), referred to in subsecs. (b) and (e)(4), probably means section 7 of act Aug. 15, 1953, ch. 505, 67 Stat. 590, which was set out as a note under section 1360 of Title 28, Judiciary and Judicial Procedure, and was repealed by Pub. L. 90–284, title IV, § 403(b), Apr. 11, 1968, 82 Stat. 79. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–126 substituted ''Cedar'' for ''Cedar City''.

TRANSFER OF LAND INTO TRUST FOR SHIVWITS BAND OF PAIUTE INDIAN TRIBE OF UTAH

Pub. L. 111–11, title I, § 1982, Mar. 30, 2009, 123 Stat. 1093, provided that:

''(a) DEFINITIONS.—In this section:

''(1) PARCEL A.—The term 'Parcel A' means the parcel that consists of approximately 640 acres of land that is—

''(A) managed by the Bureau of Land Management;

''(B) located in Washington County, Utah; and

''(C) depicted on the map entitled 'Washington County Growth and Conservation Act Map' [meaning the ''Washington County Growth and Conservation Act Map'', dated November 13, 2008].

''(2) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(3) TRIBE.—The term 'Tribe' means the Shivwits Band of Paiute Indians of the State of Utah.

''(b) PARCEL TO BE HELD IN TRUST.—

''(1) IN GENERAL.—At the request of the Tribe, the Secretary shall take into trust for the benefit of the Tribe all right, title, and interest of the United States in and to Parcel A.

''(2) SURVEY; LEGAL DESCRIPTION.—

''(A) SURVEY.—Not later than 180 days after the date of enactment of this Act [Mar. 30, 2009], the Secretary, acting through the Director of the Bureau of Land Management, shall complete a survey of Parcel A to establish the boundary of Parcel A.

''(B) LEGAL DESCRIPTION OF PARCEL A.—

''(i) IN GENERAL.—Upon the completion of the survey under subparagraph (A), the Secretary shall publish in the Federal Register a legal description of—

''(I) the boundary line of Parcel A; and

''(II) Parcel A.

''(ii) TECHNICAL CORRECTIONS.—Before the date of publication of the legal descriptions under clause (i), the Secretary may make minor corrections to correct technical and clerical errors in the legal descriptions.

''(iii) EFFECT.—Effective beginning on the date of publication of the legal descriptions under clause (i), the legal descriptions shall be considered to be the official legal descriptions of Parcel A.

''(3) EFFECT.—Nothing in this section—

''(A) affects any valid right in existence on the date of enactment of this Act [Mar. 30, 2009];

''(B) enlarges, impairs, or otherwise affects any right or claim of the Tribe to any land or interest in land other than to Parcel A that is—

''(i) based on an aboriginal or Indian title; and

''(ii) in existence as of the date of enactment of this Act; or

''(C) constitutes an express or implied reservation of water or a water right with respect to Parcel A.

''(4) LAND TO BE MADE A PART OF THE RESERVATION.—Land taken into trust pursuant to this section shall be considered to be part of the reservation of the Tribe.''

CONVEYANCE OF LAND HELD IN TRUST FOR PAIUTE INDIAN TRIBE OF UTAH

Pub. L. 109–126, Dec. 7, 2005, 119 Stat. 2546, provided that:

''SECTION 1. LAND CONVEYANCE TO CITY.

''(a) AUTHORIZATION FOR CONVEYANCE.—Not later than 90 days after the Secretary receives a request from the Tribe and the City to convey all right, title, and interest of the United States and the Tribe in and to the Property to the City, the Secretary shall take the Property out of trust status and convey the Property to the City.

''(b) TERMS AND CONDITIONS.—The conveyance under subsection (a) shall be subject to the following conditions:

''(1) TRIBAL RESOLUTION.—Prior to conveying the Property under subsection (a), the Secretary shall ensure that the terms of the sale have been approved by a tribal resolution of the Tribe.

''(2) CONSIDERATION.—Consideration given by the City for the Property shall be not less than the appraised fair market value of the Property.

''(3) NO FEDERAL COST.—The City shall pay all costs related to the conveyance authorized under this section.

''(c) PROCEEDS OF SALE.—The proceeds from the conveyance of the Property under this section shall be given immediately to the Tribe.

''(d) FAILURE TO MAKE CONVEYANCE.—If after the Secretary takes the Property out of trust status pursuant to subsection (a) the City or the Tribe elect not to carry out the conveyance under that subsection, the Secretary shall take the Property back into trust for the benefit of the Tribe.

''SEC. 2. TRIBAL RESERVATION.

''Land acquired by the United States in trust for the Tribe after February 17, 1984, shall be part of the Tribe's reservation.

''SEC. 3. TRUST LAND FOR SHIVWITS OR KANOSH BANDS.

''If requested to do so by a tribal resolution of the Tribe, the Secretary shall take land held in trust by the United States for the benefit of the Tribe out of such trust status and take that land into trust for the Shivwits or Kanosh Bands of the Paiute Indian Tribe of Utah, as so requested by the Tribe.

''SEC. 4. CEDAR BAND OF PAIUTES TECHNICAL CORRECTION.

''The Paiute Indian Tribe of Utah Restoration Act (25 U.S.C. 761 [et seq.]) is amended by striking 'Cedar City' each place it appears and inserting 'Cedar'. Any reference in a law, map, regulation, document, paper, or other record of the United States to the 'Cedar City Band of Paiute Indians' shall be deemed to be a reference to the 'Cedar Band of Paiute Indians'.

''SEC. 5. DEFINITIONS.

''For the purposes of this Act:

''(1) CITY.—The term 'City' means the City of Richfield, Utah.

''(2) PROPERTY.—The term 'Property' means the parcel of land held by the United States in trust for the Paiute Indian Tribe of Utah located in Section 2, Township 24 South, Range 3 West, Salt Lake Base and Meridian, Sevier County, Utah and more particularly described as follows: Beginning at a point on the East line of the Highway which is West 0.50 chains, more or less, and South 8° 21° West, 491.6 feet from the Northeast Corner of the Southwest Quarter of Section 2, Township 24 South, Range 3 West, Salt Lake Base and Meridian, and running thence South 81° 39° East, perpendicular to the highway, 528.0 feet; thence South 26° 31° West, 354.6 feet; thence North 63° 29° West, 439.3 feet to said highway; thence North 8° 21° East, along Easterly line of said highway 200.0 feet to the point of beginning, containing 3.0 acres more or less.

''(3) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(4) TRIBE.—The term 'Tribe' means the Paiute Indian Tribe of Utah.''

RESERVATION OF PAIUTE INDIAN TRIBE OF UTAH

Pub. L. 98–219, Feb. 17, 1984, 98 Stat. 11, as amended by Pub. L. 109–126, § 4, Dec. 7, 2005, 119 Stat. 2547, provided that:

''SECTION 1. (a) Subject to subsection (d), all right, title, and interest of the United States in the lands described in subsection (b) (including all improvements thereon and appurtenances thereto) are declared to be held in trust by the United States for the benefit of the respective bands of the Paiute Indian Tribe of Utah, as provided in subsection (b), and are declared to be part of the reservation of the Paiute Indian Tribe of Utah.

''(b) The lands subject to this section are parcels 1 through 5 of the lands depicted on the maps contained in the draft document entitled 'Proposed Paiute Indian Tribe of Utah Reservation Plan', dated January 24, 1982, and published by the United States Department of the Interior, Bureau of Indian Affairs. Upon enactment of this Act [Feb. 17, 1984], the Secretary shall publish in the Federal Register the legal description of the lands so depicted. The Secretary is authorized to correct any technical errors in the descriptions of the subject lands. Such lands shall be held as follows:

''(1) To be held in trust for the Kanosh Band of the Paiute Tribe of Utah: Parcel numbered 2, figure 5, page 95, containing approximately five hundred and sixty acres; parcel numbered 3, figure 6, page 99, containing approximately five hundred and two acres.

''(2) To be held in trust for the Koosharem Band of the Paiute Tribe of Utah: Parcel numbered 4, figure 7, page 105, containing approximately five hundred and twenty acres; parcel numbered 5, figure 8, page 111, containing approximately seven hundred and fifteen acres.

''(3) To be held in trust for the Cedar Band of the Paiute Tribe of Utah: That portion of parcel numbered 1, figure 4, page 85, containing approximately two thousand forty-four acres.

''(4) To be held in trust for the Indian Peaks Band of the Paiute Indian Tribe of Utah: That portion of parcel numbered 1, figure 4, page 85, containing approximately four hundred and twenty-four acres.

''(c) Nothing in this section shall deprive any person of any existing legal right-of-way, mining claim, grazing permit, water right, or other right or interest which such person may have in the lands described in subsection (b).

''(d) Pursuant to the Act of June 14, 1934 (48 Stat. 985) [probably means section 5 of act June 18, 1934, 25 U.S.C. 465], the Secretary shall acquire, to the extent available, easements to and water rights for the lands described in subsection (b) as necessary for their use.

''(e) The Secretary shall consult with the town council of Joseph, Utah, and other appropriate local governmental entities prior to permitting the introduction of any point source of contamination pursuant to any proposed development on parcel numbered 4 as described in subsection (b)(2). The Secretary shall require a minimum of one thousand five hundred feet distance be maintained from the town well of the town of Joseph and any such point source of contamination and may, if he determines it is necessary to prevent contamination of said well, require the installation of an appropriate waste water disposal system as part of any proposed development on parcel 4.

''(f) Upon the effective date of this Act [Feb. 17, 1984], all valid leases, permits, rights-of-way, or other land use rights or authorizations, except mining claims, existing on the date of enactment of this Act [Feb. 17, 1984] in the lands described in subsection (b), including the right to receive compensation for use of the lands, shall cease to be the responsibility of, or enure to the benefit of, the United States, and shall become the responsibility of the Paiute Indian Tribe which shall succeed to the interests of the United States and shall continue to maintain them under the same terms and conditions as they were maintained by the United States.

''(g) All improvements on the lands described in subsection (b) in existence on the effective date of the Act [Feb. 17, 1984], under the authority of the land use rights or authorizations described in subsection (c), shall remain in the same status as to ownership and right of use as existed prior to the date of enactment of this Act [Feb. 17, 1984].

''(h) Nothing in this Act shall be construed as terminating any valid mining claim existing on the date of enactment of this Act [Feb. 17, 1984] on the lands described in subsection (b).

''(i) The mining claims described in subsection (c) shall carry all the rights incident to mining claims, including the rights of ingress and egress over the land described in subsection (b). Such mining claims shall carry the right to occupy and use so much of the surface of the land within their boundaries as is required for all purposes reasonably necessary to mine and remove the minerals, including the removal of timber for mining purposes. Such mining claims shall terminate when they are determined invalid under subsection (j) or are abandoned.

''(j) As soon as possible after enactment of this Act, the Secretary of the Interior shall determine the validity of the mining claims described in subsection (h) as of the date of enactment of this Act [Feb. 17, 1984]. Those mining claims which the Secretary determines to be valid shall be maintained thereafter in compliance with the mining laws of the United States but the holders of such claims shall not be entitled to a patent.

''(k) Nothing in this Act shall prevent the Paiute Indian Tribe from negotiating the accommodation of land use rights or authorizations described in this section through any method acceptable to the parties.

''SEC. 2. The lands which are declared to be held in trust for the benefit of the tribe or bands under this Act shall be subject to the laws of the United States relating to Indian land to the same extent and in the same manner as the lands comprising the reservation of the tribe or bands on the day before the date of the enactment of this Act [Feb. 17, 1984].

''SEC. 3. (a) The Secretary of Agriculture shall not deny the tribe or any member of the tribe the right to use and occupy, on a nonexclusive basis, the national forest land described in subsection (b) for religious and ceremonial purposes for such periods of time and under such reasonable terms and conditions as the Secretary may prescribe: *Provided*, That the Secretary shall permit the tribe to use and occupy, on an exclusive basis, so much of the national forest land in subsection (b) abutting Fish Lake as is necessary for such religious and ceremonial purposes during and including the second and third weeks of June and the first and second weeks of September of each year, under such reasonable terms and conditions as the Secretary may prescribe.

''(b) The land referred to in subsection (a) is the parcel of land depicted on the map contained in the document entitled 'Proposed Paiute Indian Tribe of Utah Reservation Plan', dated January 24, 1982, and published by the United States Department of the Interior,

Bureau of Indian Affairs, as follows: Parcel numbered 6: Fish Lake; figure 9, page 117.

''SEC. 4. (a) There is hereby established in the Treasury of the United States a fund to be known as the Paiute Indian Tribe of Utah Economic Development and Tribal Government Fund. This Fund shall be held in trust for the benefit of the tribe and administered in accordance with this Act.

''(b)(1) One-half of the principal of the Fund shall be designated as the Economic Development Fund and the remaining one-half as the Tribal Government Fund. Each portion of the Fund shall be administered by the Secretary in accordance with reasonable terms established by the tribe and agreed to by the Secretary. The Secretary shall not agree to terms which provide for the investment of the Fund in a manner not in accordance with section 1 of the Act of June 24, 1938 (52 Stat. 1037) [25 U.S.C. 162a], unless the tribe first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment. Until such terms have been agreed upon, the Secretary shall fix the terms for the administration of any portion of the Fund as to which there is no agreement.

''(2) Under no circumstances shall any part of the principal of the Fund be distributed to the tribe, or to any member of the tribe, nor shall income accruing to the Fund be used for per capita payments to any member of the tribe.

''(3) The Secretary shall make available to the tribe in quarterly payments, without any deductions, any income received from the investment of each fund. The use of the income from the Tribal Government Fund shall be free of regulation by the Secretary. The use of the income from the Economic Development Fund shall be consistent with an economic development plan developed by the tribe and approved by the Secretary. The Secretary shall approve such plan within sixty days of its submission if he finds that it is reasonably related to the economic development of the tribe. If the Secretary does not approve such plan, he shall, at the time of his decision, set forth in writing the reasons for his disapproval. With the approval of the Secretary, the tribe may alter the economic development plan subject to the conditions set forth in this section.

''(c) There is authorized to be appropriated in fiscal year 1985 the sum of $2,500,000, which shall be deposited in the Fund. Not more than 5 per centum of any amount appropriated to the Fund under this section may be obligated or spent by the tribe under any contract or agreement relating to the employment of legal counsel.

''(d) The transfer of the approximately four thousand seven hundred and seventy acres of land and the appropriation of the $2,500,000 authorized by this Act shall be in complete fulfillment of the provisions of Public Law 96–227 [this subchapter] relating to the enlargement of the tribe's reservation.

''SEC. 5. For purposes of this Act—

''(1) the term 'tribe' means the Cedar, Shivwits, Kanosh, Koosharem, and Indian Peaks Bands of Paiute Indians of Utah; and

''(2) except where otherwise specified, the term 'Secretary' means the Secretary of the Interior.''

§ 767. Legal claims barred for lands lost through tax or other sales since September 1, 1954

Any legal claims for lands owned by the Shivwits, Kanosh, Koosharem, or Indian Peaks Bands of Paiute Indians of Utah and lost through tax sales or any other sales to individuals, corporations, or the State of Utah since September 1, 1954, are hereby barred.

(Pub. L. 96–227, § 8, Apr. 3, 1980, 94 Stat. 322.)

§ 768. Rules and regulations

The Secretary may make such rules and regulations as are necessary to carry out the purposes of this subchapter.

(Pub. L. 96–227, § 9, Apr. 3, 1980, 94 Stat. 322.)

SUBCHAPTER XXXIII—INDIAN TRIBES OF OREGON

§ 771. Enrollment of descendants; determination of eligibility

The Secretary of the Interior, hereafter referred to as the ''Secretary'', is authorized and directed to prepare separate rolls of the Indians of the blood of the Molel or Molallalas Tribe of Oregon and of the Confederated Bands of the Umpqua Tribe of Indians and the Calappoias residing in the Umpqua Valley, and of the Tillamook, Coquille, Tootootoney, and Chetco Tribes of Oregon, living on August 30, 1954. Applications for enrollment shall be filed within one year of August 30, 1954. The determination of the Secretary of the eligibility of an applicant for enrollment shall be final and conclusive. No person shall be entitled to be enrolled on more than one roll.

(Aug. 30, 1954, ch. 1085, § 1, 68 Stat. 979.)

§ 772. Per capita payments to tribal members; tax exemption

The Secretary is authorized and directed to withdraw the funds on deposit in the Treasury of the United States to the credit of the respective tribes or bands, including those funds appropriated by Public Law 253 (Eighty-second Congress) approved November 1, 1951, in satisfaction of judgments obtained by the tribes or bands in the cases of Alcea Band of Tillamook, et al., against United States (119 C. Cls. 835), and Rogue River Tribes of Indians, et al., against United States (116 C. Cls. 454), and to make appropriate and equitable per capita payments therefrom to each person whose name appears on said approved rolls: *Provided*, That any amounts paid to or for individual members, or distributed to or for the legatees or next of kin of any enrollee, as provided in this subchapter, shall not be subject to Federal tax.

(Aug. 30, 1954, ch. 1085, § 2, 68 Stat. 979.)

REFERENCES IN TEXT

Public Law 253 (Eighty-second Congress), referred to in text, is act Nov. 1, 1951, ch. 664, 65 Stat. 736, known as the Supplemental Appropriations Act, 1952, which was not classified to the Code.

§ 773. Payments

(a) Enrollees, next of kin, or legatees

The Secretary shall make payments directly to a living enrollee. The Secretary shall distribute the share of a person determined to be eligible for enrollment, but who dies subsequent to August 30, 1954, and on whose behalf an application is filed and approved, and the share of a deceased enrollee, directly to his next of kin or legatees as determined by the laws of the domicile of the decedent, upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) Minors and persons under legal disability; guardians

Payments due persons under twenty-one years of age or persons under legal disability shall be

made in accordance with laws applicable to such persons in the State of domicile of the payee. The Secretary may apply to any court of competent jurisdiction for the appointment of a guardian to receive and administer payments due a person under twenty-one years of age or under legal disability, and may take such other action as he deems appropriate for the protection of the interests of any such person in connection with payments hereunder.

(c) Payments not subject to debts; time limits

No part of any payment hereunder shall be subject to any debt or debts created prior to August 30, 1954 by a beneficiary of Indian blood. Payment to living enrollees, unless under twenty-one years of age, or under legal disability, shall be completed within one year after approval of the tribal rolls. Payment to next of kin and legatees, and payment for the account of persons under twenty-one years of age or under legal disability shall be completed within the same period of time to the maximum extent possible.

(Aug. 30, 1954, ch. 1085, § 3, 68 Stat. 979.)

§ 774. Costs

All costs incurred by the Secretary in the preparation of such rolls and the payment of such per capita shares shall be paid by appropriate withdrawals out of the fund or funds on deposit in the Treasury of the United States arising out of such judgments.

(Aug. 30, 1954, ch. 1085, § 4, 68 Stat. 980.)

§ 775. Rules and regulations

The Secretary is authorized to prescribe the necessary rules and regulations to carry out the purposes of this subchapter.

(Aug. 30, 1954, ch. 1085, § 5, 68 Stat. 980.)

SUBCHAPTER XXXIV—CREEK NATION OF INDIANS

§ 781. Distribution of funds

(a) Allotment equalization payments

The Secretary of the Interior is authorized and directed to use any funds on deposit in the Treasury of the United States to the credit of the Creek Nation to complete allotment equalization payments to persons with claims thereto that were filed and adjudicated in accordance with the provisions of section 18 in the Act of June 30, 1919 (41 Stat. 3, 24.)

(b) Per capita payments to enrollees, heirs, or legatees

The Secretary of the Interior is authorized to distribute per capita to the members of the Creek Nation whose names appear on the final rolls approved under the Act of April 26, 1906 (34 Stat. 137), or to their heirs or legatees, any funds heretofore or hereafter deposited in the Treasury of the United States to the credit of the Creek Nation that are not used for the purposes of subsection (a) of this section and that are not needed, in the judgment of the Secretary, for other tribal purposes except the proceeds of any final judgment entered in Docket No. 21, pending before the Indian Claims Commission, in which the Creek Nation (Oklahoma) is plaintiff, and McGhee et al., on behalf of the Creek Nation East of the Mississippi are intervenors, and the United States is defendant.

(c) Judgment payments

The Secretary of the Interior is authorized and directed to distribute among the persons entitled thereto the funds appropriated by chapter XII of the Third Supplemental Appropriation Act, 1952 (66 Stat. 101, 121), in payment of the judgment entered by the Indian Claims Commission in favor of the Loyal Creek Band or Group of Creek Indians et al., Docket No. 1. Such funds shall be paid to those persons whose names appear on the payroll prepared pursuant to the Act of March 3, 1903 (32 Stat. 982, 994), by J. Blair Schoenfelt, United States Indian Agent, or to their heirs or legatees, on a pro rata basis in proportion to the amounts appearing opposite their names on such payroll.

(Aug. 1, 1955, ch. 444, § 2, 69 Stat. 431.)

REFERENCES IN TEXT

Section 18 of the Act of June 30, 1919, referred to in subsec. (a), is act June 30, 1919, ch. 4, § 18, 41 Stat. 21, which is set out as a note under section 375 of this title.

Act of April 26, 1906, referred to in subsec. (b), is act Apr. 26, 1906, ch. 1876, 34 Stat. 137, which is set out as a note under section 355 of this title.

The Indian Claims Commission, referred to in subsecs. (b) and (c), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

Act of March 3, 1903, referred to in subsec. (c), is act Mar. 3, 1903, ch. 994, 32 Stat. 982, 994, which was not classified to the Code.

Chapter XII of the Third Supplemental Appropriation Act, 1952, referred to in subsec. (c), is chapter XII of act June 5, 1952, ch. 369, 66 Stat. 101, which was not classified to this Code.

§ 782. Payment to heirs or legatees

(a) Laws governing

If a person entitled to a payment authorized by sections 781 to 785 of this title is deceased, such payment shall be made to his heirs or legatees determined in accordance with the laws, relating to the distribution of personal property, of the Creek Nation if the decedent died before January 1, 1898, or of the State of Arkansas in effect at the time of death if the decedent died before November 16, 1907, or of the State of Oklahoma in effect at the time of death if the decedent died on or after November 16, 1907. For the purposes of this section the decedent shall be regarded as an owner in possession of the payment at the time of his death.

(b) Proof of death and heirship or bequest

Before a payment authorized by sections 781 to 785 of this title is made to an heir or legatee of a deceased person, proof of death and heirship or bequest satisfactory to the Secretary of the Interior shall be submitted to him, and his findings with respect thereto shall be final and conclusive. Where satisfactory proof of death and heirship or bequest is already available to the Secretary, no additional submission shall be required.

(Aug. 1, 1955, ch. 444, § 3, 69 Stat. 432.)

§ 783. Payments to minors or persons under legal disability; liens, exception; tax exemption

Funds payable under sections 781 to 785 of this title to minors or to persons under legal disability shall be paid to such representatives and under such conditions as the Secretary of the Interior may direct. The distribution of funds under said sections shall not be subject to any lien, except for debts owed to the United States or to Indian organizations indebted to the United States, and shall not be taxable.

(Aug. 1, 1955, ch. 444, § 4, 69 Stat. 432.)

§ 784. Appropriations

There is authorized to be appropriated out of any money in the Treasury not otherwise appropriated the sum of $325,000 to remain available until expended, for necessary expenses incident to the distribution of funds authorized by sections 781 to 785 of this title.

(Aug. 1, 1955, ch. 444, § 5, 69 Stat. 432; Pub. L. 86–229, Sept. 8, 1959, 73 Stat. 456.)

AMENDMENTS

1959—Pub. L. 86–229 increased appropriation authorization from $200,000 to $325,000.

§ 785. Rules and regulations

The Secretary of the Interior is authorized to issue rules and regulations necessary for the purposes of sections 781 to 785 of this title.

(Aug. 1, 1955, ch. 444, § 6, 69 Stat. 432.)

§ 786. Credit of unclaimed and unpaid share of funds

The unclaimed and unpaid share of the funds, and the accrued interest thereon, appropriated by chapter XII of the Third Supplemental Appropriation Act, 1952 (66 Stat. 101, 121), in payment of the judgment entered by the Indian Claims Commission in favor of the Loyal Creek Band or Group of Indians et al., docket numbered 1, and which were authorized to be distributed by section 781(c) of this title, shall be deposited in the Treasury of the United States to the credit of the Creek Nation of Indians of Oklahoma.

(Pub. L. 90–76, § 1, Aug. 29, 1967, 81 Stat. 177.)

REFERENCES IN TEXT

Chapter XII of the Third Supplemental Appropriation Act, 1952, referred to in text, is chapter XII of Act June 5, 1952, ch. 369, 66 Stat. 101, which was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 787. Advances or expenditures from tribal funds

Funds that are deposited to the Creek Nation pursuant to sections 786 to 788 of this title, including interest and income therefrom, may be advanced or expended for any purpose that is authorized by the principal chief of the Creek Nation and the Secretary of the Interior.

(Pub. L. 90–76, § 2, Aug. 29, 1967, 81 Stat. 177.)

§ 788. Federal trust upon escheat of estates of members dying intestate without heirs

When, upon the final determination of a court having jurisdiction or by decision of the Secretary of the Interior after a period of five years from the death of the decedent, it is determined that a member of the Creek Nation or tribe of Oklahoma or a person of Creek Indian blood has died intestate without heirs, owning trust or restricted Indian lands or an interest therein in Oklahoma, such lands or interests owned, together with all rents and profits occurring therefrom, shall escheat to the Creek Nation of Indians of Oklahoma and be held thereafter in trust for said Indians by the United States.

(Pub. L. 90–76, § 3, Aug. 29, 1967, 81 Stat. 177.)

§ 788a. Disposition of judgment funds; preparation of Indian roll; eligibility

The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements: (a) they were born on or prior to and were living on September 21, 1968; (b) their names or the names of lineal ancestors appear on any of the documents identified herein or on any available census rolls or other records acceptable to the Secretary, which identify the person as a Creek Indian, including ancient documents or records of the United States located in the National Archives, State or county records in the archives of the several States or counties therein or in the courthouses thereof, and other records that would be admissible as evidence in an action to determine Indian lineage:

(1) The Final Rolls of Creeks by Blood which were closed as of March 4, 1907;

(2) Claims of Friendly Creeks paid under the Act of March 3, 1817 (H.R. Doc. 200, 20:1, 1828);

(3) Census of the Creek Nation, 1833, made pursuant to article 2 of the treaty concluded March 24, 1832 (Senate Doc. 512, 1835, Emigration Correspondence, 1831–1833, pages 239–395);

(4) Land Location Registers of Creek Indian Lands, made pursuant to the Treaty of March 24, 1832;

(5) Any emigration or muster rolls of Creek Indians;

(6) Any lists of self-emigrant Creek claimants (including those contained in Senate Ex. Doc. 198, 50:1, 1888, and H.R. Ex. Doc. 238, 51:2, 1891).

Applications for enrollment must be filed with the Area Director of the Bureau of Indian Affairs, Muskogee, Oklahoma, in the manner and within the time limits prescribed for that purpose. The determination of the Secretary regarding the eligibility of an applicant shall be final.

(Pub. L. 90–504, § 1, Sept. 21, 1968, 82 Stat. 855.)

§ 788b. Distribution of funds; tax exemption; equal shares

After the deduction of attorney fees, litigation expenses, the costs of distribution, and the cost of preparing the roll pursuant to section 788a of this title, the funds, including interest, remaining to the credit of the Creek Nation as con-

stituted August 9, 1814, which were appropriated by the Act of April 30, 1965, to pay a judgment obtained in Indian Claims Commission docket numbered 21, shall be distributed on a per capita basis to all persons whose names appear on the roll. The funds so distributed shall not be subject to Federal or State income taxes.

(Pub. L. 90–504, § 2, Sept. 21, 1968, 82 Stat. 855.)

REFERENCES IN TEXT

Act of April 30, 1965, referred to in text, is act Apr. 30, 1965, Pub. L. 89–16, 79 Stat. 81, known as the Second Supplemental Appropriations Act, 1965. That portion of the act which appropriated the funds referred to was not classified to the Code.

DISTRIBUTION OF CERTAIN UNDISTRIBUTED JUDGMENT FUNDS AWARDED TO CREEK NATION

Pub. L. 98–390, Aug. 21, 1984, 98 Stat. 1356, provided: ''That, notwithstanding Public Law 90–506 [25 U.S.C. 788e et seq.] and any other provision of law, any funds appropriated by Public Law 89–697 [Oct. 27, 1966, 80 Stat. 1057] in satisfaction of a judgment awarded the Muscogee (Creek) Nation of Oklahoma in docket numbered 276 of the Indian Claims Commission which have not been distributed on the date of enactment of this Act [Aug. 21, 1984] (including all interest and investment income accrued thereon) shall be distributed by the Secretary of the Interior to the Muscogee (Creek) Nation of Oklahoma as needed to make expenditures for any plan or program authorized by ordinance of such Nation.

''SEC. 2. (a) Notwithstanding Public Law 90–504 [25 U.S.C. 788a et seq.] and any other provision of law, any funds appropriated by Public Law 89–16 [Apr. 30, 1965, 79 Stat. 81] in satisfaction of a judgment awarded the Creek Nation of Indians in docket numbered 21 of the Indian Claims Commission which have not been distributed on the date of enactment of this Act [Aug. 21, 1984] (including all interest and investment income accrued thereon) shall be used and distributed in accordance with the provisions of this section.

''(b)(1) The Secretary of the Interior (hereinafter in this section referred to as the 'Secretary') shall allocate—

''(A) 81.6196 per centum of the funds described in subsection (a) to the Muscogee (Creek) Nation of Oklahoma, and

''(B) 18.3804 per centum of the funds described in subsection (a) to the Eastern Creeks.

''(2) The funds allocated to the Muscogee (Creek) Nation of Oklahoma under paragraph (1) shall be distributed to such Nation by the Secretary as needed to make expenditures for any plan or program authorized by ordinance of such Nation.

''(3)(A) The funds allocated to the Eastern Creeks under paragraph (1) shall be held in trust and invested by the Secretary for the benefit of the Eastern Creeks.

''SEC. 3. (a) If one or more of the Eastern Creek entities that have filed a petition for Federal acknowledgement are acknowledged to be an Indian tribe on or before December 30, 1984, such tribe or tribes shall be deemed to be a successor entity to the original Eastern Creek group for purposes of distribution of the residual funds in docket numbered 21, and the funds held in trust for the benefit of the Eastern Creeks under section 2 of this Act (including all interest and income accrued thereon) shall be distributed to such tribe or tribes by the Secretary as needed to make any expenditures for any plan or program authorized by ordinance or resolution of such tribe or tribes.

''(b) If more than one tribal entity is recognized by the Secretary, such funds shall be prorated between the tribes on the basis of their respective base membership rolls on the date of acknowledgement.

''(c) If none of the Eastern Creeks which have filed a petition for acknowledgement are recognized as an Indian tribe by the Secretary prior to December 30, 1984, the funds held in trust for the Eastern Creeks under this Act (including all interest and income accrued thereon) shall be distributed by the Secretary in the form of per capita payments in addition to any amount appropriated in satisfaction of a judgment awarded the Eastern Creeks in docket numbered 275 of the Indian Claims Commission.

''SEC. 4. If Federal recognition as an Indian tribe is extended to any Eastern Creek entity prior to distribution of the funds awarded in docket numbered 272 and 275, such tribe or tribes shall be entitled to amend the existing distribution plans for these awards by filing with the Secretary an alternative distribution plan for its proportionate share of funds in these dockets.''

§ 788c. Heirs of deceased enrollees

The Secretary shall distribute a share payable to a living enrollee directly to such enrollee or in such manner as is deemed by the Secretary to be in the enrollee's best interest, and he shall distribute the per capita share of a deceased enrollee to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive. Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under legal disability shall be paid to the persons who the Secretary determines will best protect their interests.

(Pub. L. 90–504, § 3, Sept. 21, 1968, 82 Stat. 855.)

§ 788d. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 788a to 788d of this title, including establishing an appropriate deadline for filing applications.

(Pub. L. 90–504, § 4, Sept. 21, 1968, 82 Stat. 855.)

§ 788e. Disposition of judgment funds

(a) Preparation of Indian roll; eligibility

The Secretary of the Interior shall prepare a roll of the Creek Indians who meet the following requirements: (1) they were born on or prior to and living on September 21, 1968, and (2) their names or the names of lineal ancestors through whom eligibility is claimed appear on either the 1857 or 1859 payment roll prepared pursuant to Article VI of the Treaty of August 7, 1856 (11 Stat. 699), or on the Final Roll of Creeks by Blood closed as of March 4, 1907, pursuant to statute.

(b) Applications for enrollment

Applications for enrollment shall be filed with the Area Director, Bureau of Indian Affairs, Muskogee, Oklahoma, in the manner, within the time limit, and on the form prescribed for that purpose. The determination of the Secretary of the eligibility for enrollment of an applicant shall be final.

(Pub. L. 90–506, § 1, Sept. 21, 1968, 82 Stat. 859.)

§ 788f. Distribution of funds; tax exemption; equal shares

All costs incident to carrying out the provisions of sections 788e to 788h of this title shall be paid by appropriate withdrawals from the judgment funds referred to in this section. After de-

ducting attorney fees and all other costs, the remainder of the funds, including interest, to the credit of the Creek Nation appropriated by the Act of October 27, 1966 (80 Stat. 1057), shall be distributed in equal shares to those persons whose names appear on the roll prepared in accordance with section 788e of this title. The funds so distributed shall not be subject to Federal or State income taxes.

(Pub. L. 90–506, § 2, Sept. 21, 1968, 82 Stat. 859.)

REFERENCES IN TEXT

Act of October 27, 1966, referred to in text, is act Oct. 27, 1966, Pub. L. 89–697, 80 Stat. 1057. That portion of the act which appropriated the funds referred to was not classified to the Code.

§ 788g. Heirs of deceased enrollees

The Secretary shall distribute a share payable to a living enrollee directly to such enrollee or in such manner as is deemed by the Secretary to be in the enrollee's best interest and the per capita share of a deceased enrollee shall be paid to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive. Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under legal disability shall be paid to the persons whom the Secretary of the Interior determines will best protect their interests.

(Pub. L. 90–506, § 3, Sept. 21, 1968, 82 Stat. 859.)

§ 788h. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 788e to 788h of this title, including an appropriate deadline for filing applications for enrollment.

(Pub. L. 90–506, § 4, Sept. 21, 1968, 82 Stat. 859.)

SUBCHAPTER XXXV—WYANDOTTE TRIBE OF OKLAHOMA: TERMINATION OF FEDERAL SUPERVISION

§§ 791 to 807. Repealed. Pub. L. 95–281, § 1(b)(1), May 15, 1978, 92 Stat. 246

Section 791, act Aug. 1, 1956, ch. 843, § 1, 70 Stat. 893, set out purpose of sections 791 to 807 of this title as termination of Federal supervision and services for tribe.

Section 792, act Aug. 1, 1956, ch. 843, § 2, 70 Stat. 893, defined "tribe", "Secretary", "lands", and "tribal property".

Section 793, act Aug. 1, 1956, ch. 843, § 3, 70 Stat. 893, related to preparation and publication of membership roll.

Section 794, act Aug. 1, 1956, ch. 843, § 4, 70 Stat. 893, restricted personal property rights upon publication of final membership roll.

Section 795, act Aug. 1, 1956, ch. 843, § 5, 70 Stat. 893, related to procedures for transfer of tribal property.

Section 796, act Aug. 1, 1956, ch. 843, § 6, 70 Stat. 894, related to transfers of individual property to members of tribe.

Section 797, act Aug. 1, 1956, ch. 843, § 7, 70 Stat. 894, provided for applicability of probate laws to property of deceased members.

Section 798, act Aug. 1, 1956, ch. 843, § 8, 70 Stat. 895, related to applicability of Federal or State tax laws to property distributions.

Section 799, act Aug. 1, 1956, ch. 843, § 9, 70 Stat. 895, provided for protection by Secretary of minors, etc., prior to transfers or removal of restrictions on property.

Section 800, act Aug. 1, 1956, ch. 843, § 10, 70 Stat. 895, provided for availability of tribal funds for advances or expenditures.

Section 801, act Aug. 1, 1956, ch. 843, § 11, 70 Stat. 895, authorized Secretary to execute patents, deeds, etc., as necessary for implementation of provisions for termination of supervision.

Section 802, act Aug. 1, 1956, ch. 843, § 12, 70 Stat. 895, provided for nonabrogation by termination of supervision of any valid lease, permit, license. etc.

Section 803, act Aug. 1, 1956, ch. 843, § 13, 70 Stat. 896, related to procedures for termination of Federal trust over tribal and individual property.

Section 804, act Aug. 1, 1956, ch. 843, § 14, 70 Stat. 896, provided for revocation of tribal corporate charter and termination of Federal powers over tribe.

Section 805, act Aug. 1, 1956, ch. 843, § 15, 70 Stat. 896, provided for termination of supervision as not affecting prior claims filed by tribe against United States.

Section 806, act Aug. 1, 1956, ch. 843, § 16, 70 Stat. 896, provided for nonabrogation by termination of supervision of tribal or individual water rights.

Section 807, act Aug. 1, 1956, ch. 843, § 17, 70 Stat. 896, authorized Secretary to issue rules and regulations and hold referendums for implementation of provisions relating to termination of supervision.

REPEAL OF INCONSISTENT LAWS

Section 18 of act Aug. 1, 1956, which related to repeal of inconsistent Acts, etc., was repealed by Pub. L. 95–281, § 1(b)(1), May 15, 1978, 92 Stat. 246.

SEPARABILITY

Section 19 of act Aug. 1, 1956, which provided for validity of remainder of act of Aug. 1, 1956, in event of determination of invalidity of any part of such act, was repealed by Pub. L. 95–281, § 1(b)(1), May 15, 1978, 92 Stat. 246.

SUBCHAPTER XXXVI—PEORIA TRIBE OF OKLAHOMA: TERMINATION OF FEDERAL SUPERVISION

§§ 821 to 826. Repealed Pub. L. 95–281, § 1(b)(2), May 15, 1978, 92 Stat. 246

Section 821, act Aug. 2, 1956, ch. 881, § 1, 70 Stat. 937, set out purpose of sections 821 to 826 of this title as termination of Federal supervision and services for tribe.

Section 822, act Aug. 2, 1956, ch. 881, § 2, 70 Stat. 937, related to removal of restrictions on sales or encumbrances and nature of title passed.

Section 823, act Aug. 2, 1956, ch. 881, § 3, 70 Stat. 937, related to termination of Federal trust and services.

Section 824, act Aug. 2, 1956, ch. 881, § 4, 70 Stat. 937, provided for revocation of tribal corporate charter and termination of Federal powers over tribe.

Section 825, act Aug. 2, 1956, ch. 881, § 5, 70 Stat. 938, provided for termination of supervision as not affecting prior claims filed by tribe against United States.

Section 826, act Aug. 2, 1956, ch. 881, § 6, 70 Stat. 938, related to preparation and publication of membership roll.

SUBCHAPTER XXXVII—OTTAWA TRIBE OF OKLAHOMA: TERMINATION OF FEDERAL SUPERVISION

§§ 841 to 853. Repealed. Pub. L. 95–281, § 1(b)(3), May 15, 1978, 92 Stat. 246

Section 841, act Aug. 3, 1956, ch. 909, § 1, 70 Stat. 963, set out purpose of sections 841 to 853 of this title as termination of Federal supervision and services for tribe.

Section 842, act Aug. 3, 1956, ch. 909, § 2, 70 Stat. 963, related to transfers of individual property to members of tribe.

Section 843, act Aug. 3, 1956, ch. 909, § 3, 70 Stat. 963, provided for applicability of probate laws to property of deceased members.

Section 844, act Aug. 3, 1956, ch. 909, § 4, 70 Stat. 964, provided for protection by Secretary of minors, etc., prior to transfers or removal of restrictions on property.

Section 845, act Aug. 3, 1956, ch. 909, § 5, 70 Stat. 964, provided for availability of tribal funds for advances or expenditures.

Section 846, act Aug. 3, 1956, ch. 909, § 6, 70 Stat. 964, authorized Secretary to execute patents, deeds, etc., as necessary for implementation of provisions for termination of supervision.

Section 847, act Aug. 3, 1956, ch. 909, § 7, 70 Stat. 964, provided for nonabrogation by termination of supervision of any valid lease, permit, license, etc.

Section 848, act Aug. 3, 1956, ch. 909, § 8, 70 Stat. 964, related to procedures for termination of Federal trust and services for tribe and individual members.

Section 849, act Aug. 3, 1956, ch. 909, § 9, 70 Stat. 965, provided for revocation of tribal corporate charter and termination of Federal powers over tribe.

Section 850, act Aug. 3, 1956, ch. 909, § 10, 70 Stat. 965, provided for termination of supervision as not affecting prior claims filed by tribe against United States.

Section 851, act Aug. 3, 1956, ch. 909, § 11, 70 Stat. 965, provided for nonabrogation by termination of supervision of tribal or individual water rights.

Section 852, act Aug. 3, 1956, ch. 909, § 12, 70 Stat. 965, authorized Secretary to issue rules and regulations and hold referendums for implementation of provisions relating to termination of supervision.

Section 853, act Aug. 3, 1956, ch. 909, § 15, 70 Stat. 965, related to preparation and publication of membership roll.

REPEAL OF INCONSISTENT LAWS

Section 13 of act Aug. 3, 1956, which related to repeal of inconsistent Acts, etc., was repealed by Pub. L. 95–281, § 1(b)(3), May 15, 1978, 92 Stat. 246.

SEPARABILITY

Section 14 of act Aug. 3, 1956, which provided for validity of remainder of act of Aug. 3, 1956, in event of determination of invalidity of any part of such act, was repealed by Pub. L. 95–281, § 1(b)(3), May 15, 1978, 92 Stat. 246.

SUBCHAPTER XXXVII–A—WYANDOTTE, PEORIA, OTTAWA, AND MODOC TRIBES OF OKLAHOMA: RESTORATION OF FEDERAL SUPERVISION

§ 861. Federal recognition of Wyandotte, Ottawa, and Peoria Tribes

(a) Extension or confirmation

Federal recognition is hereby extended or confirmed with respect to the Wyandotte Indian Tribe of Oklahoma, the Ottawa Indian Tribe of Oklahoma, and the Peoria Indian Tribe of Oklahoma, the provisions of the Acts repealed by subsection (b) of this section notwithstanding.

(b) Repeal of provisions terminating Federal supervision

The following Acts are hereby repealed:

(1) the Act of August 1, 1956 (70 Stat. 893; 25 U.S.C. 791–807), relating to the Wyandotte Tribe;

(2) the Act of August 2, 1956 (70 Stat. 937; 25 U.S.C. 821–826), relating to the Peoria Tribe; and

(3) the Act of August 3, 1956 (70 Stat. 963; 25 U.S.C. 841–853), relating to the Ottawa Tribe.

(c) Tribal rights and privileges; reinstatement and continuation

There are hereby reinstated all rights and privileges of each of the tribes described in subsection (a) of this section and their members under Federal treaty, statute, or otherwise which may have been diminished or lost pursuant to the Act relating to them which is repealed by subsection (b) of this section. Nothing contained in this subchapter shall diminish any rights or privileges enjoyed by each of such tribes or their members now or prior to enactment of such Act, under Federal treaty, statute, or otherwise, which are not inconsistent with the provisions of this subchapter.

(d) Continuation of property or contractual rights or obligations and tax obligations

Except as specifically provided in this subchapter, nothing contained in this subchapter shall alter any property rights or obligations, any contractual rights or obligations, including existing fishing rights, or any obligation for taxes already levied.

(Pub. L. 95–281, § 1, May 15, 1978, 92 Stat. 246.)

REFERENCES IN TEXT

Act of August 1, 1956, referred to in subsec. (b)(1), is act Aug. 1, 1956, ch. 843, 70 Stat. 893, which was classified generally to subchapter XXXV (§ 791 et seq.) of this chapter prior to its repeal by subsec. (b)(1) of this section. For complete classification of this Act to the Code, see Tables.

Act of August 2, 1956, referred to in subsec. (b)(2), is act Aug. 2, 1956, ch. 881, 70 Stat. 937, which was classified generally to subchapter XXXVI (§ 821 et seq.) of this chapter prior to its repeal by subsec. (b)(2) of this section. For complete classification of this Act to the Code, see Tables.

Act of August 3, 1956, referred to in subsec. (b)(3), is act Aug. 3, 1956, ch. 909, 70 Stat. 963, which was classified to subchapter XXXVII (§ 841 et seq.) of this chapter prior to its repeal by subsec. (b)(3) of this section. For complete classification of this Act to the Code, see Tables.

This subchapter, referred to in subsecs. (c) and (d), was in the original "this Act", meaning Pub. L. 95–281, May 15, 1978, 92 Stat. 246, which enacted this subchapter and repealed subchapter XXXV (§ 791 et seq.), subchapter XXXVI (§ 821 et seq.), and subchapter XXXVII (§ 841 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

§ 861a. Organization of tribes

(a) Modoc Tribe; extension of Federal recognition and assistance; applicability of provisions relating to Klamath Tribe; membership requirements

(1) The Modoc Indian Tribe of Oklahoma is hereby recognized as a tribe of Indians residing in Oklahoma and the provisions of the Act of June 26, 1936, as amended (49 Stat. 1967; 25 U.S.C. 501–509), are hereby extended to such tribe and its members. The Secretary of the Interior shall promptly offer the said Modoc Tribe assistance to aid them in organizing under section 3 of said Act of June 26, 1936 (25 U.S.C. 503).

(2) The provisions of the Act of August 13, 1954 (68 Stat. 718; 25 U.S.C. 564–564w), hereafter shall not apply to the Modoc Tribe of Oklahoma or its members except for any right to share in the proceeds of any claim against the United States as provided in sections 6(c) and 21 of said Act, as amended [25 U.S.C. 564e(c), 564t].

(3) The Modoc Indian Tribe of Oklahoma shall consist of those Modoc Indians who are direct lineal descendants of those Modocs removed to Indian territory (now Oklahoma) in November 1873, and who did not return to Klamath, Oregon, pursuant to the Act of March 9, 1909 (35 Stat. 751), as determined by the Secretary of the Interior, and the descendants of such Indians who otherwise meet the membership requirements adopted by the tribe.

(b) Ottawa and Peoria Tribes; extension of Federal assistance

The Secretary of the Interior shall promptly offer the Ottawa Tribe of Oklahoma and the Peoria Tribe of Oklahoma assistance to aid them in reorganizing under section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503), which Act [25 U.S.C. 501 et seq.] is re-extended to them and their members by this subchapter.

(c) Wyandotte Tribe; confirmation of validity of organization and continuation

The validity of the organization of the Wyandotte Indian Tribe of Oklahoma under section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503), and the continued application of said Act [25 U.S.C. 501 et seq.] to such tribe and its members is hereby confirmed.

(Pub. L. 95–281, § 2, May 15, 1978, 92 Stat. 246.)

REFERENCES IN TEXT

Act of June 26, 1936, referred to in subsecs. (a)(1), (b), and (c), popularly known as the Oklahoma Welfare Act, is classified generally to subchapter VIII (§ 501 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 501 of this title and Tables.

Act of August 13, 1954, referred to in subsec. (a)(2), is act Aug. 13, 1954, ch. 732, 68 Stat. 718, as amended, which is classified generally to subchapter XIII (§ 564 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

Act of March 9, 1909, referred to in subsec. (a)(3), probably means the act of Mar. 3, 1909, ch. 253, 35 Stat. 751, which was not classified to the Code.

This subchapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 95–281, May 15, 1978, 92 Stat. 246, which enacted this subchapter and repealed subchapter XXXV (§ 791 et seq.), subchapter XXXVI (§ 821 et seq.), and subchapter XXXVII (§ 841 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

§ 861b. Restoration of supervision as fulfilling other Federal statutory requirements

(a) Wyandotte, Peoria, and Ottawa Tribes; right or interest in tribal land

It is hereby declared that enactment of this subchapter fulfills the requirements of the first proviso in section 2 of the Act of January 2, 1975 (88 Stat. 1920, 1921), with respect to the Wyandotte Tribe of Oklahoma, the Ottawa Tribe of Oklahoma, and the Peoria Tribe of Oklahoma.

(b) Modoc Tribe; right or interest in tribal land

It is hereby declared that the organization of the Modoc Tribe of Oklahoma as provided in subsection (a) of this section shall fulfill the requirements of the second proviso in section 2 of the Act of January 2, 1975 (88 Stat. 1920, 1921).

(c) Modoc Tribe; publication of notice in Federal Register of organization for purposes of compliance

Promptly after organization of the Modoc Tribe of Oklahoma, the Secretary of the Interior shall publish a notice of such fact in the Federal Register including a statement that such organization completes fulfillment of the requirements of the provisos in section 2 of the Act of January 2, 1975 (88 Stat. 1920, 1921), and that the land described in section 1 of said Act is held in trust by the United States for the eight tribes named in said Act.

(Pub. L. 95–281, § 3, May 15, 1978, 92 Stat. 247.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95–281, May 15, 1978, 92 Stat. 246, which enacted this subchapter and repealed subchapter XXXV (§ 791 et seq.), subchapter XXXVI (§ 821 et seq.), and subchapter XXXVII (§ 841 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

Act of January 2, 1975, referred to in text, is Pub. L. 93–588, Jan. 2, 1975, 88 Stat. 1920, and is not classified to this Code. The provisos in section 2 of such Act relate to right or interest in tribal land of the enumerated tribes.

§ 861c. Programs and services by United States; participation in by tribes as result of return to status as Indians

The Wyandotte, Ottawa, Peoria, and Modoc Tribes of Oklahoma and their members shall be entitled to participate in the programs and services provided by the United States to Indians because of their status as Indians, including, but not limited to, those under section 13 of this title, and for purposes of sections 2005 to 2005f of title 42. The members of such tribes shall be deemed to be Indians for which hospital and medical care was being provided by or at the expense of the Public Health Service on August 16, 1957.

(Pub. L. 95–281, § 4, May 15, 1978, 92 Stat. 247.)

SUBCHAPTER XXXVIII—OTOE AND MISSOURIA INDIANS

§ 871. Membership roll; preparation; eligibility for enrollment; finality of determination

The Secretary of the Interior is authorized and directed to prepare a roll of the Indians of the blood of the Otoe and Missouria Tribe whose names appear on the allotment rolls of the tribe approved December 7, 1899, June 1, 1906, and January 17, 1907, and who are living on May 9, 1958, and the descendants of such allottees who are living on May 9, 1958, regardless of whether such allottees are living or deceased. Applications for enrollment shall be filed within six months after May 9, 1958. The determination of the Secretary regarding the eligibility of an applicant for enrollment shall be final and conclusive.

(Pub. L. 85–395, § 1, May 9, 1958, 72 Stat. 105.)

§ 872. Per capita distribution to tribal members

The Secretary is authorized and directed to withdraw the funds on deposit in the Treasury of the United States to the credit of the Otoe and

Missouria Tribe appropriated by the Act of May 19, 1956 (70 Stat. 161, 176), together with accrued interest, in satisfaction of the judgment obtained in the Indian Claims Commission against the United States in docket numbered 11, and to distribute such funds per capita to the persons whose names appear on the roll prepared pursuant to section 871 of this title.

(Pub. L. 85–395, § 2, May 9, 1958, 72 Stat. 105.)

REFERENCES IN TEXT

Act of May 19, 1956, referred to in text, is act May 19, 1956, ch. 313, 70 Stat. 161, 176, known as the Second Supplemental Appropriation Act, 1956. That portion of the act which appropriated the funds referred to was not classified to the Code.

§ 873. Per capita payments

(a) Enrollees, next of kin or legatees

The Secretary shall make per capita payments directly to a living enrollee, except as provided in subsection (b) of this section. The Secretary shall distribute the share of a person determined to be eligible for enrollment but who dies subsequent to May 9, 1958, and on whose behalf the application is filed and approved, and the share of a deceased enrollee, directly to his next of kin or legatee as determined by the laws of the place of domicile of the decedent, upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) Minors and persons under legal disability

Per capita payments due persons under twenty-one years of age or persons under legal disability shall be made in accordance with the laws of the place of domicile of such person, or in accordance with such procedures as the Secretary determines will adequately protect the best interests of such persons.

(c) Payments not subject to debts; tax exemption

No part of any per capita payment shall be subject to any debt or debts, other than to the United States, created prior to May 9, 1958, by a person of Indian blood, and such per capita payments shall not be taxable.

(Pub. L. 85–395, § 3, May 9, 1958, 72 Stat. 106; Pub. L. 86–540, June 29, 1960, 74 Stat. 252.)

AMENDMENTS

1960—Subsec. (b). Pub. L. 86–540 authorized per capita payments to be made in accordance with such procedures as the Secretary determines will adequately protect the best interests of the persons.

§ 874. Costs

All costs incurred by the Secretary in the preparation of such roll and in the payment of such per capita shares shall be paid from the judgment fund or the interest accruing thereon.

(Pub. L. 85–395, § 4, May 9, 1958, 72 Stat. 106.)

§ 875. Rules and regulations

The Secretary is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 85–395, § 5, May 9, 1958, 72 Stat. 106.)

§ 876. Advances or expenditures from tribal funds; tax exemption

The unexpended balance of funds on deposit in the Treasury of the United States to the credit of the Otoe and Missouria Tribe of Indians that were appropriated by the Act of June 9, 1964, to pay a judgment by the Indian Claims Commission in docket numbered 11–A, and the interest thereon, less payment of attorney fees and expenses, may be advanced or expended for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior. Any part of such funds that may be distributed to the members of the tribe shall not be subject to Federal or State income taxes. The sum of $150,000, and any accrued interest thereon, shall be held in the United States Treasury pending final determination of the Yankton Sioux claim in docket numbered 332–A. Any portion of such sum that is determined to belong to the Otoe and Missouria Tribe shall thereupon become subject to the foregoing provisions of this section.

(Pub. L. 89–661, Oct. 14, 1966, 80 Stat. 911.)

REFERENCES IN TEXT

Act of June 9, 1964, referred to in text, is Pub. L. 88–317, June 9, 1964, 78 Stat. 204, which was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

CODIFICATION

Section was not enacted as part of Pub. L. 85–395, May 9, 1958, 72 Stat. 105, which comprises this subchapter.

SUBCHAPTER XXXIX—INDIANS OF OKLAHOMA

§ 881. Potawatomi Indians; disposition of judgment fund; deductions; advances or expenditures for authorized purposes; tax exemption

The funds on deposit in the Treasury of the United States to the credit of the Citizen Band of Potawatomi Indians of Oklahoma that were appropriated by the Act of July 22, 1969 (Public Law 91–47) to pay a judgment by the Indian Claims Commission in docket numbered 96 dated August 27, 1968, and the interest thereon, including the interest accruing thereon, after payment of attorney fees and expenses, may be advanced or expended for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior. Any part of such funds that may be distributed per capita to the members of the band shall not be subject to Federal or State income tax.

(Pub. L. 91–401, § 1, Sept. 16, 1970, 84 Stat. 838.)

REFERENCES IN TEXT

Act of July 22, 1969, referred to in text, is Pub. L. 91–47, July 22, 1969, 83 Stat. 49, known as the Second Supplemental Appropriation Act, 1969. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 881a. Trusts and other procedures for protection of minors and persons under legal disability

Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons.

(Pub. L. 91–401, § 2, Sept. 16, 1970, 84 Stat. 838.)

§ 882. Sac and Fox Tribes; disposition of judgment fund; deductions; advances, expenditures, investments, or reinvestments for authorized purposes

The funds appropriated by the Act of June 19, 1968 (82 Stat. 239), to pay a judgment by the Indian Claims Commission in docket numbered 220, together with interest thereon, after payment of attorneys' fees and other litigation expenses, may be advanced, deposited, expended, invested, or reinvested for any purposes that are authorized by the tribal governing body and approved by the Secretary of the Interior.

(Pub. L. 91–404, § 1, Sept. 19, 1970, 84 Stat. 845.)

REFERENCES IN TEXT

Act of June 19, 1968, referred to in text, is Pub. L. 90–352, June 19, 1968, 82 Stat. 239, which was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 882a. Tax exemption

Any portion of such funds that may be distributed per capita to members of the tribe shall not be subject to Federal or State income tax.

(Pub. L. 91–404, § 2, Sept. 19, 1970, 84 Stat. 845.)

§ 883. Osage Tribe; disposition of judgment fund

(a) Persons eligible for allotments; excepted sums

The Secretary of the Interior is authorized and directed to distribute per capita to all persons whose names appear on the roll of the Osage Tribe of Indians approved by the Secretary of the Interior April 11, 1908, pursuant to the Act of June 28, 1906 (34 Stat. 539), all funds which were appropriated by the Act of January 8, 1971 (84 Stat. 1981), in satisfaction of a judgment that was obtained by the Osage Nation of Indians in the Indian Claims Commission against the United States in dockets numbered 105, 106, 107, and 108, together with interest thereon, except the sum of $1,000,000 and any funds that revert to the Osage Tribe and except the amount allowed for attorney fees and expenses and the cost of distribution.

(b) Education program; advances, expenditures, etc., for financing such program

The sum of $1,000,000 plus any funds that revert to the Osage Tribe may be advanced, expended, invested, or reinvested for the purpose of financing an education program of benefit to the Osage Tribe of Indians of Oklahoma, such program to be administered as authorized by the Secretary of the Interior.

(c) Withdrawal of funds for payment of costs of carrying out provisions

The Secretary of the Interior may make appropriate withdrawals from the judgment funds and interest thereon, using interest funds first, to pay costs incident to carrying out the provisions of sections 883 to 883d of this title.

(Pub. L. 92–586, § 1, Oct. 27, 1972, 86 Stat. 1295; Pub. L. 98–605, § 5, Oct. 30, 1984, 98 Stat. 3168.)

REFERENCES IN TEXT

Act of June 28, 1906, referred to in subsec. (a), is act June 28, 1906, ch. 3572, 34 Stat. 539, which was not classified to the Code.

Act of January 8, 1971, referred to in subsec. (a), is Pub. L. 91–665, Jan. 8, 1971, 84 Stat. 1981, which was not classified to the Code.

The Indian Claims Commission, referred to in subsec. (a), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–605 struck out ''or other socioeconomic programs'' after ''an education program'' and substituted ''such program'' for ''such programs''.

§ 883a. Payment of allotments

(a) Living original allottees

Except as provided in subsections (b) and (c) of this section, a share or proportional share payable to a living original Osage allottee shall be paid to such allottee.

(b) Distribution to heirs; heirship determinations; intestate succession; finality of determinations and distributions; reversion of minimal amounts

A share of a deceased Osage allottee having died prior to or after October 27, 1972, shall be distributed to his heirs of Osage Indian blood pursuant to an order determining heirs by the Secretary of the Interior or a court of competent jurisdiction of the State of Oklahoma, and such distributions by the Secretary of the Interior shall be final and conclusive. In the event the heirs of Osage Indian blood of an Osage Indian having died prior to or after October 27, 1972, have not been determined by the Secretary of the Interior or a court of competent jurisdiction of the State of Oklahoma, such share shall be distributed to the heirs of Osage Indian blood upon the filing of proof of death and inheritance in accordance with the Oklahoma law of intestate succession in a form satisfactory to the Secretary of the Interior whose findings and determinations upon such proof shall be final and conclusive: *Provided*, That when a person of Osage Indian blood receives an amount totaling less than $20 from one or more shares of one or more Osage allottees, that amount shall not be distributed to the individual, but will revert to the Osage Tribe.

(c) Minors and persons under guardianship; rules and regulations

A share or proportional share payable to a person of Osage Indian blood under eighteen years of age and any person under guardianship pursuant to an order of a court of competent jurisdiction notwithstanding the fact he has received a certificate of competency shall be disbursed

under rules and regulations to be prescribed by the Secretary of the Interior.

(Pub. L. 92–586, § 2, Oct. 27, 1972, 86 Stat. 1295.)

§ 883b. Per capita shares; filing claims; reversion of unclaimed shares

All claims for per capita shares by heirs of Osage Indian blood shall be filed with the Superintendent, Osage Agency, Pawhuska, Oklahoma, not later than eighteen months from October 27, 1972. Thereafter, all claims and the right to file same shall be forever barred and the unclaimed shares shall revert to the Osage Tribe. Unclaimed shares of distributees shall revert to the Osage Tribe six months after determination by the Secretary of the Interior of their right to share.

(Pub. L. 92–586, § 3, Oct. 27, 1972, 86 Stat. 1296.)

§ 883c. Income tax exemption

None of the funds distributed per capita under the provisions of sections 883 to 883d of this title shall be subject to Federal or State income taxes.

(Pub. L. 92–586, § 4, Oct. 27, 1972, 86 Stat. 1296.)

§ 883d. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 883 to 883d of this title.

(Pub. L. 92–586, § 5, Oct. 27, 1972, 86 Stat. 1296.)

SUBCHAPTER XL—MENOMINEE TRIBE OF WISCONSIN: TERMINATION OF FEDERAL SUPERVISION

§§ 891 to 902. Repealed. Pub. L. 93–197, § 3(b), Dec. 22, 1973, 87 Stat. 770

Section 891, act June 17, 1954, ch. 303, § 1, 68 Stat. 250, set out purpose of sections 891 to 902 as orderly termination of Federal supervision over property of Menominee Tribe.

Section 892, act June 17, 1954, ch. 303, § 2, 68 Stat. 250, defined ''Tribe'' and ''Secretary''.

Section 893, act June 17, 1954, ch. 303, § 3, 68 Stat. 250, set forth procedure for inclusion on tribal membership roll prior to its closure.

Section 894, act June 17, 1954, ch. 303, § 5, 68 Stat. 251, authorized payment of $1,500 to tribal members.

Section 895, acts June 17, 1954, ch. 303, § 6, 68 Stat. 251; July 14, 1956, ch. 601, 70 Stat. 544; July 2, 1958, Pub. L. 85–488, § 1(a), 72 Stat. 290, authorized hiring of management specialists by tribe to assist tribe in studying industrial programs for reservation.

Section 896, acts June 17, 1954, ch. 303, § 7, 68 Stat. 251; July 14, 1956, ch. 604, § 1, 70 Stat. 549; July 2, 1958, Pub. L. 85–488, § 1(b), 72 Stat. 290; Sept. 8, 1960, Pub. L. 86–733, § 1, 74 Stat. 867, required tribe to formulate and submit a plan to Secretary for control of tribal property and service functions conducted by United States.

Section 897, acts June 17, 1954, ch. 303, § 8, 68 Stat. 252; July 14, 1956, ch. 604, § 2, 70 Stat. 550; July 2, 1958, Pub. L. 85–488, § 1(c), 72 Stat. 291; Sept. 8, 1960, Pub. L. 86–733, § 2, 74 Stat. 867, authorized transfer of all tribal property by Secretary on or before Apr. 30, 1961, to tribal corporation or a trustee selected by Secretary.

Section 898, acts June 17, 1954, ch. 303, § 9, 68 Stat. 252; Sept. 8, 1960, Pub. L. 86–733, § 3, 74 Stat. 867, set forth conditions for tax exemptions for distributions, conveyances, and transfer of title to assets.

Section 899, act June 17, 1954, ch. 303, § 10, 68 Stat. 252, provided for publication in Federal Register by Secretary of a proclamation of transferred property.

Section 900, act June 17, 1954, ch. 303, § 11, 68 Stat. 252, related to protection of minors, etc. by Secretary prior to transfer of tribal property.

Section 901, act June 17, 1954, ch. 303, § 12, 68 Stat. 252, authorized Secretary to promulgate rules and regulations.

Section 902, act June 17, 1954, ch. 303, § 14, as added Sept. 8, 1960, Pub. L. 86–733, § 4, 74 Stat 867, authorized contracts with Wisconsin Department of Public Instruction for completion of any vocational or undergraduate college program prior to termination of Federal responsibilities.

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 89–653, § 1, Oct. 15, 1966, 80 Stat. 903, authorized appropriations for the fiscal year ending June 30, 1967, and for each of the three succeeding fiscal years to compensate Wisconsin and its political subdivisions for extraordinary expenses occasioned by the termination of Federal supervision over the Menominee Tribe of Wisconsin by the act of June 17, 1954, ch. 303, 68 Stat. 250.

SUBCHAPTER XLI—MENOMINEE TRIBE OF WISCONSIN: RESTORATION OF FEDERAL SUPERVISION

§ 903. Definitions

For the purposes of this subchapter—

(1) The term ''tribe'' means the Menominee Indian Tribe of Wisconsin.

(2) The term ''Secretary'' means the Secretary of the Interior.

(3) The term ''Menominee Restoration Committee'' means that committee of nine Menominee Indians who shall be elected pursuant to subsections (a) and (b) of section 903b of this title.

(Pub. L. 93–197, § 2, Dec. 22, 1973, 87 Stat. 770.)

SHORT TITLE

Section 1 of Pub. L. 93–197 provided: ''That this Act [enacting this subchapter and repealing sections 891 to 902 of this title] may be cited as the 'Menominee Restoration Act'.''

§ 903a. Federal recognition

(a) Extension; laws applicable

Notwithstanding the provisions of the Act of June 17, 1954 (68 Stat. 250; 25 U.S.C. 891–902), as amended, or any other law, Federal recognition is hereby extended to the Menominee Indian Tribe of Wisconsin and the provisions of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 et seq.), as amended, are made applicable to it.

(b) Repeal of provisions terminating Federal supervision; reinstatement of tribal rights and privileges

The Act of June 17, 1954 (68 Stat. 250; 25 U.S.C. 891–902) as amended, is hereby repealed and there are hereby reinstated all rights and privileges of the tribe or its members under Federal treaty, statute, or otherwise which may have been diminished or lost pursuant to such Act.

(c) Continuation of tribal rights and privileges

Nothing contained in this subchapter shall diminish any rights or privileges enjoyed by the tribe or its members now or prior to June 17, 1954, under Federal treaty, statute, or otherwise, which are now inconsistent with the provisions of this subchapter.

(d) Continuation of property or contractual rights or obligations and tax obligations

Except as specifically provided in this subchapter, nothing contained in this subchapter shall alter any property rights or obligations, any contractual rights or obligations, including existing fishing rights, or any obligations for taxes already levied.

(e) Grants for services entitled to upon Federal recognition; terms and conditions; power of Menominee Restoration Committee

In providing to the tribe such services to which it may be entitled upon its recognition pursuant to subsection (a) of this section, the Secretary of the Interior and the Secretary of Health and Human Services, as appropriate, are authorized from funds appropriated pursuant to section 13 of this title, the Act of August 5, 1954 (68 Stat. 674), as amended [42 U.S.C. 2001 et seq.], or any other Act authorizing appropriations for the administration of Indian affairs, upon the request of the tribe and subject to such terms and conditions as may be mutually agreed to, to make grants and contract to make grants which will accomplish the general purposes for which the funds were appropriated. The Menominee Restoration Committee shall have full authority and capacity to be a party to receive such grants[1] to make such contracts, and to bind the tribal governing body as the successor in interest to the Menominee Restoration Committee: *Provided, however*, That the Menominee Restoration Committee shall have no authority to bind the tribe for a period of more than six months after the date on which the tribal governing body takes office.

(Pub. L. 93–197, § 3, Dec. 22, 1973, 87 Stat. 770; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Act of June 17, 1954, referred to in subsecs. (a) and (b), which was classified to subchapter XL (§ 891 et seq.) of this chapter, was repealed by section 3(b) of Pub. L. 93–197, which is classified to subsec. (b) of this section.

Act of June 18, 1934, referred to in subsec. (a), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Act of August 5, 1954, referred to in subsec. (e), is act Aug. 5, 1954, ch. 658, 68 Stat. 674, as amended, which is classified generally to subchapter I (§ 2001 et seq.) of chapter 22 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in text, pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 903b. Menominee Restoration Committee

(a) Nomination and election of members; time and procedure; ballot requirements; approval by Secretary; powers of Committee

Within fifteen days after December 22, 1973, the Secretary shall announce the date of a general council meeting of the tribe to nominate candidates for election to the Menominee Restoration Committee. Such general council meeting shall be held within thirty days of December 22, 1973. Within forty-five days of the general council meeting provided for herein, the Secretary shall hold an election by secret ballot, absentee balloting to be permitted, to elect the membership of the Menominee Restoration Committee from among the nominees submitted to him from the general council meeting provided for herein. The ballots shall provide for write-in votes. The Secretary shall approve the Menominee Restoration Committee elected pursuant to this section if he is satisfied that the requirements of this section relating to the nominating and election process have been met. The Menominee Restoration Committee shall represent the Menominee people in the implementation of this subchapter and shall have no powers other than those given to it in accordance with this subchapter. The Menominee Restoration Committee shall have no power or authority under this subchapter after the time which the duly-elected tribal governing body takes office: *Provided, however*, That this provision shall in no way invalidate or affect grants or contracts made pursuant to the provisions of section 903a(e) of this title.

(b) Eligible voters; notice by Secretary of nominating meeting and election

In the absence of a completed tribal roll prepared pursuant to subsection (c) of this section and solely for the purposes of the general council meeting and the election provided for in subsection (a) of this section, all living persons on the final roll of the tribe published under section 893[1] of this title, and all descendants, who are at least eighteen years of age and who possess at least one-quarter degree of Menominee Indian blood, of persons on such roll shall be entitled to attend, participate, and vote at such general council meeting and such election. Verification of descendancy, age, and blood quantum shall be made upon oath before the Secretary or his authorized representative and his determination thereon shall be conclusive and final. The Secretary shall assure that adequate notice of such meeting and election shall be provided eligible voters.

(c) Membership roll; opening; revision procedure; prerequisites for inclusion; possession and maintenance of enrollment records and materials; appeal; finality of determination

The membership roll of the tribe which was closed as of June 17, 1954, is hereby declared open. The Secretary, under contract with the Menominee Restoration Committee, shall proceed to make current the roll in accordance with the terms of this subchapter. The names of all enrollees who are deceased as of December 22, 1973, shall be stricken. The names of any descendants of an enrollee shall be added to the roll provided such descendant possesses at least one-quarter degree Menominee Indian blood. Upon installation of elected constitutional officers of the tribe, the Secretary and the Menominee Restoration Committee shall deliver their

[1] So in original. Probably should be followed by a comma.

[1] See References in Text note below.

records, files, and any other material relating to enrollment matters to the tribal governing body. All further work in bringing and maintaining current the tribal roll shall be performed in such manner as may be prescribed in accordance with the tribal governing documents. Until responsibility for the tribal roll is assumed by the tribal governing body, appeals from the omission or inclusion of any name upon the tribal roll shall lie with the Secretary and his determination thereon shall be final. The Secretary shall make the final determination of each such appeal within ninety days after an appeal is initiated.

(Pub. L. 93–197, § 4, Dec. 22, 1973, 87 Stat. 771.)

REFERENCES IN TEXT

Section 893 of this title, referred to in subsec. (b), was repealed by section 3(b) of Pub. L. 93–197, which is classified to section 903a(b) of this title.

§ 903c. Tribal constitution and bylaws

(a) Election; time and procedure

Upon request from the Menominee Restoration Committee, the Secretary shall conduct an election by secret ballot, pursuant to the provisions of the Act of June 18, 1934, as amended [25 U.S.C. 461 et seq.], for the purpose of determining the tribe's constitution and bylaws. The election shall be held within sixty days after final certification of the tribal roll.

(b) Distribution by Menominee Restoration Committee prior to election of proposed constitution and bylaws and brief impartial description; consultations by Committee with persons entitled to vote

The Menominee Restoration Committee shall distribute to all enrolled persons who are entitled to vote in the election, at least thirty days before the election, a copy of the constitution and bylaws as drafted by the Menominee Restoration Committee which will be presented at the election, along with a brief impartial description of the constitution and bylaws. The Menominee Restoration Committee shall freely consult with persons entitled to vote in the election concerning the text and description of the constitution and bylaws. Such consultation shall not be carried on within fifty feet of the polling places on the date of the election.

(c) Election of tribal officers provided for in constitution and bylaws; time and procedure for initial election; subsequent elections governed by constitution, bylaws and ordinances

Within one hundred and twenty days after the tribe adopts a constitution and bylaws, the Menominee Restoration Committee shall conduct an election by secret ballot for the purpose of determining the individuals who will serve as tribal officials as provided in the tribal constitution and bylaws. For the purpose of this initial election and notwithstanding any provision in the tribal constitution and bylaws to the contrary, absentee balloting shall be permitted and all tribal members who are eighteen years of age or over shall be entitled to vote in the election. All further elections of tribal officers shall be as provided in the tribal constitution and bylaws and ordinances adopted thereunder.

(d) Majority vote necessary for passage and initial election of tribal governing body; minimum number of voters required to vote

In any election held pursuant to this section, the vote of a majority of those actually voting shall be necessary and sufficient to effectuate the adoption of a tribal constitution and bylaws and the initial election of the tribe's governing body, so long as, in each such election, the total vote cast is at least 30 per centum of those entitled to vote.

(e) Revision of time periods pursuant to agreement of Secretary and Menominee Restoration Committee

The time periods set forth in section 903b(c) of this title and subsections (a) and (c) of this section may be changed by the written agreement of the Secretary and the Menominee Restoration Committee.

(Pub. L. 93–197, § 5, Dec. 22, 1973, 87 Stat. 772.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in subsec. (a), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 903d. Transfer of assets of Menominee Enterprises, Inc.

(a) Negotiation and development of plan for assumption of assets; submittal of plan to Congress

The Secretary shall negotiate with the elected members of the Menominee Common Stock and Voting Trust and the Board of Directors of Menominee Enterprises, Incorporated, or their authorized representatives, to develop a plan for the assumption of the assets of the corporation. The Secretary shall submit such plan to the Congress within one year from December 22, 1973.

(b) Acceptance of assets by Secretary; prerequisites; preexisting rights and obligations in assets; United States as trustee for land transferred; exemption from taxation for transfer of assets and assets transferred

If neither House of Congress shall have passed a resolution of disapproval of the plan within sixty days of the date the plan is submitted to Congress, the Secretary shall, subject to the terms and conditions of the plan negotiated pursuant to subsection (a) of this section, accept the assets (excluding any real property not located in or adjacent to the territory, constituting, on December 22, 1973, the county of Menominee, Wisconsin) of Menominee Enterprises, Incorporated, but only if transferred to him by the Board of Directors of Menominee Enterprises, Incorporated, subject to the approval of the shareholders as required by the laws of Wisconsin. Such assets shall be subject to all valid existing rights, including, but not limited to, liens, outstanding taxes (local, State, and Federal), mortgages, outstanding corporate indebtedness of all types, and any other obligation. The land and other assets transferred to the Secretary pursuant to this subsection shall be sub-

ject to foreclosure or sale pursuant to the terms of any valid existing obligation in accordance with the laws of the State of Wisconsin. Subject to the conditions imposed by this section, the land transferred shall be taken in the name of the United States in trust for the tribe and shall be their reservation. The transfer of assets authorized by this section shall be exempt from all local, State, and Federal taxation. All assets transferred under this section shall, as of the date of transfer, be exempt from all local, State, and Federal taxation.

(c) Transfer to Secretary of real property of Menominee Tribe members; necessity for transfer by Menominee owner or owners; preexisting rights and obligations in land; United States as trustee for land transferred; exemption from taxation for transfer of assets and assets transferred

The Secretary shall accept the real property (excluding any real property not located in or adjacent to the territory constituting, on December 22, 1973, the county of Menominee, Wisconsin) of members of the Menominee Tribe, but only if transferred to him by the Menominee owner or owners. Such property shall be subject to all valid existing rights including, but not limited to, liens, outstanding taxes (local, State, and Federal), mortgages, and any other obligations. The land transferred to the Secretary pursuant to this subsection shall be subject to foreclosure or sale pursuant to the terms of any valid existing obligation in accordance with the laws of the State of Wisconsin. Subject to the conditions imposed by this subsection, the land transferred shall be taken in the name of the United States in trust for the Menominee Tribe of Wisconsin and shall be part of their reservation. The transfer of assets authorized by this section shall be exempt from all local, State, and Federal taxation. All assets transferred under this section shall, as of the date of transfer, be exempt from all local, State, and Federal taxation.

(d) Consultation by Secretary and Menominee Restoration Committee with appropriate State and local government officials for nonimpairment of necessary governmental services upon transfer of assets

The Secretary and the Menominee Restoration Committee shall consult with appropriate State and local government officials to assure that the provision of necessary governmental services is not impaired as a result of the transfer of assets provided for in this section.

(e) Establishment of local government bodies, etc., by Wisconsin to provide necessary governmental services in Menominee County

For the purpose of implementing subsection (d) of this section, the State of Wisconsin may establish such local government bodies, political subdivisions, and service arrangements as will best provide the State or local government services required by the people in the territory constituting, on December 22, 1973, the county of Menominee.

(Pub. L. 93–197, § 6, Dec. 22, 1973, 87 Stat. 772.)

§ 903e. Rules and regulations

The Secretary is hereby authorized to make such rules and regulations as are necessary to carry out the provisions of this subchapter.

(Pub. L. 93–197, § 7, Dec. 22, 1973, 87 Stat. 773.)

§ 903f. Authorization of appropriations

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

(Pub. L. 93–197, § 8, Dec. 22, 1973, 87 Stat. 773.)

SUBCHAPTER XLII—QUAPAW TRIBE: DISTRIBUTION OF JUDGMENT FUND

§ 911. Membership roll; preparation; eligibility for enrollment; applications for enrollment; protests; finality of determination

The Secretary of the Interior is authorized and directed to prepare a roll of the persons whose names appear on the Quapaw membership roll forwarded under date of January 4, 1890, and whose membership in the tribe was then based upon Quapaw blood rather than solely upon adoption, and the descendants of such persons, who are living on July 17, 1959. Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Muskogee, Oklahoma, on forms prescribed by the Secretary, within six months after July 17, 1959. For a period of three months thereafter, the Secretary shall permit the examination of the applications by the Quapaw Tribal Business Committee or by persons having a material interest therein for the purpose of lodging protests against any application. The determination of the Secretary regarding the eligibility of an applicant shall be final.

(Pub. L. 86–97, § 1, July 17, 1959, 73 Stat. 221.)

§ 912. Per capita payments to enrollees, heirs or legatees; tax exemption

The Secretary shall distribute on a pro rata basis to the persons whose names appear on the roll prepared pursuant to section 911 of this title, or their heirs or legatees, the balance of the funds on deposit in the Treasury of the United States to the credit of the Quapaw Indians that were appropriated by the Act of August 26, 1954 (68 Stat. 801), in satisfaction of a judgment against the United States that was obtained by the tribe in the Indian Claims Commission on May 7, 1954, and accrued interest thereon. The funds so distributed shall not be subject to Federal or State income tax.

(Pub. L. 86–97, § 2, July 17, 1959, 73 Stat. 222.)

REFERENCES IN TEXT

Act of August 26, 1954, referred to in text, is act Aug. 26, 1954, ch. 935, 68 Stat. 801, known as the Supplemental Appropriation Act, 1955. That portion of the act which appropriated the funds referred to was not classified to the Code.

§ 913. Distribution of shares

(a) Payments to enrollees, next of kin, or legatees

Except as provided in subsection (b) of this section, the Secretary shall distribute a share

payable to a living enrollee directly to such enrollee, and the Secretary shall distribute a share payable to a deceased enrollee directly to his next of kin or legatees as determined by the laws of the place of domicile of the decedent, upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) Payments to minors or persons under legal disability

A share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with the laws applicable to such person in the place of his domicile, or in the discretion of the Secretary to the natural parent or guardian of such person.

(Pub. L. 86–97, § 3, July 17, 1959, 73 Stat. 222.)

§ 914. Costs

All costs incurred by the Secretary in the preparation of the roll and in the payment of shares in accordance with the provisions of this subchapter shall be paid by appropriate withdrawals from the judgment fund, but the cost and expense of any litigation that may arise from the preparation of the roll or the payment of shares shall be paid by the United States.

(Pub. L. 86–97, § 4, July 17, 1959, 73 Stat. 222.)

SUBCHAPTER XLIII—CATAWBA TRIBE OF SOUTH CAROLINA: DIVISION OF ASSETS

§§ 931 to 938. Repealed. Pub. L. 103–116, § 4(c), Oct. 27, 1993, 107 Stat. 1121

Section 931, Pub. L. 86–322, § 1, Sept. 21, 1959, 73 Stat. 592, related to publication of notice of agreement to division of assets, closure of roll, preparation of roll, protest against inclusion or omission from roll, finality of determinations, and final publication.

Section 932, Pub. L. 86–322, § 2, Sept. 21, 1959, 73 Stat. 592, related to personal property rights of enrolled members and restrictions on alienation.

Section 933, Pub. L. 86–322, § 3, Sept. 21, 1959, 73 Stat. 592, related to distribution of tribal assets.

Section 934, Pub. L. 86–322, § 4, Sept. 21, 1959, 73 Stat. 593, related to land surveys and execution of conveyances by Secretary and title of grantees.

Section 935, Pub. L. 86–322, § 5, Sept. 21, 1959, 73 Stat. 593, related to revocation of tribal constitution, termination of Federal services, application of Federal and State laws, and effect on citizenship status.

Section 936, Pub. L. 86–322, § 6, Sept. 21, 1959, 73 Stat. 593, provided that rights, privileges, and obligations under South Carolina laws would be unaffected.

Section 937, Pub. L. 86–322, § 7, Sept. 21, 1959, 73 Stat. 593, related to applicability of Federal or State income taxes on distributed property.

Section 938, Pub. L. 86–322, § 8, Sept. 21, 1959, 73 Stat. 594, related to education and training program, purposes, subjects, transportation, subsistence, contracts, and other education programs.

EFFECTIVE DATE OF REPEAL

For effective date of repeal, see section 17 of Pub. L. 103–116, set out as an Effective Date note under section 941 of this title.

SUBCHAPTER XLIII–A—CATAWBA INDIAN TRIBE OF SOUTH CAROLINA; RESTORATION OF FEDERAL TRUST RELATIONSHIP

§ 941. Declaration of policy, Congressional findings and purpose

(a) Findings

The Congress declares and finds that:

(1) It is the policy of the United States to promote tribal self-determination and economic self-sufficiency and to support the resolution of disputes over historical claims through settlements mutually agreed to by Indian and non-Indian parties.

(2) There is pending before the United States District Court for the District of South Carolina a lawsuit disputing ownership of approximately 140,000 acres of land in the State of South Carolina and other rights of the Catawba Indian Tribe under Federal law.

(3) The Catawba Indian Tribe initiated a related lawsuit against the United States in the United States Court of Federal Claims seeking monetary damages.

(4) Some of the significant historical events which have led to the present situation include:

(A) In treaties with the Crown in 1760 and 1763, the Tribe ceded vast portions of its aboriginal territory in the present States of North and South Carolina in return for guarantees of being quietly settled on a 144,000-acre reservation.

(B) The Tribe's district court suit contended that in 1840 the Tribe and the State entered into an agreement without Federal approval or participation whereby the Tribe ceded its treaty reservation to the State, thereby giving rise to the Tribe's claim that it was dispossessed of its lands in violation of Federal law.

(C) In 1943, the United States entered into an agreement with the Tribe and the State to provide services to the Tribe and its members. The State purchased 3,434 acres of land and conveyed it to the Secretary in trust for the Tribe and the Tribe organized under the Indian Reorganization Act [25 U.S.C. 461 et seq.].

(D) In 1959, when Congress enacted the Catawba Tribe of South Carolina Division of Assets Act (25 U.S.C. 931–938), Federal agents assured the Tribe that if the Tribe would release the Government from its obligation under the 1943 agreement and agree to Federal legislation terminating the Federal trust relationship and liquidating the 1943 reservation, the status of the Tribe's land claim would not be jeopardized by termination.

(E) In 1980, the Tribe initiated Federal court litigation to regain possession of its treaty lands and in 1986, the United States Supreme Court ruled in South Carolina against Catawba Indian Tribe that the 1959 Act resulted in the application of State statutes of limitations to the Tribe's land claim. Two subsequent decisions of the United States Court of Appeals for the Fourth Circuit have held that some portion of the Tribe's claim is barred by State statutes of limitations and that some portion is not barred.

(5) The pendency of these lawsuits has led to substantial economic and social hardship for a large number of landowners, citizens and communities in the State of South Carolina, including the Catawba Indian Tribe. Congress recognizes that if these claims are not re-

solved, further litigation against tens of thousands of landowners would be likely; that any final resolution of pending disputes through a process of litigation would take many years and entail great expenses to all parties; continue economically and socially damaging controversies; prolong uncertainty as to the ownership of property; and seriously impair long-term economic planning and development for all parties.

(6) The 102d Congress has enacted legislation suspending until October 1, 1993, the running of any unexpired statute of limitation applicable to the Tribe's land claim in order to provide additional time to negotiate settlement of these claims.

(7) It is recognized that both Indian and non-Indian parties enter into this settlement to resolve the disputes raised in these lawsuits and to derive certain benefits. The parties' Settlement Agreement constitutes a good faith effort to resolve these lawsuits and other claims and requires implementing legislation by the Congress of the United States, the General Assembly of the State of South Carolina, and the governing bodies of the South Carolina counties of York and Lancaster.

(8) To advance the goals of the Federal policy of Indian self-determination and restoration of terminated Indian Tribes, and in recognition of the United States obligation to the Tribe and the Federal policy of settling historical Indian claims through comprehensive settlement agreements, it is appropriate that the United States participate in the funding and implementation of the Settlement Agreement.

(b) Purpose

It is the purpose of this subchapter—

(1) to approve, ratify, and confirm the Settlement Agreement entered into by the non-Indian settlement parties and the Tribe, except as otherwise provided by this subchapter;

(2) to authorize and direct the Secretary to implement the terms of such Settlement Agreement;

(3) to authorize the actions and appropriations necessary to implement the provisions of the Settlement Agreement and this subchapter;

(4) to remove the cloud on titles in the State of South Carolina resulting from the Tribe's land claim; and

(5) to restore the trust relationship between the Tribe and the United States.

(Pub. L. 103–116, § 2, Oct. 27, 1993, 107 Stat. 1118.)

REFERENCES IN TEXT

The Indian Reorganization Act, referred to in subsec. (a)(4)(C), is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, which is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

The Catawba Tribe of South Carolina Division of Assets Act and the 1959 Act, referred to in subsec. (a)(4)(D), (E), probably mean Pub. L. 86–322, Sept. 21, 1959, 73 Stat. 592, which was classified generally to subchapter XLIII (§ 931 et seq.) of this chapter prior to repeal by Pub. L. 103–116, § 4(c), Oct. 27, 1993, 107 Stat. 1121.

Legislation suspending until October 1, 1993, the running of any unexpired statute of limitation applicable to the Tribe's land claim, referred to in subsec. (a)(6), is Pub. L. 102–339, § 3, Aug. 11, 1992, 106 Stat. 869, which is not classified to the Code.

This subchapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 103–116, Oct. 27, 1993, 107 Stat. 1118, known as the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Section 17 of Pub. L. 103–116 provided that: "Except for sections 7, 8, and 12 [enacting sections 941e, 941f and 941j of this title], the provisions of this Act [see Short Title note below] shall become effective upon the transfer of the Existing Reservation under section 12 [enacting section 941j of this title] to the Secretary."

[In accordance with the provisions of Pub. L. 103–116, a quitclaim deed transferring the existing reservation to the United States as Trustee for the Tribe was executed on Nov. 29, 1993. This conveyance was accepted on behalf of the United States, in trust, on Jan. 19, 1994. The deed was recorded Jan. 20, 1994.]

SHORT TITLE

Section 1 of Pub. L. 103–116 provided that: "This Act [enacting this subchapter and repealing subchapter XLIII (§ 931 et seq.) of this chapter] may be cited as the 'Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993'."

§ 941a. Definitions

For purposes of this subchapter:

(1) The term "Tribe" means the Catawba Indian Tribe of South Carolina as constituted in aboriginal times, which was party to the Treaty of Pine Tree Hill in 1760 as confirmed by the Treaty of Augusta in 1763, which was party also to the Treaty of Nation Ford in 1840, and which was the subject of the Termination Act, and all predecessors and successors in interest, including the Catawba Indian Tribe of South Carolina, Inc.

(2) The term "claim" or "claims" means any claim which was asserted by the Tribe in either Suit, and any other claim which could have been asserted by the Tribe or any Catawba Indian of a right, title or interest in property, to trespass or property damages, or of hunting, fishing or other rights to natural resources, if such claim is based upon aboriginal title, recognized title, or title by grant, patent, or treaty including the Treaty of Pine Tree Hill of 1760, the Treaty of Augusta of 1763, or the Treaty of Nation Ford of 1840.

(3) The term "Executive Committee" means the body of the Tribe composed of the Tribe's executive officers as selected by the Tribe in accordance with its constitution.

(4) The term "Existing Reservation" means that tract of approximately 630 acres conveyed to the State in trust for the Tribe by J.M. Doby on December 24, 1842, by deed recorded in York County Deed Book N, pp. 340–341.

(5) The term "General Council" means the membership of the Tribe convened as the Tribe's governing body for the purpose of conducting tribal business pursuant to the Tribe's constitution.

(6) The term "Member" means individuals who are currently members of the Tribe or who are enrolled in accordance with this subchapter.

(7) The term ''Reservation'' or ''Expanded Reservation'' means the Existing Reservation and the lands added to the Existing Reservation in accordance with section 941j of this title, which are to be held in trust by the Secretary in accordance with this subchapter.

(8) The term ''Secretary'' means the Secretary of the Interior.

(9) The term ''service area'' means the area composed of the State of South Carolina and Cabarrus, Cleveland, Gaston, Mecklenburg, Rutherford, and Union counties in the State of North Carolina.

(10) The term ''Settlement Agreement'' means the document entitled ''Agreement in Principle'' between the Tribe and the State of South Carolina and attached to the copy of the State Act and filed with the Secretary of State of the State of South Carolina, as amended to conform to this subchapter and printed in the Congressional Record.

(11) The term ''State'' means, except for section 941d(a) through (f) of this title, the State of South Carolina.

(12) The term ''State Act'' means the Act enacted into law by the State of South Carolina on June 14, 1993, and codified as S.C. Code Ann., sections 27–16–10 through 27–16–140, to implement the Settlement Agreement.

(13) The term ''Suit'' or ''Suits'' means Catawba Indian Tribe of South Carolina v. State of South Carolina, et al., docketed as Civil Action No. 80–2050 and filed in the United States District Court for the District of South Carolina; and Catawba Indian Tribe of South Carolina v. The United States of America, docketed as Civil Action No. 90–553L and filed in the United States Court of Federal Claims.

(14) The term ''Termination Act'' means the Act entitled ''An Act to provide for the division of the tribal assets of the Catawba Indian Tribe of South Carolina among the members of the Tribe and for other purposes'', approved September 21, 1959 (73 Stat. 592; 25 U.S.C. 931–938).

(15) The term ''transfer'' includes (but is not limited to) any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event or circumstance that resulted in a change in title to, possession of, dominion over, or control of land, water, minerals, timber, or other natural resources.

(16) The term ''Trust Funds'' means the trust funds established by section 941i of this title.

(Pub. L. 103–116, § 3, Oct. 27, 1993, 107 Stat. 1120.)

REFERENCES IN TEXT

The Agreement in Principle, referred to in par. (10), is set out at Cong. Rec., vol. 139, part 16, p. 22583.

The Act entitled ''An Act to provide for the division of the tribal assets of the Catawba Indian Tribe of South Carolina among the members of the Tribe and for other purposes'', approved September 21, 1959, referred to in par. (14), is Pub. L. 86–322, Sept. 21, 1959, 73 Stat. 592, which was classified generally to subchapter XLIII (§ 931 et seq.) of this chapter prior to repeal by Pub. L. 103–116, § 4(c), Oct. 27, 1993, 107 Stat. 1121.

§ 941b. Restoration of Federal trust relationship

(a) Restoration of Federal trust relationship and approval, ratification, and confirmation of Settlement Agreement

On the effective date of this subchapter—

(1) the trust relationship between the Tribe and the United States is restored; and

(2) the Settlement Agreement and the State Act are approved, ratified, and confirmed by the United States to effectuate the purposes of this subchapter, and shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law.

(b) Eligibility for Federal benefits and services

Notwithstanding any other provision of law, on the effective date of this subchapter, the Tribe and the Members shall be eligible for all benefits and services furnished to federally recognized Indian tribes and their members because of their status as Indians. On the effective date of this subchapter, the Secretary shall enter the Tribe on the list of federally recognized bands and tribes maintained by the Department of the Interior; and its members shall be eligible to special services, educational benefits, medical care, and welfare assistance provided by the United States to Indians because of their status as Indians, and the Tribe shall be eligible to the special services performed by the United States for tribes because of their status as Indian tribes. For the purpose of eligibility for Federal services made available to members of federally recognized Indian tribes because of their status as Indian tribal members, Members of the Tribe in the Tribe's service area shall be deemed to be residing on or near a reservation.

(c) Repeal of Termination Act

The Termination Act is repealed.

(d) Effect on property rights and other obligations

Except as otherwise specifically provided in this subchapter, this subchapter shall not affect any property right or obligation or any contractual right or obligation in existence before the effective date of this subchapter, or any obligation for taxes levied before that date.

(e) Extent of jurisdiction

This subchapter shall not be construed to empower the Tribe with special jurisdiction or to deprive the State of jurisdiction other than as expressly provided by this subchapter or by the State Act. The jurisdiction and governmental powers of the Tribe shall be solely those set forth in this subchapter and the State Act.

(Pub. L. 103–116, § 4, Oct. 27, 1993, 107 Stat. 1121.)

REFERENCES IN TEXT

For the effective date of this subchapter, referred to in subsecs. (a), (b), and (d), see Effective Date note set out under section 941 of this title.

§ 941c. Settlement funds

(a) Authorization for appropriation

There is hereby authorized to be appropriated $32,000,000 for the Federal share which shall be deposited in the trust funds established pursuant to section 941i of this title or paid pursuant to section 941d(g) of this title.

(b) Disbursement in accordance with Settlement Agreement

The Federal funds appropriated pursuant to this subchapter shall be disbursed in four equal annual installments of $8,000,000 beginning in the fiscal year following October 27, 1993. Funds transferred to the Secretary from other sources shall be deposited in the trust funds established pursuant to section 941i of this title or paid pursuant to section 941d(g) of this title within 30 days of receipt by the Secretary.

(c) Federal, State, local and private contributions held in trust by Secretary

The Secretary shall, on behalf of the Tribe, collect those contributions toward settlement appropriated or received by the State pursuant to section 5.2 of the Settlement Agreement and shall either hold such funds totalling $18,000,000, together with the Federal funds appropriated pursuant to this subchapter, in trust for the Tribe pursuant to the provisions of section 941i of this title or pay such funds pursuant to section 941d(g) of this title.

(d) Nonpayment of State, local, or private contributions

The Secretary shall not be accountable or incur any liability for the collection, deposit, or management of the non-Federal contributions made pursuant to section 5.2 of the Settlement Agreement, or payment of such funds pursuant to section 941d(g) of this title, until such time as such funds are received by the Secretary.

(Pub. L. 103–116, § 5, Oct. 27, 1993, 107 Stat. 1122.)

§ 941d. Ratification of prior transfers; extinguishment of aboriginal title, rights and claims

(a) Ratification of transfers

Any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Tribe, any one or more of its Members, or anyone purporting to be a Member, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, and Congress hereby approves and ratifies any such transfer effective as of the date of such transfer. Nothing in this section shall be construed to affect, eliminate, or revive the personal claim of any individual Member (except for any Federal common law fraud claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(b) Aboriginal title

To the extent that any transfer of land or natural resources described in subsection (a) of this section may involve land or natural resources to which the Tribe, any of its Members, or anyone purporting to be a Member, or any other Indian, Indian nation, or Tribe or band of Indians had aboriginal title, subsection (a) of this section shall be regarded as an extinguishment of aboriginal title as of the date of such transfer.

(c) Extinguishment of claims

By virtue of the approval and ratification of any transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Tribe, any of its Members, or anyone purporting to be a Member, or any predecessors or successors in interest thereof or any other Indian, Indian Nation, or tribe or band of Indians, arising at the time of or subsequent to the transfer and based on any interest in or right involving such land or natural resources, including without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished as of the date of the transfer.

(d) Extinguishment of title

(1) All claims and all right, title, and interest that the Tribe, its Members, or any person or group of persons purporting to be Catawba Indians may have to aboriginal title, recognized title, or title by grant, patent, or treaty to the lands located anywhere in the United States are hereby extinguished.

(2) This extinguishment of claims shall also extinguish title to any hunting, fishing, or water rights or rights to any other natural resource claimed by the Tribe or a Member based on aboriginal or treaty recognized title, and all trespass damages and other damages associated with use, occupancy or possession, or entry upon such lands.

(e) Bar to future claims

The United States is hereby barred from asserting by or on behalf of the Tribe or any of its Members, or anyone purporting to be a Member, any claim arising before the effective date of this subchapter from the transfer of any land or natural resources by deed or other grant, or by treaty, compact, or act of law, on the grounds that such transfer was not made in accordance with the laws of South Carolina or the Constitution or laws of the United States.

(f) No derogation of fee simple in Existing Reservation, or effect on Members' fee interests

Nothing in this subchapter shall be construed to diminish or derogate from the Tribe's estate in the Existing Reservation; or to divest or disturb title in any land conveyed to any person or entity as a result of the Termination Act and the liquidation and partition of tribal lands; or to divest or disturb the right, title and interest of any Member in any fee simple, leasehold or remainder estate or any equitable or beneficial right or interest any such Member may own individually and not as a Member of the Tribe.

(g) Costs and attorneys' fees

The parties to the Suits shall bear their own costs and attorneys' fees. As provided by section 6.4 of the Settlement Agreement, the Secretary shall pay to the Tribe's attorneys in the Suits attorneys' fees and expenses from, and not to exceed 10 percent of, the $50,000,000 obligated for payment to the Tribe by Federal, State, local, and private parties pursuant to section 5 of the Settlement Agreement.

(h) Personal claims not affected

Nothing in this section shall be deemed to affect, diminish, or eliminate the personal claim

of any individual Indian which is pursued under any law of general applicability (other than Federal common law fraud) that protects non-Indians as well as Indians.

(i) Federal payment

In the event any of the Federal payments are not paid as set forth in section 941c of this title, such failure to pay shall give rise to a cause of action by the Tribe against the United States for money damages for the amount authorized to be paid to the Tribe in section 941c(a) of this title in settlement of the Tribe's claim, and the Tribe is authorized to bring an action in the United States Court of Claims for such funds plus applicable interest. The United States hereby waives any affirmative defense to such action.

(j) State payment

In the event any of the State payments are not paid as set forth in section 941c of this title, such failure to pay shall give rise to a cause of action in the United States District Court for the District of South Carolina by the Tribe against the State of South Carolina for money damages for the amount authorized to be paid to the Tribe by the State in § 27–16–50(A) of the State Act in settlement of the Tribe's claim. Pursuant to § 27–16–50(E) of the State Act, the State of South Carolina waives any Eleventh Amendment immunity to such action.

(Pub. L. 103–116, § 6, Oct. 27, 1993, 107 Stat. 1122.)

REFERENCES IN TEXT

For the effective date of this subchapter, referred to in subsec. (e), see Effective Date note set out under section 941 of this title.

§ 941e. Base membership roll

(a) Base membership roll criteria

Within one year after October 27, 1993, the Tribe shall submit to the Secretary, for approval, its base membership roll. An individual is eligible for inclusion on the base membership roll if that individual is living on October 27, 1993, and—

(1) is listed on the membership roll published by the Secretary in the Federal Register on February 25, 1961 (26 FR 1680–1688, ''Notice of Final Membership Roll''), and is not excluded under the provisions of subsection (c) of this section;

(2) the Executive Committee determines, based on the criteria used to compile the roll referred to in paragraph (1), that the individual should have been included on the membership roll at that time, but was not; or

(3) is a lineal descendant of a Member whose name appeared or should have appeared on the membership roll referred to in paragraph (1).

(b) Base membership roll notice

Within 90 days after October 27, 1993, the Secretary shall publish in the Federal Register, and in three newspapers of general circulation in the Tribe's service area, a notice stating—

(1) that a base membership roll is being prepared by the Tribe and that the current membership roll is open and will remain open for a period of 90 days;

(2) the requirements for inclusion on the base membership roll;

(3) the final membership roll published by the Secretary in the Federal Register on February 25, 1961;

(4) the current membership roll as prepared by the Executive Committee and approved by the General Council; and

(5) the name and address of the tribal or Federal official to whom inquiries should be made.

(c) Completion of base membership roll

Within 120 days after publication of notice under subsection (b) of this section, the Secretary, after consultation with the Tribe, shall prepare and publish in the Federal Register, and in three newspapers of general circulation in the Tribe's service area, a proposed final base membership roll of the Tribe. Within 60 days from the date of publication of the proposed final base membership roll, an appeal may be filed with the Executive Committee under rules made by the Executive Committee in consultation with the Secretary. Such an appeal may be filed by a Member with respect to the inclusion of any name on the proposed final base membership roll and by any person with respect to the exclusion of his or her name from the final base membership roll. The Executive Committee shall review such appeals and render a decision, subject to the Secretary's approval. If the Executive Committee and the Secretary disagree, the Secretary's decision will be final. All such appeals shall be resolved within 90 days following publication of the proposed roll. The final base membership roll of the Tribe shall then be published in the Federal Register, and in three newspapers of general circulation in the Tribe's service area, and shall be final for purposes of the distribution of funds from the Per Capita Trust Fund established under section 941i(h) of this title.

(d) Future membership in Tribe

The Tribe shall have the right to determine future membership in the Tribe; however, in no event may an individual be enrolled as a tribal member unless the individual is a lineal descendant of a person on the final base membership roll and has continued to maintain political relations with the Tribe.

(Pub. L. 103–116, § 7, Oct. 27, 1993, 107 Stat. 1124.)

§ 941f. Transitional and provisional government

(a) Future tribal government

The Tribe shall adopt a new constitution within 24 months after the effective date of this subchapter.

(b) Executive Committee as transitional body

(1) Until the Tribe has adopted a constitution, the existing tribal constitution shall remain in effect and the Executive Committee is recognized as the provisional and transitional governing body of the Tribe. Until an election of tribal officers under the new constitution, the Executive Committee shall—

(A) represent the Tribe and its Members in the implementation of this subchapter; and

(B) during such period—

(i) have full authority to enter into contracts, grant agreements and other arrangements with any Federal department or agency; and

(ii) have full authority to administer or operate any program under such contracts or agreements.

(2) Until the initial election of tribal officers under a new constitution and bylaws, the Executive Committee shall—

(A) determine tribal membership in accordance with the provisions of section 941e of this title; and

(B) oversee and implement the revision and proposal to the Tribe of a new constitution and conduct such tribal meetings and elections as are required by this subchapter.

(Pub. L. 103–116, § 8, Oct. 27, 1993, 107 Stat. 1125.)

§ 941g. Tribal constitution and governance

(a) Indian Reorganization Act

If the Tribe so elects, it may organize under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the ''Indian Reorganization Act''). The Tribe shall be subject to such Act except to the extent such sections are inconsistent with this subchapter.

(b) Adoption of new tribal constitution

Within 180 days after the effective date of this subchapter, the Executive Committee shall draft and distribute to each Member eligible to vote under the tribal constitution in effect on the effective date of this subchapter, a proposed constitution and bylaws for the Tribe together with a brief, impartial description of the proposed constitution and bylaws and a notice of the date, time and location of the election under this subsection. Not sooner than 30 days or later than 90 days after the distribution of the proposed constitution, the Executive Committee shall conduct a secret-ballot election to adopt a new constitution and bylaws.

(c) Majority vote for adoption; procedure in event of failure to adopt proposed constitution

(1) The tribal constitution and bylaws shall be ratified and adopted if—

(A) not less than 30 percent of those entitled to vote do vote; and

(B) approved by a majority of those actually voting.

(2) If in any such election such majority does not approve the adoption of the proposed constitution and bylaws, the Executive Committee shall prepare another proposed constitution and bylaws and present it to the Tribe in the same manner provided in this section for the first constitution and bylaws. Such new proposed constitution and bylaws shall be distributed to the eligible voters of the Tribe no later than 180 days after the date of the election in which the first proposed constitution and bylaws failed of adoption. An election on the question of the adoption of the new proposal of the Executive Committee shall be conducted in the same manner provided in subsection (b) of this section for the election on the first proposed constitution and bylaws.

(d) Election of tribal officers

Within 120 days after the Tribe ratifies and adopts a constitution and bylaws, the Executive Committee shall conduct an election by secret ballot for the purpose of electing tribal officials as provided in the constitution and bylaws. Subsequent elections shall be held in accordance with the Tribe's constitution and bylaws.

(e) Extension of time

Any time periods prescribed in subsections (b) and (c) of this section may be altered by written agreement between the Executive Committee and the Secretary.

(Pub. L. 103–116, § 9, Oct. 27, 1993, 107 Stat. 1125.)

REFERENCES IN TEXT

The Indian Reorganization Act, referred to in subsec. (a), is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, which is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

For the effective date of this subchapter, referred to in subsec. (b), see Effective Date note set out under section 941 of this title.

§ 941h. Administrative provisions relating to jurisdiction, taxation, and other matters

In the administration of this subchapter:

(1) All matters involving tribal powers, immunities, and jurisdiction, whether criminal, civil, or regulatory, shall be governed by the terms and provisions of the Settlement Agreement and the State Act, unless otherwise provided in this subchapter.

(2) All matters pertaining to governance and regulation of the reservation (including environmental regulation and riparian rights) shall be governed by the terms and provisions of the Settlement Agreement and the State Act, including, but not limited to, section 17 of the Settlement Agreement and section 27–16–120 of the State Act, unless otherwise provided in this subchapter.

(3) The Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.) shall apply to Catawba Indian children except as provided in the Settlement Agreement.

(4) Whether or not the Tribe, under section 941g(a) of this title, elects to organize under the Act of June 18, 1934 [25 U.S.C. 461 et seq.], the Tribe, in any constitution adopted by the Tribe, may be authorized to exercise such authority as is consistent with the Settlement Agreement and the State Act.

(5) In no event may the Tribe pledge or hypothecate the income or principal of the Catawba Education or Social Services and Elderly Trust Funds or otherwise use them as security or a source of payment for bonds the Tribe may issue.

(6) The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall apply to the Tribe except to the extent that such application may be inconsistent with this subchapter or the Settlement Agreement.

(Pub. L. 103–116, § 10, Oct. 27, 1993, 107 Stat. 1126.)

REFERENCES IN TEXT

The Indian Child Welfare Act of 1978, referred to in par. (3), is Pub. L. 95–608, Nov. 8, 1978, 92 Stat. 3069, as

amended, which is classified principally to chapter 21 (§ 1901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of this title and Tables.

Act of June 18, 1934, referred to in par. (4), is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, popularly known as the Indian Reorganization Act, which is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in par. (6), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 941i. Tribal trust funds

(a) Purposes of trust funds

All funds paid pursuant to section 941c of this title, except for payments made pursuant to section 941d(g) of this title, shall be deposited with the Secretary in trust for the benefit of the Tribe. Separate trust funds shall be established for the following purposes: economic development, land acquisition, education, social services and elderly assistance, and per capita payments. Except as provided in this section, the Tribe, in consultation with the Secretary, shall determine the share of settlement payments to be deposited in each Trust Fund, and define, consistently with the provisions of this section, the purposes of each Trust Fund and provisions for administering each, specifically including provisions for periodic distribution of current and accumulated income, and for invasion and restoration of principal.

(b) Outside management option

(1) The Tribe, in consultation with and subject to the approval of the Secretary, as set forth in this section, is authorized to place any of the Trust Funds under professional management, outside the Department of the Interior.

(2) If the Tribe elects to place any of the Trust Funds under professional management outside the Department of the Interior, it may engage a consulting or advisory firm to assist in the selection of an independent professional investment management firm, and it shall engage, with the approval of the Secretary, an independent investment management firm of proven competence and experience established in the business of counseling large endowments, trusts, or pension funds.

(3) The Secretary shall have 45 days to approve or reject any independent investment management firm selected by the Tribe. If the Secretary fails to approve or reject the firm selected by the Tribe within 45 days, the investment management firm selected by the Tribe shall be deemed to have been approved by the Secretary.

(4) Secretarial approval of an investment management firm shall not be unreasonably withheld, and any Secretarial disapproval of an investment management firm shall be accompanied by a detailed explanation setting forth the Secretary's reasons for such disapproval.

(5)(A) For funds placed under professional management, the Tribe, in consultation with the Secretary and its investment manager, shall develop—

(i) current operating and long-term capital budgets; and

(ii) a plan for managing, investing, and distributing income and principal from the Trust Funds to match the requirements of the Tribe's operating and capital budgets.

(B) For each Trust Fund which the Tribe elects to place under outside professional management, the investment plan shall provide for investment of Trust Fund assets so as to serve the purposes described in this section and in the Trust Fund provisions which the Tribe shall establish in consultation with the Secretary and the independent investment management firm.

(C) Distributions from each Trust Fund shall not exceed the limits on the use of principal and income imposed by the applicable provisions of this subchapter for that particular Trust Fund.

(D)(i) The Tribe's investment management plan shall not become effective until approved by the Secretary.

(ii) Upon submission of the plan by the Tribe to the Secretary for approval, the Secretary shall have 45 days to approve or reject the plan. If the Secretary fails to approve or disapprove the plan within 45 days, the plan shall be deemed to have been approved by the Secretary and shall become effective immediately.

(iii) Secretarial approval of the plan shall not be unreasonably withheld and any secretarial rejection of the plan shall be accompanied by a detailed explanation setting forth the Secretary's reasons for rejecting the plan.

(E) Until the selection of an established investment management firm of proven competence and experience, the Tribe shall rely on the management, investment, and administration of the Trust Funds by the Secretary pursuant to the provisions of this section.

(c) Transfer of trust funds; exculpation of Secretary

Upon the Secretary's approval of the Tribe's investment management firm and an investment management plan, all funds previously deposited in trust funds held by the Secretary and all funds subsequently paid into the trust funds, which are chosen for outside management, shall be transferred to the accounts established by an investment management firm in accordance with the approved investment management plan. The Secretary shall be exculpated by the Tribe from liability for any loss of principal or interest resulting from investment decisions made by the investment management firm. Any Trust Fund transferred to an investment management firm shall be returned to the Secretary upon written request of the Tribe, and the Secretary shall manage such funds for the benefit of the Tribe.

(d) Land Acquisition Trust

(1) The Secretary shall establish and maintain a Catawba Land Acquisition Trust Fund, and until the Tribe engages an outside firm for investment management of this trust fund, the Secretary shall manage, invest, and administer this trust fund. The original principal amount of the Land Acquisition Trust Fund shall be deter-

mined by the Tribe in consultation with the Secretary.

(2) The principal and income of the Land Acquisition Trust Fund may be used for the purchase and development of Reservation and non-Reservation land pursuant to the Settlement Agreement, costs related to land acquisition, and costs of construction of infrastructure and development of the Reservation and non-Reservation land.

(3)(A) Upon acquisition of the maximum amount of land allowed for expansion of the Reservation, or upon request of the Tribe and approval of the Secretary pursuant to the Secretarial approval provisions set forth in subsection (b)(5)(D) of this section, all or part of the balance of this trust fund may be merged into one or more of the Economic Development Trust Fund, the Education Trust Fund, or the Social Services and Elderly Assistance Trust Fund.

(B) Alternatively, at the Tribe's election, the Land Acquisition Trust Fund may remain in existence after all the Reservation land is purchased in order to pay for the purchase of non-Reservation land.

(4)(A) The Tribe may pledge or hypothecate the income and principal of the Land Acquisition Trust Fund to secure loans for the purchase of Reservation and non-Reservation lands.

(B) Following the effective date of this subchapter and before the final annual disbursement is made as provided in section 941c of this title, the Tribe may pledge or hypothecate up to 50 percent of the unpaid annual installments required to be paid to this Trust Fund, the Economic Development Trust Fund and the Social Services and Elderly Assistance Trust Fund by section 941c of this title and by section 5 of the Settlement Agreement, to secure loans to finance the acquisition of Reservation or non-Reservation land or infrastructure improvements on such lands.

(e) Economic Development Trust

(1) The Secretary shall establish and maintain a Catawba Economic Development Trust Fund, and until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer this Trust Fund. The original principal amount of the Economic Development Trust Fund shall be determined by the Tribe in consultation with the Secretary. The principal and income of this Trust Fund may be used to support tribal economic development activities, including but not limited to infrastructure improvements and tribal business ventures and commercial investments benefiting the Tribe.

(2) The Tribe, in consultation with the Secretary, may pledge or hypothecate future income and up to 50 percent of the principal of this Trust Fund to secure loans for economic development. In defining the provisions for administration of this Trust Fund, and before pledging or hypothecating future income or principal, the Tribe and the Secretary shall agree on rules and standards for the invasion of principal and for repayment or restoration of principal, which shall encourage preservation of principal, and provide that, if feasible, a portion of all profits derived from activities funded by principal be applied to repayment of the Trust Fund.

(3) Following the effective date of this subchapter and before the final annual disbursement is made as provided in section 941c of this title, the Tribe may pledge or hypothecate up to 50 percent of the unpaid annual installments required to be paid by section 941c of this title and by section 5 of the Settlement Agreement to secure loans to finance economic development activities of the Tribe, including (but not limited to) infrastructure improvements on Reservation and non-Reservation lands.

(4) If the Tribe develops sound lending guidelines approved by the Secretary, a portion of the income from this Trust Fund may also be used to fund a revolving credit account for loans to support tribal businesses or business enterprises of tribal members.

(f) Education Trust

The Secretary shall establish and maintain a Catawba Education Trust Fund, and until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer this Trust Fund. The original principal amount of this Trust Fund shall be determined by the Tribe in consultation with the Secretary; subject to the requirement that upon completion of all payments into the Trust Funds, an amount equal to at least ⅓ of all State, local, and private contributions made pursuant to the Settlement Agreement shall have been paid into the Education Trust Fund. Income from this Trust Fund shall be distributed in a manner consistent with the terms of the Settlement Agreement. The principal of this Trust Fund shall not be invaded or transferred to any other Trust Fund, nor shall it be pledged or encumbered as security.

(g) Social Services and Elderly Assistance Trust

(1) The Secretary shall establish and maintain a Catawba Social Services and Elderly Assistance Trust Fund and, until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer the Social Services and Elderly Assistance Trust Fund. The original principal amount of this Trust Fund shall be determined by the Tribe in consultation with the Secretary.

(2) The income of this Trust Fund shall be periodically distributed to the Tribe to support social services programs, including (but not limited to) housing, care of elderly, or physically or mentally disabled Members, child care, supplemental health care, education, cultural preservation, burial and cemetery maintenance, and operation of tribal government.

(3) The Tribe, in consultation with the Secretary, shall establish eligibility criteria and procedures to carry out this subsection.

(h) Per Capita Payment Trust Fund

(1) The Secretary shall establish and maintain a Catawba Per Capita Payment Trust Fund in an amount equal to 15 percent of the settlement funds paid pursuant to section 5 of the Settlement Agreement. Until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer the Catawba Per Capita Payment Trust Fund.

(2) Each person (or their estate) whose name appears on the final base membership roll of the

Tribe published by the Secretary pursuant to section 941e(c) of this title will receive a one-time, non-recurring payment from this Trust Fund.

(3) The amount payable to each member[1] shall be determined by dividing the trust principal and any accrued interest thereon by the number of Members on the final base membership roll.

(4)(A) Subject to the provisions of this paragraph, each enrolled member[1] who has reached the age of 21 years on the date the final roll is published shall receive the payment on the date of distribution, which shall be as soon as practicable after date of publication of the final base membership roll. Adult Members shall be paid their pro rata share of this Trust Fund on the date of distribution unless they elect in writing to leave their pro rata share in the Trust Fund, in which case such share shall not be distributed.

(B) The pro rata share of adult Members who elect not to withdraw their payment from this Trust Fund shall be managed, invested and administered, together with the funds of Members who have not attained the age of 21 years on the date the final base membership roll is published, until such Member requests in writing that their pro rata share be distributed, at which time such Member's pro rata share shall be paid, together with the net income of the Trust Fund allocable to such Member's share as of the date of distribution.

(C) No member[1] may elect to have their pro rata share managed by this Trust Fund for a period of more than 21 years after the date of publication of the final base membership roll.

(5)(A) Subject to the provisions of this paragraph, the pro rata share of any Member who has not attained the age of 21 years on the date the final base membership roll is published shall be managed, invested and administered pursuant to the provisions of this section until such Member has attained the age of 21 years, at which time such Member's pro rata share shall be paid, together with the net income of the Trust Fund allocable to such Member's share as of the date of payment. Such Members shall be paid their pro rata share of this Trust Fund on the date they attain 21 years of age unless they elect in writing to leave their pro rata share in the Trust Fund, in which case such share shall not be distributed.

(B) The pro rata share of such Members who elect not to withdraw their payment from this Trust Fund shall be managed, invested and administered, together with the funds of members[1] who have not attained the age of 21 years on the date the final base membership roll is published, until such Member requests in writing that their pro rata share be distributed, at which time such Member's pro rata share shall be paid, together with the net income of the Trust Fund allocable to such Member's share as of the date of distribution.

(C) No Member may elect to have their pro rata share retained and managed by this Trust Fund beyond the expiration of the period of 21 years after the date of publication of the final base membership roll.

(6) After payments have been made to all Members entitled to receive payments, this Trust Fund shall terminate, and any balance remaining in this Trust Fund shall be merged into the Economic Development Trust Fund, the Education Trust Fund, or the Social Services and Elderly Assistance Trust Fund, as the Tribe may determine.

(i) Duration of trust funds

Subject to the provisions of this section and with the exception of the Catawba Per Capita Payment Trust Fund, the Trust Funds established in accordance with this section shall continue in existence so long as the Tribe exists and is recognized by the United States. The principal of these Trust Funds shall not be invaded or distributed except as expressly authorized in this subchapter or in the Settlement Agreement.

(j) Transfer of money among trust funds

The Tribe, in consultation with the Secretary, shall have the authority to transfer principal and accumulated income between Trust Funds only as follows:

(1) Funds may be transferred among the Catawba Economic Development Trust Fund, the Catawba Land Acquisition Trust Fund, and the Catawba Social Services and Elderly Assistance Trust Fund, and from any of those three Trust Funds into the Catawba Education Trust Fund; except, that the mandatory share of State, local, and private sector funds invested in the original corpus of the Catawba Education Trust Fund shall not be transferred to any other Trust Fund.

(2) Any Trust Fund, except for the Catawba Education Trust Fund, may be dissolved by a vote of two-thirds of those Members eligible to vote, and the assets in such Trust Fund shall be transferred to the remaining Trust Funds; except, that (A) no assets shall be transferred from any of the Trust Funds into the Catawba Per Capita Payment Trust Fund, and (B) the mandatory share of State, local and private funds invested in the original corpus of the Catawba Education Trust Fund may not be transferred or used for any non-educational purposes.

(3) The dissolution of any Trust Fund shall require the approval of the Secretary pursuant to the Secretarial approval provisions set forth in subsection (b)(5)(D) of this section.

(k) Trust fund accounting

(1) The Secretary shall account to the Tribe periodically, and at least annually, for all Catawba Trust Funds being managed and administered by the Secretary. The accounting shall—

(A) identify the assets in which the Trust Funds have been invested during the relevant period;

(B) report income earned during the period, distinguishing current income and capital gains;

(C) indicate dates and amounts of distributions to the Tribe, separately distinguishing current income, accumulated income, and distributions of principal; and

(D) identify any invasions or repayments of principal during the relevant period and

[1] So in original. Probably should be capitalized.

record provisions the Tribe has made for repayment or restoration of principal.

(2)(A) Any outside investment management firm engaged by the Tribe shall account to the Tribe and separately to the Secretary at periodic intervals, at least quarterly. Its accounting shall—

(i) identify the assets in which the Trust Funds have been invested during the relevant period;

(ii) report income earned during the period, separating current income and capital gains;

(iii) indicate dates and amounts of distributions to the Tribe, distinguishing current income, accumulated income, and distributions of principal; and

(iv) identify any invasions or repayments of principal during the relevant period and record provisions the Tribe has made for repayment or restoration of principal.

(B) Prior to distributing principal from any Trust Fund, the investment management firm shall notify the Secretary of the proposed distribution and the Tribe's proposed use of such funds, following procedures to be agreed upon by the investment management firm, the Secretary, and the Tribe. The Secretary shall have 15 days within which to object in writing to any such invasion of principal. Failure to object will be deemed approval of the distribution.

(C) All Trust Funds held and managed by any investment management firm shall be audited annually by a certified public accounting firm approved by the Secretary, and a copy of the annual audit shall be submitted to the Tribe and to the Secretary within four months following the close of the Trust Funds' fiscal year.

(*l*) Replacement of investment management firm and modification of investment management plan

The Tribe shall not replace the investment management firm approved by the Secretary without prior written notification to the Secretary and approval by the Secretary of any investment management firm chosen by the Tribe as a replacement. Such Secretarial approval shall be given or denied in accordance with the Secretarial approval provisions contained in subsection (b)(5)(D) of this section. The Tribe and its investment management firm shall also notify the Secretary in writing of any revisions in the investment management plan which materially increase investment risk or significantly change the investment management plan, or the agreement, made in consultation with the Secretary pursuant to which the outside management firm was retained.

(m) Trust funds not counted for certain purposes; use as matching funds

None of the funds, assets, income, payments, or distributions from the Trust Funds established pursuant to this section shall at any time affect the eligibility of the Tribe or its Members for, or be used as a basis for denying or reducing funds to the Tribe or its Members under any Federal, State, or local program. Distributions from these Trust Funds may be used as matching funds, where appropriate, for Federal grants or loans.

(Pub. L. 103–116, § 11, Oct. 27, 1993, 107 Stat. 1127.)

REFERENCES IN TEXT

For the effective date of this subchapter, referred to in subsecs. (d)(4)(B) and (e)(3), see Effective Date note set out under section 941 of this title.

§ 941j. Establishment of Expanded Reservation

(a) Existing Reservation

The Secretary is authorized to receive from the State, by such transfer document as the Secretary and the State shall approve, all rights, title, and interests of the State in and to the Existing Reservation to be held by the United States as trustee for the Tribe, and, effective on the date of such transfer, the obligation of the State as trustee for the Tribe with respect to such land shall cease.

(b) Expanded Reservation

(1) The Existing Reservation shall be expanded in the manner prescribed by the Settlement Agreement.

(2) Within 180 days following October 27, 1993, the Secretary, after consulting with the Tribe, shall ascertain the boundaries and area of the existing reservation.[1] In addition, the Secretary, after consulting with the Tribe, shall engage a professional land planning firm as provided in the Settlement Agreement. The Secretary shall bear the cost of all services rendered pursuant to this section.

(3) The Tribe may identify, purchase and request that the Secretary place into reservation status, tracts of lands in the manner prescribed by the Settlement Agreement. The Tribe may not request that any land be placed in reservation status, unless those lands were acquired by the Tribe and qualify for reservation status in full compliance with the Settlement Agreement, including section 14 thereof.

(4) The Secretary shall bear the cost of all title examinations, preliminary subsurface soil investigations, and level one environmental audits to be performed on each parcel contemplated for purchase by the Tribe or the Secretary for the Expanded Reservation, and shall report the results to the Tribe. The Secretary's or the Tribe's payment of any option fee and the purchase price may be drawn from the Catawba Land Acquisition Trust Fund.

(5) The total area of the Expanded Reservation shall be limited to 3,000 acres, including the Existing Reservation, but the Tribe may exclude from this limit up to 600 acres of additional land under the conditions set forth in the Settlement Agreement. The Tribe may seek to have the permissible area of the Expanded Reservation enlarged by an additional 600 acres as set forth in the Settlement Agreement.

(6) All lands acquired for the Expanded Reservation may be held in trust together with the Existing Reservation which the State is to convey to the United States.

(7) Nothing in this subchapter shall prohibit the Secretary from providing technical and financial assistance to the Tribe to fulfill the purposes of this section.

[1] So in original. Probably should be capitalized.

(c) Expansion zones

(1) Subject to the conditions, criteria, and procedures set forth in the Settlement Agreement, the Tribe shall endeavor at the outset to acquire contiguous tracts for the Expanded Reservation in the ''Catawba Reservation Primary Expansion Zone'', as defined in the Settlement Agreement.

(2) Subject to the conditions, criteria, and procedures set forth in the Settlement Agreement, the Tribe may elect to purchase contiguous tracts in an alternative area, the ''Catawba Reservation Secondary Expansion Zone'', as defined in the Settlement Agreement.

(3) The Tribe may propose different or additional expansion zones subject to the authorizations required in the Settlement Agreement and the State Act.

(d) Non-contiguous tracts

The Tribe, in consultation with the Secretary, shall take such actions as are reasonable to expand the Existing Reservation by assembling a composite tract of contiguous parcels that border and surround the Existing Reservation. Before requesting that any non-contiguous tract be placed in Reservation status, the Tribe shall comply with section 14 of the Settlement Agreement. Upon the approval of the Tribe's application under and in accordance with section 14 of the Settlement Agreement, the Secretary, in consultation with the Tribe, may proceed to place non-contiguous tracts in Reservation status. No purchases of non-contiguous tracts shall be made for the Reservation except as set forth in the Settlement Agreement and the State Act.

(e) Voluntary land purchases

(1) The power of eminent domain shall not be used by the Secretary or any governmental authority in acquiring parcels of land for the benefit of the Tribe, whether or not the parcels are to be part of the Reservation. All such purchases shall be made only from willing sellers by voluntary conveyances subject to the terms of the Settlement Agreement.

(2) Notwithstanding any other provision of this section and the provisions of sections 3113 and 3114(a) to (d) of title 40, the Secretary or the Tribe may acquire a fractional interest in land otherwise qualifying under section 14 of the Settlement Agreement for treatment as Reservation land for the benefit of the Tribe from the ostensible owner of the land if the Secretary or the Tribe and the ostensible owner have agreed upon the identity of the land to be sold and upon the purchase price and other terms of sale. If the ostensible owner agrees to the sale, the Secretary may use condemnation proceedings to perfect or clear title and to acquire any interests of putative co-tenants whose address is unknown or the interests of unknown or unborn heirs or persons subject to mental disability.

(f) Terms and conditions of acquisition

All properties acquired by the Tribe shall be acquired subject to the terms and conditions set forth in the Settlement Agreement. The Tribe and the Secretary, acting on behalf of the Tribe and with its consent, are also authorized to acquire Reservation and non-Reservation lands using the methods of financing described in the Settlement Agreement.

(g) Authority to erect permanent improvements on Existing and Expanded Reservation land and non-Reservation land held in trust

Notwithstanding any other provision of law or regulation, the Attorney General of the United States shall approve any deed or other instrument which conveys to the United States lands purchased pursuant to the provisions of this section and the Settlement Agreement. The Secretary or the Tribe may erect permanent improvements of a substantial value, or any other improvements authorized by law on such land after such land is conveyed to the United States.

(h) Easements over Reservation

(1) The acquisition of lands for the Expanded Reservation shall not extinguish any easements or rights-of-way then encumbering such lands unless the Secretary or the Tribe enters into a written agreement with the owners terminating such easements or rights-of-way.

(2)(A) The Tribe, with the approval of the Secretary, shall have the power to grant or convey easements and rights-of-way, in a manner consistent with the Settlement Agreement.

(B) Unless the Tribe and the State agree upon a valuation formula for pricing easements over the Reservation, the Secretary shall be subject to proceedings for condemnation and eminent domain to acquire easements and rights of way for public purposes through the Reservation under the laws of the State in circumstances where no other reasonable access is available.

(C) With the approval of the Tribe, the Secretary may grant easements or rights-of-way over the Reservation for private purposes, and implied easements of necessity shall apply to all lands acquired by the Tribe, unless expressly excluded by the parties.

(i) Jurisdictional status

Only land made part of the Reservation shall be governed by the special jurisdictional provisions set forth in the Settlement Agreement and the State Act.

(j) Sale and transfer of Reservation lands

With the approval of the Secretary, the Tribe may sell, exchange, or lease lands within the Reservation, and sell timber or other natural resources on the Reservation under circumstances and in the manner prescribed by the Settlement Agreement and the State Act.

(k) Time limit on acquisitions

All acquisitions of contiguous land to expand the Reservation or of non-contiguous lands to be placed in Reservation status shall be completed or under contract of purchase within 10 years from the date the last payment is made into the Land Acquisition Trust; except that for a period of 20 years after the date the last payment is made into the Catawba Land Acquisition Trust Fund, the Tribe may, subject to the limitation on the total size of the Reservation, continue to add parcels to up to two Reservation areas so long as the parcels acquired are contiguous to one of those two Reservation areas.

(*l*) Leases of Reservation lands

The provisions of section 415 of this title shall not apply to the Tribe and its Reservation. The

Tribe is authorized to lease its Reservation lands for terms up to but not exceeding 99 years, with or without the approval of the Secretary. With regard to any lease of Reservation lands not approved by the Secretary, the Secretary shall be exculpated by the Tribe from any liability arising out of any loss incurred by the Tribe as a result of the unapproved lease.

(m) Non-applicability of BIA land acquisition regulations

The general land acquisition regulations of the Bureau of Indian Affairs, contained in part 151 of title 25, Code of Federal Regulations, shall not apply to the acquisition of lands authorized by this section.

(Pub. L. 103–116, § 12, Oct. 27, 1993, 107 Stat. 1133.)

CODIFICATION

''Sections 3113 and 3114(a) to (d) of title 40'' substituted in subsec. (e)(2) for ''the first section of the Act of August 1, 1888 (ch. 728, 25 Stat. 357; 40 U.S.C. 257), and the first section of the Act of February 26, 1931 (ch. 307, 46 Stat. 1421; 40 U.S.C. 258a)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 941k. Non-Reservation properties

(a) Acquisition of non-Reservation properties

The Tribe may draw upon the corpus or accumulated income of the Catawba Land Acquisition Trust Fund or the Catawba Economic Development Trust Fund to acquire and hold parcels of real estate outside the Reservation for the purposes and in the manner delineated in the Settlement Agreement. Jurisdiction and status of all non-Reservation lands shall be governed by section 15 of the Settlement Agreement.

(b) Authority to dispose of lands

Notwithstanding any other provision of law, the Tribe may lease, sell, mortgage, restrict, encumber, or otherwise dispose of such non-Reservation lands in the same manner as other persons and entities under State law, and the Tribe as land owner shall be subject to the same obligations and responsibilities as other persons and entities under State, Federal, and local law.

(c) Restrictions

Ownership and transfer of non-Reservation parcels shall not be subject to Federal law restrictions on alienation, including (but not limited to) the restrictions imposed by Federal common law and the provisions of section 177 of this title.

(Pub. L. 103–116, § 13, Oct. 27, 1993, 107 Stat. 1136.)

§ 941*l*. Games of chance

(a) Inapplicability of Indian Gaming Regulatory Act

The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not apply to the Tribe.

(b) Games of chance generally

The Tribe shall have the rights and responsibilities set forth in the Settlement Agreement and the State Act with respect to the conduct of games of chance. Except as specifically set forth in the Settlement Agreement and the State Act, all laws, ordinances, and regulations of the State, and its political subdivisions, shall govern the regulation of gambling devices and the conduct of gambling or wagering by the Tribe on and off the Reservation.

(Pub. L. 103–116, § 14, Oct. 27, 1993, 107 Stat. 1136.)

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (a), is Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (§ 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 941m. General provisions

(a) Severability

If any provision of section 941b(a), 941c, or 941d of this title is rendered invalid by the final action of a court, then all of this subchapter is invalid. Should any other section of this subchapter be rendered invalid by the final action of a court, the remaining sections of this subchapter shall remain in full force and effect.

(b) Interpretation consistent with Settlement Agreement

To the extent possible, this subchapter shall be construed in a manner consistent with the Settlement Agreement and the State Act. In the event of a conflict between the provisions of this subchapter and the Settlement Agreement or the State Act, the terms of this subchapter shall govern. In the event of a conflict between the State Act and the Settlement Agreement, the terms of the State Act shall govern. The Settlement Agreement and the State Act shall be maintained on file and available for public inspection at the Department of the Interior.

(c) Laws and regulations of United States

The provisions of any Federal law enacted after October 27, 1993, for the benefit of Indians, Indian nations, tribes, or bands of Indians, which would affect or preempt the application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the South Carolina State Implementing Act, shall not apply within the State of South Carolina, unless such provision of such subsequently enacted Federal law is specifcally[1] made applicable within the State of South Carolina.

(d) Eligibility for consideration to become enterprise zone or general purpose foreign trade zone

Notwithstanding the provisions of any other law or regulation, the Tribe shall be eligible to become, sponsor and operate (1) an ''enterprise zone'' pursuant to title VII of the Housing and Community Development Act of 1987 (42 U.S.C. 11501–11505) or any other applicable Federal (or State) laws or regulations; or (2) a ''foreign-trade zone'' or ''subzone'' pursuant to the Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u) and the regulations thereunder,

[1] So in original. Probably should be ''specifically''.

to the same extent as other federally recognized Indian Tribes.

(e) General applicability of State law

Consistent with the provisions of section 941b(a)(2) of this title, the provisions of South Carolina Code Annotated, section 27–16–40, and section 19.1 of the Settlement Agreement are approved, ratified, and confirmed by the United States, and shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law.

(f) Subsequent amendments to Settlement Agreement or State Act

Consent is hereby given to the Tribe and the State to amend the Settlement Agreement and the State Act if consent to such amendment is given by both the State and the Tribe, and if such amendment relates to—

(1) the jurisdiction, enforcement, or application of civil, criminal, regulatory, or tax laws of the Tribe and the State;

(2) the allocation or determination of governmental responsibility of the State and the Tribe over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the Tribe;

(3) the allocation of jurisdiction between the tribal courts and the State courts; or

(4) technical and other corrections and revisions to conform the State Act and the Agreement in Principle attached to the State Act to the Settlement Agreement.

(Pub. L. 103–116, § 15, Oct. 27, 1993, 107 Stat. 1136.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1987, referred to in subsec. (d), is Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1815, as amended. Title VII of the Act is classified principally to chapter 120 (§ 11501 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note under section 5301 of Title 42 and Tables.

The Foreign Trade Zones Act of 1934, referred to in subsec. (d), probably means act June 18, 1934, ch. 590, 48 Stat. 998, as amended, popularly known as the Foreign Trade Zones Act, which is classified generally to chapter 1A (§ 81a et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see Tables.

§ 941n. Tax treatment of income and transactions

Notwithstanding any provision of the State Act, the Settlement Agreement, or this subchapter (including any amendment made under section 941m(f) of this title), nothing in this subchapter, the State Act, or the Settlement Agreement—

(1) shall amend or alter title 26, as amended, or any rules or regulations promulgated thereunder, or

(2) shall affect the treatment under title 26 of any person or transaction other than by reason of the restoration of the trust relationship between the United States and the Tribe.

(Pub. L. 103–116, § 16, Oct. 27, 1993, 107 Stat. 1137.)

SUBCHAPTER XLIV—AGUA CALIENTE (PALM SPRINGS) RESERVATION OF CALIFORNIA: EQUALIZATION OF ALLOTMENTS

§ 951. Authority to equalize allotments

The Secretary of the Interior (hereinafter called the ''Secretary'') is authorized and directed to do whatever is necessary and proper to equalize as nearly as possible the values of all allotments of land on the Agua Caliente (Palm Springs) Reservation in California in accordance with the provisions of this subchapter.

(Pub. L. 86–339, § 1, Sept. 21, 1959, 73 Stat. 602.)

SHORT TITLE

Pub. L. 86–339, Sept. 21, 1959, 73 Stat. 602, as amended, which enacted this subchapter, is popularly known as the ''Aqua Caliente Equalization Act of 1959''.

EXPIRATION OF RESTRICTION ON DISTRIBUTION OF REVENUES FROM MINERAL SPRINGS PARCEL

Pub. L. 105–308, Oct. 30, 1998, 112 Stat. 2932, provided that:

''SECTION 1. FINDINGS.

''Congress finds that—

''(1) among its purposes, the Act entitled 'An Act to provide for the equalization of allotments on the Agua Caliente (Palm Springs) Reservation in California, and for other purposes', approved September 21, 1959, commonly known as the 'Agua Caliente Equalization Act of 1959' (25 U.S.C. 951 et seq.) (referred to in this section as the 'Act') was intended to provide for a reasonable degree of equalization of the value of allotments made to members of the Agua Caliente Band of Cahuilla Indians;

''(2) the Act was enacted in response to litigation in Federal courts in Segundo, et al. v. United States, 123 F. Supp. 554 (1954);

''(3) the case referred to in paragraph (2) was appealed under the case name United States v. Pierce, 235 F. 2d 885 (1956) and that case affirmed the entitlement of certain members of the Band to allotments of approximately equal value to lands allotted to other members of the Band;

''(4)(A) to achieve the equalization referred to in paragraph (3), section 3 of the Act (25 U.S.C. 953) provided for the allotment or sale of all remaining tribal lands, with the exception of several specifically designated parcels, including 2 parcels in the Mineral Springs area known as parcel A and parcel B;

''(B) section 3 of the Act restricted the distribution of any net rents, profits, or other revenues derived from parcel B to members of the Band and their heirs entitled to equalization of the value of the allotments of those members;

''(C) from 1959 through 1984, each annual budget of the Band, as approved by the Bureau of Indian Affairs, provided for expenditure of all revenues derived from both parcel A and parcel B solely for tribal governmental purposes; and

''(D) as a result of the annual budgets referred to in subparagraph (C), no net revenues from parcel B were available for distribution to tribal members entitled to equalization under section 3 of the Act referred to in paragraph (1);

''(5) by letter of December 6, 1961, the Director of the Sacramento Area Office of the Bureau of Indian Affairs informed the regional solicitor of the Bureau of Indian Affairs that the equalization of allotments on the Agua Caliente Reservation with respect to those members of the Band who were eligible for equalization had been completed using all available excess tribal land in a manner consistent with—

''(A) the decree of the court in the case referred to in paragraph (2); and

''(B) the Act;

''(6) in 1968, the files of the Department of the Interior with respect to the case referred to in paragraph (3), the closure of which was contingent upon completion of the equalization program, were retired to the Federal Record Center, where they were subsequently destroyed;

''(7) on March 16, 1983, the Secretary of the Interior published notice in the Federal Register that full equalization had been achieved within the meaning of section 7 of the Act (25 U.S.C. 957);

''(8) section 7 of the Act states that 'allotments in accordance with the provisions of this Act shall be deemed complete and full equalization of allotments on the Agua Caliente Reservation'; and

''(9) the regulations governing the equalization of allotments under the Act referred to in paragraph (1) were rescinded by the Secretary, effective March 31, 1983.

''SEC. 2. DEFINITIONS.

''In this Act:

''(1) BAND.—The term 'Band' means the Agua Caliente Band.

''(2) PARCEL B.—The term 'parcel B' means the parcel of land in the Mineral Springs area referred to as 'parcel B' in section 3(b) of the Act entitled 'An Act to provide for the equalization of allotments on the Agua Caliente (Palm Springs) Reservation in California, and for other purposes', approved September 21, 1959, commonly known as the 'Agua Caliente Equalization Act of 1959' (25 U.S.C. 953(b)).

''(3) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''SEC. 3. EQUALIZATION OF ALLOTMENTS.

''(a) IN GENERAL.—The full equalization of allotments within the meaning of section 7 of the Act entitled 'An Act to provide for the equalization of allotments on the Agua Caliente (Palm Springs) Reservation in California, and for other purposes', approved September 21, 1959, commonly known as the 'Agua Caliente Equalization Act of 1959' (25 U.S.C. 957) is deemed to have been completed.

''(b) EXPIRATION OF ENTITLEMENT.—By reason of the achievement of the full equalization of allotments described in subsection (a), the entitlement of holders of equalized allotments to distribution of net revenues from parcel B under section 3(b) of the Act entitled 'An Act to provide for the equalization of allotments on the Agua Caliente (Palm Springs) Reservation in California, and for other purposes', approved September 21, 1959, commonly known as the 'Agua Caliente Equalization Act of 1959' (25 U.S.C. 953(b)) shall be deemed to have expired.

''SEC. 4. REMOVAL OF RESTRICTION.

''(a) IN GENERAL.—[Amended section 953(b) of this title.]

''(b) APPLICABILITY.—The amendment made by subsection (a) shall apply as if this section had been enacted on March 31, 1983.

''(c) SUBSEQUENT DISTRIBUTIONS.—Any per capita distribution of tribal revenues of the Band made after the date of enactment of this Act [Oct. 30, 1998] shall be made to all members of the Band in equal amounts.''

§ 952. Members entitled to allotment; prohibition against further allotments

Any member of the Agua Caliente Band (hereinafter called the ''band'') who is living on September 21, 1959, and who has not received an allotment of land shall be given an allotment in accordance with the provisions of law existing prior to this Act. No further allotments of land shall thereafter be made to any other or future born members of the band, or to their heirs or devisees, except for the purpose of equalization. This prohibition against further allotments shall not be construed as a closing of the band's membership rolls.

(Pub. L. 86–339, § 2, Sept. 21, 1959, 73 Stat. 602.)

REFERENCES IN TEXT

The words ''prior to this Act'', referred to in text, mean prior to enactment of Act Sept. 21, 1959, Pub. L. 86–339.

§ 953. Lands

(a) Determination of value of unallotted and allotted lands; exclusion of deceased allottees' allotments

The Secretary shall determine on the basis of the contract appraisals that were made in 1957 and 1958 (1) the value of all unallotted tribal land, and (2) the value of the allotment of each allottee who is living on September 21, 1959, excluding the value of any improvements thereon. Where lands of a living allottee have been sold under the supervision of the Secretary, their value for the purpose of equalization shall be the amount received from such sale, excluding the value assigned to any improvements thereon. Where lands of a living allottee have been fee patented to and sold by the allottee, their value for the purpose of equalization shall be the appraised value of the lands, excluding improvements, as of the time of the sale, regardless of the amount received from the sale. The allotments of allottees who are not living on September 21, 1959 shall be excluded from the equalization program. All values so determined by the Secretary shall be final and conclusive for the purposes of this subchapter.

(b) Lands not subject to allotment

In no event shall the following tribal lands be subject to allotment, and they shall henceforth be set apart and designated as tribal reserves for the benefit and use of the band:

Cemetery numbered 1, block 235, section 14, township 4 south, range 4 east.

Cemetery numbered 2, as now constituted pursuant to secretarial order, comprising approximately two acres.

Roman Catholic Church, as now constituted pursuant to secretarial order, comprising approximately two acres.

Mineral Springs, lots 3a, 4a, 13, and 14, section 14, township 4 south, range 4 east.

San Andreas Canyon, west half southeast quarter, southeast quarter southeast quarter section 3, township 5 south, range 4 east.

Palm Canyon, south half and south half north half section 14, township 5 south, range 4 east; all section 24, township 5 south, range 4 east.

Tahquitz Canyon, southwest quarter section 22, township 4 south, range 4 east; north half section 28, township 4 south, range 4 east.

Murray Canyon, east half section 10, township 5 south, range 4 east.

(c) Equalization for living members by allotment without regard to acreage limitations; creation of right by selection and approval; allotments made subject to laws and regulations

On the basis of such values, the Secretary shall determine the highest level of equalization that is feasible for the members of the band who are living at the time of this Act by allotting all of the unallotted tribal land, except the reserved

areas listed in subsection (b) of this section, without regard to acreage limitations heretofore imposed by law. Such unallotted tribal land shall then be allotted to those members who have received allotments with a value that is less than the equalization figure deemed feasible in accordance with procedures prescribed by the Secretary. No selection of an allotment pursuant to such procedures shall create a vested right in the land until all selections authorized by this subchapter have been made, included in one schedule, and approved by the Secretary. Allotments thereafter made shall be subject to the same laws and regulations that apply to other trust allotments on the Agua Caliente Reservation.

(d) Portions in airport subject to allotment unless sold; procedure for sale; payment of sale proceeds in lieu of allotment

The unallotted portions of section 18, township 4 south, range 5 east, and section 12, township 4 south, range 4 east, that are in the municipal airport for the city of Palm Springs shall be subject to allotment as a part of the equalization program, subject to the following qualifications: If within thirty days after September 21, 1959, a majority of the adult members of the band who are eligible to vote agree, the Secretary may offer to sell such land to the city for its appraised value on September 21, 1959, and the Secretary shall cause an independent appraisal thereof to be made by an appraiser he shall select who shall be approved jointly by the band and the city before proceeding with such appraisal, the costs for the appraisal to be shared by the band and the city; thereafter the Secretary shall review the completed appraisal and shall, if approved, then submit copies to both the band and the city for their approval which shall be either accepted or rejected in writing within thirty days; and if within three hundred and sixty-five days after joint acceptance of such appraisal by the band and the city, the city accepts the offer and tenders payment in full, the Secretary shall complete the sale, and any allottees who may have made or who may thereafter make an equalization selection from the lands sold to the city shall receive in lieu of the allotment selected his proportionate share of the proceeds of the sale.

(Pub. L. 86–339, § 3, Sept. 21, 1959, 73 Stat. 602; Pub. L. 105–308, § 4(a), Oct. 30, 1998, 112 Stat. 2934.)

REFERENCES IN TEXT

The words ''at the time of this Act'', referred to in subsec. (c), mean at Sept. 21, 1959, the date of enactment of this subchapter.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–308, in undesignated par. relating to Mineral Springs, substituted ''east.'' for ''east: *Provided*, That no distribution to member of the band of the net rents, profits, and other revenues derived from that portion of these lands which is designated as 'parcel B' in the supplement dated September 8, 1958, to the lease by and between the Agua Caliente Band of Mission Indians and Palm Springs Spa dated January 21, 1958, or of the net income derived from the investment of such net rents, profits, and other revenues or from the sale of said lands or of assets purchased with the net rents, profits, and other revenues aforesaid or with the net income from the investment thereof shall be made except to those enrolled members who are entitled to an equalization allotment or to a cash payment in satisfaction thereof under this subchapter or, in the case of such a member who died after September 21, 1959, to those entitled to participate in his estate, and any such distribution shall be per capita to living enrolled members and per stirpes to participants in the estate of a deceased member.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–308 applicable as if it had been enacted on Mar. 31, 1983, see section 4(b) of Pub. L. 105–308, set out as an Expiration of Restriction on Distribution of Revenues From Mineral Springs Parcel note under section 951 of this title.

§ 954. Powers and duties of guardians

(a) Appointment and continuance in office; notice to Secretary of State court proceedings; appearance

No guardian or other fiduciary shall be appointed under State law for the estate of any member of the band, or continued in office, except with approval of the Secretary: *Provided*, That no conservator for any member of the band shall be appointed under State law or continued in office after the effective date of this Act, unless the individual Indian concerned, with the approval of the Secretary, personally petitions for the appointment or continuation of such appointment. The Secretary shall be given notice of all proceedings in the State court with respect to the estate of any member of the band which is being administered, and he may at any time appear as a party in such proceedings, and may exercise all rights accorded to a party under State law.

(b) Management and disposition of trust property and property subject to restrictions against alienation by guardians, conservators, or fiduciaries; approved activities; approval of activities

No guardian, conservator or other fiduciary appointed under State law shall, in his official capacity, participate in the management or disposition of any property or interest therein which is held in trust by the United States for a member of the band or is subject to restrictions against alienation imposed by the laws of the United States, execute or approve any use, expenditure, investment, deposit, or disposition of such property or interest therein, or proceeds therefrom, or receive any fee or other compensation for services hereafter performed with respect to such property or interest therein. The provisions of this subsection shall not preclude any such person, in his private capacity, from participating in the management or disposition of such property or interest therein with the specific approval of the Secretary of the Interior. Actions with respect to the use, expenditure, investment, deposit, or disposition of such property or interests therein, or proceeds therefrom, shall be valid and efficacious in all respects without participation of affirmation by any guardian, conservator, or other fiduciary appointed under State law.

(c) Reports by guardians; failure or refusal to report; fraudulent, capricious, arbitrary or grossly erroneous reports; prosecution; appropriate relief

The Secretary, at any time, may require any guardian, conservator, or other fiduciary appointed under State law for a member of the band to submit a full and complete report concerning his handling of the estate during the preceding six years. If any person or entity required to do so by the Secretary fails or refuses to so report, or, if having reported, the Secretary concludes that any action connected therewith is fraudulent, or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, he may request the Attorney General to cause an action to be brought in the name of the United States in the United States District Court for the Central District of California or in any such district court having jurisdiction over the person, or persons, and subject matter, for such relief as may be appropriate, and said courts are hereby granted jurisdiction to hear and determine such action.

(d) Delivery to Secretary of money or property at termination of fiduciary relationship

The Secretary may require any money or property in the possession of a fiduciary at the time the fiduciary relationship is terminated, or which is recovered pursuant to this subchapter, to be delivered to him to be held in trust for the individual Indian concerned.

(e) Use and disposition of money or property held in trust by the United States by the Secretary; consent by competent Indian; determination of competency; applicability of administrative procedure under title 5; time and place of hearing; judicial review

Under such regulations as he shall provide, and with the consent of the individual Indian concerned, unless the Secretary determines such Indian to be incompetent by reason of minority or otherwise, in which case such consent shall not be required, the Secretary may use, advance, expend, exchange, deposit, dispose of, invest and reinvest, in any manner and for any purpose, any money or other property held by the United States in trust for such Indian. The Secretary shall make no determination that an adult Indian is incompetent except after according him an opportunity to be heard upon reasonable notice, in accordance with the provisions of subchapter II of chapter 5 of title 5. Unless the Indian otherwise agrees, the hearing shall be held in the State of California within sixty days of the date of notice. A person aggrieved by a determination of incompetency made by the Secretary shall be entitled to judicial review of such determination in accordance with sections 701 to 706 of title 5.

(f) Authority of the Secretary under other provisions unaffected

Nothing herein shall be deemed to limit any authority possessed by the Secretary under any other provisions of law.

(Pub. L. 86–339, § 4, Sept. 21, 1959, 73 Stat. 604; Pub. L. 90–597, Oct. 17, 1968, 82 Stat. 1164.)

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (a), probably means the date of enactment of Pub. L. 86–339, which was approved Sept. 21, 1959.

CODIFICATION

In subsec. (e), ''subchapter II of chapter 5 of title 5'' substituted for ''the Administrative Procedure Act'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–597 substituted provisions requiring Secretary to approve any guardian or other fiduciary appointed under State law for estate of any member of band or continued in office as guardian of estate, and provisions requiring Secretary to be given notice of State court proceedings involving estate of any member of band and power to appear in such proceedings, for provisions requiring Secretary to request appointment of a guardian of estate of minor allottees and adult allottees needing assistance.

Subsecs. (b) to (f). Pub. L. 90–597 added subsecs. (b) to (f).

§ 955. Tax exemption

(a) The right to an equalization allotment or to a cash payment in lieu thereof pursuant to section 953(d) of this title, shall be transferable by will or descent in the same manner as are trust payments under existing law and shall not be subject to State or Federal inheritance, estate, legacy, or succession taxes.

(b) A cash payment made in lieu of an equalization allotment pursuant to section 953(d) of this title shall not be regarded as income or capital gain for purposes of Federal or State income taxation and shall not, as long as it remains in the form of cash or a bank deposit in the ownership of the allottee, be subject to taxation as personal property. A payment and the income derived therefrom heretofore or hereafter made to an allottee as compensation for the acquisition of part or all of the allottee's allotment for a public purpose is—

(1) deemed a cash payment in lieu of an allotment for purposes of this subsection;

(2) deemed a right under subsection (a) of this section; and

(3) subject to sections 409a and 410 of this title.

(Pub. L. 86–339, § 5, Sept. 21, 1959, 73 Stat. 604; Pub. L. 100–581, title II, § 216, Nov. 1, 1988, 102 Stat. 2941.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–581 inserted sentence at end relating to payment and income derived therefrom made as compensation for acquisition of part of all of allottee's allotment for public purpose.

§ 956. Claims against allotments

(a) Assignment, sale, hypothecation, attachment or levy void unless approved

Equalization allotments made pursuant to this subchapter shall not be subject to assignment, sale, or hypothecation or to any attachment or levy for claims or debts created before or after September 21, 1959, without the written approval of the Secretary, and any such assignment, sale, hypothecation, attachment, or levy

that has not been so approved by the Secretary shall be absolutely null and void.

(b) Liens and lis pendens; legal services

No equalization allotment made pursuant to this subchapter, and no basic allotment made prior to this Act, shall be subject to an equitable charging lien or other charge or lien or enforced sale for any advantage or benefit which the allottee has received or will receive under or as a consequence of enactment of this subchapter, nor shall any lis pendens heretofore or hereafter filed upon such lands while in a restricted status be of any effect or constitute notice of any action. Whoever directly or indirectly accepts or receives any money or other form of compensation for legal services in connection with such restricted lands from any person who has not expressly employed him as his attorney shall be liable, in a civil action brought by the payor or his heirs or devisees or by the United States on his behalf, for twice the amount so accepted or received unless, prior to the time of acceptance or receipt of said compensation, the right to such compensation has been determined and the amount thereof fixed by a formal order of the Federal court having jurisdiction to make such order. Nothing herein provided shall be construed to prevent any attorney from petitioning the Federal court having jurisdiction to fix and determine the fees to which he is entitled and to pursue and enforce payment thereof in any lawful manner after the court has made such order.

(Pub. L. 86–339, § 6, Sept. 21, 1959, 73 Stat. 604.)

REFERENCES IN TEXT

The words ''prior to this Act'', referred to in subsec. (b), mean prior to enactment of Act Sept. 21, 1959, Pub. L. 86–339.

§ 957. Allotments deemed full equalization

Allotments in accordance with the provisions of this subchapter shall be deemed complete and full equalization of allotments on the Agua Caliente Reservation.

(Pub. L. 86–339, § 7, Sept. 21, 1959, 73 Stat. 605.)

§ 958. Organization and transfer of title to legal entity

The band may, at any time it wishes to do so, organize a legal entity under the laws of the State of California and request the Secretary to transfer to such legal entity title to the lands in the reserves established by section 953(b) of this title. The Secretary shall transfer an unrestricted title to such property if the organization of the legal entity and request for the transfer have been approved by a majority of the adult members of the band who are eligible to vote, and if in the judgment of the Secretary the legal entity is organized in a form and manner that is fair to all members of the band: *Provided, however*, That if the lands to which the proviso to the fourth item in section 953(b) of this title is applicable are transferred to such an entity, they shall be held by it subject to the terms provided in said proviso, and the rights and duties therein set forth shall be preserved and reflected in any distribution of securities of, or other evidences of participation in, said entity.

(Pub. L. 86–339, § 8, Sept. 21, 1959, 73 Stat. 605.)

SUBCHAPTER XLV—OMAHA TRIBE: DISTRIBUTION OF JUDGMENT FUND

§ 961. Membership roll; preparation; eligibility for enrollment; applications for enrollment; protests; finality of determination

The Secretary of the Interior is authorized and directed, pursuant to such regulations as may be issued by him, to prepare a roll of Omaha Indians whose names appear on the Omaha allotment rolls finally approved pursuant to the Acts of Congress of August 7, 1882, (22 Stat. 341) and March 3, 1893 (27 Stat. 612), and who are living on September 14, 1961, and the descendants of such allottees who are born and living on September 14, 1961 and who possess Omaha blood of the degree of one-fourth or more regardless of whether such allottees are living or deceased: *Provided*, That no person who is enrolled with any other tribe of Indians or who has received an allotment of land on any other reservation shall be enrolled under the provisions of this subchapter unless the application for enrollment by such person is approved by a two-thirds vote of the governing body of the Omaha Tribe of Nebraska. Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Aberdeen, South Dakota, within four months after September 14, 1961. For a period of three months thereafter, the Secretary shall permit the examination of the applications by the governing body of the Omaha Tribe of Nebraska for the purpose of lodging protests against any application. The determination of the Secretary regarding the eligibility of an applicant shall be final.

(Pub. L. 87–235, § 1, Sept. 14, 1961, 75 Stat. 508.)

REFERENCES IN TEXT

Acts of Congress of August 7, 1882, and March 3, 1893, referred to in text, are acts Aug. 7, 1882, ch. 434, 22 Stat. 341, and Mar. 3, 1893, ch. 209, 27 Stat. 612, respectively, which were not classified to the Code.

§ 962. Membership roll; enrollment of children born after September 14, 1961

The roll prepared pursuant to section 961 of this title shall constitute the membership roll of the Omaha Tribe of Nebraska as of September 14, 1961, notwithstanding the provisions of article II, section 1 of the tribal constitution, and children who are born after September 14, 1961, may be enrolled if they meet the requirements of section 1(b) of article II of the tribal constitution, applicable to children born after the date that amendment I to said constitution was approved, or any amendment thereof.

(Pub. L. 87–235, § 2, Sept. 14, 1961, 75 Stat. 508.)

§ 963. Per capita distributions to tribal members; attorneys' fees and expenses; advances or expenditures from tribal funds; tax exemption

Of the funds on deposit in the Treasury of the United States to the credit of the Omaha Tribe of Nebraska that were appropriated to pay a judgment by the Indian Claims Commission dated February 11, 1960, and the interest thereon, after payment of attorneys' fees and ex-

penses, the Secretary of the Interior shall make a per capita distribution of a sum up to a maximum of $750, to the extent available, to each person whose name appears on the roll prepared pursuant to section 961 of this title; and the balance of such funds after making payment of or provision for such per capita distribution and accrued and accruing interest, if any, may be advanced or expended for any purpose that is authorized by the tribal governing body and approved in writing by the Secretary. The funds so distributed shall not be subject to Federal or State income taxes.

(Pub. L. 87–235, § 3, Sept. 14, 1961, 75 Stat. 508.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 964. Distribution of shares

(a) Payments to enrollees, next of kin, or legatees

Except as provided in subsection (b) of this section, the Secretary shall distribute a per capita share payable to a living enrollee directly to such enrollee, and the Secretary shall distribute a per capita share payable to a deceased enrollee directly to his next of kin or legatees as determined by the laws of the place of domicile of the decedent upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) Payments to minors or persons under legal disability

A share payable to a person under twenty-one years of age or to a person under a legal disability shall be paid in accordance with such procedures as the Secretary determines will adequately protect the best interests of such persons.

(Pub. L. 87–235, § 4, Sept. 14, 1961, 75 Stat. 508.)

§ 965. Payments not subject to liens, debts, or claims; exception

No part of any of the funds which may be so distributed shall be subject to any lien, debt, or claim of any nature whatsoever against the tribe or individual Indians except delinquent debts owed by the tribe to the United States or owed by individual Indians to the tribe or to the United States.

(Pub. L. 87–235, § 5, Sept. 14, 1961, 75 Stat. 509.)

§ 966. Costs

All costs incurred by the Secretary in the preparation of the roll and in the payment of the per capita shares in accordance with provisions of this subchapter shall be paid by appropriate withdrawals from the judgment fund.

(Pub. L. 87–235, § 6, Sept. 14, 1961, 75 Stat. 509.)

§ 967. Rules and regulations

The Secretary is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 87–235, § 7, Sept. 14, 1961, 75 Stat. 509.)

§ 967a. Per capita payments to enrolled tribal members; use of balance of funds

From the funds on deposit in the Treasury of the United States to the credit of the Omaha Tribe of Nebraska that were appropriated by the Act of June 9, 1964, to pay a judgment obtained by the tribe in Indian Claims Commission docket numbered 138, after deduction of attorney fees, litigation expenses, and such sums as may be required to distribute individual shares, the Secretary of the Interior shall make a per capita distribution of no more than $270 to each person living on November 2, 1966, whose name appears on the roll of the tribe prepared pursuant to section 961 of this title, and to each child living on November 2, 1966, who was born after September 14, 1961, and who possesses aboriginal Omaha blood of the degree of one-fourth or more except for any such child who is enrolled with any other tribe of Indians. The balance of such funds, and the interest thereon, may be advanced or expended for any purpose that is authorized by the tribal governing body and approved by the Secretary. The amount of $150,000 of said funds and any interest thereon shall not be distributed, advanced or expended until said $150,000 and any interest thereon becomes available for disbursement pursuant to the terms of the final judgment dated April 14, 1964, by the Indian Claims Commission in docket numbered 138.

(Pub. L. 89–717, § 1, Nov. 2, 1966, 80 Stat. 1114.)

REFERENCES IN TEXT

Act of June 9, 1964, referred to in text, is Pub. L. 88–317, June 9, 1964, 78 Stat. 204, which was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

CODIFICATION

Section was not enacted as part of Pub. L. 87–235, Sept. 14, 1961, 75 Stat. 508, which comprises this subchapter.

§ 967b. Payments to minors and persons under legal disability; shares under certain amount to revert to tribe

Sums payable to persons or to their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures as the Secretary, after consultation with the tribal governing body, determines will adequately protect their best interests. Proportional shares of heirs or legatees amounting to $5 or less shall not be distributed and such amounts shall escheat to the Omaha Tribe of Nebraska.

(Pub. L. 89–717, § 2, Nov. 2, 1966, 80 Stat. 1115.)

CODIFICATION

Section was not enacted as part of Pub. L. 87–235, Sept. 14, 1961, 75 Stat. 508, which comprises this subchapter.

§ 967c. Tax exemption

The funds distributed under the provisions of sections 967a to 967d of this title shall not be subject to Federal or State income taxes.

(Pub. L. 89–717, § 3, Nov. 2, 1966, 80 Stat. 1115.)

CODIFICATION

Section was not enacted as part of Pub. L. 87–235, Sept. 14, 1961, 75 Stat. 508, which comprises this subchapter.

§ 967d. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 967a to 967d of this title.

(Pub. L. 89–717, § 4, Nov. 2, 1966, 80 Stat. 1115.)

CODIFICATION

Section was not enacted as part of Pub. L. 87–235, Sept. 14, 1961, 75 Stat. 508, which comprises this subchapter.

SUBCHAPTER XLVI—PONCA TRIBE OF NEBRASKA: TERMINATION OF FEDERAL SUPERVISION

§ 971. Membership roll; preparation; eligibility for enrollment; protests against inclusion or omission from roll; finality of determination; publication of roll; publication of notice of agreement to division of assets; finality of roll

The Secretary of the Interior shall, with the advice and assistance of the Ponca Tribe of Native Americans of Nebraska and pursuant to such regulations as he may prescribe, prepare a roll of the members of the tribe and record thereon persons whose names appeared on the census roll of April 1, 1934, and the supplement thereto of January 1, 1935, and their descendants of not less than one-quarter degree Indian blood of the Ponca Tribe, regardless of place of residence, who are living on September 5, 1962. He shall provide a reasonable opportunity for any person to protest against the inclusion or omission of any name on or from the roll and his decision on such protests shall be final and conclusive. After all protests are disposed of, the roll shall be published in the Federal Register. The Secretary shall thereupon give the adult members of the tribe whose names appear on the roll an opportunity to indicate their agreement or disagreement with a division of tribal assets in accordance with the provisions of this subchapter. If a majority of those indicating agreement or disagreement are favorable to such division, the Secretary shall publish in the Federal Register a notice of the fact and the roll prepared by him shall thereupon become final and sections 972 to 980 of this title shall become effective.

(Pub. L. 87–629, § 1, Sept. 5, 1962, 76 Stat. 429.)

§ 972. Personal property rights; restrictions

Each member whose name appears on the final roll of the tribe as published in the Federal Register shall be entitled to receive in accordance with the provisions of this subchapter an equal share of the tribe's assets that are held in trust by the United States. This right shall constitute personal property which may be inherited or bequeathed, but it shall not otherwise be subject to alienation or encumbrance.

(Pub. L. 87–629, § 2, Sept. 5, 1962, 76 Stat. 429.)

§ 973. Distribution of assets

(a) Tribal assets; time limitation

All property of the United States used for the benefit of the Ponca Tribe of Native Americans of Nebraska is declared to be a part of the assets of the tribe, and all of the tribe's assets shall be distributed in accordance with the provisions of this section. The distribution shall be completed within three years from September 5, 1962, or as soon thereafter as practicable.

(b) Designation of property for church, park, playground, or cemetery

The tribe shall designate any part of the tribe's property that is to be set aside for church, park, playground, or cemetery purposes, and the Secretary is authorized to convey such property to trustees or agencies designated by the tribe for that purpose and approved by the Secretary.

(c) Homesites; market value; improvements

Each member may select for homesite purposes and receive title to not to exceed five acres of tribal land that is being used for homesite purposes by such member. The member shall pay the current market value of the homesite selection excluding any improvements or repairs constructed by such member, his wife, children, or ancestor, as determined by the Secretary of the Interior.

(d) Sale of assets not selected; bidding

All assets of the tribe that are not selected and conveyed to members shall be sold by competitive bid at not less than the current market value, and any member shall have the right to purchase property offered for sale for a price not less than the highest acceptable bid therefor. If more than one member exercises such right, the property shall be sold to the member exercising the right who offers the highest price.

(e) Proceeds and tribal funds for payment of tribal debts; distributive share; set off; member purchases of tribal property

The net proceeds of all sales of tribal property, and all other tribal funds, shall be used to pay, as authorized by the Secretary, any debts of the tribe. The remainder of such proceeds and funds shall be divided equally among the members whose names are on the final roll, or their heirs or legatees. Any debt owed by a member, heir, or legatee to the tribe or to the United States may be set off as authorized by the Secretary against the distributive share of such person. Any member of the tribe who purchases tribal property in accordance with this section may apply on the purchase price his share of the proceeds of all sales of tribal property, and the Secretary of the Interior shall adopt sales procedures that permit such action.

(Pub. L. 87–629, § 3, Sept. 5, 1962, 76 Stat. 429.)

§ 974. Sale of trust lands

(a) Requisite owners' request; time limitation; bidding; member purchases; reservation of mineral rights; representation of minors, incompetents and missing owners

The Secretary of the Interior is authorized to partition or to sell the complete interest (in-

cluding any unrestricted interest) in any land in which an undivided interest is owned by a member of the Ponca Tribe of Native Americans of Nebraska in a trust or restricted status, provided the partition or sale is requested by the owners of a 25 per centum interest in the land, and the partition or sale is made within three years from September 5, 1962. Any such sale shall be by competitive bid, except that with the concurrence of the owners of a 25 per centum interest in the land any owner of an interest in the land shall have the right to purchase the land within a reasonable time fixed by the Secretary of the Interior prior to a competitive sale at not less than its current market value. If more than one preference right is exercised, the sale shall be by competitive bid limited to the persons entitled to a preference. If the owners of a 25 per centum interest in the land so request, mineral rights may be reserved to the owners in an unrestricted status. The Secretary of the Interior may represent for the purposes of this section any Indian owner who is a minor, or who is non compos mentis, and, after giving reasonable notice of the proposed partition or sale by publication, he may represent an Indian owner who cannot be located.

(b) Removal of restrictions; title to lands

All restrictions on the alienation or taxation of interests in land that are owned by members of the Ponca Tribe of Native Americans of Nebraska three years after September 5, 1962 shall be deemed removed by operation of law, and an unrestricted title shall be vested in each such member.

(Pub. L. 87–629, § 4, Sept. 5, 1962, 76 Stat. 430.)

§ 975. Land surveys and execution of conveyances by Secretary; title of grantee

The Secretary of the Interior is authorized to make such land surveys and to execute such conveyancing instruments as he deems necessary to convey marketable and recordable title to the individual and tribal assets disposed of pursuant to this subchapter. Each grantee shall receive an unrestricted title to the property conveyed.

(Pub. L. 87–629, § 5, Sept. 5, 1962, 76 Stat. 430.)

§ 976. Indian claims unaffected

Nothing in this subchapter shall affect any claims heretofore filed against the United States by the Ponca Tribe of Native Americans of Nebraska.

(Pub. L. 87–629, § 6, Sept. 5, 1962, 76 Stat. 430.)

§ 977. Rights, privileges, and obligations under Nebraska laws unaffected

Nothing in this subchapter shall affect the rights, privileges, or obligations of the tribe and its members under the laws of Nebraska.

(Pub. L. 87–629, § 7, Sept. 5, 1962, 76 Stat. 430.)

§ 978. Taxes; initial exemption; taxes following distribution; valuation for capital gains or losses

No property distributed under the provisions of this subchapter shall at the time of distribution be subject to any Federal or State income tax. Following any distribution of property made under the provisions of this subchapter, such property and income derived therefrom by the distributee shall be subject to the same taxes, State and Federal as in the case of non-Indians: *Provided*, That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the grantee.

(Pub. L. 87–629, § 8, Sept. 5, 1962, 76 Stat. 430.)

§ 979. Expenses; appropriation authorization

Such amounts of tribal funds as may be needed to meet the expenses of the tribe under this subchapter, as approved by the Secretary of the Interior, shall be available for expenditure. There is authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated such sums as may be necessary to reimburse the tribe for such expenditures, and carry out the responsibilities of the Secretary under the provisions of this subchapter.

(Pub. L. 87–629, § 9, Sept. 5, 1962, 76 Stat. 430.)

§ 980. Termination of Federal trust; publication; termination of Federal services; application of Federal and State laws; citizenship status unaffected

When the distribution of tribal assets in accordance with the provisions of this subchapter has been completed, the Secretary of the Interior shall publish in the Federal Register a proclamation declaring that the Federal trust relationship to such tribe and its members has terminated. Thereafter, the tribe and its members shall not be entitled to any of the special services performed by the United States for Indians or Indian tribes because of their Indian status, all statutes of the United States that affect Indians or Indian tribes because of their Indian status shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner they apply to other persons or citizens within their jurisdiction. Nothing in this subchapter, however, shall affect the status of any Indian as a citizen of the United States.

(Pub. L. 87–629, § 10, Sept. 5, 1962, 76 Stat. 431.)

SUBCHAPTER XLVI–A—PONCA TRIBE OF NEBRASKA: RESTORATION OF RIGHTS AND PRIVILEGES

§ 983. Definitions

For purposes of this subchapter—

(1) The term ''Tribe'' means the Ponca Tribe of Nebraska.

(2) The term ''Secretary'' means the Secretary of the Interior or the designated representative of the Secretary of the Interior.

(3) The term ''Interim Council'' means the Board of Directors of the Northern Ponca Restoration Committee, Inc.

(4) The term ''member'' means a person who is enrolled on the membership roll of the Tribe of June 10, 1965, that was compiled by the Bureau of Indian Affairs or is entitled to be enrolled as a member of the Tribe under section 983e of this title.

(5) The term ''State'' means the State of Nebraska.

(Pub. L. 101–484, § 2, Oct. 31, 1990, 104 Stat. 1167.)

SHORT TITLE

Section 1 of Pub. L. 101–484 provided that: ''This Act [enacting this subchapter] may be cited as the 'Ponca Restoration Act'.''

§ 983a. Federal recognition

Federal recognition is hereby extended to the Ponca Tribe of Nebraska. All Federal laws of general application to Indians and Indian tribes (including the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461, et seq.), popularly known as the Indian Reorganization Act) shall apply with respect to the Tribe and to the members.

(Pub. L. 101–484, § 3, Oct. 31, 1990, 104 Stat. 1167.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 983b. Restoration of rights

(a) Rights abrogated or diminished

All rights and privileges of the Tribe which may have been abrogated or diminished before October 31, 1990, by reason of any provision of Public Law 87–629 [25 U.S.C. 971 et seq.] are hereby restored and such law shall no longer apply with respect to the Tribe or the members.

(b) Rights existing prior to restoration

Nothing in this subchapter may be construed to diminish any rights or privileges of the Tribe, or of the members, that exist prior to October 31, 1990.

(c) Acceptance by Secretary of real property transferred for benefit of Tribe; exemption from taxation

The Secretary shall accept not more than 1,500 acres of any real property located in Knox or Boyd Counties, Nebraska, that is transferred to the Secretary for the benefit of the Tribe. Such real property shall be accepted by the Secretary (subject to any rights, liens, or taxes that exist prior to the date of such transfer) in the name of the United States in trust for the benefit of the Tribe and shall be exempt from all taxes imposed by the Federal Government or any State or local government after such transfer. The Secretary may accept any additional acreage in Knox or Boyd Counties pursuant to his authority under the Act of June 18, 1934 (25 U.S.C. 461 et seq.).

(d) Effect on existing rights and obligations

Except as otherwise specifically provided in any other provision of this subchapter, nothing in this subchapter may be construed as altering or affecting—

(1) any rights or obligations with respect to property,

(2) any rights or obligations under any contract,

(3) any hunting, fishing, trapping, gathering, or water rights of the Tribe or the members, or

(4) any obligation to pay a tax levied before October 31, 1990.

(e) Reservation status

Reservation status shall not be granted any land acquired by or for the Tribe.

(Pub. L. 101–484, § 4, Oct. 31, 1990, 104 Stat. 1167.)

REFERENCES IN TEXT

Public Law 87–629, referred to in subsec. (a), is Pub. L. 87–629, Sept. 5, 1962, 76 Stat. 429, which is classified generally to subchapter XLVI (§ 971 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

Act of June 18, 1934, referred to in subsec. (c), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 983c. Services

Notwithstanding any other provision of law, the Tribe and its members shall be eligible, on or after October 31, 1990, for all Federal services and benefits furnished to federally recognized tribes without regard to the existence of a reservation for the Tribe. In the case of Federal services available to members of federally recognized tribes residing on or near a reservation, members of the Tribe residing in Sarpy, Burt, Platte, Stanton, Holt, Hall, Wayne, Knox, Boyd, Madison, Douglas, or Lancaster Counties of Nebraska, Woodbury or Pottawattomie Counties of Iowa, or Charles Mix County of South Dakota shall be deemed to be residing on or near a reservation.

(Pub. L. 101–484, § 5, Oct. 31, 1990, 104 Stat. 1168; Pub. L. 104–109, § 12, Feb. 12, 1996, 110 Stat. 765.)

AMENDMENTS

1996—Pub. L. 104–109 inserted ''Sarpy, Burt, Platte, Stanton, Holt, Hall, Wayne,'' before ''Knox'' and substituted '', Woodbury or Pottawattomie Counties of Iowa, or Charles Mix County'' for ''or Charles Mix County''.

§ 983d. Interim government

Until such time as a constitution for the Tribe is adopted in accordance with section 983f(a) of this title and tribal officials are elected under section 983f(b) of this title, the Tribe shall be governed by the Interim Council.

(Pub. L. 101–484, § 6, Oct. 31, 1990, 104 Stat. 1168.)

§ 983e. Membership roll

(a) Accuracy pending adoption of tribal constitution

Until a tribal constitution is adopted in accordance with section 983f of this title, the Interim Council shall take such measures as will insure the continuing accuracy of the membership roll of the Tribe.

(b) Eligibility pending adoption of tribal constitution; appeal of exclusion

(1) Until a tribal constitution is adopted in accordance with section 983f of this title, an individual shall be eligible for membership in the Tribe, and the name of the individual shall be placed on the membership roll of the Tribe, if—

(A) the individual is living and is not an enrolled member of another Indian tribe that is recognized by the Federal Government, and

(B) the individual—

(i) was listed on the tribal membership roll of June 18, 1965, that was compiled by the Bureau of Indian Affairs,

(ii) notwithstanding the application or appeal deadline dates, was entitled to be listed on the membership roll of June 18, 1965, that was compiled by the Bureau of Indian Affairs, but was not listed, or

(iii) is a lineal descendant of an individual, living or deceased, who is described in clause (i) or (ii).

(2) Any individual who is excluded from the membership roll of the Tribe by the Interim Council may appeal to the Secretary for a determination of the eligibility of the individual for membership in the Tribe. Such determination by the Secretary shall be final. The Interim Council shall include on the membership roll any such individual that the Secretary determines in such an appeal to be eligible for membership in the Tribe.

(c) Constitution as governing

After adoption of a tribal constitution in accordance with section 983f of this title, the constitution of the Tribe shall govern membership in the Tribe.

(Pub. L. 101–484, § 7, Oct. 31, 1990, 104 Stat. 1168.)

§ 983f. Tribal constitution

(a) Adoption by secret ballot; absentee balloting

Upon the completion of the tribal membership roll and upon the written request of the Interim Council, the Secretary shall conduct, by secret ballot, an election to adopt a constitution for the Tribe. Such constitution shall be submitted by the Interim Council to the Secretary no later than 1 year following October 31, 1990. Absentee balloting shall be permitted regardless of voter residence. In every other regard, the election shall be held according to section 476 of this title.

(b) Election of tribal officials

Not later than 120 days after the Tribe adopts a tribal constitution, the Secretary shall conduct an election by secret ballot for the purpose of electing tribal officials as provided in the constitution. Said election shall be conducted according to the procedures stated in subsection (a) of this section except to the extent that said procedures conflict with the tribal constitution.

(c) Governing body treated as Indian tribal government for purposes of taxation

Notwithstanding any other provision of law, the governing body of the Tribe established under the constitution of the Tribe that is adopted under subsection (a) of this section shall be treated as an Indian tribal government for purposes of title 26.

(Pub. L. 101–484, § 8, Oct. 31, 1990, 104 Stat. 1169.)

§ 983g. Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 101–484, § 9, Oct. 31, 1990, 104 Stat. 1169.)

§ 983h. Economic development plan

(a) Establishment; submittal to Congress

The Secretary shall—

(1) enter into negotiations with the governing body of the Tribe to establish a plan for economic development for the Tribe;

(2) in accordance with this section, establish such a plan; and

(3) upon the approval of such plan by the governing body of the Tribe (and after consultation with the State and local officials pursuant to subsection (b) of this section), shall[1] submit such plan to the Congress by no later than the date that is 3 years after October 31, 1990.

(b) Consultation with State and local officials

(1) To ensure that legitimate State and local interests are not prejudiced by the economic development plan established under subsection (a) of this section, the Secretary shall notify and consult with the appropriate officials of the State and all appropriate local governmental officials in the State with respect to the proposed economic development plan. The Secretary shall provide complete information on the proposed economic development plan to such officials, including the restrictions imposed on such plan by subsection (c) of this section.

(2) During any consultation by the Secretary under this subsection, the Secretary shall provide such information as the Secretary may possess and shall request comments and additional information on the extent of any State or local service to the Tribe.

(c) Required provisions

Any economic development plan established by the Secretary under subsection (a) of this section shall provide that—

(1) real property acquired by or for the Tribe located in Knox or Boyd Counties, Nebraska, shall be taken by the Secretary in the name of the United States in trust for the benefit of the Tribe;

(2) any real property taken in trust by the Secretary pursuant to such plan shall be subject to—

(A) all legal rights and interests in such land held by any person at the time of acquisition of such land by the Secretary, including any lien, mortgage, or previously levied and outstanding State or local tax, and

(B) foreclosure or sale in accordance with the laws of the State of Nebraska pursuant to the terms of any valid obligation in existence at the time of the acquisition of such land by the Secretary; and

(3) any real property transferred pursuant to such plan shall be exempt from Federal, State, and local taxation of any kind.

(d) Statement regarding individuals consulted, and testimony or comments received by Secretary

The Secretary shall append to the economic development plan submitted to the Congress

[1] So in original. The word ''shall'' probably should not appear.

under subsection (a) of this section a detailed statement—

(1) naming each individual consulted in accordance with subsection (b) of this section;

(2) summarizing the testimony received by the Secretary pursuant to any such consultation; and

(3) including any written comments or reports submitted to the Secretary by any individual named in paragraph (1).

(Pub. L. 101–484, § 10, Oct. 31, 1990, 104 Stat. 1169; Pub. L. 102–497, § 2, Oct. 24, 1992, 106 Stat. 3255.)

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–497 substituted ''3 years'' for ''2 years''.

SUBCHAPTER XLVII—CHEROKEE NATION: DISTRIBUTION OF JUDGMENT FUND

§ 991. Per capita payments to tribal members; closure of rolls; appropriations; accrued interest; deductions

The Secretary of the Interior is authorized and directed to distribute per capita to all persons whose names appear on the rolls of the Cherokee Nation, which rolls were closed and made final as of March 4, 1907, pursuant to the Act of April 26, 1906 (34 Stat. 137), and subsequent additions thereto, all funds which were appropriated by the Act of September 30, 1961 (75 Stat. 733), in satisfaction of a judgment that was obtained by the Cherokee Tribe in the Indian Claims Commission against the United States in docket numbered 173, together with the interest accrued thereon, except $1,432,084.17 which by stipulation of the parties has been set aside for the payments of any offsets that are finally determined to be due the United States, and except the amount allowed for attorney fees and expenses.

(Pub. L. 87–775, § 1, Oct. 9, 1962, 76 Stat. 776.)

REFERENCES IN TEXT

Act of April 26, 1906, referred to in text, is act Apr. 26, 1906, ch. 1876, 34 Stat. 137, which is set out as a note under section 355 of this title.

Act of September 30, 1961, referred to in text, is act Sept. 30, 1961, Pub. L. 87–322, 75 Stat. 733. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 992. Payments to adults, heirs or legatees; shares under certain amounts to revert to tribe; protection of minors and persons under legal disability

(a) Except as provided in subsections (b) and (c) of this section, a share or proportional share payable to a living adult shall be paid directly to such adult; (b) a share payable to a deceased enrollee shall be distributed to his heirs or legatees upon the filing of proof of death and inheritance satisfactory to the Secretary of the Interior, or his authorized representative, whose findings and determinations upon such proof shall be final and conclusive: *Provided*, That proportional shares of deceased heirs amounting to $10 or less shall not be distributed, and no inherited share amounting to $5 or less shall be paid, and the money shall revert to the tribe; (c) a share or proportional share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures as the Secretary determines will adequately protect the best interests of such persons.

(Pub. L. 87–775, § 2, Oct. 9, 1962, 76 Stat. 776.)

§ 993. Claims

(a) Time for filing; reversion of funds upon failure to file

All claims for per capita shares, whether by a living enrollee or by the heirs or legatees of a deceased enrollee, shall be filed with the Area Director of the Bureau of Indian Affairs, Muskogee, Oklahoma, not later than three years from October 9, 1962. Thereafter, all claims and the right to file same shall be forever barred and the unclaimed shares shall revert to the tribe.

(b) Use of reverted funds

Tribal funds that revert to the tribe pursuant to this subchapter, including interest and income therefrom, may be advanced or expended for any purpose that is authorized by the principal chief of the Cherokee Nation and approved by the Secretary of the Interior.

(Pub. L. 87–775, § 3, Oct. 9, 1962, 76 Stat. 776.)

§ 994. Tax exemption

No part of any funds which may be distributed in accordance with the provisions of this subchapter shall be subject to Federal or State income tax.

(Pub. L. 87–775, § 4, Oct. 9, 1962, 76 Stat. 776.)

§ 995. Payments not subject to liens, debts, or claims; exception

No part of any of the funds which may be so distributed shall be subject to any lien, debt, or claim of any nature whatsoever against the tribe or individual Indians except delinquent debts owed by the tribe to the United States, or owed by individual Indians to the tribe or to the United States.

(Pub. L. 87–775, § 5, Oct. 9, 1962, 76 Stat. 776.)

§ 996. Payments not "other income and resources"

Payments made under this subchapter shall not be held to be ''other income and resources'', as that term is used in sections 302(a)(10)(A), 602(a)(7),[1] 1202(a)(8), and 1352(a)(8) of title 42.

(Pub. L. 87–775, § 6, Oct. 9, 1962, 76 Stat. 776.)

REFERENCES IN TEXT

Section 602 of title 42, referred to in text, was repealed and a new section 602 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, subsec. (a)(7) no longer contains the term ''other income and resources''.

§ 997. Costs

All costs incident to making the payments authorized by this subchapter shall be paid by ap-

[1] See References in Text note below.

propriate withdrawals from the judgment fund and interest on the judgment fund, using the interest fund first.

(Pub. L. 87–775, § 7, Oct. 9, 1962, 76 Stat. 777.)

§ 998. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 87–775, § 8, Oct. 9, 1962, 76 Stat. 777.)

SUBCHAPTER XLVIII—SNAKE OR PAIUTE INDIANS OF OREGON: DISTRIBUTION OF JUDGMENT FUND

§ 1011. Membership roll; preparation; eligibility for enrollment; time for filing application; finality of Secretary's determination

The Secretary of the Interior shall prepare a roll of the persons of Snake or Paiute Indian ancestry who meet the following requirements for eligibility: (1) They were born on or prior to and living on August 20, 1964; and (2) they were members of or are lineal descendants of members of the bands whose chiefs and headmen We-you-we-wa (Wewa), Gaha-nee, E-hi-gant (Egan), Po-nee, Chaw-wat-na-nee, Owits (Oits), and Tash-e-go, signed the unratified Treaty of December 10, 1868; and (3) they do not elect to participate as beneficiaries of any awards granted in the docket numbered 87 claim of the Northern Paiute Nation. Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Portland, Oregon, within nine months after August 20, 1964 on forms prescribed for that purpose. The determination of the Secretary regarding utilization of available rolls or records and the eligibility for enrollment of an applicant shall be final.

(Pub. L. 88–464, § 1, Aug. 20, 1964, 78 Stat. 563.)

§ 1012. Authorization to withdraw, prorate and distribute funds

The Secretary is authorized and directed to withdraw the funds on deposit in the Treasury of the United States to the credit of the Snake or Paiute Tribe that were appropriated by the Act of April 13, 1960 (74 Stat. 42), in satisfaction of a judgment that was obtained by the tribe in the Indian Claims Commission against the United States in docket numbered 17 together with the interest accrued thereon, after payment of attorney fees and expenses, as well as all other expenses, and to prorate such funds among those persons whose names appear on the roll prepared pursuant to section 1011 of this title for distribution as hereinafter provided.

(Pub. L. 88–464, § 2, Aug. 20, 1964, 78 Stat. 563.)

REFERENCES IN TEXT

Act of April 13, 1960, referred to in text, is Pub. L. 86–424, Apr. 13, 1960, 74 Stat. 42. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1013. Distribution; persons entitled; considerations; tax exemption

The Secretary shall distribute shares payable to living persons enrolled pursuant to section 1011 of this title and shares payable to the heirs or legatees of deceased persons enrolled pursuant to section 1011 of this title according to rules and regulations which he shall prescribe, taking into account that in some instances a planned individual or group program for the use of shares may more properly serve the long-term interest of the enrollees than would direct, unsupervised per capita payment. The funds so distributed shall not be subject to Federal or State income tax.

(Pub. L. 88–464, § 3, Aug. 20, 1964, 78 Stat. 563.)

§ 1014. Costs

All costs incurred by the Secretary in the preparation of the rolls and in the distribution of payment of pro rata shares in accordance with the provisions of this subchapter shall be paid by appropriate withdrawals from the judgment fund.

(Pub. L. 88–464, § 4, Aug. 20, 1964, 78 Stat. 563.)

§ 1015. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 88–464, § 5, Aug. 20, 1964, 78 Stat. 563.)

SUBCHAPTER XLIX—SHAWNEE TRIBE OR NATION: DISTRIBUTION OF JUDGMENT FUND

§ 1031. Disposition of funds

The funds on deposit in the Treasury of the United States to the credit of the Shawnee Tribe or Nation that were appropriated by the Act of September 30, 1961 (75 Stat. 733), to pay a judgment that was obtained by the tribe or nation in the Indian Claims Commission for inadequate compensation for lands ceded to the United States under the treaty of May 10, 1854 (10 Stat. 1053), and the interest thereon, shall be divided on the basis of 514/1378ths to the Absentee Band of Shawnee Indians of Oklahoma; 747/1378ths to the Cherokee Band of Shawnee Indians of Oklahoma; and 117/1378ths to the Eastern Band of Shawnee Indians of Oklahoma, after payment of attorney fees and expenses of litigation.

(Pub. L. 88–457, § 1, Aug. 20, 1964, 78 Stat. 555.)

REFERENCES IN TEXT

Act of September 30, 1961, referred to in text, is Pub. L. 87–332, Sept. 30, 1961, 75 Stat. 733. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1032. Absentee and Eastern Bands; authorization for use of funds by tribal governing bodies; approval of Secretary of the Interior

The funds placed to the credit of the Absentee and the Eastern Bands of Shawnee Indians in

the United States Treasury, and the interest thereon may be advanced or expended for any purpose and in such manner as the respective tribal governing bodies authorize and the Secretary of the Interior approves.

(Pub. L. 88–457, § 2, Aug. 20, 1964, 78 Stat. 555.)

§ 1033. Cherokee Band; preparation of roll; eligibility for enrollment; rules and regulations

For the purpose of determining individual interests in the funds placed to the credit of the Cherokee Band of Shawnee Indians pursuant to section 1031 of this title, the Secretary shall prepare a new roll based on the roll of Cherokee Shawnees prepared in accordance with the Act of March 2, 1889 (25 Stat. 994). Eligible for inclusion on this new payment roll shall be all persons living on August 20, 1964, (a) who are, themselves, listed on the 1889 roll and (b) who are direct lineal descendants of persons listed on the 1889 roll. The Secretary may promulgate such rules and regulations as he considers necessary to carry out the purposes of this section.

(Pub. L. 88–457, § 3, Aug. 20, 1964, 78 Stat. 555.)

REFERENCES IN TEXT

Act of March 2, 1889, referred to in text, is act Mar. 2, 1889, ch. 412, 25 Stat. 994. Provisions of the act relating to roll of the Cherokee Shawnee were not classified to the Code.

§ 1034. Cherokee Band; per capita distribution

When the roll prepared pursuant to section 1033 of this title has been completed and finally approved, the Secretary shall withdraw from the Treasury the funds placed to the credit of the Cherokee Band of Shawnee Indians in accordance with section 1031 of this title, together with the interest accumulated thereon, and shall distribute them in equal per capita shares to persons whose names appear on the roll: *Provided*, That no person who receives a per capita payment from funds credited to the Cherokee Band of Shawnee Indians shall be permitted to share in any per capita distribution of the funds credited to the Absentee and Eastern Bands of Shawnee Indians.

(Pub. L. 88–457, § 4, Aug. 20, 1964, 78 Stat. 555.)

§ 1035. Distribution of shares

(a) Payments to enrollees, next of kin, or legatees

Except as provided in subsection (b) of this section, the Secretary shall distribute a per capita share payable to a living enrollee directly to such enrollee, and the Secretary shall distribute a per capita share payable to a deceased enrollee directly to his next of kin or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) Payments to minors or persons under legal disability

A share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures as the Secretary determines will adequately protect the best interests of such persons.

(Pub. L. 88–457, § 5, Aug. 20, 1964, 78 Stat. 555.)

§ 1036. Taxes

No part of any of the funds distributed in accordance with this subchapter shall be subject to Federal or State income tax.

(Pub. L. 88–457, § 6, Aug. 20, 1964, 78 Stat. 556.)

§ 1037. Costs

All costs incurred by the Secretary in the preparation of the roll and in the payment of the per capita shares in accordance with the provisions of this subchapter shall be paid by withdrawals from the judgment fund of the appropriate band.

(Pub. L. 88–457, § 7, Aug. 20, 1964, 78 Stat. 556.)

§ 1038. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 88–457, § 8, Aug. 20, 1964, 78 Stat. 556.)

SUBCHAPTER XLIX–A—SHAWNEE TRIBE STATUS

§ 1041. Findings

Congress finds the following:

(1) The Cherokee Shawnees, also known as the Loyal Shawnees, are recognized as the descendants of the Shawnee Tribe which was incorporated into the Cherokee Nation of Indians of Oklahoma pursuant to an agreement entered into by and between the Shawnee Tribe and the Cherokee Nation on June 7, 1869, and approved by the President on June 9, 1869, in accordance with Article XV of the July 19, 1866, Treaty between the United States and the Cherokee Nation (14 Stat. 799).

(2) The Shawnee Tribe from and after its incorporation and its merger with the Cherokee Nation has continued to maintain the Shawnee Tribe's separate culture, language, religion, and organization, and a separate membership roll.

(3) The Shawnee Tribe and the Cherokee Nation have concluded that it is in the best interests of the Shawnee Tribe and the Cherokee Nation that the Shawnee Tribe be restored to its position as a separate federally recognized Indian tribe and all current and historical responsibilities, jurisdiction, and sovereignty as it relates to the Shawnee Tribe, the Cherokee-Shawnee people, and their properties everywhere, provided that civil and criminal jurisdiction over Shawnee individually owned restricted and trust lands, Shawnee tribal trust lands, dependent Indian communities, and all other forms of Indian country within the jurisdictional territory of the Cherokee Nation and located within the State of Oklahoma shall remain with the Cherokee Nation, unless consent is obtained by the Shawnee Tribe from the Cherokee Nation to assume all or any portion of such jurisdiction.

(4) On August 12, 1996, the Tribal Council of the Cherokee Nation unanimously adopted Resolution 96–09 supporting the termination by the Secretary of the Interior of the 1869 Agreement.

(5) On July 23, 1996, the Shawnee Tribal Business Committee concurred in such resolution.

(6) On March 13, 2000, a second resolution was adopted by the Tribal Council of the Cherokee Nation (Resolution 15–00) supporting the submission of this legislation to Congress for enactment.

(Pub. L. 106–568, title VII, § 702, Dec. 27, 2000, 114 Stat. 2913.)

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–568, title VII, § 701, Dec. 27, 2000, 114 Stat. 2913, provided that: ''This title [enacting this subchapter] may be cited as the 'Shawnee Tribe Status Act of 2000'.''

§ 1041a. Definitions

In this subchapter:

(1) Cherokee Nation

The term ''Cherokee Nation'' means the Cherokee Nation, with its headquarters located in Tahlequah, Oklahoma.

(2) Secretary

The term ''Secretary'' means the Secretary of the Interior.

(3) Tribe

The term ''Tribe'' means the Shawnee Tribe, known also as the ''Loyal Shawnee'' or ''Cherokee Shawnee'', which was a party to the 1869 Agreement between the Cherokee Nation and the Shawnee Tribe of Indians.

(4) Trust land

The term ''trust land'' means land, the title to which is held by the United States in trust for the benefit of an Indian tribe or individual.

(5) Restricted land

The term ''restricted land'' means any land, the title to which is held in the name of an Indian or Indian tribe subject to restrictions by the United States against alienation.

(Pub. L. 106–568, title VII, § 703, Dec. 27, 2000, 114 Stat. 2913.)

§ 1041b. Federal recognition, trust relationship, and program eligibility

(a) Federal recognition

The Federal recognition of the Tribe and the trust relationship between the United States and the Tribe are hereby reaffirmed. Except as otherwise provided in this subchapter, the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 501 et seq.) (commonly known as the ''Oklahoma Indian Welfare Act''), and all laws and rules of law of the United States of general application to Indians, Indian tribes, or Indian reservations which are not inconsistent with this subchapter shall apply to the Tribe, and to its members and lands. The Tribe is hereby recognized as an independent tribal entity, separate from the Cherokee Nation or any other Indian tribe.

(b) Program eligibility

(1) In general

Subject to the provisions of this subsection, the Tribe and its members are eligible for all special programs and services provided by the United States to Indians because of their status as Indians.

(2) Continuation of benefits

Except as provided in paragraph (3), the members of the Tribe who are residing on land recognized by the Secretary to be within the Cherokee Nation and eligible for Federal program services or benefits through the Cherokee Nation shall receive such services or benefits through the Cherokee Nation.

(3) Administration by Tribe

The Tribe shall be eligible to apply for and administer the special programs and services provided by the United States to Indians because of their status as Indians, including such programs and services within land recognized by the Secretary to be within the Cherokee Nation, in accordance with applicable laws and regulations to the same extent that the Cherokee Nation is eligible to apply for and administer programs and services, but only—

(A) if the Cherokee Nation consents to the operation by the Tribe of federally funded programs and services;

(B) if the benefits of such programs or services are to be provided to members of the Tribe in areas recognized by the Secretary to be under the jurisdiction of the Tribe and outside of land recognized by the Secretary to be within the Cherokee Nation, so long as those members are not receiving such programs or services from another Indian tribe; or

(C) if under applicable provisions of Federal law, the Cherokee Nation is not eligible to apply for and administer such programs or services.

(4) Duplication of services not allowed

The Tribe shall not be eligible to apply for or administer any Federal programs or services on behalf of Indians[1] recipients if such recipients are receiving or are eligible to receive the same federally funded programs or services from the Cherokee Nation.

(5) Cooperative agreements

Nothing in this section shall restrict the Tribe and the Cherokee Nation from entering into cooperative agreements to provide such programs or services and such funding agreements shall be honored by Federal agencies, unless otherwise prohibited by law.

(Pub. L. 106–568, title VII, § 704, Dec. 27, 2000, 114 Stat. 2914.)

REFERENCES IN TEXT

The Oklahoma Indian Welfare Act, referred to in subsec. (a), is act June 26, 1936, ch. 831, 49 Stat. 1967, as amended, also popularly known as the Oklahoma Welfare Act, which is classified generally to subchapter VIII (§ 501 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 501 of this title and Tables.

§ 1041c. Establishment of a tribal roll

(a) Approval of base roll

Not later than 180 days after December 27, 2000, the Tribe shall submit to the Secretary for

[1] So in original. Probably should be ''Indian''.

approval its base membership roll, which shall include only individuals who are not members of any other federally recognized Indian tribe or who have relinquished membership in such tribe and are eligible for membership under subsection (b) of this section.

(b) Base roll eligibility

An individual is eligible for enrollment on the base membership roll of the Tribe if that individual—

(1) is on, or eligible to be on, the membership roll of Cherokee Shawnees maintained by the Tribe prior to December 27, 2000, which is separate from the membership roll of the Cherokee Nation; or

(2) is a lineal descendant of any person—

(A) who was issued a restricted fee patent to land pursuant to Article 2 of the Treaty of May 10, 1854, between the United States and the Tribe (10 Stat. 1053); or

(B) whose name was included on the 1871 Register of names of those members of the Tribe who moved to, and located in, the Cherokee Nation in Indian Territory pursuant to the Agreement entered into by and between the Tribe and the Cherokee Nation on June 7, 1869.

(c) Future membership

Future membership in the Tribe shall be as determined under the eligibility requirements set out in subsection (b)(2) of this section or under such future membership ordinance as the Tribe may adopt.

(Pub. L. 106–568, title VII, § 705, Dec. 27, 2000, 114 Stat. 2915.)

§ 1041d. Organization of the Tribe; tribal constitution

(a) Existing constitution and governing body

The existing constitution and bylaws of the Cherokee Shawnee and the officers and members of the Shawnee Tribal Business Committee, as constituted on December 27, 2000, are hereby recognized respectively as the governing documents and governing body of the Tribe.

(b) Constitution

Notwithstanding subsection (a) of this section, the Tribe shall have a right to reorganize its tribal government pursuant to section 503 of this title.

(Pub. L. 106–568, title VII, § 706, Dec. 27, 2000, 114 Stat. 2915.)

§ 1041e. Tribal land

(a) Land acquisition

The Tribe shall be eligible to have land acquired in trust for its benefit pursuant to section 465 of this title and section 501 of this title.

(b) Restriction

No land recognized by the Secretary to be within the Cherokee Nation or any other Indian tribe may be taken into trust for the benefit of the Tribe under this section without the consent of the Cherokee Nation or such other tribe, respectively.

(Pub. L. 106–568, title VII, § 707, Dec. 27, 2000, 114 Stat. 2915; Pub. L. 109–59, title X, § 10213, Aug. 10, 2005, 119 Stat. 1939.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–59 struck out ''(1) In general'' before ''The Tribe'' and heading and text of par. (2). Text read as follows: ''Notwithstanding any other provision of law but subject to subsection (b) of this section, if the Tribe transfers any land within the boundaries of the State of Oklahoma to the Secretary, the Secretary shall take such land into trust for the benefit of the Tribe.''

§ 1041f. Jurisdiction

(a) In general

The Tribe shall have jurisdiction over trust land and restricted land of the Tribe and its members to the same extent that the Cherokee Nation has jurisdiction over land recognized by the Secretary to be within the Cherokee Nation and its members, but only if such land—

(1) is not recognized by the Secretary to be within the jurisdiction of another federally recognized tribe; or

(2) has been placed in trust or restricted status with the consent of the federally recognized tribe within whose jurisdiction the Secretary recognizes the land to be, and only to the extent that the Tribe's jurisdiction has been agreed to by that host tribe.

(b) Rule of construction

Nothing in this subchapter shall be construed to diminish or otherwise limit the jurisdiction of any Indian tribe that is federally recognized on the day before December 27, 2000, over trust land, restricted land, or other forms of Indian country of that Indian tribe on such date.

(Pub. L. 106–568, title VII, § 708, Dec. 27, 2000, 114 Stat. 2916.)

§ 1041g. Individual Indian land

Nothing in this subchapter shall be construed to affect the restrictions against alienation of any individual Indian's land and those restrictions shall continue in force and effect.

(Pub. L. 106–568, title VII, § 709, Dec. 27, 2000, 114 Stat. 2916.)

§ 1041h. Treaties not affected

No provision of this subchapter shall be construed to constitute an amendment, modification, or interpretation of any treaty to which a tribe referred to in this subchapter is a party nor to any right secured to such a tribe or to any other tribe by any treaty.

(Pub. L. 106–568, title VII, § 710, Dec. 27, 2000, 114 Stat. 2916.)

SUBCHAPTER L—TILLAMOOK AND NEHALEM BANDS OF THE TILLAMOOK INDIANS: DISTRIBUTION OF JUDGMENT FUND

§ 1051. Membership roll; preparation; eligibility for enrollment; filing of applications; finality of Secretary's decision

The Secretary of the Interior shall prepare a roll of all persons who meet both of the following requirements for eligibility: (1) They were born on or prior to and living on August 30, 1964; and (2) their name or the name of an ancestor

through whom they claim eligibility appears either on the census roll of the Naalem (Nehalem) Band of Tillamook Indians dated January 28, 1898, or on the annuity payment roll of the Tillamook Band of Tillamook Indians prepared in 1914 under the provisions of the Act of August 24, 1912 (37 Stat. L., 519–535). Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Portland, Oregon, within six months after August 30, 1964, on forms prescribed for that purpose. The determination of the Secretary regarding the eligibility for enrollment of an applicant shall be final.

(Pub. L. 88–506, § 1, Aug. 30, 1964, 78 Stat. 639.)

REFERENCES IN TEXT

Act of August 24, 1912, referred to in text, is act Aug. 24, 1912, ch. 388, 37 Stat. 519–534. Provisions of the act relating to the annuity payment roll of the Tillamook Band of the Tillamook Indians were not classified to the Code.

§ 1052. Distribution of funds; pro rata basis

The Secretary is authorized and directed to withdraw the funds on deposit in the Treasury of the United States to the credit of the Nehalem and Tillamook Bands of Indians that were appropriated by the Act of May 17, 1963 (77 Stat. 43), in satisfaction of a judgment obtained by the bands in the Indian Claims Commission against the United States in Docket Numbered 240 together with the interest accrued thereon and to pro rate such funds among those persons whose names appear on the roll prepared pursuant to section 1051 of this title. The Secretary shall distribute shares payable to living persons enrolled pursuant to section 1051 of this title and shares payable to the heirs and legatees of deceased persons enrolled pursuant to section 1051 of this title according to such rules and regulations as he may prescribe.

(Pub. L. 88–506, § 2, Aug. 30, 1964, 78 Stat. 639.)

REFERENCES IN TEXT

Act of May 17, 1963, referred to in text, is Pub. L. 88–25, May 17, 1963, 77 Stat. 43. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1053. Taxes

The funds distributed in accordance with this subchapter shall not be subject to the Federal or State income tax.

(Pub. L. 88–506, § 3, Aug. 30, 1964, 78 Stat. 639.)

§ 1054. Costs

Any costs incurred by the Secretary in the preparation of the rolls and in the distribution of payment of pro rata shares in accordance with the provisions of this subchapter shall be paid by appropriate withdrawals from the judgment fund.

(Pub. L. 88–506, § 4, Aug. 30, 1964, 78 Stat. 639.)

§ 1055. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 88–506, § 5, Aug. 30, 1964, 78 Stat. 639.)

SUBCHAPTER LI—CONFEDERATED TRIBES OF THE COLVILLE RESERVATION: DISTRIBUTION OF JUDGMENT FUND

§ 1071. Per capita payments to enrolled tribal members; tax exemption

The funds on deposit in the Treasury of the United States to the credit of the Colville Tribe, San Poeils-Nespelem Tribe, Okanogan Tribe, Methow Tribe, and Lake Tribe (certain constituent groups of the Confederated Tribes of the Colville Reservation) that were appropriated to pay a judgment of the Indian Claims Commission dated March 1, 1960, in docket numbered 181, and the funds which may be deposited in the Treasury of the United States to the credit of the said constituent groups or any other constituent groups of the Confederated Tribes of the Colville Reservation to pay any judgments arising out of claims presently pending before the Indian Claims Commission and the interest on said judgments, after payment of attorney fees and expenses, shall be credited to the account of the Confederated Tribes of the Colville Reservation and the Secretary of the Interior is authorized and directed to make a per capita distribution from such funds of $350, to the extent that such funds are available, to each enrolled member of the Confederated Tribes of the Colville Reservation. Any part of such funds distributed per capita to the members of the tribes shall not be subject to Federal or State income tax.

(Pub. L. 88–551, Aug. 31, 1964, 78 Stat. 755.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

CODIFICATION

Section was not enacted as part of Pub. L. 92–244, Mar. 9, 1972, 86 Stat. 56, which comprises this subchapter.

LITIGATION WITH YAKIMA TRIBES OF INDIANS OF THE YAKIMA RESERVATION

Authority to commence or defend in the United States Court of Claims an action to determine claims against judgment fund, see sections 609 and 609a of this title.

§ 1072. Per capita distribution; limitation of $950 per share

The funds deposited to the credit of the Confederated Tribes of the Colville Reservation to pay a judgment arising out of proceedings before the Indian Claims Commission in docket numbered 178 and the funds appropriated by the Act of July 6, 1970 (84 Stat. 376), to pay a judgment in favor of the Confederated Tribes of the Colville Reservation, and others, in Indian Claims Commission docket numbered 179, and apportioned to the Confederated Tribes under

the Act of April 24, 1961 (75 Stat. 45), and interest thereon, after payment of attorney fees and other litigation expenses, shall be distributed on a per capita basis, each share amounting to not more than $950, to the extent such funds are available, to each person born on or prior to and living on March 9, 1972, who meets the requirements for membership in the Confederated Tribes of the Colville Reservation. The remaining balance of such funds, and the interest thereon, shall be combined and distributed with any other tribal funds that may hereafter become available for per capita distribution.

(Pub. L. 92–244, § 1, Mar. 9, 1972, 86 Stat. 56.)

REFERENCES IN TEXT

Act of July 6, 1970, referred to in text, is act July 6, 1970, Pub. L. 91–305 84 Stat. 376, which was not classified to the Code.

Act of April 24, 1961, referred to in text, is act Apr. 24, 1961, Pub. L. 87–24 75 Stat. 45, which was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1073. Tax exemption; payments to minors and persons under legal disabilities

None of the funds distributed per capita under the provisions of this subchapter shall be subject to Federal or State income tax. Any per capita share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines will adequately protect the best interest of such persons.

(Pub. L. 92–244, § 2, Mar. 9, 1972, 86 Stat. 57.)

SUBCHAPTER LII—QUILEUTE AND HOH TRIBES OF WASHINGTON: DISTRIBUTION OF JUDGMENT FUND

§ 1081. Division of funds on basis of tribal membership rolls; advances or expenditures from tribal funds

The unexpended balance of funds on deposit in the Treasury of the United States to the credit of the Quileute and Hoh Tribes that were appropriated by the Act of January 6, 1964 (77 Stat. 857), to pay a judgment by the Indian Claims Commission in docket numbered 155, and the interest thereon, after payment of attorney fees and expenses, shall be divided on the basis of tribal membership rolls for the respective groups after approval of such rolls by the Secretary of the Interior, and the funds so divided, including the interest thereon, may be advanced or expended for any purpose that is authorized by the respective tribal governing bodies and approved by the Secretary of the Interior: *Provided*, That until the Hoh Indians develop a formal organization with a recognized governing body, their share of the judgment funds, and any other Hoh tribal funds, may be expended by the Secretary for the benefit of the Hoh Reservation and the Hoh tribal members, upon approval by him of plans adopted by a majority of the adult Hoh Indians voting at a general meeting of the tribal membership called by the Secretary.

(Pub. L. 89–655, § 1, Oct. 14, 1966, 80 Stat. 905.)

REFERENCES IN TEXT

Act of January 6, 1964, referred to in text, is act Jan 6, 1964, Pub. L. 88–258, 77 Stat. 857. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1082. Membership rolls; preparation; eligibility for enrollment; relinquishment of membership with other tribes

The Secretary of the Interior shall prepare membership rolls for the Quileute and Hoh Tribes. No person shall be eligible to have his name placed on either membership roll who at the same time is a member of any other tribe, and no person shall be permitted to be enrolled in both the Quileute and Hoh Tribes: *Provided*, That persons eligible for enrollment or already enrolled with other tribes may relinquish that membership through filing a formal statement of relinquishment with the Secretary according to rules and regulations which he may prescribe.

(Pub. L. 89–655, § 2, Oct. 14, 1966, 80 Stat. 905.)

§ 1083. Quileute base roll

When preparing a Quileute tribal roll, the Secretary shall employ the criteria in article II of the approved constitution and bylaws of the Quileute Tribe of the Quileute Reservation, except that, in the absence of the 1935 census referred to in article II, section 1(a) of the constitution and bylaws, the Secretary, with the assistance of the governing body of the Quileute Tribe, shall construct a base roll from pertinent records, including other census data, of the same period. No person shall be eligible to have his name placed thereon if born after December 31, 1940. Upon approval of such base roll by the Secretary and the Quileute tribal governing body, it shall henceforth serve as the Quileute base roll for all purposes, the provisions of article II, section 1(a) notwithstanding.

(Pub. L. 89–655, § 3, Oct. 14, 1966, 80 Stat. 905.)

§ 1084. Hoh base roll

When preparing a Hoh tribal base roll, the Secretary shall include only the names of applicants who demonstrate that their names or the names of lineal ancestors from whom they are descended appear on the Census of the Hoh Indians of Neah Bay Agency, Washington, June 30, 1894. Upon approval by the Secretary, such roll shall henceforth serve as the Hoh base roll for all purposes.

(Pub. L. 89–655, § 4, Oct. 14, 1966, 80 Stat. 905.)

§ 1085. Tribal organizational document: development and adoption

Upon completion of a Hoh base roll in accordance with section 1084 of this title, the Secretary shall assist the Hoh Indians in developing a tribal organizational document and shall call an election for the purpose of voting on the adoption of such document.

(Pub. L. 89–655, § 5, Oct. 14, 1966, 80 Stat. 905.)

§ 1086. Advances or expenditures from tribal funds

The Secretary is authorized to advance or expend, as provided in section 1081 of this title, the Hoh tribal funds now on deposit, or hereafter placed on deposit, in the Treasury of the United States under the following symbols and titles:

14X7235 Proceeds of Labor, Hoh Indians, Washington;

14X7735 Interest and Accruals on Interest, Proceeds of Labor, Hoh Indians, Washington.

(Pub. L. 89–655, § 6, Oct. 14, 1966, 80 Stat. 905.)

§ 1087. Tax exemption

Any part of the funds that may be distributed to individual members of the Quileute and Hoh Tribes under the provisions of this subchapter shall not be subject to Federal or State income taxes.

(Pub. L. 89–655, § 7, Oct. 14, 1966, 80 Stat. 906.)

§ 1088. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 89–655, § 8, Oct. 14, 1966, 80 Stat. 906.)

SUBCHAPTER LIII—NOOKSACK TRIBE OF WASHINGTON: DISTRIBUTION OF JUDGMENT FUND

§ 1101. Membership roll; preparation; eligibility for enrollment; filing of applications; finality of determination

The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements for eligibility: (a) They were born on or prior to and were living on October 14, 1966, and (b) they are descendants of members of the Nooksack Tribe as it existed in 1855. Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Portland, Oregon, on forms prescribed for that purpose. The determination of the Secretary regarding the utilization of available rolls or records and the eligibility for enrollment of an applicant shall be final.

(Pub. L. 89–656, § 1, Oct. 14, 1966, 80 Stat. 906.)

§ 1102. Distribution of funds; persons entitled

After the deduction of attorney fees, litigation expenses, the costs of roll preparation, and such sums as may be required to distribute individual shares, the funds, including interest, remaining to the credit of the Nooksack Tribe, which were appropriated by the Act of April 30, 1965 (Public Law 89–16), shall be distributed in equal shares to those persons whose names appear on the roll prepared in accordance with section 1101 of this title.

(Pub. L. 89–656, § 2, Oct. 14, 1966, 80 Stat. 906.)

REFERENCES IN TEXT

Act of April 30, 1965, referred to in text, is act Apr. 30, 1965, Pub. L. 89–16, 79 Stat. 92, known as the Second Supplemental Appropriations Act, 1965. That portion of the act which appropriated the funds referred to was not classified to the Code.

§ 1103. Payments to enrollees, heirs or legatees; protection of minors and persons under legal disability; credits of shares under certain amounts; escheat

The Secretary shall distribute a share payable to a living enrollee directly to such enrollee or in such manner as is deemed by the Secretary to be in the enrollee's best interest. The Secretary shall distribute the per capita share of a deceased enrollee to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary whose findings upon such proof shall be final and conclusive. Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid to the persons whom the Secretary determines will best protect their interests. Proportional shares of heirs or legatees amounting to $5 or less shall not be distributed and shall remain to the credit of the Nooksack Tribe. Any sum of money remaining to the credit of the Nooksack Tribe as a result of this judgment, three years after October 14, 1966, shall escheat to the United States and shall be deposited in the Treasury of the United States in miscellaneous receipts.

(Pub. L. 89–656, § 3, Oct. 14, 1966, 80 Stat. 906.)

§ 1104. Tax exemption

The funds distributed under the provisions of this subchapter shall not be subject to Federal or State income taxes.

(Pub. L. 89–656, § 4, Oct. 14, 1966, 80 Stat. 906.)

§ 1105. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 89–656, § 5, Oct. 14, 1966, 80 Stat. 906.)

SUBCHAPTER LIV—MIAMI INDIANS OF INDIANA AND OKLAHOMA: DISTRIBUTION OF JUDGMENT FUND

§ 1111. Distribution and use of funds

The Secretary of the Interior shall take the necessary steps to provide for the distribution and use of the money appropriated to the Miami Indians of Indiana and Oklahoma in satisfaction of judgments awarded by the Indian Claims Commission in dockets numbered 67 and 124, 124–A, and 251 as hereinafter provided.

(Pub. L. 89–659, § 1, Oct. 14, 1966, 80 Stat. 909.)

§ 1112. Advances or expenditures from funds of Miami Tribe of Oklahoma; persons entitled

The funds on deposit in the Treasury of the United States to the credit of the Miami Tribe of Oklahoma that were appropriated by the Act of September 30, 1961 (75 Stat. 747), to pay a judgment by the Indian Claims Commission in docket numbered 251, together with the interest thereon, after payment of attorney fees and expenses, shall be advanced or expended in accordance with plans adopted by the governing body of the Miami Tribe of Oklahoma and approved by the Secretary of the Interior. The persons entitled to share in any per capita payment au-

thorized by the governing body and approved by the Secretary shall be all individuals who are enrolled members of the Miami Tribe of Oklahoma, as organized under the Oklahoma Welfare Act (49 Stat. 1967) [25 U.S.C. 501 et seq.].

(Pub. L. 89–659, § 2, Oct. 14, 1966, 80 Stat. 909.)

REFERENCES IN TEXT

Act of September 30, 1961, referred to in text, is act Sept. 30, 1961, Pub. L. 87–322, 75 Stat. 747. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

The Oklahoma Welfare Act, referred to in text, is act June 26, 1936, ch. 831, 49 Stat. 1967, as amended, which is classified generally to subchapter VIII (§ 501 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

§ 1113. Miami Indians of Indiana; membership roll; preparation; eligibility for enrollment

For the purpose of determining entitlement to the judgment awarded in Indian Claims Commission docket numbered 124–A to the Miami Indians of Indiana and appropriated by the Act of September 30, 1961 (75 Stat. 747), the Secretary shall prepare a roll of all persons of Miami Indian ancestry who meet the following requirements for eligibility:

(a) They were born on or prior to, and living on, October 14, 1966; and

(b) Their name or the name of an ancestor from whom they claim eligibility appears on the roll of Miami Indians of Indiana of June 12, 1895, or the roll of ''Miami Indians of Indiana, now living in Kansas, Quapaw Agency, I.T., and Oklahoma Territory,'' prepared and completed pursuant to the Act of March 2, 1895 (28 Stat. 903), or the roll of the Eel River Miami Tribe of Indians of May 27, 1889, prepared and completed pursuant to the Act of June 29, 1888 (25 Stat. 223). No person whose name appears on the current tribal roll of the Miami Tribe of Oklahoma shall be eligible to be enrolled under this section.

(Pub. L. 89–659, § 3, Oct. 14, 1966, 80 Stat. 909.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

Act of September 30, 1961, referred to in subsec. (a), is act Sept. 30, 1961, Pub. L. 87–322, 75 Stat. 747. That portion of the act which appropriated the funds referred to was not classified to the Code.

Act of March 2, 1895, referred to in subsec. (b), is act Mar. 2, 1895, ch. 188, 28 Stat. 903. Provisions of the act relating to the roll of the Miami Indians of Indiana were not classified to the Code.

Act of June 29, 1888, referred to in subsec. (b), is act June 29, 1888, ch. 503, 25 Stat. 223. Provisions of the act relating to the roll of the Eel River Miami Tribe of Indians of May 27, 1889, were not classified to the Code.

§ 1114. Miami Indians of Oklahoma; membership roll; preparation; eligibility for enrollment

For the purpose of determining entitlement to the judgment awarded in Indian Claims Commission dockets numbered 67 and 124 and appropriated by the Act of May 17, 1963 (77 Stat. 43), the Secretary of the Interior shall prepare a roll of all persons of Miami Indian ancestry who meet the following requirements for eligibility:

(a) They were born on or prior to, and living on, October 14, 1966; and

(b) Their name or the name of an ancestor from whom they claim eligibility appears on any of the rolls cited in section 1113(b) of this title, or on the roll of the Western Miami Tribe of Indians of June 12, 1891, prepared and completed pursuant to the Act of March 3, 1891 (26 Stat. 1000).

(Pub. L. 89–659, § 4, Oct. 14, 1966, 80 Stat. 909.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

Act of May 17, 1963, referred to in text, is act May 17, 1963, Pub. L. 88–25, 77 Stat. 43. That portion of the act which appropriated the funds referred to was not classified to the Code.

Act of March 3, 1891, referred to in text, is act Mar. 3, 1891, ch. 543, 26 Stat. 1000. Provisions of the act relating to the roll of the Western Miami Tribe of June 12, 1891, were not classified to the Code.

§ 1115. Applications; place for filing; finality of determination

Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Muskogee, Oklahoma, on forms prescribed for that purpose. The determination of the Secretary regarding the eligibility of an applicant shall be final.

(Pub. L. 89–659, § 5, Oct. 14, 1966, 80 Stat. 909.)

§ 1116. Distribution of funds of Miami Indians of Indiana; persons entitled

The funds on deposit in the Treasury of the United States to the credit of the Miami Indians of Indiana that were appropriated by the Act of September 30, 1961 (75 Stat. 747), to pay a judgment in Indian Claims Commission docket numbered 124–A, and the interest thereon, after payment of attorney fees and expenses, shall be distributed to the individuals whose names appear on the roll prepared pursuant to section 1113 of this title, and in accordance with the instructions contained in sections 1118 and 1119 of this title.

(Pub. L. 89–659, § 6, Oct. 14, 1966, 80 Stat. 909.)

REFERENCES IN TEXT

Act of September 30, 1961, referred to in text, is act Sept. 30, 1961, Pub. L. 87–322, 75 Stat. 747. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1117. Distribution of funds of Miami Indians of Oklahoma; persons entitled

The funds on deposit in the Treasury of the United States to the credit of the ''Miami Tribe of Oklahoma'' that were appropriated by the Act of May 17, 1963 (77 Stat. 43), to pay a judgment in Indian Claims Commission dockets numbered 67 and 124, and the interest thereon, after payment of attorney fees and expenses, shall be dis-

tributed to the persons whose names appear on the roll prepared pursuant to section 1114 of this title, and in accordance with the instructions contained in sections 1118 and 1119 of this title.

(Pub. L. 89–659, § 7, Oct. 14, 1966, 80 Stat. 910.)

REFERENCES IN TEXT

Act of May 17, 1963, referred to in text, is act May 17, 1963, Pub. L. 88–25, 77 Stat. 43. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1118. Distribution of shares

(a) Payments to enrollees, next of kin, or legatees

Except as provided in subsection (b) of this section, the Secretary shall distribute a per capita share payable to a living enrollee directly to such enrollee, and the Secretary shall distribute a per capita share payable to a deceased enrollee directly to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) Payments to minors or persons under legal disability

A share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures as the Secretary determines will adequately protect the best interests of such persons.

(Pub. L. 89–659, § 8, Oct. 14, 1966, 80 Stat. 910.)

§ 1119. Reserve funds for expenses

(a) Establishment

Prior to making any distribution of the funds credited to the Miami Tribe or Nation and the Miami Tribe of Indiana or approving any expenditures of the funds credited to the Miami Tribe of Oklahoma, pursuant to this subchapter, the Secretary is authorized to reserve in the Treasury of the United States a part of such funds sufficient, in his judgment, to meet the litigation expenses, exclusive of attorney fees, of the remaining cases which each has pending before the Indian Claims Commission.

(b) Availability

The funds reserved shall be available for appropriate withdrawal by the Secretary.

(Pub. L. 89–659, § 9, Oct. 14, 1966, 80 Stat. 910.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in subsec. (a), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1120. Tax exemption; costs

The funds distributed under the provisions of this subchapter shall not be subject to Federal or State income taxes, and any costs incurred by the Secretary in the preparation of the rolls and in the distribution of per capita shares in accordance with the provisions of this subchapter shall be paid by appropriate withdrawals from the judgment funds.

(Pub. L. 89–659, § 10, Oct. 14, 1966, 80 Stat. 910.)

§ 1121. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 89–659, § 11, Oct. 14, 1966, 80 Stat. 910.)

§ 1122. Payment and distribution of judgment funds

The funds appropriated by the Acts of July 22, 1969 (83 Stat. 49), and January 8, 1971 (84 Stat. 1981), to pay judgments awarded to the Miami Tribe of Oklahoma and the Miami Indians of Indiana in Indian Claims Commission dockets numbered 255 and 124–C, dockets numbered 256, 124–D, E, and F, and dockets numbered 131 and 253, and to pay a judgment awarded to the Miami Tribe of Oklahoma in docket numbered 251–A, together with interest thereon, after payment of attorney fees and litigation expenses, shall be distributed as provided in sections 1122 to 1130 of this title.

(Pub. L. 92–309, § 1, June 2, 1972, 86 Stat. 199.)

REFERENCES IN TEXT

Acts of July 22, 1969, and January 8, 1971, referred to in text, are Pub. L. 91–47, July 22, 1969, 83 Stat. 49, and Pub. L. 91–665, Jan. 8, 1971, 84 Stat. 1981, respectively, which were not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

CODIFICATION

Section was not enacted as part of Pub. L. 89–659, Oct. 14, 1966, 80 Stat. 909, which comprises this subchapter.

§ 1123. Costs

The Secretary may make appropriate withdrawals from the judgment funds and interest thereon, using interest funds first, to pay costs incident to carrying out the provisions of sections 1122 to 1130 of this title.

(Pub. L. 92–309, § 2, June 2, 1972, 86 Stat. 199.)

CODIFICATION

Section was not enacted as part of Pub. L. 89–659, Oct. 14, 1966, 80 Stat. 909, which comprises this subchapter.

§ 1124. Revision of enrollment list

The Secretary of the Interior shall bring current to June 2, 1972, the roll prepared pursuant to section 1114 of this title, by (a) adding the names of persons living on June 2, 1972, who were eligible for enrollment under section 1114 of this title but were not enrolled, (b) by adding the names of children born to enrollees on or prior to June 2, 1972, and who are living on said date, (c) by adding the names of children born to persons who were eligible for enrollment under section 1114 of this title but who were not enrolled, regardless of whether such persons are living or deceased on June 2, 1972, provided said children of such persons are living on June 2, 1972, and (d) by deleting the names of persons who are deceased as of June 2, 1972.

(Pub. L. 92–309, § 3, June 2, 1972, 86 Stat. 200.)

CODIFICATION

Section was not enacted as part of Pub. L. 89–659. Oct. 14, 1966, 80 Stat. 909, which comprises this subchapter.

§ 1125. Applications for enrollment

An application for addition of a name to the roll pursuant to section 1124 of this title must be filed with the area director of the Bureau of Indian Affairs, Muskogee, Oklahoma, on forms prescribed for that purpose. The determination of the Secretary regarding the eligibility of an applicant shall be final.

(Pub. L. 92–309, § 4, June 2, 1972, 86 Stat. 200.)

CODIFICATION

Section was not enacted as part of Pub. L. 89–659, Oct. 14, 1966, 80 Stat. 909, which comprises this subchapter.

§ 1126. Equal distribution to individuals enrolled

On completion of the roll by the Secretary of the Interior, the balance of the funds appropriated to satisfy the judgments in dockets numbered 255 and 124–C, dockets numbered 256, 124–D, E, and F, and dockets numbered 131 and 253, and interest accumulated thereon, shall be distributed equally to the individuals enrolled.

(Pub. L. 92–309, § 5, June 2, 1972, 86 Stat. 200.)

CODIFICATION

Section was not enacted as part of Pub. L. 89–659, Oct. 14, 1966, 80 Stat. 909, which comprises this subchapter.

§ 1127. Use of appropriated funds; approval by Secretary on receipt of recommendations from tribal governing body

The funds on deposit in the Treasury of the United States to the credit of the Miami Tribe of Oklahoma that were appropriated by the Act of July 22, 1969 (83 Stat. 49), to pay a judgment by the Indian Claims Commission in docket numbered 251–A, together with the interest thereon, after payment of attorney fees and expenses, may be advanced or expended for any purpose that is authorized by the tribal governing body of the Miami Tribe of Oklahoma, and approved by the Secretary of the Interior.

(Pub. L. 92–309, § 6, June 2, 1972, 86 Stat. 200.)

REFERENCES IN TEXT

Act of July 22, 1969, referred to in text, is act July 22, 1969, Pub. L. 91–665, 83 Stat. 49, which was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

CODIFICATION

Section was not enacted as part of Pub. L. 89–659, Oct. 14, 1966, 80 Stat. 909, which comprises this subchapter.

§ 1128. Distribution of shares

(a) Payments to enrollees, next of kin, or legatees

Except as provided in subsection (b) of this section, the Secretary of the Interior shall distribute a per capita share payable to a living enrollee directly to such enrollee, and shall distribute a per capita share payable to a deceased enrollee directly to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) Payments to minors or persons under legal disability

Sums payable to enrollees or their heirs or legatees who are less than eighteen years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interest of such persons.

(Pub. L. 92–309, § 7, June 2, 1972, 86 Stat. 200.)

CODIFICATION

Section was not enacted as part of Pub. L. 89–659, Oct. 14, 1966, 80 Stat. 909, which comprises this subchapter.

§ 1129. Tax exemption

None of the funds distributed under the provisions of sections 1122 to 1130 of this title shall be subject to Federal or State income taxes.

(Pub. L. 92–309, § 8, June 2, 1972, 86 Stat. 200.)

CODIFICATION

Section was not enacted as part of Pub. L. 89–659, Oct. 14, 1966, 80 Stat. 909, which comprises this subchapter.

§ 1130. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of sections 1122 to 1130 of this title, including the establishment of deadlines.

(Pub. L. 92–309, § 9, June 2, 1972, 86 Stat. 200.)

CODIFICATION

Section was not enacted as part of Pub. L. 89–659, Oct. 14, 1966, 80 Stat. 909, which comprises this subchapter.

SUBCHAPTER LV—DUWAMISH TRIBE OF WASHINGTON: DISTRIBUTION OF JUDGMENT FUND

§ 1131. Membership roll; preparation; eligibility for enrollment; applications; place for filing; finality of determination

The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements for eligibility: (a) They were born on or prior to and living on October 14, 1966, and (b) they are descendants of members of the Duwamish Tribe as it existed in 1855. Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Portland, Oregon, on forms prescribed for that purpose. The determination of the Secretary regarding the utilization of available rolls or records and the eligibility for enrollment of an applicant shall be final.

(Pub. L. 89–660, § 1, Oct. 14, 1966, 80 Stat. 910.)

§ 1132. Equal share distribution; persons entitled

After the deduction of attorney fees, litigation expenses, the costs of roll preparation, and such sums as may be required to distribute individual shares, the funds, including interest, remaining to the credit of the Duwamish Tribe, which were appropriated by the Act of June 9, 1964 (78 Stat. 213), shall be distributed in equal shares to those persons whose names appear on the roll prepared in accordance with section 1131 of this title.

(Pub. L. 89–660, § 2, Oct. 14, 1966, 80 Stat. 911.)

REFERENCES IN TEXT

Act of June 9, 1964, referred to in text, is act June 9, 1964, Pub. L. 88–317, 78 Stat. 213, which was not classified to the Code.

§ 1133. Payments to enrollees, heirs, or legatees; protection of minors and persons under legal disability; escheats

The Secretary shall distribute a share payable to a living enrollee directly to such enrollee or in such manner as is deemed by the Secretary to be in the enrollee's best interest. The Secretary shall distribute the per capita share of a deceased enrollee to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary whose findings upon such proof shall be final and conclusive. Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid to the persons whom the Secretary determines will best protect their interests. Proportional shares of heirs or legatees amounting to $5 or less shall not be distributed, and shall escheat to the United States. In the event that the sum of money reserved by the Secretary to pay the costs of distributing the individual shares exceeds the amount actually necessary to accomplish this purpose, such funds shall also escheat to the United States.

(Pub. L. 89–660, § 3, Oct. 14, 1966, 80 Stat. 911.)

§ 1134. Tax exemption

The funds distributed under the provisions of this subchapter shall not be subject to Federal or State income taxes.

(Pub. L. 89–660, § 4, Oct. 14, 1966, 80 Stat. 911.)

§ 1135. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 89–660, § 5, Oct. 14, 1966, 80 Stat. 911.)

SUBCHAPTER LVI—EMIGRANT NEW YORK INDIANS: DISTRIBUTION OF JUDGMENT FUND

§ 1141. Distribution of funds; attorney's fees and expenses

The funds on deposit in the Treasury of the United States to the credit of the Emigrant New York Indians that were appropriated by the Act of May 29, 1967 (81 Stat. 50), to pay a judgment by the Indian Claims Commission in Docket Numbered 75, and the interest thereon, after payment of attorney fees and expenses, shall be distributed as determined in sections 1144 and 1145 of this title.

(Pub. L. 90–93, § 1, Sept. 27, 1967, 81 Stat. 229.)

REFERENCES IN TEXT

Act of May 29, 1967, referred to in text, is act May 29, 1967, Pub. L. 90–21, 81 Stat. 50. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1142. Membership rolls; Oneida Tribe of Wisconsin; Stockbridge-Munsee Indian Community of Wisconsin; Brotherton Indians of Wisconsin

The Secretary of the Interior shall prepare rolls of all persons born on or prior to and living on September 27, 1967 (a) whose names appear on the membership roll of the Oneida Tribe of Indians of Wisconsin; or (b) whose names appear on the membership roll of the Stockbridge-Munsee Indian Community of Wisconsin; or (c) who are Brotherton Indians of Wisconsin of at least one-fourth degree Emigrant New York Indian blood and not members of either of the organized groups mentioned in (a) or (b).

(Pub. L. 90–93, § 2, Sept. 27, 1967, 81 Stat. 229.)

§ 1143. Assistance of Secretary in preparing membership rolls; applications for enrollment

For the purposes of expediting the enrollment of persons referred to in section 1142(a) and (b) of this title, the governing bodies of the Oneida Tribe of Indians of Wisconsin and the Stockbridge-Munsee Indian Community of Wisconsin shall, with the assistance of the Secretary, prepare membership rolls of their respective bands. Applications for enrollment under section 1142(c) of this title must be filed with the Superintendent of the Great Lakes Agency, Ashland, Wisconsin 54806, on forms prescribed for that purpose. The determination of the Secretary regarding the eligibility of the applicant shall be final.

(Pub. L. 90–93, § 3, Sept. 27, 1967, 81 Stat. 229.)

§ 1144. Apportionment; ratio of apportioned shares

The Secretary of the Interior shall apportion to each group mentioned in section 1142 of this title so much of the aforementioned judgment and accrued interest as the ratio of its enrollees bears to the total enrollees of all of said groups.

(Pub. L. 90–93, § 4, Sept. 27, 1967, 81 Stat. 229.)

§ 1145. Disposition of apportioned shares

The funds apportioned to the Oneida Tribe of Indians of Wisconsin and the Stockbridge-Munsee Indian Community of Wisconsin shall be placed to their credit and may be used, advanced, expended, deposited, invested, or reinvested for any purposes that are authorized by the tribal governing bodies thereof and approved by the Secretary of the Interior. The funds apportioned to the group mentioned in section 1142(c) of this title shall be available for distribution in equal shares to the enrollees or their heirs or legatees. Payment may be made directly to each enrollee except that a share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures as the Secretary determines will adequately protect the best interests of such persons.

(Pub. L. 90–93, § 5, Sept. 27, 1967, 81 Stat. 229.)

§ 1146. Federal and State income taxes

None of the funds that may be distributed per capita shall be subject to Federal or State income taxes.

(Pub. L. 90–93, § 6, Sept. 27, 1967, 81 Stat. 230.)

§ 1147. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 90–93, § 7, Sept. 27, 1967, 81 Stat. 230.)

SUBCHAPTER LVII—UPPER AND LOWER CHEHALIS TRIBES: DISTRIBUTION OF JUDGMENT FUND

§ 1151. Membership roll; preparation; eligibility for enrollment; applications; finality of determination

The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements for eligibility: (a) They were alive on October 24, 1967, and (b) they are descendants of members of the Upper and Lower Chehalis Tribes as they existed in 1855. Applications for enrollment must be filed with the Superintendent, Western Washington Agency, Everett, Washington, on forms prescribed for that purpose. The determination of the Secretary regarding the utilization of available rolls or records and the eligibility for enrollment of an applicant shall be final.

(Pub. L. 90–114, § 1, Oct. 24, 1967, 81 Stat. 335.)

§ 1152. Distribution in equal shares

After the deduction of attorney fees, litigation expenses, the costs of roll preparation, and such sums as may be required to distribute individual shares, the funds, including interest, remaining to the credit of the Upper and Lower Chehalis Tribes, which were appropriated by the Act of June 9, 1964 (78 Stat. 213), shall be distributed in equal shares to those persons whose names appear on the roll prepared in accordance with section 1151 of this title.

(Pub. L. 90–114, § 2, Oct. 24, 1967, 81 Stat. 335.)

REFERENCES IN TEXT

Act of June 9, 1964, referred to in text, is act June 9, 1964, Pub. L. 88–317, 78 Stat. 213, which was not classified to the Code.

§ 1153. Payments to minors and persons under legal disabilities; escheats

Sums payable to enrollees or to their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be held in trust by the Secretary of the Interior with use limited to emergency medical care and direct educational expenses, until such minor becomes of age or disability ceases. Proportional shares of heirs or legatees amounting to $5 or less shall not be distributed, and shall escheat to the United States. In the event that the sum of money reserved by the Secretary to pay the costs of distributing the individual shares exceeds the amount actually necessary to accomplish this purpose, the money remaining shall also be distributed per capita unless individual shares would have a value of less than $5. Individual shares or proportional shares of heirs or legatees amounting to $5 or less shall not be distributed, but shall escheat to the United States.

(Pub. L. 90–114, § 3, Oct. 24, 1967, 81 Stat. 335.)

§ 1154. Tax exemption

The funds distributed under the provisions of this subchapter shall not be subject to Federal or State income taxes.

(Pub. L. 90–114, § 4, Oct. 24, 1967, 81 Stat. 335.)

§ 1155. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter, including appropriate deadline for filing enrollment applications.

(Pub. L. 90–114, § 5, Oct. 24, 1967, 81 Stat. 335.)

SUBCHAPTER LVIII—CHEYENNE-ARAPAHO INDIANS OF OKLAHOMA: DISTRIBUTION OF JUDGMENT FUND

§ 1161. Authorization for distribution of funds

The Secretary of the Interior is authorized and directed to distribute and expend the funds on deposit in the Treasury of the United States to the credit of the Cheyenne-Arapaho Tribes of Oklahoma that were appropriated by the Act of October 31, 1965 (79 Stat. 1133), in satisfaction of the settlement and compromise of claims of said tribes against the United States in the Indian Claims Commission in dockets numbered 329A and 329B, together with the interest accrued thereon, as herein provided.

(Pub. L. 90–117, § 1, Oct. 31, 1967, 81 Stat. 337.)

REFERENCES IN TEXT

Act of October 31, 1965, referred to in text, is act Oct. 31, 1965, Pub. L. 89–309, 79 Stat. 1133. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1162. Trust; education and scholarships; approval of agreement

Five hundred thousand dollars of said funds shall be held in trust for the purpose of providing education and scholarships for members of said tribes pursuant to a trust agreement to be made and entered into by and between said tribes, as grantor, and a national banking association located in the State of Oklahoma, as trustee, which trust agreement shall be authorized and approved by the tribal governing body and approved by the Secretary of the Interior.

(Pub. L. 90–117, § 2, Oct. 31, 1967, 81 Stat. 337.)

§ 1163. Payments to enrollees, heirs or legatees; trust for minors and persons under legal disability; approval of agreement

The Secretary of the Interior shall distribute remaining funds per capita to all persons alive on October 31, 1967, whose names appear on the membership roll of the Cheyenne-Arapaho Tribes of Oklahoma or who, on October 31, 1967, were eligible for membership, hereinafter referred to as ''enrollees'', as follows:

(a) A share payable to an enrollee not less than eighteen years of age shall be paid di-

rectly in one payment to such enrollee, except as provided in subsections (b) and (c) of this section;

(b) A share payable to an enrollee dying after October 31, 1967, shall be distributed to his heirs or legatees upon the filing of proof of death and inheritance satisfactory to the Secretary of the Interior, or his authorized representative, whose findings and determinations upon such proof shall be final and conclusive: *Provided*, That if a share of such deceased enrollee, or a portion thereof, is payable to an heir or legatee under eighteen years of age or to an heir or legatee under legal disability other than because of age, the same shall be paid and held in trust pursuant to subsection (c) of this section;

(c) A share or proportional share payable to an enrollee or person under eighteen years of age or to an enrollee or person under legal disability other than because of age shall be paid and held in trust for such enrollee or person pursuant to a trust agreement to be made and entered into by and between the Cheyenne-Arapaho Tribes of Oklahoma, as grantor, and a national banking association located in the State of Oklahoma, as Trustee, which trust agreement shall be authorized and approved by the tribal governing body and approved by the Secretary of the Interior. The Secretary of the Interior is authorized to approve amendments to trust agreements entered into pursuant to this subchapter, to permit the distribution of assets to, and the termination of trusts for, minor beneficiaries, not under other legal disability, who have attained or who shall hereafter attain the age of eighteen years.

(Pub. L. 90–117, § 3, Oct. 31, 1967, 81 Stat. 337; Pub. L. 92–439, Sept. 29, 1972, 86 Stat. 742.)

AMENDMENTS

1972—Pub. L. 92–439 lowered period of minority from twenty-one to eighteen years of age in subsecs. (a) to (c), qualified the legal disability in subsecs. (b) and (c) to a disability other than one of age, and provided for subsec. (c) authorization of amendments to trust agreements, distribution of assets, and termination of trusts for beneficiaries eighteen years of age without any other legal disability.

§ 1164. Claims

(a) Time for filing; reversion of funds upon failure to file

All claims for per capita shares, whether by a living enrollee or by the heirs or legatees of a deceased enrollee, shall be filed with the area director of the Bureau of Indian Affairs, Anadarko, Oklahoma, not later than three years from October 31, 1967. Thereafter, all claims and the right to file same shall be forever barred and the unclaimed shares shall revert to the tribes.

(b) Use of reverted funds

Tribal funds that revert to the tribes pursuant to subsection (a) of this section, including interest and income therefrom, may be advanced or expended for any purpose that is authorized by the tribal governing body.

(Pub. L. 90–117, § 4, Oct. 31, 1967, 81 Stat. 338.)

§ 1165. Tax exemption

No part of any funds distributed or held in trust under the provisions of this subchapter shall be subject to Federal or State income taxes.

(Pub. L. 90–117, § 5, Oct. 31, 1967, 81 Stat. 338.)

§ 1166. Costs

(a) Payment from judgment fund

All costs incident to making the payments authorized by this subchapter including the costs of payment roll preparation and such sums as may be required to distribute said funds, shall be paid by appropriate withdrawals from the judgment fund and interest on the judgment fund, using the interest fund first.

(b) Use of reverted funds

In the event that the sum of money reserved by the Secretary of the Interior to pay the costs of distributing said funds exceeds the amount actually necessary to accomplish this purpose, the money remaining shall revert to the tribes and may be advanced or expended for any purpose that is authorized and approved by the tribal governing body.

(Pub. L. 90–117, § 6, Oct. 31, 1967, 81 Stat. 338.)

§ 1167. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 90–117, § 7, Oct. 31, 1967, 81 Stat. 338.)

SUBCHAPTER LIX—IOWA TRIBES OF KANSAS AND NEBRASKA AND OF OKLAHOMA: DISTRIBUTION OF JUDGMENT FUND

§ 1171. Distribution of funds; authorized spending; per capita payment; tax exemption

The funds on deposit in the United States Treasury to the credit of the Iowa Tribes of Kansas and Nebraska and of Oklahoma that were appropriated by the Act of April 30, 1965 (79 Stat. 81), to pay a judgment by the Indian Claims Commission in dockets numbered 138 and 79, and the interest thereon, after payment of attorney fees and other litigation expenses, shall be divided on the basis of 171/279ths (61.29 per centum) to the Iowas of Kansas and Nebraska and 108/279ths (38.71 per centum) to the Iowas of Oklahoma, and the funds so divided, including interest accruing thereon, may be invested or expended for any purpose that is authorized by the respective tribal governing bodies and approved by the Secretary of the Interior. Any per capita distribution of any part of the funds placed to the credit of the Iowa Tribes of Kansas and Nebraska and of Oklahoma shall be payable only to those persons who meet the membership requirements specified in the respective tribal constitutions, and such per capita payments shall not be subject to Federal or State income tax.

(Pub. L. 90–199, Dec. 14, 1967, 81 Stat. 583.)

REFERENCES IN TEXT

Act of April 30, 1965, referred to in text, is act Apr. 30, 1965, Pub. L. 89–16, 79 Stat. 81, known as the Second

Supplemental Appropriation Act, 1965. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

SUBCHAPTER LX—DELAWARE NATION OF INDIANS

§ 1181. Distribution of judgment fund; preparation of Indian roll; eligibility

The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements for eligibility: (a) They were born on or prior to and living on September 21, 1968; (b) their name or the name of a lineal ancestor appears on the Delaware Indian per capita payroll approved by the Secretary on April 20, 1906, or (c) their name or the name of a lineal ancestor is on or is eligible to be on the constructed base census roll as of 1940 of the Absentee Delaware Tribe of Western Oklahoma, approved by the Secretary of the Interior, or (d) they are lineal descendants of Delaware Indians who were members of the Delaware Nation of Indians as constituted at the time of the Treaty of October 3, 1818 (7 Stat. 188), and their name or the name of a lineal ancestor appears on any available census roll or any other records acceptable to the Secretary. No person shall be eligible to be enrolled under this section who is not a citizen of the United States. Applications for enrollment must be filed with the Area Director of the Bureau of Indian Affairs, Muskogee, Oklahoma, or the Area Director of the Bureau of Indian Affairs, Anadarko, Oklahoma, on forms prescribed for that purpose. All applications filed shall be reviewed and a judgment of the eligibility of each applicant will be made and recommendation given in writing to the respective area directors by a committee composed of representatives of the two Oklahoma Delaware groups prior to submission of names to the Secretary of the Interior for acceptance on the distribution roll. The determination of the Secretary regarding the utilization of available rolls or records and the eligibility for enrollment of an applicant shall be final.

(Pub. L. 90–508, § 1, Sept. 21, 1968, 82 Stat. 861.)

§ 1182. Division between Cherokee Delawares and the Delaware Tribe of Indians of Western Oklahoma

There shall be withdrawn from the funds on deposit in the Treasury of the United States to the credit of the Delaware Nation that were appropriated by the Act of October 7, 1964 (78 Stat. 1033), and the interest accrued thereon, using the interest fund first, $7,000, which shall be divided equally between the Cherokee Delawares and the Delaware Tribe of Indians of Western Oklahoma, and shall be available for claims expenses incurred by the duly authorized personnel of the two tribal groups, as set forth in their joint resolution numbered 4–68 adopted on September 9, 1967.

(Pub. L. 90–508, § 2, Sept. 21, 1968, 82 Stat. 861.)

REFERENCES IN TEXT

Act of October 7, 1964, referred to in text, is act Oct. 7, 1964, Pub. L. 88–635, 78 Stat. 1033, known as the Supplemental Appropriation Act, 1965. That portion of the act which appropriated the funds referred to was not classified to the Code.

§ 1183. Equal share distribution

After the deduction of attorney fees and expenses, litigation expenses, all costs incident to the provisions of this subchapter, and to making the payments authorized by this subchapter, including the cost of roll preparation, which shall be paid by appropriate withdrawals from the judgment fund, the unexpended balance of the funds on deposit in the Treasury shall be distributed in equal shares to those persons whose names appear on the roll prepared in accordance with section 1181 of this title. No person shall be entitled to more than one per capita share of the funds.

(Pub. L. 90–508, § 3, Sept. 21, 1968, 82 Stat. 862.)

§ 1184. Heirs of deceased enrollees

The Secretary shall distribute a share payable to a living enrollee directly to such enrollee. The Secretary shall distribute the per capita share of a deceased enrollee to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary whose findings upon such proof shall be final and conclusive. Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures as the Secretary determines will best protect their interests.

(Pub. L. 90–508, § 4, Sept. 21, 1968, 82 Stat. 862.)

§ 1185. Tax exemption

The funds distributed under the provisions of this subchapter shall not be subject to Federal or State income tax.

(Pub. L. 90–508, § 5, Sept. 21, 1968, 82 Stat. 862.)

§ 1186. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter, including a deadline for filing enrollment applications.

(Pub. L. 90–508, § 6, Sept. 21, 1968, 82 Stat. 862.)

SUBCHAPTER LXI—CONFEDERATED TRIBES OF UMATILLA RESERVATION: DISTRIBUTION OF JUDGMENT FUND

§ 1191. Per capita distribution; trusts for minors and incompetents; payments to heirs or legatees

The entire unexpended balance of funds that were appropriated by the Act of May 13, 1966 (80 Stat. 141) to pay a judgment by the Indian Claims Commission entered in docket numbers 264, 264A, and 264B in favor of the Confederated Tribes of the Umatilla Indian Reservation, and the interest thereon, less litigation expenses, estimated costs of distribution, and $200,000 to be used as provided in section 1195 of this title, shall be distributed, per capita, in equal shares to all eligible members of the Confederated Tribes as defined in this subchapter under such

terms and conditions as are authorized by the tribal governing body and approved by the Secretary of the Interior, including the establishment of trusts for minors and incompetents. Payments to heirs or legatees shall be made upon proof of death and inheritance satisfactory to the Secretary, whose findings shall be final and conclusive. Such per capita distribution shall be made in three installments of approximately equal amount, the first installment to be made as soon as possible after May 21, 1970, and the next two installments to be made at six-month intervals.

(Pub. L. 91–259, § 1, May 21, 1970, 84 Stat. 253.)

REFERENCES IN TEXT

Act of May 13, 1966, referred to in text, is act May 13, 1966, Pub. L. 89–426, 80 Stat. 141, which was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1192. Eligibility for per capita payments

The persons eligible to receive such per capita payments shall be all persons who were living on December 17, 1965, and whose names appear on any of the following:

(a) The membership roll of the Confederated Tribes as of June 15, 1957, as approved by the Bureau of Indian Affairs on January 10, 1958, or

(b) The supplemental membership roll as of April 12, 1960, approved by the Bureau of Indian Affairs on January 27, 1961, and also any other persons born after July 1, 1949, and living on or at any time between December 17, 1965, and May 21, 1970, who were either enrolled as of May 21, 1970, or became entitled to enrollment under section (b), article IV of the constitution and bylaws of the Confederated Tribes adopted November 4, 1949, as determined by the Secretary of the Interior or his authorized representative.

(Pub. L. 91–259, § 2, May 21, 1970, 84 Stat. 254.)

§ 1193. Status of funds pending distribution

Until distributed such funds shall remain tribal funds and the shares herein designated for the eligible members shall constitute inheritable property from and after December 17, 1965.

(Pub. L. 91–259, § 3, May 21, 1970, 84 Stat. 254.)

§ 1194. Per capita distributions as exempt from taxation

The per capita distributions of such funds shall not be subject to Federal or State income tax.

(Pub. L. 91–259, § 4, May 21, 1970, 84 Stat. 254.)

§ 1195. Disposition of funds withheld from per capita distribution

The $200,000 withheld from per capita distribution pursuant to section 1191 of this title shall be invested or placed in trust with an institutional trustee by the Secretary of the Interior, under terms and conditions approved by the tribal governing body. The income from the investment or trust, together with such invasions of the principal or trust corpus as the Secretary deems desirable, shall be used for the education of members of the tribe until such time as the tribal governing body, with the approval of the Secretary, determines that the funds should be used in some other manner.

(Pub. L. 91–259, § 5, May 21, 1970, 84 Stat. 254.)

SUBCHAPTER LXII—SIOUX TRIBE OF MONTANA: DISTRIBUTION OF JUDGMENT FUND

§ 1201. Per capita distributions to tribal members; attorney's fees, expenses, and other deductions; eligibility of members

The funds appropriated by the Act of October 21, 1968 (82 Stat. 1190, 1198), to pay a judgment to the Sioux Tribe of the Fort Peck Reservation, Montana, in Indian Claims Commission Docket Numbered 279A and the interest thereon, after payment of attorney's fees and all appropriate expenses, and after deducting $50,000 to be used as provided in section 1205 of this title, and after deducting the estimated costs of distribution, shall be distributed per capita to each person born on or before, and living on, June 19, 1970, who is a citizen of the United States and duly enrolled, on a roll approved by the Secretary of the Interior, as a member of the Sioux Tribe of the Fort Peck Reservation, in accordance with eligibility requirements and procedures agreed upon by the Secretary of the Interior and the tribe, or its authorized representatives.

(Pub. L. 91–283, § 1, June 19, 1970, 84 Stat. 313.)

REFERENCES IN TEXT

Act of October 21, 1968, referred to in text, is act Oct. 21, 1968, Pub. L. 90–608, 82 Stat. 1190, known as the Supplemental Appropriation Act, 1969. Chapter XII of act Oct. 21, 1968, set out at 82 Stat. 1198, appropriated the funds referred to and was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1202. Per capita shares; reversion to tribe; use of reverted funds

The per capita shares shall be determined on the basis of the number of persons eligible for per capitas and the number of persons rejected for per capitas who have taken a timely appeal. The shares of those persons whose appeals are denied shall revert to the Sioux Tribe of the Fort Peck Reservation, Montana, to be expended for any purpose designated by the tribe and approved by the Secretary.

(Pub. L. 91–283, § 2, June 19, 1970, 84 Stat. 313.)

§ 1203. Protection of minors and persons under legal disability

Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons.

(Pub. L. 91–283, § 3, June 19, 1970, 84 Stat. 313.)

§ 1204. Tax exemption

The funds distributed under the provisions of this subchapter shall not be subject to Federal or State income taxes.

(Pub. L. 91–283, § 4, June 19, 1970, 84 Stat. 313.)

§ 1205. Amount of agreed contribution to joint account for expenditure for official salaries and expenses of Fort Peck Tribes; discretionary per capita distributions

Upon agreement by the Fort Peck Sioux Tribe and the Fort Peck Assiniboine Tribe on the amount each agrees to contribute from any award to each tribe in Indian Claims Commission Docket No. 279A, the agreed contribution of the Fort Peck Sioux Tribe shall be withdrawn from the $50,000, and interest thereon, withheld from per capita distribution pursuant to section 1201 of this title, and credited to the joint account for expenditure pursuant to the Act of June 29, 1954 (68 Stat. 329): *Provided*, That upon request of the Fort Peck Sioux Tribe the Secretary of the Interior in his discretion may distribute all or part of the aforesaid $50,000 and interest thereon per capita to each person eligible under section 1201 of this title.

(Pub. L. 91–283, § 5, June 19, 1970, 84 Stat. 313.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

Act of June 29, 1954, referred to in text, is act June 29, 1954, ch. 421, 68 Stat. 329, which was not classified to the Code.

SUBCHAPTER LXIII—TLINGIT AND HAIDA INDIANS OF ALASKA

§ 1211. Distribution of fund; authorized spending; tax exemption

The unexpended funds and interest thereon on deposit in the Treasury of the United States to the credit of and otherwise invested by the Secretary of the Interior for the account of the Tlingit and Haida Indians of Alaska which were appropriated by the Act of July 9, 1968 (82 Stat. 307), to pay the judgment of the Court of Claims in the case entitled. The Tlingit and Haida Indians of Alaska, et al. versus The United States, numbered 47900, after payment of attorney fees and expenses, may be advanced, expended, invested or used for any purpose and in any manner authorized by the Central Council of the Tlingit and Haida Indians of Alaska and approved by the Secretary of the Interior. Any of such funds that may be distributed under the provisions of this subchapter shall not be subject to Federal or State income taxes.

(Pub. L. 91–335, July 13, 1970, 84 Stat. 431.)

REFERENCES IN TEXT

Act of July 9, 1968, referred to in text, is act July 9, 1968, Pub. L. 90–392, 82 Stat. 307, known as the Second Supplemental Appropriation Act, 1968. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Court of Claims, referred to in text, and the Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 1212. Findings

The Congress finds and declares that—

(1) the United States has acknowledged the Central Council of Tlingit and Haida Indian Tribes of Alaska pursuant to the Act of June 19, 1935 (49 Stat. 388, as amended, commonly referred to as the ''Jurisdiction Act''), as a federally recognized Indian tribe;

(2) on October 21, 1993, the Secretary of the Interior published a list of federally recognized Indian tribes pursuant to part 83 of title 25 of the Code of Federal Regulations which omitted the Central Council of Tlingit and Haida Indian Tribes of Alaska;

(3) the Secretary does not have the authority to terminate the federally recognized status of an Indian tribe as determined by Congress;

(4) the Secretary may not administratively diminish the privileges and immunities of federally recognized Indian tribes without the consent of Congress; and

(5) the Central Council of Tlingit and Haida Indian Tribes of Alaska continues to be a federally recognized Indian tribe.

(Pub. L. 103–454, title II, § 202, Nov. 2, 1994, 108 Stat. 4792.)

REFERENCES IN TEXT

Act of June 19, 1935, referred to in par. (1), is act June 19, 1935, ch. 275, 49 Stat. 388, as amended, which is not classified to the Code.

SHORT TITLE

Section 201 of title II of Pub. L. 103–454 provided that: ''This title [enacting this section and sections 1213 to 1215 of this title] may be cited as the 'Tlingit and Haida Status Clarification Act'.''

§ 1213. Reaffirmation of tribal status

The Congress reaffirms and acknowledges that the Central Council of Tlingit and Haida Indian Tribes of Alaska is a federally recognized Indian tribe.

(Pub. L. 103–454, title II, § 203, Nov. 2, 1994, 108 Stat. 4792.)

§ 1214. Disclaimer

(a) In general

Nothing in sections 1212 to 1215 of this title shall be interpreted to diminish or interfere with the government-to-government relationship between the United States and other federally recognized Alaska Native tribes, nor to vest any power, authority, or jurisdiction in the Central Council of Tlingit and Haida Indian Tribes of Alaska over other federally recognized Alaska Native tribes.

(b) Constitution of Central Council of Tlingit and Haida Indian Tribes of Alaska

Nothing in sections 1212 to 1215 of this title shall be construed as codifying the Constitution of the Central Council of the Tlingit and Haida Indian Tribes of Alaska into Federal law.

(Pub. L. 103–454, title II, § 204, Nov. 2, 1994, 108 Stat. 4793.)

§ 1215. Prohibition against duplicative services

Other federally recognized tribes in Southeast Alaska shall have precedence over the Central

Council of Tlingit and Haida Indian Tribes of Alaska in the award of a Federal compact, contract or grant to the extent that their service population overlaps with that of the Central Council of Tlingit and Haida Indian Tribes of Alaska. In no event shall dually enrolled members result in duplication of Federal service funding.

(Pub. L. 103–454, title II, § 205, Nov. 2, 1994, 108 Stat. 4793; Pub. L. 104–109, § 10, Feb. 12, 1996, 110 Stat. 765.)

AMENDMENTS

1996—Pub. L. 104–109 substituted ''Indian Tribes of Alaska.'' for ''Indian tribes of Alaska.''

SUBCHAPTER LXIV — CONFEDERATED TRIBES OF WEAS, PIANKASHAWS, PEORIAS, AND KASKASKIAS: DISTRIBUTION OF JUDGMENT FUND

§ 1221. Membership roll

(a) Preparation; eligibility for enrollment

The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements: (1) they were born on or prior to and were living on July 31, 1970; (2) their names or the name of a lineal ancestor from whom they claim eligibility appears on (a) the final roll of the Peoria Tribe of Indians of Oklahoma, pursuant to the Act of August 2, 1956 (70 Stat. 937) [25 U.S.C. 821 et seq.], or (b) the January 1, 1937, census of the Peoria Tribe, or (c) the 1920 census of the Peoria Tribe, or (d) the Indian or Citizen Class lists pursuant to the Treaty of February 23, 1867 (15 Stat. 520), or (e) the Schedule of Persons or Families composing the United Tribes of Weas, Piankashaws, Peorias, and Kaskaskias, annexed to the Treaty of May 30, 1854.

(b) Applications; finality of determination

Applications for enrollment must be filed with the area director of the Bureau of Indian Affairs, Muskogee, Oklahoma, in the manner and within the time limits prescribed for that purpose by the Secretary of the Interior. The determination of the Secretary regarding the eligibility of an applicant shall be final.

(Pub. L. 91–364, § 1, July 31, 1970, 84 Stat. 688.)

REFERENCES IN TEXT

Act of August 2, 1956, referred to in subsec. (a), is act Aug. 2, 1956, ch. 881, 70 Stat. 937, which was classified generally to subchapter XXXVI (§ 821 et seq.) of this title and was repealed by Pub. L. 95–281, § 1(b)(2), May 15, 1978, 92 Stat. 246.

§ 1222. Disposition of funds: improvement and maintenance of Peoria Indian Cemetery; distribution of balance in equal shares

After the deduction of attorneys' fees and expenses and the administrative costs involved in the preparation of the roll and the distribution of the individual shares, the remaining funds on deposit in the United States Treasury to the credit of the Peoria Tribe on behalf of the Wea Nation that were appropriated by the Acts of May 13, 1966 (80 Stat. 141, 150), and June 19, 1968 (82 Stat. 239), in satisfaction of judgments that were obtained by the Peoria Tribe on behalf of the Wea Nation in Indian Claims Commission dockets numbered 314, amended, and 314–E, respectively, and the funds to the credit of the Peoria Tribe of Oklahoma on behalf of the Wea, Piankashaw, Peoria, and Kaskaskia Nations that were appropriated by the Act of July 22, 1969 (83 Stat. 49, 62), in satisfaction of a judgment in docket numbered 65, shall be disposed of in the following manner: The Secretary shall pay $3,000 of such funds to the Peoria Tribe of Oklahoma for improvement and maintenance of the Peoria Indian Cemetery located approximately ten miles northeast of Miami, Oklahoma, and shall distribute the balance of such funds in equal shares to those persons whose names appear on the roll prepared pursuant to section 1221 of this title.

(Pub. L. 91–364, § 2, July 31, 1970, 84 Stat. 688.)

REFERENCES IN TEXT

Act of May 13, 1966, referred to in text, is act May 13, 1966, Pub. L. 89–426, 80 Stat. 141, known as the Second Supplemental Appropriation Act, 1966. Chapter XI of the act set out at 80 Stat. 150, appropriated the funds referred to and was not classified to the Code.

Act of June 19, 1968, referred to in text, is act June 19, 1968, Pub. L. 90–352, 82 Stat. 239, which was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

Act of July 22, 1969, referred to in text, is act July 22, 1969, Pub. L. 91–47, 83 Stat. 49, known as the Second Supplemental Appropriation Act, 1969. Chapter XIII of the act set out at 83 Stat. 62, appropriated the funds referred to and was not classified to the Code.

§ 1223. Distribution of shares

(a) Payments to enrollees, next of kin, or legatees

Except as provided is subsection (b) of this section, the Secretary shall distribute a share payable to a living enrollee directly to such enrollee and the Secretary shall distribute a per capita share of a deceased enrollee directly to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) Payments to minors or persons under legal disability

A share payable to a person under twenty-one years of age or to a person under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines will adequately protect the best interest of such person.

(Pub. L. 91–364, § 3, July 31, 1970, 84 Stat. 688.)

§ 1224. Subsequent judgment funds; distribution; preparation of current membership roll

Funds that may hereafter be deposited in the United States Treasury to the credit of the Peoria Tribe on behalf of the Wea, Kaskaskia, Piankashaw, or Peoria Nation, to pay any judgment arising out of proceedings presently pending before the Indian Claims Commission in dockets numbered 99, 289, 313, 314–A, B, C, and D, and 338 and the interest accrued thereon, after payment of attorneys' fees and expenses and all costs incident to bringing the roll current as

provided is[1] this section and distributing the shares, shall be distributed on a per capita basis in accordance with section 1223 of this title to persons whose names appear on the roll prepared under section 1221 of this title, after the roll has been brought current to the date the funds are appropriated by adding names of persons to the roll who were born after July 31, 1970, but on or prior to and living on the date the funds are appropriated, and by deleting names of enrollees who died between July 31, 1970, and the date the funds are appropriated.

(Pub. L. 91–364, § 4, July 31, 1970, 84 Stat. 688.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1225. Tax exemption

The funds distributed under the provisions of this subchapter shall not be subject to Federal or State income taxes.

(Pub. L. 91–364, § 5, July 31, 1970, 84 Stat. 689.)

§ 1226. Shares not distributed within two years; unexpended funds; reversion; bar of claims

Any per capita share, whether payable to a living enrollee or to the heirs or legatees of a deceased enrollee, which the Secretary of the Interior is unable to deliver within two years after the date the check is issued, and all unexpended tribal and judgment funds set aside for tribal roll preparation and distribution, shall revert to the Peoria Tribe, and all claims for such per capita shall thereafter be barred forever.

(Pub. L. 91–364, § 6, July 31, 1970, 84 Stat. 689.)

§ 1227. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 91–364, § 7, July 31, 1970, 84 Stat. 689.)

SUBCHAPTER LXV—CHEMEHUEVI TRIBE: DISTRIBUTION OF JUDGMENT FUND

§ 1231. Persons eligible for equal share payments

The funds on deposit in the Treasury of the United States to the credit of the Chemehuevi Tribe of Indians which were appropriated (by the Act entitled ''An Act making supplemental appropriations for the fiscal year ending June 30, 1965, and for other purposes'', approved April 30, 1965 (79 Stat. 81)), to pay the judgment awarded by the Indian Claims Commission (dockets numbered 351 and 351–A), together with interest thereon, shall be distributed by the Secretary of the Interior (hereafter in this subchapter referred to as ''Secretary'') in equal shares to those persons whose names appear on the roll prepared in accordance with section 1232 of this title.

(Pub. L. 91–417, § 1, Sept. 25, 1970, 84 Stat. 868.)

REFERENCES IN TEXT

The Act entitled ''An Act making supplemental appropriations for the fiscal year ending June 30, 1965, and for other purposes'', approved April 30, 1965 (79 Stat. 81), referred to in text, is Pub. L. 89–16, Apr. 30, 1965, 79 Stat. 81. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1232. Enrollment

(a) Preparation of roll; applications; finality of determination

(1) The Secretary shall prepare a roll of all persons—

(A) who were born on or prior to and living on September 25, 1970;

(B) who are lineal descendants of members of the Chemehuevi Tribe as it existed in 1860; and

(C) whose name or the name of a lineal ancestor appears as a Chemehuevi Indian on any available census roll or other record or evidence acceptable to the Secretary.

(2) Applications for enrollment must be filed in the manner and within the time limits prescribed by the Secretary for that purpose. The determination of the Secretary regarding the utilization of available rolls or records and the eligibility for enrollment of an applicant shall be final.

(b) Dual awards

Any person who has applied for and has been determined as eligible to share in the awards granted by the Indian Claims Commission in dockets numbered 88, 330, and 330–A, to the Southern Paiute Indian Nation or in dockets numbered 31, 37, 80, 80–D, 176, 215, 333, and 347, to ''Certain Indians of California'' shall not be entitled to share in the awards granted under this subchapter.

(Pub. L. 91–417, § 2, Sept. 25, 1970, 84 Stat. 868.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in subsec. (b), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1233. Payments to enrollees; per capita shares to heirs or legatees; trusts and other procedures for protection of minors and persons under legal disability

The Secretary shall distribute a share payable to a living enrollee directly to such enrollee. The Secretary shall distribute the per capita share of a deceased enrollee to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary. Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines to be appropriate to protect their best interests.

(Pub. L. 91–417, § 3, Sept. 25, 1970, 84 Stat. 868.)

§ 1234. Tax exemption

No part of any funds distributed under this subchapter shall be subject to Federal or State income taxes.

(Pub. L. 91–417, § 4, Sept. 25, 1970, 84 Stat. 868.)

[1] So in original.

§ 1235. Identity of eligibility roll and membership roll

The roll prepared by the Secretary of the Interior pursuant to this subchapter shall not be deemed to constitute the membership roll of the Chemehuevi Tribe.

(Pub. L. 91–417, § 5, Sept. 25, 1970, 84 Stat. 868.)

§ 1236. Costs

The Secretary may make appropriate withdrawals from the judgment funds and interest thereon, using interest funds first, to pay costs incident to carrying out the provisions of this subchapter.

(Pub. L. 91–417, § 6, Sept. 25, 1970, 84 Stat. 868.)

SUBCHAPTER LXVI—PEMBINA BAND OF CHIPPEWA INDIANS: DISTRIBUTION OF JUDGMENT FUND

§ 1241. Distribution of funds; attorney fees and expenses

The funds appropriated by the Act of June 9, 1964 (78 Stat. 204, 213), to pay a judgment to the Pembina Band of Chippewa Indians in Indian Claims Commission dockets numbered 18–A, 113, and 191, together with the interest thereon, after payment of attorney fees and litigation expenses, and such expenses as may be necessary in carrying out the provisions of this subchapter, shall be distributed as provided herein.

(Pub. L. 92–59, § 1, July 29, 1971, 85 Stat. 158.)

REFERENCES IN TEXT

Act of June 9, 1964, referred to in text, is act June 9, 1964, Pub. L. 88–317, 78 Stat. 204, known as the Deficiency Appropriation Act, 1964. Chapter XI of the act set out at 78 Stat. 213, appropriated the funds referred to and was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1242. Membership rolls; preparation; eligibility; excluded persons

The Secretary of the Interior shall prepare a roll of all persons born on or prior to and living on July 29, 1971, who are lineal descendants of members of the Pembina Band as it was constituted in 1863, except that persons in the following categories shall not be so enrolled:

a. those who are not citizens of the United States;

b. those who are members of the Red Lake Band of Chippewa Indians; and

c. those who participated in the Mississippi, Pillager, and Lake Winnibigoshish Chippewa Band awards under the provisions of sections 594 and 594a of this title.

(Pub. L. 92–59, § 2, July 29, 1971, 85 Stat. 158).

§ 1243. Enrollment applications; filing; finality of determination

Applications for enrollment shall be filed with the Area Director, Bureau of Indian Affairs, Aberdeen, South Dakota, in the manner and within the time limits prescribed for that purpose. The determination of the Secretary of the Interior regarding the utilization of available rolls and records and the eligibility for enrollment of an applicant shall be final.

(Pub. L. 92–59, § 3, July 29, 1971, 85 Stat. 158.)

§ 1244. Apportionment of funds; members and descendants of Minnesota Chippewa Tribe, the Turtle Mountain Band of Chippewas of North Dakota, the Chippewa-Cree Tribe of Montana

In developing the roll of Pembina descendants, the Secretary of the Interior shall determine which enrollees are members of the Minnesota Chippewa Tribe, the Turtle Mountain Band of Chippewas of North Dakota, or the Chippewa-Cree Tribe of Montana, and subsequent to the establishment of the descendancy roll shall apportion funds to the three cited tribes on the basis of the numbers of descendants having membership with these tribes. Fund not apportioned in this manner shall be distributed in equal shares to those enrolled descendants who are not members of the three cited tribes.

(Pub. L. 92–59, § 4, July 29, 1971, 85 Stat. 158.)

§ 1245. Use of funds apportioned; approval by Secretary on receipt of recommendations from certain tribal organizations

The funds apportioned to the Minnesota Chippewa Tribe, the Turtle Mountain Band, and the Chippewa-Cree Tribe may be advanced, expended, invested, or reinvested for any purpose authorized by the respective tribal governing bodies and approved by the Secretary of the Interior: *Provided*, That the governing body of the Minnesota Chippewa Tribe shall act in concert with the General Council of the Pembina Band of Chippewa Indians of the White Earth Reservation for the purpose of making recommendations to the Secretary; *And provided further*, That the Pembina descendants within the Turtle Mountain Band shall be authorized to establish pursuant to regulations set by the Secretary the Pembina Descendants Committee and that the tribal governing body shall be required to work in concert with such committee for the purpose of making recommendations to the Secretary and only those members of the three cited tribes who are enrolled as Pembina descendants under the provisions of this subchapter shall be permitted to share in any per capita distribution of the funds accruing to the tribes.

(Pub. L. 92–59, § 5, July 29, 1971, 85 Stat. 158.)

§ 1246. Tax exemption

None of the funds distributed per capita under the provisions of this subchapter shall be subject to Federal or State income taxes.

(Pub. L. 92–59, § 6, July 29, 1971, 85 Stat. 159.)

§ 1247. Payments to enrollees, heirs, or legatees; protection of the interests of minors and persons under legal disability

Sums payable to adult living enrollees or to adult heirs or legatees of deceased enrollees shall be paid directly to such persons. Sums payable to enrollees or their heirs or legatees who

are less than twenty-one years of age or who are under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons.

(Pub. L. 92–59, § 7, July 29, 1971, 85 Stat. 159.)

§ 1248. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to effect the provisions of this subchapter, including the establishment of deadlines.

(Pub. L. 92–59, § 8, July 29, 1971, 85 Stat. 159.)

SUBCHAPTER LXVII—CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA: DISTRIBUTION OF JUDGMENT FUND

§ 1251. Distribution of funds; attorney fees and expenses

The funds appropriated to the credit of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, in satisfaction of judgments awarded in paragraphs 7 and 10 in docket numbered 50233, United States Court of Claims, including interest thereon, after payment of attorneys fees and other litigation expenses, shall be used as follows: 85 per centum thereof shall be distributed in equal per capita shares to each person who is enrolled or entitled to be enrolled on March 17, 1972; the remainder may be advanced, expended, invested or reinvested for any purposes that are authorized by the tribal governing body and approved by the Secretary of the Interior.

(Pub. L. 92–253, § 1, Mar. 17, 1972, 86 Stat. 64.)

REFERENCES IN TEXT

The United States Court of Claims, referred to in text, and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 1252. Tax exemption

Any part of such funds that may be distributed to members of the Tribes shall not be subject to Federal or State income tax.

(Pub. L. 92–253, § 2, Mar. 17, 1972, 86 Stat. 64.)

REFERENCES IN TEXT

Such funds, referred to in text, are the funds provided for in this subchapter.

§ 1253. Payments to minors

Sums payable under this subchapter to enrollees or their heirs or legatees who are less than eighteen years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons.

(Pub. L. 92–253, § 3, Mar. 17, 1972, 86 Stat. 64.)

SUBCHAPTER LXVIII—BLACKFEET AND GROS VENTRE TRIBES: DISTRIBUTION OF JUDGMENT FUND

§ 1261. Distribution of funds; attorney fees and expenses

The funds appropriated by the Act of October 21, 1968 (82 Stat. 1190, 1198), to pay a judgment to the Blackfeet Tribe of the Blackfeet Indian Reservation, Montana, and the Gros Ventre Tribe of the Fort Belknap Reservation, Montana, in Indian Claims Commission docket numbered 279–A, together with interest thereon, after payment of attorney fees, litigation expenses, and the cost of carrying out the provisions of this subchapter, shall be divided by the Secretary of the Interior on the basis of 73.2 per centum to the Blackfeet Tribe and 26.8 per centum to the Gros Ventre Tribe.

(Pub. L. 92–254, § 1, Mar. 18, 1972, 86 Stat. 64.)

REFERENCES IN TEXT

Act of October 21, 1968, referred to in text, is act Oct. 21, 1968, Pub. L. 90–608, 82 Stat. 1190, known as the Supplemental Appropriation Act, 1969. Chapter XII of the act set out at 82 Stat. 1198, appropriated the funds referred to and was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1262. Membership roll; per capita distribution; minors

The sum of $5,671,156 from the funds credited to the Blackfeet Tribe under section 1261 of this title shall be distributed per capita to each person whose name appears on or is entitled to appear on the membership roll of the Blackfeet Tribe, and who was born on or prior to and is living on March 18, 1972. The sum of $2,100,000 from the funds credited to the Gros Ventre Tribe under section 1261 of this title shall be distributed per capita to all members of the Fort Belknap Community who were born on or prior to and are living on March 18, 1972, and (a) whose names appear on the February 5, 1937, payment roll of the Gros Ventre Tribe of the Fort Belknap Reservation, or (b) who are descended from a person whose name appears on said roll, if such member possesses a greater degree of Gros Ventre blood than Assiniboine blood. If such member possesses equal quantums of Gros Ventre and Assiniboine blood he may elect to participate in the per capita distribution authorized by this section, in which event he shall not be eligible to participate in any per capita distribution of an Assiniboine judgment. A share or interest payable to enrollees or their heirs or legatees who are less than eighteen years of age or under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines appropriate to protect the best interest of such persons.

(Pub. L. 92–254, § 2, Mar. 18, 1972, 86 Stat. 64.)

§ 1263. Use of funds; authorization and approval

The balance of each tribe's share of the funds may be advanced, expended, invested, or rein-

vested for any purposes that are authorized by the respective tribal governing bodies and approved by the Secretary of the Interior.

(Pub. L. 92–254, § 3, Mar. 18, 1972, 86 Stat. 65.)

§ 1264. Tax exemption; Social Security eligibility

None of the funds distributed per capita under the provisions of this subchapter shall be subject to Federal or State income taxes, and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act [42 U.S.C. 301 et seq.]. The provision of this section regarding eligibility for assistance under the Social Security Act is enacted in recognition of unique circumstances applicable to the tribes involved, and shall not be regarded as a precedent or as a general policy for application to other tribes.

(Pub. L. 92–254, § 4, Mar. 18, 1972, 86 Stat. 65.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified principally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

§ 1265. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 92–254, § 5, Mar. 18, 1972, 86 Stat. 65.)

SUBCHAPTER LXIX—JICARILLA APACHE TRIBE: DISTRIBUTION OF JUDGMENT FUND

§ 1271. Disposition of judgment funds

The funds appropriated to pay a judgment to the Jicarilla Apache Tribe in Indian Claims Commission docket numbered 22–A, together with the interest thereon, after payment of attorney fees and other litigation expenses, may be advanced, expended, invested, or reinvested for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior.

(Pub. L. 92–295, § 1, May 16, 1972, 86 Stat. 139.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1272. Protection of minors and persons under legal disability

Sums payable to enrollees or their heirs or legatees who are less than eighteen years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons.

(Pub. L. 92–295, § 2, May 16, 1972, 86 Stat. 139.)

§ 1273. Tax exemption

None of the funds distributed per capita under the provisions of this subchapter shall be subject to Federal or State income taxes.

(Pub. L. 92–295, § 3, May 16, 1972, 86 Stat. 139.)

§ 1274. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 92–295, § 4, May 16, 1972, 86 Stat. 139.)

SUBCHAPTER LXX—HAVASUPAI TRIBE OF ARIZONA: DISTRIBUTION OF JUDGMENT FUND

§ 1281. Disposition of funds

The funds appropriated by the Act of December 26, 1969 (83 Stat. 447), to pay a judgment to the Havasupai Tribe in Indian Claims Commission docket numbered 91, together with interest thereon, after payment of attorney fees and litigation expenses, may be advanced, expended, invested, or reinvested for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior.

(Pub. L. 92–438, § 1, Sept. 29, 1972, 86 Stat. 741.)

REFERENCES IN TEXT

Act of December 26, 1969, referred to in text, is act Dec. 26, 1969, Pub. L. 91–166, 83 Stat. 447, known as the Supplemental Appropriation Act, 1970. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1282. Tax exemption

None of the funds distributed per capita under the provisions of this subchapter shall be subject to Federal or State income taxes.

(Pub. L. 92–438, § 2, Sept. 29, 1972, 86 Stat. 741.)

§ 1283. Payments to adults; trusts for minors and persons under legal disability

Sums payable to adult living enrollees or to adult heirs or legatees of deceased enrollees shall be paid directly to such persons. Sums payable to enrollees or their heirs or legatees who are less than eighteen years of age or who are under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines appropriate to protect the best interests of such persons.

(Pub. L. 92–438, § 3, Sept. 29, 1972, 86 Stat. 741.)

§ 1284. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to effect the provisions of this subchapter.

(Pub. L. 92–438, § 4, Sept. 29, 1972, 86 Stat. 741.)

SUBCHAPTER LXXI—DELAWARE TRIBE AND ABSENTEE DELAWARE TRIBE OF WESTERN OKLAHOMA: DISTRIBUTION OF JUDGMENT FUND

§ 1291. Disposition of funds

The funds appropriated by the Act of December 26, 1969 (83 Stat. 447, 453), to pay a judgment

in favor of the petitioners, the Delaware Tribe of Indians in docket 298, and the Absentee Delaware Tribe of Western Oklahoma, and others, in docket 72, together with any interest thereon, after payment of attorney fees, litigation expenses, and such expenses as may be necessary in effecting the provisions of this subchapter, shall be distributed as provided herein.

(Pub. L. 92–456, § 1, Oct. 3, 1972, 86 Stat. 762.)

REFERENCES IN TEXT

Act of December 26, 1969, referred to in text, is act Dec. 26, 1969, Pub. L. 91–166, 83 Stat. 447, known as the Supplemental Appropriation Act, 1970. Chapter IX of the act, set out at 83 Stat. 453, appropriated the funds referred to and was not classified to the Code.

§ 1292. Membership roll requirements

The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements:

(a) they were born on or prior to and were living on October 3, 1972; and

(b) they are citizens of the United States; and

(c)(1) their name or the name of a lineal ancestor appears on the Delaware Indian per capita payroll approved by the Secretary on April 20, 1906, or

(2) their name or the name of a lineal ancestor is on or is eligible to be on the constructed base census roll as of 1940 of the Absentee Delaware Tribe of Western Oklahoma, approved by the Secretary.

(Pub. L. 92–456, § 2, Oct. 3, 1972, 86 Stat. 762.)

§ 1293. Applications for enrollment; filing date and place; notice and appeal of rejections; review

All applications for enrollment must be filed either with the Area Director of the Bureau of Indian Affairs, Muskogee, Oklahoma, or with the Area Director of the Bureau of Indian Affairs, Anadarko, Oklahoma, on or before the last day of the fourth full month following October 3, 1972, and no application shall be accepted thereafter. The Secretary of the Interior shall give a rejection notice within sixty days after receipt of an application if the applicant is ineligible for enrollment. An appeal from a rejected application must be filed with the Area Director not later than thirty days from receipt of the notice of rejection. The Secretary shall make a final determination on each appeal not later than sixty days from the date it is filed. Each application and each appeal filed with the Area Director shall be reviewed by a committee composed of representatives of the two Oklahoma Delaware groups prior to submission of the application or appeal to the Secretary, and the committee shall advise the Area Director in writing of its judgment regarding the eligibility of the applicant.

(Pub. L. 92–456, § 3, Oct. 3, 1972, 86 Stat. 762.)

§ 1294. Apportionment, credit, and disposition of funds

(a) Authority of Secretary

The Secretary of the Interior shall apportion to the Absentee Delaware Tribe of Western Oklahoma, as presently constituted, so much of the judgment fund and accrued interest as the ratio of the persons enrolled pursuant to section 1292(c)(2) of this title bears to the total number of persons enrolled pursuant to section 1292 of this title. The funds so apportioned to the Absentee Delaware Tribe of Western Oklahoma shall be placed to the credit of the tribe in the United States Treasury and shall be used in the following manner: 90 per centum of such funds shall be distributed in equal shares to each person enrolled pursuant to section 1292(c)(2) of this title, and 10 per centum shall remain to the credit of the tribe in the United States Treasury, and may be advanced, expended, invested, or reinvested for any purpose that is authorized by the tribal governing body and approved by the Secretary of the Interior.

(b) Manner of payment

The funds not apportioned to the Absentee Delaware Tribe of Western Oklahoma shall be placed to the credit of the Delaware Tribe of Indians in the United States Treasury and shall be used in the following manner: 90 per centum of such funds shall be distributed in equal shares to each person enrolled pursuant to section 1292(c)(1) of this title, and 10 per centum shall remain to the credit of the tribe in the United States Treasury and may be advanced, expended, invested, or reinvested for any purpose that is authorized by the tribal governing body: *Provided*, That the Secretary of the Interior shall not approve the use of the funds remaining to the credit of the tribe until the tribe has organized a legal entity which in the judgment of the Secretary adequately protects the interests of its members.

(Pub. L. 92–456, § 4, Oct. 3, 1972, 86 Stat. 762.)

§ 1295. Payments to adults; trusts for minors and persons under legal disability

Sums payable to living enrollees age eighteen or older or to heirs or legatees of deceased enrollees age eighteen or older shall be paid directly to such persons. Sums payable to enrollees or their heirs or legatees who are under age eighteen or who are under legal disability other than minority shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons.

(Pub. L. 92–456, § 5, Oct. 3, 1972, 86 Stat. 763.)

§ 1296. Income tax exemption

None of the funds distributed per capita under the provisions of this subchapter shall be subject to Federal or State income taxes.

(Pub. L. 92–456, § 6, Oct. 3, 1972, 86 Stat. 763.)

§ 1297. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 92–456, § 7, Oct. 3, 1972, 86 Stat. 763.)

SUBCHAPTER LXXII—YAVAPAI APACHE TRIBE OF ARIZONA: DISTRIBUTION OF JUDGMENT FUND

§ 1300. Distribution of funds; attorney fees and expenses

The funds appropriated by the Act of July 22, 1969 (83 Stat. 49, 62), to pay a judgment to the Yavapai Indians in Indian Claims Commission dockets numbered 22–E and 22–F, together with any interest thereon, after payment of attorney fees and litigation expenses and the costs of carrying out the provisions of this subchapter, shall be distributed as provided in such sections.

(Pub. L. 92–461, § 1, Oct. 6, 1972, 86 Stat. 768.)

REFERENCES IN TEXT

Act of July 22, 1969, referred to in text, is act July 22, 1969, Pub. L. 91–47, 83 Stat. 49, known as the Second Supplemental Appropriation Act, 1969. Chapter XIII of the act, set out at 83 Stat. 62, appropriated the funds referred to and was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1300a. Percentage of funds for Payson Indian Band

The Secretary of the Interior shall set aside for the benefit of the Payson Indian Band, at Payson, Arizona, 3.5 per centum of the net judgment funds described in section 1300 of this title, which shall be disposed of pursuant to section 1300a–2 of this title.

(Pub. L. 92–461, § 2, Oct. 6, 1972, 86 Stat. 769.)

§ 1300a–1. Membership roll; preparation; eligibility for enrollment; verification; approval

For the purposes of apportioning the funds, the Yavapai Apache Indian Community of the Camp Verde Reservation, the Fort McDowell Mohave-Apache Community, and the Yavapai-Prescott Community shall prepare rolls of all persons who were born on or prior to and living on October 6, 1972, and who are enrolled or entitled to be enrolled in accordance with the respective tribal constitutions or articles of association, as the case may be, in effect on April 1, 1972. The Secretary of the Interior shall verify and approve the rolls.

(Pub. L. 92–461, § 3, Oct. 6, 1972, 86 Stat. 769.)

§ 1300a–2. Apportionment of funds; advances, expenditures, investments, or reinvestments; utilization of funds for Payson Band

Upon completion and approval of the rolls as provided in section 1300a–1 of this title, the balance of the funds not set aside pursuant to section 1300a of this title shall be apportioned among the cited groups in section 1300a–1 of this title on the basis of the number of enrollees in each group. The funds so apportioned shall be redeposited in the Treasury of the United States to the credit of the respective groups and may be advanced, expended, invested, or reinvested in any manner authorized by the governing bodies and approved by the Secretary. All funds so accruing to the Payson Band pursuant to section 1300a of this title shall be utilized pursuant to a plan agreed upon between the governing body elected by the Payson Indian community or by the members thereof at a meeting called in accordance with the rules prescribed by the Secretary of the Interior.

(Pub. L. 92–461, § 4, Oct. 6, 1972, 86 Stat. 769.)

§ 1300a–3. Tax exemption; trusts and other procedures for protection of minors and persons under legal disability

None of the funds distributed per capita under the provisions of this subchapter shall be subject to Federal or State income taxes. Sums payable to enrollees or heirs or legatees who are less than eighteen years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines appropriate to protect the best interests of such persons.

(Pub. L. 92–461, § 5, Oct. 6, 1972, 86 Stat. 769.)

§ 1300a–4. Rules and regulations

The Secretary is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 92–461, § 6, Oct. 6, 1972, 86 Stat. 769.)

SUBCHAPTER LXXIII—KICKAPOO INDIANS OF KANSAS AND OKLAHOMA: DISTRIBUTION OF JUDGMENT FUND

§ 1300b. Disposition of judgment funds; division of funds on basis of tribal membership rolls; net tribal credits

The funds on deposit in the Treasury of the United States to the credit of the Kickapoo Indians of Kansas and Oklahoma to pay judgments by the Indian Claims Commission in dockets 316, 316–A, 317, 145, and 193, together with interest thereon, after payment of attorney fees and litigation expenses, shall be divided on the basis of membership of the respective tribes current as of October 6, 1972. For the purpose of adjusting the offsets allowed in docket 316, the Secretary of the Interior shall use the gross award (land value) as a basis for his computation, deduct therefrom the consideration paid, the offsets expended for the Kickapoo Tribe prior to its separation into two tribal entities, attorney fees and litigation expenses, and, after making the division of the balance as provided herein, shall deduct $44,759.45 from the proportionate share of the Kickapoo Tribe of Kansas and $118,661.24 from the proportionate share of the Kickapoo Tribe of Oklahoma. The balances remaining shall be the net amount to be placed to the credit of the respective tribes.

(Pub. L. 92–467, § 1, Oct. 6, 1972, 86 Stat. 781.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1300b–1. Distribution of shares

(a) Per capita shares to tribal members

The funds divided and credited under section 1300b of this title, and the funds appropriated to

pay a judgment recovered by the Kickapoo Indians of Oklahoma in docket numbered 318, including the interest thereon, after the payment of attorney fees and other litigation expenses, shall be used as follows: 75 per centum shall be distributed in equal per capita shares to each person whose name appears on or is entitled to appear on the membership roll of the Kickapoo Tribe of Oklahoma and 90 per centum shall be distributed in equal per capita shares to each person whose name appears on or is entitled to appear on the membership roll of the Kickapoo Tribe of Kansas if such person was born on or prior to and is living on October 6, 1972.

(b) Use of balance for advances, etc.

The balance of each tribe's share of the funds may be advanced, expended, invested, or reinvested for any purposes that are authorized by the tribal governing bodies and approved by the Secretary of the Interior.

(Pub. L. 92–467, § 2, Oct. 6, 1972, 86 Stat. 781.)

§ 1300b–2. Approval of plans for use of money after submission to Congressional committees

The Secretary of the Interior shall approve no plans for the use of the money specified in section 1300b–1(b) of this title for the Kickapoo Tribes of Kansas and Oklahoma until at least thirty days after the plans have been submitted by the Secretary to the Committees on Interior and Insular Affairs of the Senate and House of Representatives.

(Pub. L. 92–467, § 3, Oct. 6, 1972, 86 Stat. 781.)

CHANGE OF NAME

Committee on Interior and Insular Affairs of the Senate abolished and replaced by Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of the Senate, as amended by Senate Resolution No. 4, Ninety-fifth Congress (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977. Section 105 of Senate Resolution No. 4 established a temporary Select Committee on Indian Affairs having jurisdiction over matters relating to Indian affairs (such matters previously having been within the jurisdiction of the Committee on Interior and Insular Affairs). Senate Resolution No. 127, June 6, 1984, Ninety-eighth Congress, established the Select Committee on Indian Affairs as a permanent committee of the Senate, and section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress, redesignated the Select Committee on Indian Affairs as the Committee on Indian Affairs.

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

§ 1300b–3. Per capita payments; trusts and other procedures for protection of minors and persons under legal disability

Any sums payable per capita to persons who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons.

(Pub. L. 92–467, § 4, Oct. 6, 1972, 86 Stat. 781.)

§ 1300b–4. Tax exemption

None of the funds distributed per capita under the provisions of this subchapter shall be subject to Federal or State income taxes.

(Pub. L. 92–467, § 5, Oct. 6, 1972, 86 Stat. 781.)

§ 1300b–5. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 92–467, § 6, Oct. 6, 1972, 86 Stat. 781.)

SUBCHAPTER LXXIII–A—TEXAS BAND OF KICKAPOO INDIANS

§ 1300b–11. Congressional findings and declaration of policy

(a) Findings

Congress finds that the Texas Band of Kickapoo Indians is a subgroup of the Kickapoo Tribe of Oklahoma; that many years ago, the Band was forced to migrate from its ancestral lands to what is now the State of Texas and the nation of Mexico; that, although many members of the band[1] meet the requirements for United States citizenship, some of them cannot prove that they are United States citizens; that, although the Band resides in the State of Texas, it owns no land there; that, because the Band owns no land in Texas, members of the Band are considered ineligible for services which the United States provides to other Indians who are members of federally recognized tribes because of their status as Indians except when the members of the Band are on or near the reservation of the Kickapoo Tribe of Oklahoma; that members of the Band live under conditions that pose serious threats to their health; and that, because their culture is derived from three different cultures, they have unique needs including, especially, educational needs.

(b) Declarations

Congress therefore declares that the Band should be recognized by the United States; that the right of the members of the Band to pass and repass the borders of the United States should be clarified; that services which the United States provides to Indians because of their status as Indians should be provided to members of the Band in Maverick County, Texas; and, that land in the State of Texas should be taken in trust by the United States for the benefit of the Band.

(Pub. L. 97–429, § 2, Jan. 8, 1983, 96 Stat. 2269.)

SHORT TITLE

Section 1 of Pub. L. 97–429 provided: ''That this Act [enacting this subchapter] may be cited as the 'Texas Band of Kickapoo Act'.''

§ 1300b–12. Definitions

For purposes of this subchapter—

(a) ''Band'' means the Texas Band of Kickapoo Indians, a subgroup of the Kickapoo Tribe of Oklahoma;

[1] So in original. Probably should be capitalized.

(b) ''Tribe'' means the Kickapoo Tribe of Oklahoma; and

(c) ''Secretary'' means the Secretary of the Interior.

(Pub. L. 97–429, § 3, Jan. 8, 1983, 96 Stat. 2269.)

§ 1300b–13. Band roll

(a) Establishment; publication in Federal Register

Within one year of January 8, 1983, the Secretary shall, after consultation with the Tribe, compile a roll of those members of the Tribe who possess Kickapoo blood and who are also members of the Band. When said roll is complete, the Secretary shall immediately publish notice in the Federal Register stating that the roll has been completed. The Secretary shall ensure that the roll, once completed, is maintained and that it is current.

(b) Report to Congress

If the Secretary does not compile the roll within the period prescribed in subsection (a) of this section, he shall submit a report to Congress setting forth the reasons he did not do so.

(c) Citizenship for applicants

For a period of five years after the publication of the Federal Register notice required under subsection (a) of this section, any member of the Band whose name appears on the roll compiled by the Secretary, may, at his option, apply for United States citizenship. Such application shall be made to the Immigration and Naturalization Service and, upon receipt of the application, citizenship shall promptly be granted to the applicant.

(d) Border crossing, living and working rights

Notwithstanding the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], all members of the Band shall be entitled to freely pass and repass the borders of the United States and to live and work in the United States.

(Pub. L. 97–429, § 4, Jan. 8, 1983, 96 Stat. 2269.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (d), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 1300b–14. Land acquisition

(a) Statutory provisions applicable

The Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.], is hereby made applicable to the Band: *Provided*, *however*, That the Secretary is only authorized to exercise his authority under section 5 of that Act [25 U.S.C. 465] with respect to lands located in Maverick County, Texas.

(b) Authority of Secretary

The Secretary is authorized and directed to accept no more than one hundred acres of land in Maverick County, Texas which shall be offered for the benefit of the Band with the approval of the Tribe. Nothing in this subsection shall be construed as limiting the authority of the Secretary under section 5 of the Act of June 18, 1934 (48 Stat. 985) [25 U.S.C. 465].

(Pub. L. 97–429, § 5, Jan. 8, 1983, 96 Stat. 2270.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 1300b–15. Jurisdiction

The State of Texas shall exercise jurisdiction over civil causes of action and criminal offenses arising on the Band's trust lands in accordance with section 1360 of title 28 and section 1162 of title 18 as if it had assumed jurisdiction pursuant to sections 1321 and 1322 of this title. The provisions of section 1323 of this title, shall be applicable and available to the State of Texas.

(Pub. L. 97–429, § 6, Jan. 8, 1983, 96 Stat. 2270.)

§ 1300b–16. Provision of Federal Indian services

(a) Eligibility for Federal Indian services

Notwithstanding any other provision of law authorizing the provision of special programs and services by the United States to Indians because of their status as Indians, the Band and its members in Maverick County, Texas shall be eligible for such programs and services without regard to the existence of a reservation, the residence of members of the Band on or near a reservation, or the compilation of the roll pursuant to section 1300b–13(a) of this title.

(b) Cooperation with Mexican Government and joint funding agreements for meeting special agricultural needs of the Band

In providing services pursuant to subsection (a) of this section, the Secretary and the head of each department and agency shall consult and cooperate with appropriate officials or agencies of the Mexican Government to the greatest extent possible to ensure that such services meet the special tricultural needs of the Band and its members. Such consultation and cooperation may include, whenever practicable, joint funding agreements between such agency or department of the United States and the appropriate agencies and officials of the Mexican Government.

(Pub. L. 97–429, § 7, Jan. 8, 1983, 96 Stat. 2270.)

SUBCHAPTER LXXIV—YANKTON SIOUX TRIBE: DISTRIBUTION OF JUDGMENT FUND

§ 1300c. Distribution of funds; attorney fees and expenses

The funds appropriated by the Act of July 22, 1969 (83 Stat. 49), to pay a judgment to the Yankton Sioux Tribe in Indian Claims Commission docket numbered 332–A, together with the interest thereon, after payment of attorney fees and litigation expenses, and such other expenses as may be necessary in effecting the provisions

of this subchapter, shall be distributed as provided herein.

(Pub. L. 92–468, § 1, Oct. 6, 1972, 86 Stat. 782.)

REFERENCES IN TEXT

Act of July 22, 1969, referred to in text, is act July 22, 1969, Pub. L. 91–47, 83 Stat. 49, known as the Second Supplemental Appropriation Act, 1969. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

Herein, referred to in text, means in Pub. L. 92–468, Oct. 6, 1972, 86 Stat. 782, which comprises this subchapter. For complete classification of this Act to the Code, see Tables.

§ 1300c–1. Funds for expert witnesses and programing needs

The Secretary of the Interior shall withhold from distribution a sum not to exceed $150,000, pending a decision by the Yankton Sioux Tribal Business and Claims Committee regarding the needs of the tribe for expert witnesses in the Yankton Sioux claims in Indian Claims Commission dockets numbered 332–B, 332–C, and 74. The sum withheld may be used for such purpose or for other programing needs, subject to the approval of the Secretary.

(Pub. L. 92–468, § 2, Oct. 6, 1972, 86 Stat. 782.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1300c–2. Membership roll; preparation; tribal constitutional requirements

The Secretary of the Interior, in cooperation with the Tribal Council, shall prepare a roll of all persons born on or prior to and living on October 6, 1972, who meet the requirements for membership of the Yankton Sioux tribal constitution approved on October 5, 1932, as amended.

(Pub. L. 92–468, § 3, Oct. 6, 1972, 86 Stat. 782.)

§ 1300c–3. Per capita distributions to tribal members; advances, expenditures, investments, or reinvestments for authorized purposes; trusts and other procedures for protection of minors and persons under legal disability

The judgment fund, less funds otherwise provided in section 1300c–1 of this title, shall be used as follows: 75 per centum thereof shall be distributed in equal per capita shares to each person who is enrolled or entitled to be enrolled on October 6, 1972; the remainder may be advanced, expended, invested, or reinvested for any purposes that are authorized by the tribal governing body and approved by the Secretary of the Interior. Sums payable to adult living enrollees or to adult heirs or legatees of deceased enrollees shall be paid directly to such persons. Sums payable to enrollees or their heirs or legatees who are less than eighteen years of age or who are under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons.

(Pub. L. 92–468, § 4, Oct. 6, 1972, 86 Stat. 782.)

§ 1300c–4. Tax exemption

None of the funds distributed per capita under the provisions of this subchapter shall be subject to Federal or State income taxes.

(Pub. L. 92–468, § 5, Oct. 6, 1972, 86 Stat. 782.)

§ 1300c–5. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 92–468, § 6, Oct. 6, 1972, 86 Stat. 782.)

SUBCHAPTER LXXV—MISSISSIPPI SIOUX TRIBES: DISTRIBUTION OF JUDGMENT FUND

PART A—1972 DISTRIBUTION AUTHORITY

§ 1300d. Distribution of funds; attorney fees and expenses

The funds appropriated by the Act of June 19, 1968 (82 Stat. 239), to pay compromise judgments to the Mdewakanton and Wahpakoota Tribe of Sioux Indians, and the Sisseton and Wahpeton Tribes of Sioux Indians, in Indian Claims Commission dockets numbered 142, 359, 360, 361, 362, and 363, together with interest thereon, after payment of attorney fees and litigation expenses and the costs of carrying out the provisions of this part, shall be distributed as provided in this part.

(Pub. L. 92–555, § 1, Oct. 25, 1972, 86 Stat. 1168.)

REFERENCES IN TEXT

Act of June 19, 1968, referred to in text, is act June 19, 1968, Pub. L. 90–352, 82 Stat. 239. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

SHORT TITLE

Pub. L. 105–387, § 1, Nov. 13, 1998, 112 Stat. 3471, provided that: "This Act [enacting part B of this subchapter and amending sections 1300d–3 and 1300d–4 of this title] may be cited as the 'Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998'."

§ 1300d–1. Lower Council Sioux

(a) Membership rolls; applications

The Flandreau Santee Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska shall bring current their membership rolls as of October 25, 1972. The Lower Sioux Indian Community at Morton, Minnesota, the Prairie Island Indian Community at Welch, Minnesota, and the Shakopee Mdewakanton Sioux Community of Minnesota shall prepare rolls of their members who are lineal descendants of the Mdewakanton and Wahpakoota Tribes, and who were born on or prior to and are living on October 25, 1972, using available records and rolls at the local agency and area offices, and any other available records and rolls. Applications for enrollment

must be filed with each group named in this section and such rolls shall be subject to approval of the Secretary of the Interior. The Secretary's determination on all applications shall be final.

(b) Roll of lineal descendants; applications

The Secretary of the Interior shall prepare a roll of the lineal descendants of the Mdewakanton and Wahpakoota Tribe who were born on or prior to and are living on October 25, 1972, whose names or the names of a lineal ancestor appears on any available records and rolls acceptable to the Secretary, and who are not members of any of the organized groups listed in subsection (a) of this section. Applications for enrollment must be filed with the Area Director, Bureau of Indian Affairs, Aberdeen, South Dakota. The Secretary's determination on all applications for enrollment shall be final.

(Pub. L. 92–555, title I, § 101, Oct. 25, 1972, 86 Stat. 1168.)

§ 1300d–2. Apportionment of funds; deposit in United States Treasury; per capita shares; advances, deposits, expenditures, investments, or reinvestments for approved purposes

After deducting the amounts authorized in section 1300d of this title, the funds derived from the judgment awarded the Indian Claims Commission dockets numbered 360, 361, 362, 363, and one-half of the amount awarded in docket numbered 359, plus accrued interest, shall be apportioned on the basis of the rolls prepared pursuant to section 1300d–1 of this title. An amount equivalent to the proportionate shares of those persons who are members of the Flandreau Santee Sioux Tribe of South Dakota, the Santee Sioux Tribe of Nebraska, the Lower Sioux Indian Community, the Prairie Island Indian Community, and the Shakopee Mdewakanton Sioux Community shall be placed on deposit in the United States Treasury to the credit of the respective groups. Eighty per centum of such funds on deposit to the credit of the Flandreau Santee Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska shall be distributed per capita to such tribal members, and the remainder may be advanced, deposited, expended, invested, or reinvested for any purpose designated by the respective tribal governing bodies and approved by the Secretary of the Interior. One hundred per centum of such funds on deposit to the credit of the Lower Sioux Indian Community, the Prairie Island Indian Community, and the Shakopee Mdewakanton Sioux Community shall be distributed per capita of such tribal members: *Provided*, That none of the funds may be paid per capita to any person whose name does not appear on the rolls prepared pursuant to section 1300d–1 of this title. The shares of enrollees who are not members of such groups shall be paid per capita.

(Pub. L. 92–555, title I, § 102, Oct. 25, 1972, 86 Stat. 1168.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

CODIFICATION

Reference in proviso to "section 1300d–1 of this title" was substituted for "section 2 of this Act" as the probable intent of Congress.

§ 1300d–3. Upper Council Sioux

(a) Membership rolls; applications

The Devils Lake Sioux Tribe of North Dakota, and the Sisseton and Wahpeton Sioux Tribe of South Dakota, shall bring current their membership rolls of October 25, 1972. The Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana, shall prepare rolls of their members who are lineal descendants of the Sisseton and Wahpeton Mississippi Sioux Tribe, who were born on or prior to and are living on October 25, 1972, and who are entitled to enrollment on their respective membership rolls in accordance with the applicable rules and regulations of the tribe or group involved, using available, records and rolls at the local agency and area offices, and any other available records and rolls. Applications for enrollment must be filed with each group named in this section and such rolls shall be subject to approval of the Secretary of the Interior. The Secretary's determination on all applications for enrollment shall be final.

(b) Roll of lineal descendants; applications

Subject to the Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998 [25 U.S.C. 1300d–21 et seq.], the Secretary of the Interior shall prepare a roll of the lineal descendants of the Sisseton and Wahpeton Mississippi Sioux Tribe who were born on or prior to and are living on October 25, 1972, whose names or the name of a lineal ancestor appears on any available records and rolls acceptable to the Secretary, and who are not members of any of the organized groups listed in subsection (a) of this section. Applications for enrollment must be filed with the Area Director, Bureau of Indian Affairs, Aberdeen, South Dakota. The Secretary's determination on all applications for enrollment shall be final.

(Pub. L. 92–555, title II, § 201, Oct. 25, 1972, 86 Stat. 1169; Pub. L. 105–387, § 7(d)(2), Nov. 13, 1998, 112 Stat. 3475.)

REFERENCES IN TEXT

The Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998, referred to in subsec. (b), is Pub. L. 105–387, Nov. 13, 1998, 112 Stat. 3471, which is classified principally to part B (§ 1300d–21 et seq.) of this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 1300d of this title and Tables.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–387 substituted "Subject to the Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998, the Secretary" for "The Secretary".

§ 1300d–4. Apportionment of funds

(a) Basis of apportionment

After deducting the amount authorized in section 1300d of this title, the funds derived from the judgment awarded in Indian Claims Commission docket numbered 142 and the one-half remaining from the amount awarded in docket

numbered 359[1] plus interest received (other than funds otherwise distributed to the Sisseton and Wahpeton Tribes of Sioux Indians in accordance with the Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998 [25 U.S.C. 1300d–21 et seq.]), shall be apportioned on the basis of reservation residence and other residence shown on the 1909 McLaughlin annuity roll, as follows:

Tribe or group	Percentage
Devils Lake Sioux of North Dakota	21.6892
Sisseton-Wahpeton Sioux of South Dakota	42.9730
Assiniboine and Sioux Tribe of the Fort Peck Reservation, Montana	10.3153

(b) Deposit in United States Treasury; per capita shares; advances, deposits, expenditures, investments, or reinvestments for approved purposes; programing proposals

The shares of the Devils Lake Sioux Tribe of North Dakota, the Sisseton and Wahpeton Sioux Tribe of South Dakota, and the Assiniboine and Sioux Tribe of the Fort Peck Indian Reservation, Montana, as apportioned in accordance with subsection (a) of this section, shall be placed on deposit in the United States Treasury to the credit of the respective groups. Seventy per centum of such funds shall be distributed per capita to their tribal members: *Provided*, That none of the funds may be paid per capita to any person whose name does not appear on the rolls prepared pursuant to section 1300d–3(a) of this title. The remainder of such funds may be advanced, deposited, expended, invested, or reinvested for any purpose designated by the respective tribal governing bodies and approved by the Secretary of the Interior: *Provided*, That, in the case of the Assiniboine and Sioux Tribe of the Fort Peck Reservation, Montana, the Fort Peck Sisseton-Wahpeton Sioux Council shall act as the governing body in determining the distribution of funds allotted for programing purposes: *Provided further*, That the Sisseton-Wahpeton Sioux Tribe of South Dakota shall act in concert with its membership residing in the Upper Sioux Community in Minnesota and its membership affiliated with the Urban Sisseton-Wahpeton Council of the Minneapolis-Saint Paul area in jointly submitting programing proposals to the Secretary.

(c) Per capita distribution to enrollees

The funds allocated to all other Sisseton and Wahpeton Sioux, as provided in subsection (a) of this section, shall be distributed per capita to the persons enrolled on the roll prepared by the Secretary pursuant to section 1300d–3(b) of this title.

(Pub. L. 92–555, title II, § 202, Oct. 25, 1972, 86 Stat. 1169; Pub. L. 105–387, § 7(d)(1), Nov. 13, 1998, 112 Stat. 3474.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in subsec. (a), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

The Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998, referred to in subsec. (a), is Pub. L. 105–387, Nov. 13, 1998, 112 Stat. 3471, which is classified principally to part B (§ 1300d–21 et seq.) of this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 1300d of this title and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–387, § 7(d)(1)(B), in table struck out at end item which had apportioned 25.0225 percent of funds to all other Sisseton and Wahpeton Sioux.

Pub. L. 105–387, § 7(d)(1)(A)(ii), which directed amendment of introductory provisions by inserting ''plus interest received (other than funds otherwise distributed to the Sisseton and Wahpeton Tribes of Sioux Indians in accordance with the Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998),'' after ''docket numbered 359,'' was executed by making the insertion after ''docket numbered 359'', to reflect the probable intent of Congress and the amendment by Pub. L. 105–387, § 7(d)(1)(A)(i). See below.

Pub. L. 105–387, § 7(d)(1)(A)(i), struck out '', plus accrued interest,'' after ''docket numbered 359'' in introductory provisions.

§ 1300d–5. Citizenship requirement

No person shall be eligible to be enrolled under this part who is not a citizen of the United States.

(Pub. L. 92–555, title III, § 301, Oct. 25, 1972, 86 Stat. 1170.)

§ 1300d–6. Election of group for enrollment

Any person qualifying for enrollment with more than one group shall elect the group with which he shall be enrolled for the purpose of this part.

(Pub. L. 92–555, title III, § 302, Oct. 25, 1972, 86 Stat. 1170.)

§ 1300d–7. Protection of minors and persons under legal disability

The sums payable to enrollees or their heirs or legatees who are minors or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interest of such persons after considering the recommendations of the governing bodies of the groups involved.

(Pub. L. 92–555, title III, § 303, Oct. 25, 1972, 86 Stat. 1170.)

§ 1300d–8. Income tax exemption

None of the funds distributed per capita under the provisions of this part shall be subject to Federal or State income taxes.

(Pub. L. 92–555, title III, § 304, Oct. 25, 1972, 86 Stat. 1170.)

§ 1300d–9. Rules and regulations

The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this part, including the establishment of deadlines.

(Pub. L. 92–555, title III, § 305, Oct. 25, 1972, 86 Stat. 1170.)

§ 1300d–10. Authority to settle action

Notwithstanding any provision of this part or any other provision of law, the Attorney Gen-

[1] So in original. A comma probably should appear.

eral is authorized to negotiate and settle any action that may be or has been brought to contest the constitutionality or validity under law of the distribution to all other Sisseton and Wahpeton Sioux provided for in section 1300d–4 of this title.

(Pub. L. 92–555, title III, § 306, as added Pub. L. 102–497, § 17, Oct. 24, 1992, 106 Stat. 3261.)

PART B—1998 DISTRIBUTION AUTHORITY

§ 1300d–21. Definitions

In this part:

(1) Covered Indian tribe

The term ''covered Indian tribe'' means an Indian tribe listed in section 1300d–23(a) of this title.

(2) Fund Account

The term ''Fund Account'' means the consolidated account for tribal trust funds in the Treasury of the United States that is managed by the Secretary—

(A) through the Office of Trust Fund Management of the Department of the Interior; and

(B) in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(3) Secretary

The term ''Secretary'' means the Secretary of the Interior.

(4) Tribal governing body

The term ''tribal governing body'' means the duly elected governing body of a covered Indian tribe.

(Pub. L. 105–387, § 2, Nov. 13, 1998, 112 Stat. 3471.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this Act'', meaning Pub. L. 105–387, Nov. 13, 1998, 112 Stat. 3471, which is classified principally to this part. For complete classification of this Act to the Code, see Short Title note set out under section 1300d of this title and Tables.

The American Indian Trust Fund Management Reform Act of 1994, referred to in par. (2)(B), is Pub. L. 103–412, Oct. 25, 1994, 108 Stat. 4239, as amended, which is classified principally to chapter 42 (§ 4001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

§ 1300d–22. Distribution to, and use of certain funds by, the Sisseton and Wahpeton Tribes of Sioux Indians

Notwithstanding any other provision of law, including part A of this subchapter, any funds made available by appropriations under chapter II of Public Law 90–352 (82 Stat. 239) to the Sisseton and Wahpeton Tribes of Sioux Indians to pay a judgment in favor of those Indian tribes in Indian Claims Commission dockets numbered 142 and 359, including interest, that, as of November 13, 1998, have not been distributed, shall be distributed and used in accordance with this part.

(Pub. L. 105–387, § 3, Nov. 13, 1998, 112 Stat. 3471.)

REFERENCES IN TEXT

Chapter II of Public Law 90–352, referred to in text, is chapter II of Pub. L. 90–352, June 19, 1968, 82 Stat. 239, which provided appropriations for payment of certain claims settled and determined by departments and agencies in accordance with law and judgments rendered against the United States, and was not classified to the Code.

§ 1300d–23. Distribution of funds to tribes

(a) In general

(1) Amount distributed

(A) In general

Subject to section 1300d–27(e) of this title and if no action is filed in a timely manner (as determined under section 1300d–27(d) of this title) raising any claim identified in section 1300d–27(a) of this title, not earlier than 365 days after November 13, 1998, and not later than 415 days after November 13, 1998, the Secretary shall transfer to the Fund Account to be credited to accounts established in the Fund Account for the benefit of the applicable governing bodies under paragraph (2) an aggregate amount determined under subparagraph (B).

(B) Aggregate amount

The aggregate amount referred to in subparagraph (A) is an amount equal to the remainder of—

(i) the funds described in section 1300d–22 of this title; minus

(ii) an amount equal to 71.6005 percent of the funds described in section 1300d–22 of this title.

(2) Distribution of funds to accounts in the Fund Account

The Secretary shall ensure that the aggregate amount transferred under paragraph (1) is allocated to the accounts established in the Fund Account as follows:

(A) 28.9276 percent of that amount shall be allocated to the account established for the benefit of the tribal governing body of the Spirit Lake Tribe of North Dakota.

(B) 57.3145 percent of that amount, after payment of any applicable attorneys' fees and expenses by the Secretary under the contract numbered A00C14202991, approved by the Secretary on August 16, 1988, shall be allocated to the account established for the benefit of the tribal governing body of the Sisseton and Wahpeton Sioux Tribe of South Dakota.

(C) 13.7579 percent of that amount shall be allocated to the account established for the benefit of the tribal governing body of the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana, as designated under subsection (c) of this section.

(b) Use

Amounts distributed under this section to accounts referred to in subsection (d) of this section for the benefit of a tribal governing body shall be distributed and used in a manner consistent with section 1300d–24 of this title.

(c) Tribal governing body of Assiniboine and Sioux Tribes of Fort Peck Reservation

For purposes of making distributions of funds pursuant to this part, the Sisseton and Wahpeton Sioux Council of the Assiniboine and

Sioux Tribes shall act as the governing body of the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

(d) Tribal Trust Fund Accounts

The Secretary of the Treasury, in cooperation with the Secretary of the Interior, acting through the Office of Trust Fund Management of the Department of the Interior, shall ensure that such accounts as are necessary are established in the Fund Account to provide for the distribution of funds under subsection (a)(2) of this section.

(Pub. L. 105–387, § 4, Nov. 13, 1998, 112 Stat. 3471.)

§ 1300d–24. Use of distributed funds

(a) Prohibition

No funds allocated for a covered Indian tribe under section 1300d–23 of this title may be used to make per capita payments to members of the covered Indian tribe.

(b) Purposes

The funds allocated under section 1300d–23 of this title may be used, administered, and managed by a tribal governing body referred to in section 1300d–23(a)(2) of this title only for the purpose of making investments or expenditures that the tribal governing body determines to be reasonably related to—

(1) economic development that is beneficial to the covered Indian tribe;

(2) the development of resources of the covered Indian tribe;

(3) the development of programs that are beneficial to members of the covered Indian tribe, including educational and social welfare programs;

(4) the payment of any existing obligation or debt (existing as of the date of the distribution of the funds) arising out of any activity referred to in paragraph (1), (2), or (3);

(5)(A) the payment of attorneys' fees or expenses of any covered Indian tribe referred to in subparagraph (A) or (C) of section 1300d–23(a)(2) of this title for litigation or other representation for matters arising out of the enactment of part A of this subchapter; except that

(B) the amount of attorneys' fees paid by a covered Indian tribe under this paragraph with funds distributed under section 1300d–23 of this title shall not exceed 10 percent of the amount distributed to that Indian tribe under that section;

(6) the payment of attorneys' fees or expenses of the covered Indian tribe referred to in section 1300d–23(a)(2)(B) of this title for litigation and other representation for matters arising out of the enactment of part A of this subchapter, in accordance, as applicable, with the contracts numbered A00C14203382 and A00C14202991, that the Secretary approved on February 10, 1978 and August 16, 1988, respectively; or

(7) the payment of attorneys' fees or expenses of any covered Indian tribe referred to in section 1300d–23(a)(2) of this title for litigation or other representation with respect to matters arising out of this part.

(c) Management

Subject to subsections (a), (b), and (d) of this section, any funds distributed to a covered Indian tribe pursuant to sections 1300d–23 and 1300d–26 of this title may be managed and invested by that Indian tribe pursuant to the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(d) Withdrawal of funds by covered tribes

(1) In general

Subject to paragraph (2), each covered Indian tribe may, at the discretion of that Indian tribe, withdraw all or any portion of the funds distributed to the Indian tribe under sections 1300d–23 and 1300d–26 of this title in accordance with the American Indian Trust Fund Management Reform Act[1] (25 U.S.C. 4001 et seq.).

(2) Exemption

For purposes of paragraph (1), the requirements under subsections (a) and (b) of section 202 of the American Indian Trust Fund Management Reform Act[1] (25 U.S.C. 4022(a) and (b)) and section 203 of such Act (25 U.S.C. 4023) shall not apply to a covered Indian tribe or the Secretary.

(3) Rule of construction

Nothing in paragraph (2) may be construed to limit the applicability of section 202(c) of the American Indian Trust Fund Management Reform Act[1] (25 U.S.C. 4022(c)).

(Pub. L. 105–387, § 5, Nov. 13, 1998, 112 Stat. 3472.)

REFERENCES IN TEXT

The American Indian Trust Fund Management Reform Act of 1994, referred to in subsecs. (c) and (d)(1), is Pub. L. 103–412, Oct. 25, 1994, 108 Stat. 4239, as amended, which is classified principally to chapter 42 (§ 4001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

§ 1300d–25. Effect of payments to covered Indian tribes on benefits

A payment made to a covered Indian tribe or an individual under this part shall not—

(1) for purposes of determining the eligibility for a Federal service or program of a covered Indian tribe, household, or individual, be treated as income or resources; or

(2) otherwise result in the reduction or denial of any service or program to which, pursuant to Federal law (including the Social Security Act (42 U.S.C. 301 et seq.)), the covered Indian tribe, household, or individual would otherwise be entitled.

(Pub. L. 105–387, § 6, Nov. 13, 1998, 112 Stat. 3473.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified principally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

[1] So in original. Probably should be followed by "of 1994".

§ 1300d–26. Distribution of funds to lineal descendants

(a) In general

Subject to section 1300d–27(e) of this title, the Secretary shall, in the manner prescribed in section 1300d–4(c) of this title, distribute to the lineal descendants of the Sisseton and Wahpeton Tribes of Sioux Indians an amount equal to 71.6005 percent of the funds described in section 1300d–22 of this title, subject to any reduction determined under subsection (b) of this section.

(b) Adjustments

(1) In general

Subject to section 1300d–27(e) of this title, if the number of individuals on the final roll of lineal descendants certified by the Secretary under section 1300d–3(b) of this title is less than 2,588, the Secretary shall distribute a reduced aggregate amount to the lineal descendants referred to in subsection (a) of this section, determined by decreasing—

(A) the percentage specified in section 1300d–23(a)(B)(ii)[1] of this title by a percentage amount equal to—

(i) .0277; multiplied by

(ii) the difference between 2,588 and the number of lineal descendants on the final roll of lineal descendants, but not to exceed 600; and

(B) the percentage specified in subsection (a) of this section by the percentage amount determined under subparagraph (A).

(2) Distribution

If a reduction in the amount that otherwise would be distributed under subsection (a) of this section is made under paragraph (1), an amount equal to that reduction shall be added to the amount available for distribution under section 1300d–23(a)(1) of this title, for distribution in accordance with section 1300d–23(a)(2) of this title.

(c) Verification of ancestry

In seeking to verify the Sisseton and Wahpeton Mississippi Sioux Tribe ancestry of any person applying for enrollment on the roll of lineal descendants after January 1, 1998, the Secretary shall certify that each individual enrolled as a lineal descendant can trace ancestry to a specific Sisseton or Wahpeton Mississippi Sioux Tribe lineal ancestor who was listed on—

(1) the 1909 Sisseton and Wahpeton annuity roll;

(2) the list of Sisseton and Wahpeton Sioux prisoners convicted for participating in the outbreak referred to as the ''1862 Minnesota Outbreak'';

(3) the list of Sioux scouts, soldiers, and heirs identified as Sisseton and Wahpeton Sioux on the roll prepared pursuant to the Act of March 3, 1891 (26 Stat. 989 et seq., chapter 543); or

(4) any other Sisseton or Wahpeton payment or census roll that preceded a roll referred to in paragraph (1), (2), or (3).

[1] So in original. Probably should be section ''1300d–23(a)(1)(B)(ii)''.

(Pub. L. 105–387, § 7, Nov. 13, 1998, 112 Stat. 3474.)

REFERENCES IN TEXT

Act of March 3, 1891, referred to in subsec. (c)(3), is act Mar. 3, 1891, ch. 543, 26 Stat. 989. Provisions of the act relating to preparation of the roll are not classified to the Code.

CODIFICATION

Section is comprised of section 7 of Pub. L. 105–387. Subsec. (d) of section 7 of Pub. L. 105–387 amended sections 1300d–3 and 1300d–4 of this title.

§ 1300d–27. Jurisdiction; procedure

(a) Actions authorized

In any action brought by or on behalf of a lineal descendant or any group or combination of those lineal descendants to challenge the constitutionality or validity of distributions under this part to any covered Indian tribe, any covered Indian tribe, separately, or jointly with another covered Indian tribe, shall have the right to intervene in that action to—

(1) defend the validity of those distributions; or

(2) assert any constitutional or other claim challenging the distributions made to lineal descendants under this part.

(b) Jurisdiction and venue

(1) Exclusive original jurisdiction

Subject to paragraph (2), only the United States District Court for the District of Columbia, and for the districts in North Dakota and South Dakota, shall have original jurisdiction over any action brought to contest the constitutionality or validity under law of the distributions authorized under this part.

(2) Consolidation of actions

After the filing of a first action under subsection (a) of this section, all other actions subsequently filed under that subsection shall be consolidated with that first action.

(3) Jurisdiction by the United States Court of Federal Claims

If appropriate, the United States Court of Federal Claims shall have jurisdiction over an action referred to in subsection (a) of this section.

(c) Notice to covered tribes

In an action brought under this section, not later than 30 days after the service of a summons and complaint on the Secretary that raises a claim identified in subsection (a) of this section, the Secretary shall send a copy of that summons and complaint, together with any responsive pleading, to each covered Indian tribe by certified mail with return receipt requested.

(d) Statute of limitations

No action raising a claim referred to in subsection (a) of this section may be filed after the date that is 365 days after November 13, 1998.

(e) Special rule

(1) Final judgment for lineal descendants

(A) In general

If an action that raises a claim referred to in subsection (a) of this section is brought,

and a final judgment is entered in favor of 1 or more lineal descendants referred to in that subsection, section 1300d–23(a) of this title and subsections (a) and (b) of section 1300d–26 of this title shall not apply to the distribution of the funds described in subparagraph (B).

(B) Distribution of funds

Upon the issuance of a final judgment referred to in subparagraph (A) the Secretary shall distribute 100 percent of the funds described in section 1300d–22 of this title to the lineal descendants in a manner consistent with—

(i) section 202(c) of Public Law 92–555 (25 U.S.C. 1300d–4(c)); and

(ii) section 202(a) of Public Law 92–555 [25 U.S.C. 1300d–4(a)], as in effect on the day before November 13, 1998.

(2) Final judgment for covered Indian tribes

(A) In general

If an action that raises a claim referred to in subsection (a) of this section is brought, and a final judgment is entered in favor of 1 or more covered Indian tribes that invalidates the distributions made under this part to lineal descendants, section 1300d–23(a) of this title, other than the percentages under section 1300d–23(a)(2) of this title, and subsections (a) and (b) of section 1300d–26 of this title shall not apply.

(B) Distribution of funds

Not later than 180 days after the date of the issuance of a final judgment referred to in subparagraph (A), the Secretary shall distribute 100 percent of the funds described in section 1300d–22 of this title to each covered Indian tribe in accordance with the judgment and the percentages for distribution contained in section 1300d–23(a)(2) of this title.

(f) Limitation on claims by a covered Indian tribe

(1) In general

If any covered Indian tribe receives any portion of the aggregate amounts transferred by the Secretary to a Fund Account or any other account under section 1300d–23 of this title, no action may be brought by that covered Indian tribe in any court for a claim arising from the distribution of funds under part A of this subchapter.

(2) Rule of construction

Nothing in this subsection shall be construed to limit the right of a covered Indian tribe to—

(A) intervene in an action that raises a claim referred to in subsection (a) of this section; or

(B) limit the jurisdiction of any court referred to in subsection (b) of this section, to hear and determine any such claims.

(Pub. L. 105–387, § 8, Nov. 13, 1997, 112 Stat. 3475.)

SUBCHAPTER LXXVI—ASSINIBOINE TRIBES OF MONTANA: DISTRIBUTION OF JUDGMENT FUND

§ 1300e. Disposition of funds; percentage basis for division; attorney fees and expenses

The funds appropriated by the Act of January 8, 1971 (84 Stat. 1981), to pay a judgment to the Assiniboine Tribes of the Fort Peck and Fort Belknap Reservations, Montana, in Indian Claims Commission docket numbered 279–A, together with interest thereon, after payment of attorney fees and litigation expenses, shall be divided by the Secretary of the Interior on the basis of 50 per centum to the Assiniboine Tribe of the Fort Peck Reservation and 50 per centum to the Assiniboine Tribe of the Fort Belknap Reservation.

(Pub. L. 92–557, § 1, Oct. 25, 1972, 86 Stat. 1171.)

REFERENCES IN TEXT

Act of January 8, 1971, referred to in text, is act Jan. 8, 1971, Pub. L. 91–665, 84 Stat. 1981, known as the Supplemental Appropriations Act, 1971. That portion of the act which appropriated the funds referred to was not classified to the Code.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1300e–1. Per capita shares to members of Assiniboine Tribe of Fort Peck Reservation; deductions; eligibility for payments

The share of the Assiniboine Tribe of the Fort Peck Reservation, after deducting $50,000 to be used as provided in section 1300e–2 of this title, and after deducting the estimated costs of distribution and all other appropriate expenses, shall be distributed per capita to each person born on or before, and living on, October 25, 1972, who is a citizen of the United States, is duly enrolled on the approved roll of the Assiniboine and Sioux Tribes of the Fort Peck Reservation, and is of Assiniboine lineal descent: *Provided*, That persons in the following categories shall not be eligible to receive a per capita payment: (a) persons who possess a greater degree of Fort Peck Sioux blood than Fort Peck Assiniboine blood, (b) persons who possess equal degrees of Fort Peck Assiniboine and Fort Peck Sioux blood and who elect to be enrolled as Sioux, and (c) persons who participated, or were eligible to participate, in the distribution of funds under the provisions of the Act of June 19, 1970 (84 Stat. 313) [25 U.S.C. 1201 et seq.], for the disposition of the judgment of the Sioux Tribe of the Fort Peck Reservation in docket numbered 279–A.

(Pub. L. 92–557, § 2, Oct. 25, 1972, 86 Stat. 1171.)

REFERENCES IN TEXT

Act June 19, 1970, referred to in text, is act June 19, 1970, Pub. L. 91–283, 84 Stat. 313, which is classified generally to subchapter LXII (§ 1201 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

§ 1300e–2. Expenditure of withheld funds for certain salaries and expenses; additional per capita distributions

Upon agreement by the Fort Peck Assiniboine Tribe and the Fort Peck Sioux Tribe on the

amount each agrees to contribute from the award to each tribe in Indian Claims Commission docket numbered 279–A, the agreed contribution of the Fort Peck Assiniboine Tribe shall be withdrawn from the $50,000, and interest thereon, withheld from per capita distribution pursuant to section 1300e–1 of this title, and shall be credited to the joint account for expenditure pursuant to the Act of June 29, 1954 (68 Stat. 329): *Provided*, That upon request of the Fort Peck Assiniboine Tribe the Secretary of the Interior in his discretion may distribute all or part of the aforesaid $50,000 and interest thereon per capita to each person eligible under section 1300e–1 of this title.

(Pub. L. 92–557, § 3, Oct. 25, 1972, 86 Stat. 1171.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

Act of June 29, 1954, referred to in text, is act June 29, 1954, ch. 421, 68 Stat. 329, which was not classified to the Code.

§ 1300e–3. Per capita shares to members of Assiniboine Tribe of Fort Belknap Reservation; deductions; eligibility for payments

The share of the Assiniboine Tribe of the Fort Belknap Reservation, after deducting $100,000 to be used as provided in section 1300e–4 of this title, and after deducting the estimated costs of distribution and all other appropriate expenses, shall be distributed per capita to each person born on or before, and living on, October 25, 1972, who is a citizen of the United States, is duly enrolled on the approved roll of the organized Fort Belknap Community, and is of Assiniboine lineal descent: *Provided*, That persons in the following categories shall not be eligible to receive a per capita payment: (a) persons who possess a greater degree of Gros Ventre blood than Assiniboine blood, (b) persons who possess equal degrees of Fort Belknap Assiniboine and Fort Peck Gros Ventre blood and who elect to be enrolled as Gros Ventre, and (c) persons who participated, or were eligible to participate, in the distribution of funds under the Act of March 18, 1972 (Public Law 92–254) [25 U.S.C. 1261 et seq.], for the disposition of the judgment of the Blackfeet Tribe and the Gros Ventre Tribe in Indian Claims Commission docket numbered 279–A.

(Pub. L. 92–557, § 4, Oct. 25, 1972, 86 Stat. 1171.)

REFERENCES IN TEXT

Act of March 18, 1972, referred to in text, is act Mar. 18, 1972, Pub. L. 92–254, 86 Stat. 64, which is classified generally to subchapter LXVIII (§ 1261 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

§ 1300e–4. Expenditure of withheld funds for authorized purposes; community projects; additional per capita distributions

The $100,000 withheld from distribution under section 1300e–3 of this title, and interest thereon, may be used for any purpose authorized by the Assiniboine Treaty Committee of the Fort Belknap Assiniboine Tribe and approved by the Secretary of the Interior, including contributions to Reservation community projects and further per capita distribution.

(Pub. L. 92–557, § 5, Oct. 25, 1972, 86 Stat. 1172.)

§ 1300e–5. Per capita shares; reversion to tribe

The per capita shares shall be determined on the basis of the number of persons eligible for per capitas and the number of persons rejected for per capitas who have taken a timely appeal. The shares of those persons whose appeals are denied shall revert to the tribe from whose share the per capita would have been paid, to be expended for any purpose designated by such tribe and approved by the Secretary.

(Pub. L. 92–557, § 6, Oct. 25, 1972, 86 Stat. 1172.)

§ 1300e–6. Income tax exemption; protection of minors and persons under legal disability

None of the funds distributed per capita under the provisions of this subchapter shall be subject to Federal or State income taxes. Sums payable to persons under eighteen years of age or under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines will protect the best interests of such persons.

(Pub. L. 92–557, § 7, Oct. 25, 1972, 86 Stat. 1172.)

§ 1300e–7. Rules and regulations

The Secretary is authorized to prescribe rules and regulations to effect the provisions of this subchapter, including the establishment of deadlines.

(Pub. L. 92–557, § 8, Oct. 25, 1972, 86 Stat. 1172.)

SUBCHAPTER LXXVII—PASCUA YAQUI TRIBE

§ 1300f. Status of Pascua Yaqui Indian people

(a) Eligibility for services and assistance

The Pascua Yaqui Indian people who are members of the Pascua Yaqui Association, Incorporated, an Arizona corporation, or who hereafter become members of the Pascua Yaqui Tribe in accordance with section 1300f–2 of this title, are recognized as, and declared to be, eligible, on and after September 18, 1978, for the services and assistance provided to Indians because of their status as Indians by or through any department, agency, or instrumentality of the United States, or under any statute of the United States. The Pascua Yaqui Tribe, a historic Indian tribe, is acknowledged as a federally recognized Indian tribe possessing all the attributes of inherent sovereignty which have not been specifically taken away by Acts of Congress and which are not inconsistent with such tribal status. For the purposes of section 2005a of title 42, the Pascua Yaqui Indians are to be considered as if they were being provided hospital and medical care by or at the expense of the Public Health Service on August 16, 1957.

(b) Administration of lands; application of other laws

The provisions of the Act of June 18, 1934 (48 Stat. 484[1]), as amended [25 U.S.C. 461 et seq.], are extended to such members described in subsection (a) of this section.

(c) Receipt in trust by United States of land for Pascua Yaqui Tribe; criminal and civil jurisdiction

The Secretary of the Interior is directed, upon request of the Pascua Yaqui Association, Incorporated, and without monetary consideration, to accept on behalf of the United States and in trust for the Pascua Yaqui Tribe, the title to the real property conveyed by the United States to such association under the Act of October 8, 1964 (78 Stat. 1197), and such lands shall be held as Indian lands are held: *Provided*, That the State of Arizona shall exercise criminal and civil jurisdiction over such lands as if it had assumed jurisdiction pursuant to the Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82 Stat. 79).

(Pub. L. 95–375, § 1, Sept. 18, 1978, 92 Stat. 712; Pub. L. 103–357, § 1(a), Oct. 14, 1994, 108 Stat. 3418.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in subsec. (b), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Act of October 8, 1964, referred to in subsec. (c), is act Oct. 8, 1964, Private Law 88–350, 78 Stat. 1196, which conveyed all right, title and interest of the United States in certain lands to the Pascua Yaqui Association, Inc., and was not classified to the Code.

Act of August 15, 1953, as amended by the Act of April 11, 1968, referred to in subsec. (c), is act Aug. 15, 1953, ch. 505, 67 Stat. 588, as amended, which enacted section 1162 of Title 18, Crimes and Criminal Procedure, section 1360 of Title 28, Judiciary and Judicial Procedure, and provisions set out as notes under section 1360 of Title 28. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section is comprised of section 1 of Pub. L. 95–375. Subsec. (d) of section 1 of Pub. L. 95–375, which repealed section 4 of Private Law 88–350, Oct. 8, 1964, 78 Stat. 1197, is not classified to the Code.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–357 inserted after first sentence "The Pascua Yaqui Tribe, a historic Indian tribe, is acknowledged as a federally recognized Indian tribe possessing all the attributes of inherent sovereignty which have not been specifically taken away by Acts of Congress and which are not inconsistent with such tribal status."

§ 1300f–1. Tribal constitution and bylaws; review by Secretary; publication of documents and membership roll in Federal Register

Within thirty months after September 18, 1978, the Pascua Yaqui Tribe shall adopt a constitution and bylaws or other governing documents and a membership roll. The Secretary of the Interior shall review such documents to insure that they comply with the provisions of this subchapter and shall publish such documents and membership roll in the Federal Register. Publication of such roll shall not affect or delay the immediate eligibility of the members of the Association under section 1300f of this title.

(Pub. L. 95–375, § 2, Sept. 18, 1978, 92 Stat. 712.)

§ 1300f–2. Membership of Tribe

For the purposes of section 1300f of this title, membership of the Pascua Yaqui Tribe shall consist of—

(A) the members of the Pascua Yaqui Association, Incorporated, as of September 18, 1978, who apply for enrollment in the Pascua Yaqui Tribe within one year from September 18, 1978 pursuant to the membership criteria and procedures provided for in the official governing documents of the Pascua Yaqui Tribe;

(B) all those persons of Yaqui blood who are citizens of the United States and who, within two years from September 18, 1978, apply for, and are admitted to, membership in the Association pursuant to article VII of the Articles of Incorporation of the Association;

(C) all those persons of Yaqui blood who are citizens of the United States and who, within three years after October 14, 1994, apply for enrollment in the Pascua Yaqui Tribe pursuant to the membership criteria and procedures provided for in the official governing documents of the Pascua Yaqui Tribe; and

(D) direct lineal descendants of such persons, subject to any further qualifications as may be provided by the Tribe in its constitution and bylaws or other governing documents.

(Pub. L. 95–375, § 3, Sept. 18, 1978, 92 Stat. 712; Pub. L. 103–357, § 1(b), Oct. 14, 1994, 108 Stat. 3418.)

AMENDMENTS

1994—Pub. L. 103–357 added par. (C) and redesignated former par. (C) as (D).

§ 1300f–3. Study

(a) In general

The Secretary of the Interior shall conduct one or more studies to determine—

(1) whether the lands held in trust on October 14, 1994, by the United States for the Pascua Yaqui Tribe are adequate for the needs of the tribe for the foreseeable future;

(2) if such lands are not adequate—

(A) whether suitable additional lands are available for acquisition by exchange or purchase; and

(B) the cost and location of the suitable additional lands;

(3) whether the Pascua Yaqui Tribe has sufficient water rights and allocations to meet the needs of the tribe for the foreseeable future;

(4) if such water rights and allocations are not adequate—

(A) whether additional water can be acquired; and

(B) the potential sources and associated costs of such additional water;

(5) whether the Bureau of Indian Affairs and the Indian Health Service have limited fund-

[1] So in original. Probably should be "984".

ing to the Pascua Yaqui Tribe based on a determination of the tribal enrollment in 1978, rather than the current enrollment;

(6) if funding has been based on 1978 enrollment, how the funding levels can be adjusted to ensure that the Pascua Yaqui Tribe receives a fair and equitable portion of Bureau of Indian Affairs and Indian Health Service funding;

(7) the genealogy of the Pascua Yaqui Tribe; and

(8) the economic development opportunities available to the tribe as a result of the North American Free Trade Agreement.

(b) Tribal participation

The Secretary shall provide for the participation of members of the Pascua Yaqui Tribe to carry out subsection (a) of this section.

(c) Report

Not later than 2 years after the date on which funds are made available to carry out this section, the Secretary of the Interior shall submit a report to Congress that contains the results of each study conducted pursuant to subsection (a) of this section.

(d) Authorization of appropriations

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

(Pub. L. 95–375, § 4, as added Pub. L. 103–357, § 2, Oct. 14, 1994, 108 Stat. 3418; amended Pub. L. 104–109, § 4, Feb. 12, 1996, 110 Stat. 764.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–109 substituted ''Tribe'' for ''tribe''.

SUBCHAPTER LXXVIII—YSLETA DEL SUR PUEBLO: RESTORATION OF FEDERAL SUPERVISION

§ 1300g. Definitions

For purposes of this subchapter—

(1) the term ''tribe'' means the Ysleta del Sur Pueblo (as so designated by section 1300g–1 of this title);

(2) the term ''Secretary'' means the Secretary of the Interior or his designated representative;

(3) the term ''reservation'' means lands within El Paso and Hudspeth Counties, Texas—

(A) held by the tribe on August 18, 1987;

(B) held in trust by the State or by the Texas Indian Commission for the benefit of the tribe on August 18, 1987;

(C) held in trust for the benefit of the tribe by the Secretary under section 1300g–4(g)(2) of this title; and

(D) subsequently acquired and held in trust by the Secretary for the benefit of the tribe.[1]

(4) the term ''State'' means the State of Texas;

(5) the term ''Tribal Council'' means the governing body of the tribe as recognized by the Texas Indian Commission on August 18, 1987, and such tribal council's successors; and

(6) the term ''Tiwa Indians Act'' means the Act entitled ''An Act relating to the Tiwa Indians of Texas.'' and approved April 12, 1968 (82 Stat. 93).

(Pub. L. 100–89, title I, § 101, Aug. 18, 1987, 101 Stat. 666.)

REFERENCES IN TEXT

The Tiwa Indians Act, referred to in par. (6), is Pub. L. 90–287, Apr. 12, 1968, 82 Stat. 93, which was not classified to the Code and was repealed by section 1300g–5 of this title.

SHORT TITLE

For short title of Pub. L. 100–89, which enacted this subchapter, subchapter XXXI–A of this chapter, and provisions set out as notes under section 731 of this title, as the ''Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act'', see section 1 of Pub. L. 100–89, set out as a note under section 731 of this title.

REGULATIONS

For provision authorizing the Secretary of the Interior or his designated representative to promulgate regulations as necessary to carry out provisions of this subchapter, see section 2 of Pub. L. 100–89, set out as a note under section 731 of this title.

§ 1300g–1. Redesignation of tribe

The Indians designated as the Tiwa Indians of Ysleta, Texas, by the Tiwa Indians Act shall, on and after August 18, 1987, be known and designated as the Ysleta del Sur Pueblo. Any reference in any law, map, regulation, document, record, or other paper of the United States to the Tiwa Indians of Ysleta, Texas, shall be deemed to be a reference to the Ysleta del Sur Pueblo.

(Pub. L. 100–89, title I, § 102, Aug. 18, 1987, 101 Stat. 666.)

REFERENCES IN TEXT

The Tiwa Indians Act, referred to in text, is Pub. L. 90–287, Apr. 12, 1968, 82 Stat. 93, which was not classified to the Code and was repealed by section 1300g–5 of this title.

§ 1300g–2. Restoration of Federal trust relationship; Federal services and assistance

(a) Federal trust relationship

The Federal trust relationship between the United States and the tribe is hereby restored. The Act of June 18, 1934 (48 Stat. 984), as amended [25 U.S.C. 461 et seq.], and all laws and rules of law of the United States of general application to Indians, to nations, tribes, or bands of Indians, or to Indian reservations which are not inconsistent with any specific provision contained in this subchapter shall apply to the members of the tribe, the tribe, and the reservation.

(b) Restoration of rights and privileges

All rights and privileges of the tribe and members of the tribe under any Federal treaty, statute, Executive order, agreement, or under any other authority of the United States which may have been diminished or lost under the Tiwa Indians Act are hereby restored.

(c) Federal services and benefits

Notwithstanding any other provision of law, the tribe and the members of the tribe shall be

[1] So in original. The period probably should be a semicolon.

eligible, on and after August 18, 1987, for all benefits and services furnished to federally recognized Indian tribes.

(d) Effect on property rights and other obligations

Except as otherwise specifically provided in this subchapter, the enactment of this subchapter shall not affect any property right or obligation or any contractual right or obligation in existence before August 18, 1987, or any obligation for taxes levied before August 18, 1987.

(Pub. L. 100–89, title I, § 103, Aug. 18, 1987, 101 Stat. 667.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in subsec. (a), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

The Tiwa Indians Act, referred to in subsec. (b), is Pub. L. 90–287, Apr. 12, 1968, 82 Stat. 93, which was not classified to the Code and was repealed by section 1300g–5 of this title.

§ 1300g–3. State and tribal authority

(a) State authority

Nothing in this Act shall affect the power of the State of Texas to enact special legislation benefiting the tribe, and the State is authorized to perform any services benefiting the tribe that are not inconsistent with the provisions of this Act.

(b) Tribal authority

The Tribal Council shall represent the tribe and its members in the implementation of this subchapter and shall have full authority and capacity—

(1) to enter into contracts, grant agreements, and other arrangements with any Federal department or agency, and

(2) to administer or operate any program or activity under or in connection with any such contract, agreement, or arrangement, to enter into subcontracts or award grants to provide for the administration of any such program or activity, or to conduct any other activity under or in connection with any such contract, agreement, or arrangement.

(Pub. L. 100–89, title I, § 104, Aug. 18, 1987, 101 Stat. 667.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 100–89, Aug. 18, 1987, 101 Stat. 666, known as the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, which enacted this subchapter and subchapter XXXI–A (§ 731 et seq.) of this chapter and enacted provisions set out as notes under section 731 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 731 of this title and Tables.

§ 1300g–4. Provisions relating to tribal reservation

(a) Federal reservation established

The reservation is hereby declared to be a Federal Indian reservation for the use and benefit of the tribe without regard to whether legal title to such lands is held in trust by the Secretary.

(b) Conveyance of land by State

The Secretary shall—

(1) accept any offer from the State to convey title to any land within the reservation held in trust on August 18, 1987, by the State or by the Texas Indian Commission for the benefit of the tribe to the Secretary, and

(2) hold such title, upon conveyance by the State, in trust for the benefit of the tribe.

(c) Conveyance of land by tribe

At the written request of the Tribal Council, the Secretary shall—

(1) accept conveyance by the tribe of title to any land within the reservation held by the tribe on August 18, 1987, to the Secretary, and

(2) hold such title, upon such conveyance by the tribe, in trust for the benefit of the tribe.

(d) Approval of deed by Attorney General

Notwithstanding any other provision of law or regulation, the Attorney General of the United States shall approve any deed or other instrument which conveys title to land within El Paso or Hudspeth Counties, Texas, to the United States to be held in trust by the Secretary for the benefit of the tribe.

(e) Permanent improvements authorized

Notwithstanding any other provision of law or rule of law, the Secretary or the tribe may erect permanent improvements, improvements of substantial value, or any other improvement authorized by law on the reservation without regard to whether legal title to such lands has been conveyed to the Secretary by the State or the tribe.

(f) Civil and criminal jurisdiction within reservation

The State shall exercise civil and criminal jurisdiction within the boundaries of the reservation as if such State had assumed such jurisdiction with the consent of the tribe under sections 1321 and 1322 of this title.

(g) Acquisition of land by tribe after August 18, 1987

(1) Notwithstanding any other provision of law, the Tribal Council may, on behalf of the tribe—

(A) acquire land located within El Paso County, or Hudspeth County, Texas, after August 18, 1987, and take title to such land in fee simple, and

(B) lease, sell, or otherwise dispose of such land in the same manner in which a private person may do so under the laws of the State.

(2) At the written request of the Tribal Council, the Secretary may—

(A) accept conveyance to the Secretary by the Tribal Council (on behalf of the tribe) of title to any land located within El Paso County, or Hudspeth County, Texas, that is acquired by the Tribal Council in fee simple after August 18, 1987, and

(B) hold such title, upon such conveyance by the Tribal Council, in trust for the benefit of the tribe.

(Pub. L. 100–89, title I, § 105, Aug. 18, 1987, 101 Stat. 667.)

§ 1300g–5. Tiwa Indians Act repealed

The Tiwa Indians Act is hereby repealed.

(Pub. L. 100–89, title I, § 106, Aug. 18, 1987, 101 Stat. 668.)

REFERENCES IN TEXT

The Tiwa Indians Act, referred to in text, is Pub. L. 90–287, Apr. 12, 1968, 82 Stat. 93, which was not classified to the Code.

§ 1300g–6. Gaming activities

(a) In general

All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe. Any violation of the prohibition provided in this subsection shall be subject to the same civil and criminal penalties that are provided by the laws of the State of Texas. The provisions of this subsection are enacted in accordance with the tribe's request in Tribal Resolution No. T.C.–02–86 which was approved and certified on March 12, 1986.

(b) No State regulatory jurisdiction

Nothing in this section shall be construed as a grant of civil or criminal regulatory jurisdiction to the State of Texas.

(c) Jurisdiction over enforcement against members

Notwithstanding section 1300g–4(f) of this title, the courts of the United States shall have exclusive jurisdiction over any offense in violation of subsection (a) of this section that is committed by the tribe, or by any member of the tribe, on the reservation or on lands of the tribe. However, nothing in this section shall be construed as precluding the State of Texas from bringing an action in the courts of the United States to enjoin violations of the provisions of this section.

(Pub. L. 100–89, title I, § 107, Aug. 18, 1987, 101 Stat. 668.)

§ 1300g–7. Tribal membership

(a) In general

The membership of the tribe shall consist of—

(1) the individuals listed on the Tribal Membership Roll approved by the tribe's Resolution No. TC–5–84 approved December 18, 1984, and approved by the Texas Indian Commission's Resolution No. TIC–85–005 adopted on January 16, 1985; and

(2) a descendant of an individual listed on that Roll if the descendant—

(i) has ⅛ degree or more of Tigua-Ysleta del Sur Pueblo Indian blood, and

(ii) is enrolled by the tribe.

(b) Removal from tribal roll

Notwithstanding subsection (a) of this section—

(1) the tribe may remove an individual from tribal membership if it determines that the individual's enrollment was improper; and

(2) the Secretary, in consultation with the tribe, may review the Tribal Membership Roll.

(Pub. L. 100–89, title I, § 108, Aug. 18, 1987, 101 Stat. 669.)

SUBCHAPTER LXXIX—LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

§ 1300h. Congressional findings

Congress finds that—

(1) the Lac Vieux Desert Band of Lake Superior Chippewa Indians, although currently recognized by the Federal Government as part of the Keweenaw Bay Indian Community, has historically existed, and continues to exist, as a separate and distinct Indian tribe that is located over 75 miles from the Keweenaw Bay Indian Community;

(2) the Lac Vieux Desert Band consists of approximately 250 members who continue to reside close to their ancestral homeland near the town of Watersmeet, Michigan;

(3) the Lac Vieux Desert Band entered into two treaties with the United States as a distinct tribal entity (7 Stat. 591, 10 Stat. 1109);

(4) members of the Lac Vieux Desert Band currently reside on or otherwise occupy lands within the Township of Watersmeet, Michigan, which are held by the United States in trust for the Keweenaw Bay Indian Community, and currently receive limited Federal benefits through the Keweenaw Bay Indian Community; and

(5) because of its distance from Keweenaw Bay and the failure of the United States to recognize the independent status of the tribe, the Lac Vieux Desert Band and its members receive only limited benefits to which the tribe and its members are entitled.

(Pub. L. 100–420, § 2, Sept. 8, 1988, 102 Stat. 1577.)

SHORT TITLE

Section 1 of Pub. L. 100–420 provided that: "This Act [enacting this subchapter] may be cited as the 'Lac Vieux Desert Band of Lake Superior Chippewa Indians Act'."

§ 1300h–1. Definitions

For purposes of this subchapter—

(1) the term "Band" means the Lac Vieux Desert Band of Lake Superior Chippewa Indians;

(2) the term "member" means those individuals eligible for enrollment under section 1300h–3 of this title in the Band; and

(3) the term "Secretary" means the Secretary of the Interior.

(Pub. L. 100–420, § 3, Sept. 8, 1988, 102 Stat. 1577.)

§ 1300h–2. Federal trust relationship

(a) The Federal recognition of the Band and the trust relationship between the United States and the Band is hereby reaffirmed. The Act of June 18, 1934 (48 Stat. 984), as amended [25 U.S.C. 461 et seq.], and all laws and rules of law of the United States of general application to Indians, Indian tribes, or Indian reservations which are not inconsistent with this subchapter shall apply to the members of the Band, and the reservation. The Band is hereby recognized as an independent tribal entity, separate from the Keweenaw Bay Indian Community or any other tribe.

(b) The Band and its members are eligible for all special programs and services provided by

the United States to Indians because of their status as Indians.

(Pub. L. 100–420, § 4, Sept. 8, 1988, 102 Stat. 1577.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in subsec. (a), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 1300h–3. Establishment of a Band roll

(a) Submission of membership roll

Within six months after September 8, 1988, the Band shall submit to the Secretary, for approval, its base membership roll which shall include only individuals who are not members of any other federally recognized Indian tribe or who have relinquished membership in such tribe and who are eligible for membership under subsection (b) of this section.

(b) Eligibility

An individual is eligible for inclusion on the base membership roll in the Band if that individual—

(1) is on the tribal membership roll as maintained by the Band prior to September 8, 1988, and is on file with the Bureau of Indian Affairs as of September 8, 1988; or

(2) is at least one-quarter Chippewa Indian blood and is a person or a descendant of a person who was listed, or could have been listed, on any of the census of the Lac Vieux Desert Band prepared by the Superintendent of the MacKinaw Agency prior to 1928 or by the Superintendent of the Great Lakes agency on or prior to 1940.

(c) Maintenance of roll

The Band shall ensure that the roll, once completed and approved, is maintained and kept current.

(d) Future eligibility

(1) Notwithstanding paragraph (b) of section 1300h–4 of this title and except as provided in paragraph (2), future membership in the tribe shall be limited to descendants of individuals whose names appear on the base roll and who have at least one-quarter Chippewa blood quantum.

(2) The Band may modify such quarter Chippewa blood quantum requirement and base roll if such modifications are adopted in the tribal election as prescribed under paragraph (a) of section 1300h–4 of this title or in a referendum by a majority of the voters and approved by the Secretary of the Interior. The Secretary shall approve such new membership requirements once adopted by the tribal voters unless he finds that the proposed amendment is contrary to Federal law.

(Pub. L. 100–420, § 5, Sept. 8, 1988, 102 Stat. 1578; Pub. L. 104–109, § 18, Feb. 12, 1996, 110 Stat. 766.)

AMENDMENTS

1996—Subsec. (d)(2). Pub. L. 104–109 substituted ''requirement and base roll if such modifications are'' for ''requirement if such modification is''.

§ 1300h–4. Organization of tribe; constitution and governing body

(a) Governing document

Within one year following September 8, 1988, the Band's governing body shall propose a governing document, and the Secretary shall conduct, pursuant to section 476 of this title, and in accordance with applicable rules and regulations, an election as to the adoption of the proposed document. The Secretary shall approve the governing document if approved by a majority of the tribal voters unless the Secretary finds that the proposed constitution, or any provision thereof, is contrary to Federal law.

(b) Interim governing document

Until the Band adopts and the Secretary approves a governing document, the Band's interim governing document shall be the Lac Vieux Desert Constitution which bears the approval date of June 18, 1986, and a copy of which is in the files of the Division of Tribal Government Services, Bureau of Indian Affairs, Washington, District of Columbia.

(c) Interim governing body

Until the Band elects a new governing body pursuant to the new governing document, the Band's governing body shall consist of its current Band officers, elected at the Band's election held on November 5, 1986, or any new officers selected under election procedures of the interim governing document identified under subsection (b) of this section.

(Pub. L. 100–420, § 6, Sept. 8, 1988, 102 Stat. 1578.)

§ 1300h–5. Land acquisition; establishment of Federal reservation

(a) The Keweenaw Bay Indian Community is hereby authorized to convey, by deed to the United States in trust for the Band, all lands located in Gogebic County, Michigan, which, on September 8, 1988, are held in trust by the United States for the benefit of said community. The Secretary is hereby authorized and directed to approve and accept the deed with the expressed consent of the Keweenaw Bay Indian Community and the Band. Upon acceptance of the deed, all lands described therein shall constitute the reservation of the Band.

(b) The Secretary may place such other land into trust for the benefit of the Band pursuant to the provisions of the Act of June 18, 1934 (48 Stat. 84) [25 U.S.C. 461 et seq.], or any other Act: *Provided*, That any such land placed in trust which is located in Gogebic County, shall become part of the reservation.

(Pub. L. 100–420, § 7, Sept. 8, 1988, 102 Stat. 1579.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in subsec. (b), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 1300h–6. Distribution of funds

(a) For the purpose of proceeding with the per capita distribution of the funds appropriated

and subsequently apportioned to the Keweenaw Bay Indian Community in satisfaction of judgments awarded the Lake Superior Chippewas and Mississippi Chippewas in dockets numbered 18–C, 18–T, 18–S, and 18–U of the Indian Claims Commission, the Secretary of the Interior shall accept the tribe's certification of enrolled membership.

(b) Individuals who are or become members of the Lac Vieux Desert Band and who are eligible for per capita shares out of funds apportioned to the Keweenaw Bay Indian Community or Sokaogan Chippewa Community shall continue to be eligible for such per capita payments notwithstanding their relinquishment of their enrollment in either community pursuant to section 1300h–3 of this title.

(Pub. L. 100–420, § 8, Sept. 8, 1988, 102 Stat. 1579.)

§ 1300h–7. Constitutional amendment

(a) Notwithstanding any other law or provision in the constitution of the Keweenaw Bay Indian Community, the Secretary shall call an election within 90 days of receipt of a resolution of the Keweenaw Bay Tribal Council requesting an election for the purpose of amending provisions of the constitution of the Keweenaw Bay Indian Community.

(b) The Secretary shall accept as voters eligible to vote on any amendments to the constitution of the Keweenaw Bay Indian Community—

(1) all those persons who were deemed eligible by the Keweenaw Bay Indian Community to vote in the most recent election for the Tribal Council, and

(2) any other person certified by the Keweenaw Bay Indian Community Tribal Council as—

(A) a member of the Keweenaw Bay Indian Community, and

(B) eligible to vote in any election for the Tribal Council.

(Pub. L. 100–420, § 9, Sept. 8, 1988, 102 Stat. 1579; Pub. L. 101–301, § 7, May 24, 1990, 104 Stat. 210.)

AMENDMENTS

1990—Pub. L. 101–301 designated existing provisions as subsec. (a) and added subsec. (b).

§ 1300h–8. Compliance with Budget Act

Notwithstanding any other provision of this subchapter, any spending authority provided under this subchapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts. For purposes of this subchapter, the term ''spending authority'' has the meaning provided in section 651(c)(2)[1] of title 2.

(Pub. L. 100–420, § 10, Sept. 8, 1988, 102 Stat. 1579.)

REFERENCES IN TEXT

Section 651 of title 2, referred to in text, was amended by Pub. L. 105–33, title X, § 10116(a)(3), (5), Aug. 5, 1997, 111 Stat. 691, by striking out subsec. (c) and redesignating former subsec. (d) as (c).

[1] See References in Text note below.

SUBCHAPTER LXXX—HOOPA-YUROK SETTLEMENT

§ 1300i. Short title and definitions

(a) Short title

This subchapter may be cited as the ''Hoopa-Yurok Settlement Act''.

(b) Definitions

For the purposes of this subchapter, the term—

(1) ''Escrow funds'' means the moneys derived from the joint reservation which are held in trust by the Secretary in the accounts entitled—

(A) ''Proceeds of Labor-Hoopa Valley Indians-California 70 percent Fund, account number J52–561–7197'';

(B) ''Proceeds of Labor-Hoopa Valley Indians-California 30 percent Fund, account number J52–561–7236'';

(C) ''Proceeds of Klamath River Reservation, California, account number J52–562–7056'';

(D) ''Proceeds of Labor-Yurok Indians of Lower Klamath River, California, account number J52–562–7153'';

(E) ''Proceeds of Labor-Yurok Indians of Upper Klamath River, California, account number J52–562–7154'';

(F) ''Proceeds of Labor-Hoopa Reservation for Hoopa Valley and Yurok Tribes, account number J52–575–7256''; and

(G) ''Klamath River Fisheries, account number 5628000001'';

(2) ''Hoopa Indian blood'' means that degree of ancestry derived from an Indian of the Hunstang, Hupa, Miskut, Redwood, Saiaz, Sermalton, Tish-Tang-Atan, South Fork, or Grouse Creek Bands of Indians;

(3) ''Hoopa Valley Reservation'' means the reservation described in section 1300i–1(b) of this title;

(4) ''Hoopa Valley Tribe'' means the Hoopa Valley Tribe, organized under the constitution and amendments approved by the Secretary on November 20, 1933, September 4, 1952, August 9, 1963, and August 18, 1972;

(5) ''Indian of the Reservation'' shall mean any person who meets the criteria to qualify as an Indian of the Reservation as established by the United States Court of Claims in its March 31, 1982, May 17, 1987, and March 1, 1988, decisions in the case of Jesse Short et al. v. United States, (Cl. Ct. No. 102–63);

(6) ''Joint reservation'' means the area of land defined as the Hoopa Valley Reservation in section 1300i–1(b) of this title and the Yurok Reservation in section 1300i–1(c) of this title.[1]

(7) ''Karuk Tribe'' means the Karuk Tribe of California, organized under its constitution on April 6, 1985;

(8) ''Secretary'' means the Secretary of the Interior;

(9) ''Settlement Fund'' means the Hoopa-Yurok Settlement Fund established pursuant to section 1300i–3 of this title;

(10) ''Settlement Roll'' means the final roll prepared and published in the Federal Register

[1] So in original. The period probably should be a semicolon.

by the Secretary pursuant to section 1300i–4 of this title;

(11) ''Short cases'' means the cases entitled Jesse Short et al. v. United States, (Cl. Ct. No. 102–63); Charlene Ackley v. United States, (Cl. Ct. No. 460–78); Bret Aanstadt v. United States, (Cl. Ct. No. 146–85L); and Norman Giffen v. United States, (Cl. Ct. No. 746–85L);

(12) ''Short plaintiffs'' means named plaintiffs in the Short cases;

(13) ''trust land'' means an interest in land the title to which is held in trust by the United States for an Indian or Indian tribe, or by an Indian or Indian tribe subject to a restriction by the United States against alienation;

(14) ''unallotted trust land, property, resources or rights'' means those lands, property, resources, or rights reserved for Indian purposes which have not been allotted to individuals under an allotment Act;

(15) ''Yurok Reservation'' means the reservation described in section 1300i–1(c) of this title; and

(16) ''Yurok Tribe'' means the Indian tribe which is recognized and authorized to be organized pursuant to section 1300i–8 of this title.

(Pub. L. 100–580, § 1, Oct. 31, 1988, 102 Stat. 2924.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (b), was in the original ''this Act'', meaning Pub. L. 100–580, Oct. 31, 1988, 102 Stat. 2924, which enacted this subchapter, amended section 407 of this title and section 460ss–3 of Title 16, Conservation, and enacted provisions set out as a note under section 460ss–3 of Title 16. For complete classification of this Act to the Code, see Tables.

§ 1300i–1. Reservations; partition and additions

(a) Partition of the joint reservation

(1) Effective with the publication in the Federal Register of the Hoopa tribal resolution as provided in paragraph (2), the joint reservation shall be partitioned as provided in subsections (b) and (c) of this section.

(2)(A) The partition of the joint reservation as provided in this subsection, and the ratification and confirmation as provided by section 1300i–7 of this title, shall not become effective unless, within 60 days after October 31, 1988, the Hoopa Valley Tribe shall adopt, and transmit to the Secretary, a tribal resolution:

(i) waiving any claim such tribe may have against the United States arising out of the provisions of this subchapter, and

(ii) affirming tribal consent to the contribution of Hoopa Escrow monies to the Settlement Fund, and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in this subchapter.

(B) The Secretary, after determining the validity of the resolution transmitted pursuant to subparagraph (A), shall cause such resolution to be printed in the Federal Register.

(b) Hoopa Valley Reservation

Effective with the partition of the joint reservation as provided in subsection (a) of this section, the area of land known as the ''square'' (defined as the Hoopa Valley Reservation established under section 2 of the Act of April 8, 1864 (13 Stat. 40), the Executive Order of June 23, 1876, and Executive Order 1480 of February 17, 1912) shall thereafter be recognized and established as the Hoopa Valley Reservation. The unallotted trust land and assets of the Hoopa Valley Reservation shall thereafter be held in trust by the United States for the benefit of the Hoopa Valley Tribe.

(c) Yurok Reservation

(1) Effective with the partition of the joint reservation as provided in subsection (a) of this section, the area of land known as the ''extension'' (defined as the reservation extension under the Executive Order of October 16, 1891, but excluding the Resighini Rancheria) shall thereafter be recognized and established as the Yurok Reservation. The unallotted trust land and assets of the Yurok Reservation shall thereafter be held in trust by the United States for the benefit of the Yurok Tribe.

(2) Subject to all valid existing rights and subject to the adoption of a resolution of the Interim Council of the Yurok Tribe as provided in section 1300i–8(d)(2) of this title, all right, title, and interest of the United States—

(A) to all national forest system lands within the Yurok Reservation, and

(B) to that portion of the Yurok Experimental Forest described as Township 14 N., Range 1 E., Section 28, Lot 6: that portion of Lot 6 east of U.S. Highway 101 and west of the Yurok Experimental Forest, comprising 14 acres more or less and including all permanent structures thereon, shall thereafter be held in trust by the United States for the benefit of the Yurok Tribe and shall be part of the Yurok Reservation.

(3)(A) Pursuant to the authority of sections 465 and 467 of this title, the Secretary may acquire from willing sellers lands or interests in land, including rights-of-way for access to trust lands, for the Yurok Tribe or its members, and such lands may be declared to be part of the Yurok Reservation.

(B) From amounts authorized to be appropriated by section 13 of this title, the Secretary shall use not less than $5,000,000 for the purpose of acquiring lands or interests in lands pursuant to subparagraph (A). No lands or interests in lands may be acquired outside the Yurok Reservation with such funds except lands adjacent to and contiguous with the Yurok Reservation or for purposes of exchange for lands within the reservation.

(4) The—

(A) apportionment of funds to the Yurok Tribe as provided in sections 1300i–3 and 1300i–6 of this title;

(B) the land transfers pursuant to paragraph (2);

(C) the land acquisition authorities in paragraph (3); and

(D) the organizational authorities of section 1300i–8 of this title shall not be effective unless and until the Interim Council of the Yurok Tribe has adopted a resolution waiving any claim such tribe may have against the United States arising out of the provisions of this subchapter.

(d) Boundary clarifications or corrections

(1) The boundary between the Hoopa Valley Reservation and the Yurok Reservation, after the partition of the joint reservation as provided in this section, shall be the line established by the Bissel-Smith survey.

(2) Upon the partition of the joint reservation as provided in this section, the Secretary shall publish a description of the boundaries of the Hoopa Valley Reservation and Yurok Reservation in the Federal Register.

(e) Management of the Yurok Reservation

The Secretary shall be responsible for the management of the unallotted trust land and assets of the Yurok Reservation until such time as the Yurok Tribe has been organized pursuant to section 1300i–8 of this title. Thereafter, those lands and assets shall be administered as tribal trust land and the Yurok reservation governed by the Yurok Tribe as other reservations are governed by the tribes of those reservations.

(f) Criminal and civil jurisdiction

The Hoopa Valley Reservation and Yurok Reservation shall be subject to section 1360 of title 28;[1] section 1162 of title 18, and section 1323(a) of this title.

(Pub. L. 100–580, § 2, Oct. 31, 1988, 102 Stat. 2925.)

REFERENCES IN TEXT

Section 2 of the Act of April 8, 1864, referred to in subsec. (b), is section 2 of act Apr. 8, 1864, ch. 48, 13 Stat. 40, which was not classified to the Code.

Executive Order of June 23, 1876, and Executive Order 1480 of February 17, 1912, referred to in subsec. (b), are not classified to the Code.

Executive Order of October 16, 1891, referred to in subsec. (c), is not classified to the Code.

HOOPA VALLEY RESERVATION SOUTH BOUNDARY ADJUSTMENT

Pub. L. 105–79, Nov. 13, 1997, 111 Stat. 1527, as amended by Pub. L. 105–256, § 6, Oct. 14, 1998, 112 Stat. 1897, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Hoopa Valley Reservation South Boundary Adjustment Act'.

''SEC. 2. TRANSFER OF LANDS WITHIN SIX RIVERS NATIONAL FOREST FOR HOOPA VALLEY TRIBE.

''(a) TRANSFER.—All right, title, and interest in and to the lands described in subsection (b) shall hereafter be administered by the Secretary of the Interior and be held in trust by the United States for the Hoopa Valley Tribe. The lands are hereby declared part of the Hoopa Valley Reservation. Upon the inclusion of such lands in the Hoopa Valley Reservation, Forest Service system roads numbered 8N03 and 7N51 and the Trinity River access road which is a spur off road numbered 7N51, shall be Indian reservation roads, as defined in section 101(a) of title 23 of the United States Code.

''(b) LANDS DESCRIBED.—The lands referred to in subsection (a) are those portions of Townships 7 North and 8 North, Ranges 5 East and 6 East, Humboldt Meridian, California, within a boundary beginning at a point on the current south boundary of the Hoopa Valley Indian Reservation, marked and identified as 'Post H.V.R. No. 8' on the Plat of the Hoopa Valley Indian Reservation prepared from a field survey conducted by C.T. Bissel, Augustus T. Smith, and C.A. Robinson, Deputy Surveyors, approved by the Surveyor General, H. Pratt, March 18, 1892, and extending from said point on a bearing of north 73 degrees 50 minutes east, until intersecting with a line beginning at a point marked as 'Post H.V.R. No. 3' on such survey and extending on a bearing of south 14 degrees 36 minutes east, comprising 2,641 acres more or less.

''(c) BOUNDARY ADJUSTMENT.—The boundary of the Six Rivers National Forest in the State of California is hereby adjusted to exclude the lands to be held in trust for the benefit of the Hoopa Valley Tribe pursuant to this section.

''(d) SURVEY.—The Secretary of the Interior, acting through the Bureau of Land Management, shall survey and monument that portion of the boundary of the Hoopa Valley Reservation established by the addition of the lands described in subsection (b).

''(e) SETTLEMENT OF CLAIMS.—The transfer of lands to trust status under this section extinguishes the following claims by the Hoopa Valley Tribe:

''(1) All claims on land now administered as part of the Six Rivers National Forest based on the allegation of error in establishing the boundaries of the Hoopa Valley Reservation, as those boundaries were configured before the date of the enactment of this Act [Nov. 13, 1997].

''(2) All claims of failure to pay just compensation for a taking under the fifth amendment to the United States Constitution, if such claims are based on activities, occurring before the date of the enactment of this Act, related to the lands transferred to trust status under this section.''

§ 1300i–2. Preservation of Short cases

Nothing in this subchapter shall affect, in any manner, the entitlement established under decisions of the United States Court of Federal Claims in the Short cases or any final judgment which may be rendered in those cases.

(Pub. L. 100–580, § 3, Oct. 31, 1988, 102 Stat. 2927; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 1300i–3. Hoopa-Yurok Settlement Fund

(a) Establishment

(1) There is hereby established the Hoopa-Yurok Settlement Fund. Upon enactment of this subchapter, the Secretary shall cause all the funds in the escrow funds, together with all accrued income thereon, to be deposited into the Settlement Fund.

(2) Until the distribution is made to the Hoopa Valley Tribe pursuant to section[1] (c), the Secretary may distribute to the Hoopa Valley Tribe, pursuant to section 123c of this title, not to exceed $3,500,000 each fiscal year out of the income or principal of the Settlement Fund for tribal, non per capita purposes: *Provided*, *however*, That the Settlement Fund apportioned under subsections (c) and (d) of this section shall be calculated without regard to this subparagraph, but any amounts distributed under this

[1] So in original. The semicolon probably should be a comma.

[1] So in original. Probably should be ''subsection''.

subparagraph shall be deducted from the payment to the Hoopa Valley Tribe pursuant to subsection (c) of this section.

(3) Until the distribution is made to the Yurok Tribe pursuant to section[1] (d), the Secretary may, in addition to providing Federal funding, distribute to the Yurok Transition Team, pursuant to section 123c of this title, not to exceed $500,000 each fiscal year out of the income and principal of the Settlement Fund for tribal, non per capita purposes: *Provided, however*, That the Settlement Fund apportioned under subsections (c) and (d) of this section shall be calculated without regard to this subparagraph, but any amounts distributed under this subparagraph shall be deducted from the payment to the Yurok Tribe pursuant to subsection (d) of this section.

(b) Distribution; investment

The Secretary shall make distribution from the Settlement Fund as provided in this subchapter and, pending payments under section 1300i–5 of this title and dissolution of the fund as provided in section 1300i–6 of this title, shall invest and administer such fund as Indian trust funds pursuant to section 162a of this title.

(c) Hoopa Valley Tribe portion

Effective with the publication of the option election date pursuant to section 1300i–5(a)(4) of this title, the Secretary shall immediately pay out of the Settlement Fund into a trust account for the benefit of the Hoopa Valley Tribe a percentage of the Settlement Fund which shall be determined by dividing the number of enrolled members of the Hoopa Valley Tribe as of the date of the promulgation of the Settlement Roll, including any persons enrolled pursuant to section 1300i–5 of this title, by the sum of the number of such enrolled Hoopa Valley tribal members and the number of persons on the Settlement Roll.

(d) Yurok Tribe portion

Effective with the publication of the option election date pursuant to section 1300i–5(a)(4) of this title, the Secretary shall pay out of the Settlement Fund into a trust account for the benefit of the Yurok Tribe a percentage of the Settlement Fund which shall be determined by dividing the number of persons on the Settlement Roll electing the Yurok Tribal Membership Option pursuant to section 1300i–5(c) of this title by the sum of the number of the enrolled Hoopa Valley tribal members established pursuant to subsection (c) of this section and the number of persons on the Settlement Roll, less any amount paid out of the Settlement Fund pursuant to section 1300i–5(c)(3) of this title.

(e) Federal share

There is hereby authorized to be appropriated the sum of $10,000,000 which shall be deposited into the Settlement Fund after the payments are made pursuant to subsections (c) and (d) of this section and section 1300i–5(c) of this title. The Settlement Fund, including the amount deposited pursuant to this subsection and all income earned subsequent to the payments made pursuant to subsections (c) and (d) of this section and section 1300i–5(c) of this title, shall be available to make the payments authorized by section 1300i–5(d) of this title.

(Pub. L. 100–580, § 4, Oct. 31, 1988, 102 Stat. 2927.)

§ 1300i–4. Hoopa-Yurok Settlement Roll

(a) Preparation; eligibility criteria

(1) The Secretary shall prepare a roll of all persons who can meet the criteria for eligibility as an Indian of the Reservation and—

(A) who were born on or prior to, and living upon, October 31, 1988;

(B) who are citizens of the United States; and

(C) who were not, on August 8, 1988, enrolled members of the Hoopa Valley Tribe.

(2) The Secretary's determination of eligibility under this subsection shall be final except that any Short plaintiff determined by the United States Court of Federal Claims to be an Indian of the Reservation shall be included on the Settlement Roll if they meet the other requirements of this subsection and any Short plaintiff determined by the United States Court of Federal Claims not to be an Indian of the Reservation shall not be eligible for inclusion on such roll. Children under age 10 on the date they applied for the Settlement Roll who have lived all their lives on the Joint Reservation or the Hoopa Valley or Yurok Reservations, and who otherwise meet the requirements of this section except they lack 10 years of Reservation residence, shall be included on the Settlement Roll.

(b) Right to apply; notice

Within thirty days after October 31, 1988, the Secretary shall give such notice of the right to apply for enrollment as provided in subsection (a) of this section as he deems reasonable except that such notice shall include, but shall not be limited to—

(1) actual notice by registered mail to every plaintiff in the Short cases at their last known address;

(2) notice to the attorneys for such plaintiffs; and

(3) publication in newspapers of general circulation in the vicinity of the Hoopa Valley Reservation and elsewhere in the State of California.

Contemporaneous with providing the notice required by this subsection, the Secretary shall publish such notice in the Federal Register.

(c) Application deadline

The deadline for application pursuant to this section shall be established at one hundred and twenty days after the publication of the notice by the Secretary in the Federal Register as required by subsection (b) of this section.

(d) Eligibility determination; final roll

(1) The Secretary shall make determinations of eligibility of applicants under this section and publish in the Federal Register the final Settlement Roll of such persons one hundred and eighty days after the date established pursuant to subsection (c) of this section.

(2) The Secretary shall develop such procedures and times as may be necessary for the consideration of appeals from applicants not in-

cluded on the roll published pursuant to paragraph (1). Successful appellants shall be added to the Settlement Roll and shall be afforded the right to elect options as provided in section 1300i–5 of this title, with any payments to be made to such successful appellants out of the remainder of the Settlement Fund after payments have been made pursuant to section 1300i–5(d) of this title and prior to division pursuant to section 1300i–6 of this title.

(3) Persons added to the Settlement Roll pursuant to appeals under this subsection shall not be considered in the calculations made pursuant to section 1300i–3 of this title.

(4) For the sole purpose of preparing the Settlement Roll under this section, the Yurok Transition Team and the Hoopa Valley Business Council may review applications, make recommendations which the Secretary shall accept unless conflicting or erroneous, and may appeal the Secretary's decisions concerning the Settlement Roll. Full disclosure of relevant records shall be made to the Team and to the Council notwithstanding any other provision of law.

(e) Effect of exclusion from roll

No person whose name is not included on the Settlement Roll shall have any interest in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Hoopa Valley Tribe, the Hoopa Valley Reservation, the Yurok Tribe, or the Yurok Reservation or in the Settlement Fund unless such person is subsequently enrolled in the Hoopa Valley Tribe or the Yurok Tribe under the membership criteria and ordinances of such tribes.

(Pub. L. 100–580, § 5, Oct. 31, 1988, 102 Stat. 2928; Pub. L. 101–301, § 9(1), (2), May 24, 1990, 104 Stat. 210; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in two places.

1990—Subsec. (a)(2). Pub. L. 101–301, § 9(1), inserted at end ''Children under age 10 on the date they applied for the Settlement Roll who have lived all their lives on the Joint Reservation or the Hoopa Valley or Yurok Reservations, and who otherwise meet the requirements of this section except they lack 10 years of Reservation residence, shall be included on the Settlement Roll.''

Subsec. (d)(4). Pub. L. 101–301, § 9(2), added par. (4).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 1300i–5. Election of settlement options

(a) Notice of settlement options

(1) Within sixty days after the publication of the Settlement Roll as provided in section 1300i–4(d) of this title, the Secretary shall give notice by certified mail to each person eighteen years or older on such roll of their right to elect one of the settlement options provided in this section.

(2) The notice shall be provided in easily understood language, but shall be as comprehensive as possible and shall provide an objective assessment of the advantages and disadvantages of each of the options offered. The notice shall also provide information about the counseling services which will be made available to inform individuals about the respective rights and benefits associated with each option presented under this section. It shall also clarify that on election the Lump Sum Payment option requires the completion of a sworn affidavit certifying that the individual has been provided with complete information about the effects of such an election.

(3) With respect to minors on the Settlement Roll the notice shall state that minors shall be deemed to have elected the option of subsection (c) of this section, except that if the parent or guardian furnishes proof satisfactory to the Secretary that a minor is an enrolled member of a tribe that prohibits members from enrolling in other tribes, the parent or guardian shall make the election for such minor. A minor subject to the provisions of subsection (c) of this section shall, notwithstanding any other law, be deemed to be a child of a member of an Indian tribe regardless of the option elected pursuant to this subchapter by the minor's parent. With respect to minors on the Settlement Roll whose parent or guardian is not also on the roll, notice shall be given to the parent or guardian of such minor. The funds to which such minors are entitled shall be held in trust by the Secretary until the minor reaches age 18. The Secretary shall notify and provide payment to such person including all interest accrued.

(4)(A) The notice shall also establish the date by which time the election of an option under this section must be made. The Secretary shall establish that date as the date which is one hundred and twenty days after the date of the publication in the Federal Register as required by section 1300i–4(d) of this title.

(B) Any person on the Settlement Roll who has not made an election by the date established pursuant to subparagraph (A) shall be deemed to have elected the option provided in subsection (c) of this section.

(b) Hoopa tribal membership option

(1) Any person on the Settlement Roll, eighteen years or older, who can meet any of the enrollment criteria of the Hoopa Valley Tribe set out in the decision of the United States Court of Claims in its March 31, 1982, decision in the Short case (No. 102–63) as ''Schedule A'', ''Schedule B'', or ''Schedule C'' and who—

(A) maintained a residence on the Hoopa Valley Reservation on October 31, 1988;

(B) had maintained a residence on the Hoopa Valley Reservation at any time within the five year period prior to October 31, 1988; or

(C) owns an interest in real property on the Hoopa Valley Reservation on October 31, 1988,

may elect to be, and, upon such election, shall be entitled to be, enrolled as a full member of the Hoopa Valley Tribe.

(2) Notwithstanding any provision of the constitution, ordinances or resolutions of the Hoopa Valley Tribe to the contrary, the Secretary shall cause any entitled person electing to be enrolled as a member of the Hoopa Valley Tribe

to be so enrolled and such person shall thereafter be entitled to the same rights, benefits, and privileges as any other member of such tribe.

(3) The Secretary shall determine the quantum of ''Indian blood'' or ''Hoopa Indian blood'', if any, of each person enrolled in the Hoopa Valley Tribe under this subsection pursuant to the criteria established in the March 31, 1982, decision of the United States Court of Claims in the case of Jesse Short et al. v. United States, (Cl. Ct. No. 102–63).

(4) Any person making an election under this subsection shall no longer have any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Yurok Indian Reservation or the Yurok Tribe or in the Settlement Fund.

(c) Yurok tribal membership option

(1) Any person on the Settlement Roll may elect to become a member of the Yurok Tribe and shall be entitled to participate in the organization of such tribe as provided in section 1300i–8 of this title.

(2) All persons making an election under this subsection shall form the base roll of the Yurok Tribe for purposes of organization pursuant to section 1300i–8 of this title and the Secretary shall determine the quantum of ''Indian blood'' if any pursuant to the criteria established in the March 31, 1982, decision of the United States Court of Claims in the case of Jesse Short et al. v. United States, (Cl. Ct. No. 102–63).

(3) The Secretary, subject to the provisions of section 1407 of this title, shall pay to each person making an election under this subsection, $5,000 out of the Settlement Fund for those persons who are, on the date established pursuant to subsection (a)(4) of this section, below the age of 50 years, and $7,500 out of the Settlement Fund for those persons who are, on that date, age 50 or older.

(4) Any person making an election under this subsection shall no longer have any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Hoopa Valley Reservation or the Hoopa Valley Tribe or, except to the extent authorized by paragraph (3), in the Settlement Fund. Any such person shall also be deemed to have granted to members of the Interim Council established under section 1300i–8 of this title an irrevocable proxy directing them to approve a proposed resolution waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of this subchapter, and granting tribal consent as provided in section 1300i–8(d)(2) of this title.

(d) Lump sum payment option

(1) Any person on the Settlement Roll may elect to receive a lump sum payment from the Settlement Fund and the Secretary shall pay to each such person the amount of $15,000 out of the Settlement Fund: *Provided*, That such individual completes a sworn affidavit certifying that he or she has been afforded the opportunity to participate in counseling which the Secretary, in consultation with the Hoopa Tribal Council or Yurok Transition Team, shall provide. Such counseling shall provide a comprehensive explanation of the effects of such election on the individual making such election, and on the tribal enrollment rights of that persons children and descendants who would otherwise be eligible for membership in either the Hoopa or Yurok Tribe.

(2) The option to elect a lump sum payment under this section is provided solely as a mechanism to resolve the complex litigation and other special circumstances of the Hoopa Valley Reservation and the tribes of the reservation, and shall not be construed or treated as a precedent for any future legislation.

(3) Any person making an election to receive, and having received, a lump sum payment under this subsection shall not thereafter have any interest or right whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Hoopa Valley Reservation, the Hoopa Valley Tribe, the Yurok Reservation, or the Yurok Tribe or, except authorized by paragraph (1), in the Settlement Fund.

(Pub. L. 100–580, § 6, Oct. 31, 1988, 102 Stat. 2929.)

§ 1300i–6. Division of Settlement Fund remainder

(a) Any funds remaining in the Settlement Fund after the payments authorized to be made therefrom by subsections (c) and (d) of section 1300i–5 of this title and any payments made to successful appellants pursuant to section 1300i–4(d) of this title shall be paid to the Yurok Tribe and shall be held by the Secretary in trust for such tribe.

(b) Funds divided pursuant to this section and any funds apportioned to the Hoopa Valley Tribe and the Yurok Tribe pursuant to subsections (c) and (d) of section 1300i–3 of this title shall not be distributed per capita to any individual before the date which is 10 years after the date on which the division is made under this section: *Provided*, *however*, That if the Hoopa Valley Business Council shall decide to do so it may distribute from the funds apportioned to it a per capita payment of $5,000 per member, pursuant to the Act of August 2, 1983 (25 U.S.C. 117a et seq.).

(Pub. L. 100–580, § 7, Oct. 31, 1988, 102 Stat. 2931.)

REFERENCES IN TEXT

Act of August 2, 1983, referred to in subsec. (b), is Pub. L. 98–64, Aug. 2, 1983, 97 Stat. 365, known as the ''Per Capita Act'', which enacted sections 117a to 117c of this title and repealed section 117 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 117a of this title and Tables.

§ 1300i–7. Hoopa Valley Tribe; confirmation of status

The existing govening[1] documents of the Hoopa Valley Tribe and the governing body established and elected thereunder, as heretofore recognized by the Secretary, are hereby ratified and confirmed.

(Pub. L. 100–580, § 8, Oct. 31, 1988, 102 Stat. 2932.)

[1] So in original. Probably should be ''governing''.

§ 1300i–8. Recognition and organization of the Yurok Tribe

(a) Yurok Tribe

(1) Those persons on the Settlement Roll who made a valid election pursuant to subsection (c) of section 1300i–5 of this title shall constitute the base membership roll for the Yurok Tribe whose status as an Indian tribe, subject to the adoption of the Interim Council resolution as required by subsection (d)(2) of this section, is hereby ratified and confirmed.

(2) The Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 et seq.), as amended, is hereby made applicable to the Yurok Tribe and the tribe may organize under such Act as provided in this section.

(3) Within thirty days (30) after October 31, 1988, the Secretary, after consultation with the appropriate committees of Congress, shall appoint five (5) individuals who shall comprise the Yurok Transition Team which, pursuant to a budget approved by the Secretary, shall provide counseling and assistance, shall promote communication with potential members of the Yurok Tribe concerning the provisions of this subchapter, and shall study and investigate programs, resources, and facilities for consideration by the Interim Council. The Yurok Transition Team may receive grants and enter into contracts for the purpose of carrying out this section and section 1300i–9(a) of this title. Such grants and contracts shall be transferred to the Yurok Interim Council upon its organization. Any property acquired for or on behalf of the Yurok Transition Team shall be held in the name of the Yurok Tribe.

(b) Interim Council; establishment

There shall be established an Interim Council of the Yurok Tribe to be composed of five members. The Interim Council shall represent the Yurok Tribe in the implementation of provisions of this subchapter, including the organizational provisions of this section, and subject to subsection (d) of this section shall be the governing body of the tribe until such time as a tribal council is elected under a constitution adopted pursuant to subsection (e) of this section.

(c) General council; election of Interim Council

(1) Within 30 days after the date established pursuant to section 1300i–5(a)(4) of this title, the Secretary shall prepare a list of all persons eighteen years of age or older who have elected the Yurok Tribal Membership Option pursuant to section 1300i–5(c) of this title, which persons shall constitute the eligible voters of the Yurok Tribe for the purposes of this section, and shall provide written notice to such persons of the date, time, purpose, and order of procedure for the general council meeting to be scheduled pursuant to paragraph (2) for the consideration of the nomination of candidates for election to the Interim Council.

(2) Not earlier than 30 days before, nor later than 45 days after, the notice provided pursuant to paragraph (1), the Secretary shall convene a general council meeting of the eligible voters of the Yurok Tribe on or near the Yurok Reservation, to be conducted under such order of procedures as the Secretary determines appropriate, for the nomination of candidates for election of members of the Interim Council. No person shall be eligible for nomination who is not on the list prepared pursuant to this section.

(3) Within 45 days after the general council meeting held pursuant to paragraph (2), the Secretary shall hold an election by secret ballot, with absentee balloting and write-in voting to be permitted, to elect the five members of the Interim Council from among the nominations submitted to him from such general council meeting. The Secretary shall assure that notice of the time and place of such election shall be provided to eligible voters at least fifteen days before such election.

(4) The Secretary shall certify the results of such election and, as soon as possible, convene an organizational meeting of the newly-elected members of the Interim Council and shall provide such advice and assistance as may be necessary for such organization.

(5) Vacancies on the Interim Council shall be filled by a vote of the remaining members.

(d) Interim Council; authorities and dissolution

(1) The Interim Council shall have no powers other than those given to it by this subchapter.

(2) The Interim Council shall have full authority to adopt a resolution—

(i) waiving any claim the Yurok Tribe may have against the United States arising out of the provision of this subchapter, and

(ii) affirming tribal consent to the contribution of Yurok Escrow monies to the Settlement Fund, and for their use as payments to the Hoopa Tribe, and to individual Hoopa members, as provided in this subchapter, and

(iii) to receive grants from, and enter into contracts for, Federal programs, including those administered by the Secretary and the Secretary of Health and Human Services, with respect to Federal services and benefits for the tribe and its members.

(3) The Interim Council shall have such other powers, authorities, functions, and responsibilities as the Secretary may recognize, except that any contract or legal obligation that would bind the Yurok Tribe for a period in excess of two years from the date of the certification of the election by the Secretary shall be subject to disapproval and cancellation by the Secretary if the Secretary determines that such a contract or legal obligation is unnecessary to improve housing conditions of members of the Yurok Tribe, or to obtain other rights, privileges or benefits that are in the long-term interest of the Yurok Tribe.

(4) The Interim Council shall appoint, as soon as practical, a drafting committee which shall be responsible, in consultation with the Interim Council, the Secretary and members of the tribe, for the preparation of a draft constitution for submission to the Secretary pursuant to subsection (e) of this section.

(5) The Interim Council shall be dissolved effective with the election and installation of the initial tribe[1] governing body elected pursuant to the constitution adopted under subsection (e) of

[1] So in original. Probably should be ''tribal''.

this section or at the end of two years after such installation, whichever occurs first.

(e) Organization of Yurok Tribe

Upon written request of the Interim Council or the drafting committee and the submission of a draft constitution as provided in paragraph (4) of subsection (d) of this section, the Secretary shall conduct an election, pursuant to the provisions of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 461 et seq.) and rules and regulations promulgated thereunder, for the adoption of such constitution and, working with the Interim Council, the election of the initial tribal governing body upon the adoption of such constitution.

(Pub. L. 100–580, § 9, Oct. 31, 1988, 102 Stat. 2932; Pub. L. 101–121, title III, § 315, Oct. 23, 1989, 103 Stat. 744; Pub. L. 101–301, § 9(3), May 24, 1990, 104 Stat. 211.)

REFERENCES IN TEXT

The Indian Reorganization Act, referred to in subsecs. (a)(2) and (e), is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, which is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

AMENDMENTS

1990—Subsec. (a)(3). Pub. L. 101–301 substituted ''counseling and assistance, shall'' for ''counseling,''.

1989—Subsec. (a)(3). Pub. L. 101–121 inserted provisions authorizing the Yurok Transition Team to receive grants and enter into contracts for the purpose of carrying out this section and section 1300i–9(a) of this title and directing that such grants and contracts be transferred to the Yurok Interim Council upon its organization.

§ 1300i–9. Economic development

(a) Plan for economic self-sufficiency

The Secretary shall—

(1) enter into negotiations with the Yurok Transition Team and the Interim Council of the Yurok Tribe with respect to establishing a plan for economic development for the tribe; and

(2) in accordance with this section and not later than two years after October 31, 1988, develop such a plan.[1]

(3) upon the approval of such plan by the Interim Council or tribal governing body (and after consultation with the State and local officials pursuant to subsection (b) of this section), the Secretary shall submit such plan to the Congress.

(b) Consultation with State and local officials required

To assure that legitimate State and local interests are not prejudiced by the proposed economic self-sufficiency plan, the Secretary shall notify and consult with the appropriate officials of the State and all appropriate local governmental officials in the State. The Secretary shall provide complete information on the proposed plan to such officials, including the restrictions on such proposed plan imposed by subsection (c) of this section. During any consultation by the Secretary under this subsection, the Secretary shall provide such information as the Secretary may possess, and shall request comments and additional information on the extent of any State or local service to the tribe.

(c) Restrictions to be contained in plan

Any plan developed by the Secretary under subsection (a) of this section shall provide that—

(1) any real property transferred by the tribe or any member to the Secretary shall be taken and held in the name of the United States for the benefit of the tribe;

(2) any real property taken in trust by the Secretary pursuant to such plan shall be subject to—

(A) all legal rights and interests in such land existing at the time of the acquisition of such land by the Secretary, including any lien, mortgage, or previously levied and outstanding State or local tax;

(B) foreclosure or sale in accordance with the laws of the State pursuant to the terms of any valid obligation in existence at the time of the acquisition of such land by the Secretary; and

(3) any real property transferred pursuant to such plan shall be exempt from Federal, State, and local taxation of any kind.

(d) Appendix to plan submitted to Congress

The Secretary shall append to the plan submitted to the Congress under subsection (a) of this section a detailed statement—

(1) naming each individual and official consulted in accordance with subsection (b) of this section;

(2) summarizing the testimony received by the Secretary pursuant to any such consultation; and

(3) including any written comments or reports submitted to the Secretary by any party named in paragraph (1).

(Pub. L. 100–580, § 10, Oct. 31, 1988, 102 Stat. 2934.)

§ 1300i–10. Special considerations

(a) Estate for Smokers family

The 20 acre land assignment on the Hoopa Valley Reservation made by the Hoopa Area Field Office of the Bureau of Indian Affairs on August 25, 1947, to the Smokers family shall continue in effect and may pass by descent or devise to any blood relative or relatives of one-fourth or more Indian blood of those family members domiciled on the assignment on October 31, 1988.

(b) Rancheria merger with Yurok Tribe

If a majority of the adult members of any of the following Rancherias at Resighini, Trinidad, or Big Lagoon, vote to merge with the Yurok Tribe in an election which shall be conducted by the Secretary within ninety days after October 31, 1988, the tribes and reservations of those rancherias so voting shall be extinguished and the lands and members of such reservations shall be part of the Yurok Reservation with the unallotted trust land therein held in trust by the United States for the Yurok Tribe: *Provided, however*, That the existing governing documents

[1] So in original. The period probably should be ''; and''.

and the elected governing bodies of any rancherias voting to merge shall continue in effect until the election of the Interim Council pursuant to section 1300i–8 of this title. The Secretary shall publish in the Federal Register a notice of the effective date of the merger.

(c) Preservation of leasehold and assignment rights of rancheria residents

Real property on any rancheria that merges with the Yurok Reservation pursuant to subsection (b) of this section that is, on October 31, 1988, held by any individual under a lease shall continue to be governed by the terms of the lease, and any land assignment existing on October 31, 1988, shall continue in effect and may pass by descent or devise to any blood relative or relatives of Indian blood of the assignee.

(Pub. L. 100–580, § 11, Oct. 31, 1988, 102 Stat. 2935.)

§ 1300i–11. Limitations of actions; waiver of claims

(a) Claims against partition of joint reservation

Any claim challenging the partition of the joint reservation pursuant to section 1300i–1 of this title or any other provision of this subchapter as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be brought, pursuant to section 1491 or 1505 of title 28, in the United States Court of Federal Claims. The Yurok Transition Team, or any individual thereon, shall not be named as a defendant or otherwise joined in any suit in which a claim is made arising out of this subsection.

(b) Limitations on claims

(1) Any such claim by any person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, shall be forever barred if not brought within the later of 210 days from the date of the partition of the joint reservation as provided in section 1300i–1 of this title or 120 days after the publication in the Federal Register of the option election date as required by section 1300i–5(a)(4) of this title.

(2) Any such claim by the Hoopa Valley Tribe shall be barred 180 days after October 31, 1988, or such earlier date as may be established by the adoption of a resolution waiving such claims pursuant to section 1300i–1(a)(2) of this title.

(3) Any such claim by the Yurok Tribe shall be barred 180 days after the general council meeting of the Yurok Tribe as provided in section 1300i–8 of this title or such earlier date as may be established by the adoption of a resolution waiving such claims as provided in section 1300i–8(d)(2) of this title.

(c) Report to Congress

(1) The Secretary shall prepare and submit to the Congress a report describing the final decision in any claim brought pursuant to subsection (b) of this section against the United States or its officers, agencies, or instrumentalities.

(2) Such report shall be submitted no later than 180 days after the entry of final judgment in such litigation. The report shall include any recommendations of the Secretary for action by Congress, including, but not limited to, any supplemental funding proposals necessary to implement the terms of this subchapter and any modifications to the resource and management authorities established by this subchapter. Notwithstanding the provisions of section 2517 of title 28, any judgment entered against the United States shall not be paid for 180 days after the entry of judgment; and, if the Secretary of the Interior submits a report to Congress pursuant to this section, then payment shall be made no earlier than 120 days after submission of the report.

(Pub. L. 100–580, § 14, Oct. 31, 1988, 102 Stat. 2936; Pub. L. 101–301, § 9(4), May 24, 1990, 104 Stat. 211; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1990—Subsec. (a). Pub. L. 101–301 inserted at end ''The Yurok Transition Team, or any individual thereon, shall not be named as a defendant or otherwise joined in any suit in which a claim is made arising out of this subsection.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER LXXXI—POKAGON BAND OF POTAWATOMI INDIANS

§ 1300j. Findings

The Congress finds the following:

(1) The Pokagon Band of Potawatomi Indians is the descendant of, and political successor to, the signatories of the Treaty of Greenville 1795 (7 Stat. 49); the Treaty of Grouseland 1805 (7 Stat. 91); the Treaty of Spring Wells 1815 (7 Stat. 131); the Treaty of the Rapids of the Miami of Lake Erie 1817 (7 Stat. 160); the Treaty of St. Mary's 1818 (7 Stat. 185); the Treaty of Chicago 1821 (7 Stat. 218); the Treaty of the Mississinewa on the Wabash 1826 (7 Stat. 295); the Treaty of St. Joseph 1827 (7 Stat. 305); the Treaty of St. Joseph 1828 (7 Stat. 317); the Treaty of Tippecanoe River 1832 (7 Stat. 399); and the Treaty of Chicago 1833 (7 Stat. 431).

(2) In the Treaty of Chicago 1833, the Pokagon Band of Potawatomi Indians was the only band that negotiated a right to remain in Michigan. The other Potawatomi bands relinquished all lands in Michigan and were required to move to Kansas or Iowa.

(3) Two of the Potawatomi bands later returned to the Great Lakes area, the Forest County Potawatomi of Wisconsin and the Hannahville Indian Community of Michigan.

(4) The Hannahville Indian Community of Michigan, the Forest County Potawatomi Community of Wisconsin, the Prairie Band of Potawatomi Indians of Kansas, and the Citizen Band Potawatomi Indian Tribe of Oklahoma, whose members are also descendants of the signatories to one or more of the aforementioned treaties, have been recognized by the Federal Government as Indian tribes eligible

to receive services from the Secretary of the Interior.

(5) Beginning in 1935, the Pokagon Band of Potawatomi Indians petitioned for reorganization and assistance pursuant to the Act of June 18, 1934 (25 U.S.C. 461 et seq., commonly referred to as the ''Indian Reorganization Act''). Because of the financial condition of the Federal Government during the Great Depression it relied upon the State of Michigan to provide services to the Pokagon Band. Other Potawatomi bands, including the Forest County Potawatomi and the Hannahville Indian Community were provided services pursuant to the Indian Reorganization Act.

(6) Agents of the Federal Government in 1939 made an administrative decision not to provide services or extend the benefits of the Indian Reorganization Act [25 U.S.C. 461 et seq.] to any Indian tribes in Michigan's lower peninsula.

(7) Tribes elsewhere, including the Hannahville Indian Community in Michigan's upper peninsula, received services from the Federal Government and were extended the benefits of the Indian Reorganization Act [25 U.S.C. 461 et seq.].

(8) The Pokagon Band of Potawatomi Indians consists of at least 1,500 members who continue to reside close to their ancestral homeland in the St. Joseph River Valley in southwestern Michigan and northern Indiana.

(9) In spite of the denial of the right to organize under the Indian Reorganization Act [25 U.S.C. 461 et seq.], the Pokagon Band has continued to carry out its governmental functions through a Business Committee and Tribal Council from treaty times until today.

(10) The United States Government, the government of the State of Michigan, and local governments have had continuous dealings with the recognized political leaders of the Band from 1795 until the present.

(Pub. L. 103–323, § 1, Sept. 21, 1994, 108 Stat. 2152.)

REFERENCES IN TEXT

The Indian Reorganization Act, referred to in pars. (5) to (7) and (9), is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, which is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 1300j–1. Federal recognition

Federal recognition of the Pokagon Band of Potawatomi Indians is hereby affirmed. Except as otherwise provided in this subchapter, all Federal laws of general application to Indians and Indian tribes, including the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the ''Indian Reorganization Act''), shall apply with respect to the Band and its members.

(Pub. L. 103–323, § 2, Sept. 21, 1994, 108 Stat. 2153.)

REFERENCES IN TEXT

The Indian Reorganization Act, referred to in text, is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, which is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 1300j–2. Services

Notwithstanding any other provision of law, the Band and its members shall be eligible, on and after September 21, 1994, for all Federal services and benefits furnished to federally recognized Indian tribes without regard to the existence of a reservation for the Band or the location of the residence of any member on or near an Indian reservation.

(Pub. L. 103–323, § 3, Sept. 21, 1994, 108 Stat. 2153.)

§ 1300j–3. Tribal membership

Not later than 18 months after September 21, 1994, the Band shall submit to the Secretary membership rolls consisting of all individuals eligible for membership in such Band. The qualifications for inclusion on the membership rolls of the Band shall be determined by the membership clauses in the Band's governing documents, in consultation with the Secretary. Upon completion of the rolls, the Secretary shall immediately publish notice of such in the Federal Register. The Bands shall ensure that such rolls are maintained and kept current.

(Pub. L. 103–323, § 4, Sept. 21, 1994, 108 Stat. 2153.)

§ 1300j–4. Constitution and governing body

(a) Constitution

(1) Adoption

Not later than 24 months after September 21, 1994, the Secretary shall conduct, by secret ballot and in accordance with the provisions of section 476 of this title, an election to adopt a constitution and bylaws for the Band.

(2) Interim governing documents

Until such time as a new constitution is adopted under paragraph (1), the governing documents in effect on September 21, 1994, shall be the interim governing documents for the Band.

(b) Officials

(1) Election

Not later than 6 months after the Band adopts a constitution and bylaws pursuant to subsection (a) of this section, the Secretary shall conduct elections by secret ballot for the purpose of electing officials for the Band as provided in the Band's constitution. The election shall be conducted according to the procedures described in subsection (a) of this section, except to the extent that such procedures conflict with the Band's constitution.

(2) Interim government

Until such time as the Band elects new officials pursuant to paragraph (1), the Band's governing body shall be the governing body in place on September 21, 1994, or any new governing body selected under the election procedures specified in the interim governing documents of the Band.

(Pub. L. 103–323, § 5, Sept. 21, 1994, 108 Stat. 2154.)

§ 1300j–5. Tribal lands

The Band's tribal land shall consist of all real property, including the land upon which the

Tribal Hall is situated, now or on and after September 21, 1994, held by, or in trust for, the Band. The Secretary shall acquire real property for the Band. Any such real property shall be taken by the Secretary in the name of the United States in trust for the benefit of the Band and shall become part of the Band's reservation.

(Pub. L. 103–323, § 6, Sept. 21, 1994, 108 Stat. 2154.)

§ 1300j–6. Service area

The Band's service area shall consist of the Michigan counties of Allegan, Berrien, Van Buren, and Cass and the Indiana counties of La Porte, St. Joseph, Elkhart, Starke, Marshall, and Kosciusko.

(Pub. L. 103–323, § 7, Sept. 21, 1994, 108 Stat. 2154.)

§ 1300j–7. Jurisdiction

The Band shall have jurisdiction to the full extent allowed by law over all lands taken into trust for the benefit of the Band by the Secretary. The Band shall exercise jurisdiction over all its members who reside within the service area in matters pursuant to the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.), as if the members were residing upon a reservation as defined in that Act.

(Pub. L. 103–323, § 8, Sept. 21, 1994, 108 Stat. 2154.)

REFERENCES IN TEXT

The Indian Child Welfare Act of 1978, referred to in text, is Pub. L. 95–608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§ 1901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of this title and Tables.

§ 1300j–7a. Membership list

(a) List of members as of September 1994

Not later than 120 days after September 21, 1994, the Band shall submit to the Secretary a list of all individuals who, as of September 21, 1994, were members of the Band.

(b) List of individuals eligible for membership

(1) In general

Not later than 18 months after September 21, 1994, the Band shall submit to the Secretary a membership roll that contains the names of all individuals eligible for membership in the Band. The Band, in consultation with the Secretary, shall determine whether an individual is eligible for membership in the Band on the basis of provisions in the governing documents of the Band that determine the qualifications for inclusion in the membership roll of the Band.

(2) Publication of notice

At such time as the roll has been submitted to the Secretary, the Secretary shall immediately publish in the Federal Register a notice of such roll.

(3) Maintenance of roll

The Band shall ensure that the roll is maintained and kept current.

(Pub. L. 103–323, § 9, as added Pub. L. 103–435, § 20(2), Nov. 2, 1994, 108 Stat. 4574; amended Pub. L. 104–109, § 1, Feb. 12, 1996, 110 Stat. 763.)

PRIOR PROVISIONS

A prior section 9 of Pub. L. 103–323 was renumbered section 10 and is classified to section 1300j–8 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–109, § 1(1), (2), substituted ''Band'' for ''Bands'' in two places and struck out ''respective'' after ''members of the''.

Subsec. (b)(1). Pub. L. 104–109, § 1(1), (3)(A), substituted ''Band shall submit'' for ''Bands shall submit'', ''a membership roll that contains'' for ''membership rolls that contain'', ''membership in the Band'' for ''membership in such Bands'', and ''The Band'' for ''Each such Band''.

Subsec. (b)(2). Pub. L. 104–109, § 1(3)(B), substituted ''roll has'' for ''rolls have'' and ''such roll'' for ''such rolls''.

Subsec. (b)(3). Pub. L. 104–109, § 1(1), (3)(C), (D), substituted ''roll'' for ''rolls'' in heading and substituted ''Band shall ensure that the roll is maintained'' for ''Bands shall ensure that the rolls are maintained'' in text.

§ 1300j–8. Definitions

For purposes of this subchapter—

(1) the term ''Band'' means the Pokagon Band of Potawatomi Indians;

(2) the term ''member'' means those individuals eligible for enrollment in the Band pursuant to section 1300j–3 of this title; and

(3) the term ''Secretary'' means the Secretary of the Interior.

(Pub. L. 103–323, § 10, formerly § 9, Sept. 21, 1994, 108 Stat. 2155; renumbered § 10, Pub. L. 103–435, § 20(1), Nov. 2, 1994, 108 Stat. 4574.)

SUBCHAPTER LXXXII—LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS; LITTLE RIVER BAND OF OTTAWA INDIANS

§ 1300k. Findings

Congress finds the following:

(1) The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians are descendants of, and political successors to, signatories of the 1836 Treaty of Washington and the 1855 Treaty of Detroit.

(2) The Grand Traverse Band of Ottawa and Chippewa Indians, the Sault Ste. Marie Tribe of Chippewa Indians, and the Bay Mills Band of Chippewa Indians, whose members are also descendants of the signatories to the 1836 Treaty of Washington and the 1855 Treaty of Detroit, have been recognized by the Federal Government as distinct Indian tribes.

(3) The Little Traverse Bay Bands of Odawa Indians consists of at least 1,000 eligible members who continue to reside close to their ancestral homeland as recognized in the Little Traverse Reservation in the 1836 Treaty of Washington and 1855 Treaty of Detroit, which area is now known as Emmet and Charlevoix Counties, Michigan.

(4) The Little River Band of Ottawa Indians consists of at least 500 eligible members who continue to reside close to their ancestral homeland as recognized in the Manistee Reservation in the 1836 Treaty of Washington and reservation in the 1855 Treaty of Detroit, which area is now known as Manistee and Mason Counties, Michigan.

(5) The Bands filed for reorganization of their existing tribal governments in 1935 under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the ''Indian Reorganization Act''). Federal agents who visited the Bands, including Commissioner of Indian Affairs, John Collier, attested to the continued social and political existence of the Bands and concluded that the Bands were eligible for reorganization. Due to a lack of Federal appropriations to implement the provisions of such Act, the Bands were denied the opportunity to reorganize.

(6) In spite of such denial, the Bands continued their political and social existence with viable tribal governments. The Bands, along with other Michigan Odawa/Ottawa groups, including the tribes described in paragraph (2), formed the Northern Michigan Ottawa Association in 1948. The Association subsequently pursued a successful land claim with the Indian Claims Commission.

(7) Between 1948 and 1975, the Bands carried out many of their governmental functions through the Northern Michigan Ottawa Association, while retaining individual Band control over local decisions.

(8) In 1975, the Northern Michigan Ottawa Association petitioned under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the ''Indian Reorganization Act''), to form a government on behalf of the Bands. Again in spite of the Bands' eligibility, the Bureau of Indian Affairs failed to act on their request.

(9) The United States Government, the government of the State of Michigan, and local governments have had continuous dealings with the recognized political leaders of the Bands from 1836 to the present.

(Pub. L. 103–324, § 2, Sept. 21, 1994, 108 Stat. 2156.)

REFERENCES IN TEXT

The Indian Reorganization Act, referred to in pars. (5) and (8), is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, which is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

SHORT TITLE

Section 1 of Pub. L. 103–324 provided that: ''This Act [enacting this subchapter] may be cited as the 'Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act'.''

§ 1300k–1. Definitions

For purposes of this subchapter—

(1) the term ''Bands'' means the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians;

(2) the term ''member'' means those individuals enrolled in the Bands pursuant to section 1300k–5 of this title; and

(3) the term ''Secretary'' means the Secretary of the Interior.

(Pub. L. 103–324, § 3, Sept. 21, 1994, 108 Stat. 2157.)

§ 1300k–2. Federal recognition

(a) Federal recognition

Federal recognition of the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians is hereby reaffirmed. All laws and regulations of the United States of general application to Indians or nations, tribes, or bands of Indians, including the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the ''Indian Reorganization Act''), which are not inconsistent with any specific provision of this subchapter shall be applicable to the Bands and their members.

(b) Federal services and benefits

(1) In general

The Bands and their members shall be eligible for all services and benefits provided by the Federal Government to Indians because of their status as federally recognized Indians, and notwithstanding any other provision of law, such services and benefits shall be provided after September 21, 1994, to the Bands and their members without regard to the existence of a reservation or the location of the residence of any member on or near any Indian reservation.

(2) Service areas

(A) Little Traverse Bay Bands

For purposes of the delivery of Federal services to the enrolled members of the Little Traverse Bay Bands of Odawa Indians, the area of the State of Michigan within 70 miles of the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ''third'' and ''fourth'' of the Treaty of 1855, 11 Stat. 621, shall be deemed to be within or near a reservation, notwithstanding the establishment of a reservation for the tribe after September 21, 1994. Services may be provided to members outside the named service area unless prohibited by law or program regulations.

(B) Little River Band

For purposes of the delivery of Federal services to enrolled members of the Little River Band of Ottawa Indians, the Counties of Manistee, Mason, Wexford and Lake, in the State of Michigan, shall be deemed to be within or near a reservation, notwithstanding the establishment of a reservation for the tribe after September 21, 1994. Services may be provided to members outside the named Counties unless prohibited by law or program regulations.

(Pub. L. 103–324, § 4, Sept. 21, 1994, 108 Stat. 2157.)

REFERENCES IN TEXT

The Indian Reorganization Act, referred to in subsec. (a), is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, which is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 1300k–3. Reaffirmation of rights

(a) In general

All rights and privileges of the Bands, and their members thereof, which may have been abrogated or diminished before September 21, 1994, are hereby reaffirmed.

(b) Existing rights of Bands

Nothing in this subchapter shall be construed to diminish any right or privilege of the Bands,

or of their members, that existed prior to September 21, 1994. Except as otherwise specifically provided in any other provision of this subchapter, nothing in this subchapter shall be construed as altering or affecting any legal or equitable claim the Bands might have to enforce any right or privilege reserved by or granted to the Bands which were wrongfully denied to or taken from the Bands prior to September 21, 1994.

(Pub. L. 103–324, § 5, Sept. 21, 1994, 108 Stat. 2158; Pub. L. 104–109, § 2(a), Feb. 12, 1996, 110 Stat. 763.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–109 substituted ''Bands'' for ''Tribe'' in heading.

§ 1300k–4. Transfer of land for benefit of Bands

(a) Little Traverse Bay Bands

The Secretary shall acquire real property in Emmet and Charlevoix Counties for the benefit of the Little Traverse Bay Bands. The Secretary shall also accept any real property located in those Counties for the benefit of the Little Traverse Bay Bands if conveyed or otherwise transferred to the Secretary, if at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages or taxes owed.

(b) Little River Band

The Secretary shall acquire real property in Manistee and Mason Counties for the benefit of the Little River Band. The Secretary shall also accept any real property located in those Counties for the benefit of the Little River Band if conveyed or otherwise transferred to the Secretary, if at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages or taxes owed.

(c) Additional lands

The Secretary may accept any additional acreage in each of the Bands' service area specified by section 1300k–2(b) of this title pursuant to his authority under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the ''Indian Reorganization Act'').

(d) Reservation

Subject to the conditions imposed by this section, the land acquired by or transferred to the Secretary under or pursuant to this section shall be taken in the name of the United States in trust for the Bands and shall be a part of the respective Bands' reservation.

(Pub. L. 103–324, § 6, Sept. 21, 1994, 108 Stat. 2158.)

REFERENCES IN TEXT

The Indian Reorganization Act, referred to in subsec. (c), is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, which is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 1300k–5. Membership

Not later than 18 months after September 21, 1994, the Bands shall submit to the Secretary membership rolls consisting of all individuals currently enrolled for membership in such Bands. The qualifications for inclusion on the membership rolls of the Bands shall be determined by the membership clauses in such Bands' respective governing documents, in consultation with the Secretary. Upon completion of the rolls, the Secretary shall immediately publish notice of such in the Federal Register. The Bands shall ensure that such rolls are maintained and kept current.

(Pub. L. 103–324, § 7, Sept. 21, 1994, 108 Stat. 2159.)

§ 1300k–6. Constitution and governing body

(a) Constitution

(1) Adoption

Not later than 24 months after September 21, 1994, the Secretary shall conduct, by secret ballot, elections for the purposes of adopting new constitutions for the Bands. The elections shall be held according to the procedures applicable to elections under section 476 of this title.

(2) Interim governing documents

Until such time as new constitutions are adopted under paragraph (1), the governing documents in effect on September 21, 1994, shall be the interim governing documents for the Bands.

(b) Officials

(1) Election

Not later than 6 months after the Bands adopt constitutions and bylaws pursuant to subsection (a) of this section, the Bands shall conduct elections by secret ballot for the purpose of electing officials for the Bands as provided in the Bands' respective governing constitutions. The elections shall be conducted according to the procedures described in the Bands' constitutions and bylaws.

(2) Interim governments

Until such time as the Bands elect new officials pursuant to paragraph (1), the Bands' governing bodies shall be those governing bodies in place on September 21, 1994, or any new governing bodies selected under the election procedures specified in the respective interim governing documents of the Bands.

(Pub. L. 103–324, § 8, Sept. 21, 1994, 108 Stat. 2159.)

§ 1300k–7. Membership list

(a) List of present membership

Not later than 120 days after September 21, 1994, the Bands shall submit to the Secretary a list of all individuals who, as of September 21, 1994, were members of the respective Bands.

(b) List of individuals eligible for membership

(1) In general

Not later than 18 months after September 21, 1994, each of the Bands shall submit to the Secretary a membership roll that contains the names of all individuals that are eligible for membership in such Band. Each such Band, in consultation with the Secretary, shall determine whether an individual is eligible for membership in the Band on the basis of provisions in the governing documents of the Band

that determine the qualifications for inclusion in the membership roll of the Band.

(2) Publication of notice

At such time as the rolls have been submitted to the Secretary, the Secretary shall immediately publish in the Federal Register a notice of such rolls.

(3) Maintenance of rolls

The Band shall ensure that the rolls are maintained and kept current.

(Pub. L. 103–324, § 9, as added Pub. L. 103–435, § 21, Nov. 2, 1994, 108 Stat. 4574; amended Pub. L. 104–109, § 2(b), Feb. 12, 1996, 110 Stat. 763.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–109, § 2(b)(1), substituted ''the Bands shall submit'' for ''the Band shall submit'' and ''members of the respective Bands'' for ''members of the Band''.

Subsec. (b)(1). Pub. L. 104–109, § 2(b)(2), in first sentence substituted ''each of the Bands shall submit to the Secretary a membership roll that contains the names of all individuals that are eligible for membership in such Band'' for ''the Band shall submit to the Secretary membership rolls that contain the names of all individuals eligible for membership in such Band'' and in second sentence substituted ''Each such Band, in consultation'' for ''The Band, in consultation''.

SUBCHAPTER LXXXIII—AUBURN INDIAN RESTORATION

§ 1300*l*. Restoration of Federal recognition, rights, and privileges

(a) Federal recognition

Notwithstanding any other provision of law, Federal recognition is hereby extended to the Tribe. Except as otherwise provided in this subchapter, all laws and regulations of general application to Indians or nations, tribes, or bands of Indians that are not inconsistent with any specific provision of this subchapter shall be applicable to the Tribe and its members.

(b) Restoration of rights and privileges

Except as provided in subsection (d) of this section, all rights and privileges of the Tribe and its members under any Federal treaty, Executive order, agreement, or statute, or under any other authority which were diminished or lost under the Act of August 18, 1958 (Public Law 85–671), are hereby restored and the provisions of such Act shall be inapplicable to the Tribe and its members after October 31, 1994.

(c) Federal services and benefits

Notwithstanding any other provision of law and without regard to the existence of a reservation, the Tribe and its members shall be eligible, on and after October 31, 1994, for all Federal services and benefits furnished to federally recognized Indian tribes or their members. In the case of Federal services available to members of federally recognized Indian tribes residing on a reservation, members of the Tribe residing in the Tribe's service area shall be deemed to be residing on a reservation.

(d) Hunting, fishing, trapping, and water rights

Nothing in this subchapter shall expand, reduce, or affect in any manner any hunting, fishing, trapping, gathering, or water right of the Tribe and its members.

(e) Indian Reorganization Act applicability

The Act of June 18, 1934 (25 U.S.C. 461 et seq.), shall be applicable to the Tribe and its members.

(f) Certain rights not altered

Except as specifically provided in this subchapter, nothing in this subchapter shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes levied.

(Pub. L. 103–434, title II, § 202, Oct. 31, 1994, 108 Stat. 4533.)

REFERENCES IN TEXT

Act of August 18, 1958, referred to in subsec. (b), is Pub. L. 85–671, Aug. 18, 1958, 72 Stat. 619, which is not classified to the Code.

Act of June 18, 1934, referred to in subsec. (e), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

SHORT TITLE

Section 201 of title II of Pub. L. 103–434 provided that: ''This title [enacting this subchapter] may be cited as the 'Auburn Indian Restoration Act'.''

§ 1300*l*–1. Economic development

(a) Plan for economic development

The Secretary shall—

(1) enter into negotiations with the governing body of the Tribe with respect to establishing a plan for economic development for the Tribe;

(2) in accordance with this section and not later than 2 years after the adoption of a tribal constitution as provided in section 1300*l*–5 of this title, develop such a plan; and

(3) upon the approval of such plan by the governing body of the Tribe, submit such plan to the Congress.

(b) Restrictions

Any proposed transfer of real property contained in the plan developed by the Secretary under subsection (a) of this section shall be consistent with the requirements of section 1300*l*–2 of this title.

(Pub. L. 103–434, title II, § 203, Oct. 31, 1994, 108 Stat. 4533; Pub. L. 104–109, § 8(a), Feb. 12, 1996, 110 Stat. 764.)

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–109, § 8(a)(1), made technical amendment to reference to section 1300*l*–5 of this title, to correct reference to corresponding section of original act.

Subsec. (b). Pub. L. 104–109, § 8(a)(2), made technical amendment to reference to section 1300*l*–2 of this title, to correct reference to corresponding section of original act.

§ 1300*l*–2. Transfer of land to be held in trust

(a) Lands to be taken in trust

The Secretary may accept any real property located in Placer County, California, for the benefit of the Tribe if conveyed or otherwise

transferred to the Secretary if, at the time of such conveyance or transfer, there are no adverse legal claims on such property, including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe's service area pursuant to the authority of the Secretary under the Act of June 18, 1934 (25 U.S.C. 461 et seq.).

(b) Former trust lands of Auburn Rancheria

Subject to the conditions specified in this section, real property eligible for trust status under this section shall include fee land held by the White Oak Ridge Association, Indian owned fee land held communally pursuant to the distribution plan prepared and approved by the Bureau of Indian Affairs on August 13, 1959, and Indian owned fee land held by persons listed as distributees or dependent members in such distribution plan or such distributees' or dependent members' Indian heirs or successors in interest.

(c) Lands to be part of reservation

Subject to the conditions imposed by this section, any real property conveyed or transferred under this section shall be taken in the name of the United States in trust for the Tribe or, as applicable, an individual member of the Tribe, and shall be part of the Tribe's reservation.

(Pub. L. 103–434, title II, § 204, Oct. 31, 1994, 108 Stat. 4534; Pub. L. 104–122, Mar. 29, 1996, 110 Stat. 876.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in subsec. (a), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–122 substituted ''may'' for ''shall'' in first sentence.

§ 1300*l*–3. Membership rolls

(a) Compilation of tribal membership roll

Within 1 year after October 31, 1994, the Secretary shall, after consultation with the Tribe, compile a membership roll of the Tribe.

(b) Criteria for enrollments

(1) Until a tribal constitution is adopted pursuant to section 1300*l*–5 of this title, an individual shall be placed on the membership roll if the individual is living, is not an enrolled member of another federally recognized Indian tribe, is of United Auburn Indian Community ancestry, possesses at least one-eighth or more of Indian blood quantum, and if—

(A) the individual's name was listed on the Auburn Indian Rancheria distribution roll compiled and approved by the Bureau of Indian Affairs on August 13, 1959, pursuant to Public Law 85–671;

(B) the individual was not listed on, but met the requirements that had to be met to be listed on, the Auburn Indian Rancheria distribution list compiled and approved by the Bureau of Indian Affairs on August 13, 1959, pursuant to Public Law 85–671; or

(C) the individual is a lineal descendant of an individual, living or dead, identified in subparagraph (A) or (B).

(2) After adoption of a tribal constitution pursuant to section 1300*l*–5 of this title, such tribal constitution shall govern membership in the Tribe, except that in addition to meeting any other criteria imposed in such tribal constitution, any person added to the membership roll shall be of United Auburn Indian Community ancestry and shall not be an enrolled member of another federally recognized Indian tribe.

(c) Conclusive proof of United Auburn Indian Community ancestry

For the purpose of subsection (b) of this section, the Secretary shall accept any available evidence establishing United Auburn Indian Community ancestry. The Secretary shall accept as conclusive evidence of United Auburn Indian Community ancestry information contained in the Auburn Indian Rancheria distribution list compiled by the Bureau of Indian Affairs on August 13, 1959.

(Pub. L. 103–434, title II, § 205, Oct. 31, 1994, 108 Stat. 4534.)

REFERENCES IN TEXT

Public Law 85–671, referred to in subsec. (b)(1)(A), (B), is Pub. L. 85–671, Aug. 18, 1958, 72 Stat. 619, which is not classified to the Code.

§ 1300*l*–4. Interim government

Until a new tribal constitution and bylaws are adopted and become effective under section 1300*l*–5 of this title, the Tribe's governing body shall be an Interim Council. The initial membership of the Interim Council shall consist of the members of the Executive Council of the Tribe on October 31, 1994, and the Interim Council shall continue to operate in the manner prescribed for the Executive Council under the tribal constitution adopted July 20, 1991, as long as such constitution is not contrary to Federal law. Any new members filling vacancies on the Interim Council shall meet the enrollment criteria set forth in section 1300*l*–3(b) of this title and be elected in the same manner as are Executive Council members under the tribal constitution adopted July 20, 1991.

(Pub. L. 103–434, title II, § 206, Oct. 31, 1994, 108 Stat. 4535; Pub. L. 104–109, § 8(b), Feb. 12, 1996, 110 Stat. 765.)

AMENDMENTS

1996—Pub. L. 104–109 substituted ''Interim Council shall meet'' for ''Interim council shall meet'' in last sentence.

§ 1300*l*–5. Tribal constitution

(a) Election; time and procedure

Upon the completion of the tribal membership roll under section 1300*l*–3(a) of this title and upon the written request of the Interim Council, the Secretary shall conduct, by secret ballot, an election for the purpose of adopting a constitution and bylaws for the Tribe. The election shall be held according to section 476 of this title, except that absentee balloting shall be permitted regardless of voter residence.

(b) Election of tribal officials; procedures

Not later than 120 days after the Tribe adopts a constitution and bylaws under subsection (a)

of this section, the Secretary shall conduct an election by secret ballot for the purpose of electing tribal officials as provided in such tribal constitution. Such election shall be conducted according to the procedures specified in subsection (a) of this section except to the extent that such procedures conflict with the tribal constitution.

(Pub. L. 103–434, title II, § 207, Oct. 31, 1994, 108 Stat. 4535.)

§ 1300*l*–6. Definitions

For purposes of this subchapter:

(1) The term ''Tribe'' means the United Auburn Indian Community of the Auburn Rancheria of California.

(2) The term ''Secretary'' means the Secretary of the Interior.

(3) The term ''Interim Council'' means the governing body of the Tribe specified in section 1300*l*–4 of this title.

(4) The term ''member'' means those persons meeting the enrollment criteria under section 1300*l*–3(b) of this title.

(5) The term ''State'' means the State of California.

(6) The term ''reservation'' means those lands acquired and held in trust by the Secretary for the benefit of the Tribe pursuant to section 1300*l*–2 of this title.

(7) The term ''service area'' means the counties of Placer, Nevada, Yuba, Sutter, El Dorado, and Sacramento, in the State of California.

(Pub. L. 103–434, title II, § 208, Oct. 31, 1994, 108 Stat. 4535.)

§ 1300*l*–7. Regulations

The Secretary may promulgate such regulations as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 103–434, title II, § 209, Oct. 31, 1994, 108 Stat. 4536.)

SUBCHAPTER LXXXIV—PASKENTA BAND OF NOMLAKI INDIANS OF CALIFORNIA

§ 1300m. Definitions

For purposes of this subchapter:

(1) The term ''Tribe'' means the Paskenta Band of Nomlaki Indians of the Paskenta Rancheria of California.

(2) The term ''Secretary'' means the Secretary of the Interior.

(3) The term ''Interim Council'' means the governing body of the Tribe specified in section 1300m–5 of this title.

(4) The term ''member'' means an individual who meets the membership criteria under section 1300m–4(b) of this title.

(5) The term ''State'' means the State of California.

(6) The term ''reservation'' means those lands acquired and held in trust by the Secretary for the benefit of the Tribe pursuant to section 1300m–3 of this title.

(7) The term ''service area'' means the counties of Tehama and Glenn, in the State of California.

(Pub. L. 103–454, title III, § 302, Nov. 2, 1994, 108 Stat. 4793.)

SHORT TITLE

Section 301 of title III of Pub. L. 103–454 provided that: ''This title [enacting this subchapter] may be cited as the 'Paskenta Band Restoration Act'.''

§ 1300m–1. Restoration of Federal recognition, rights, and privileges

(a) Federal recognition

Federal recognition is hereby extended to the Tribe. Except as otherwise provided in this subchapter, all laws and regulations of general application to Indians and nations, tribes, or bands of Indians that are not inconsistent with any specific provision of this subchapter shall be applicable to the Tribe and its members.

(b) Restoration of rights and privileges

Except as provided in subsection (d) of this section, all rights and privileges of the Tribe and its members under any Federal treaty, Executive order, agreement, or statute, or under any other authority which were diminished or lost under the Act of August 18, 1958 (Public Law 85–671; 72 Stat. 619), are hereby restored and the provisions of such Act shall be inapplicable to the Tribe and its members after November 2, 1994.

(c) Federal services and benefits

Without regard to the existence of a reservation, the Tribe and its members shall be eligible, on and after November 2, 1994, for all Federal services and benefits furnished to federally recognized Indian tribes or their members. In the case of Federal services available to members of federally recognized Indian tribes residing on a reservation, members of the Tribe residing in the Tribe's service area shall be deemed to be residing on a reservation.

(d) Hunting, fishing, trapping, and water rights

Nothing in this subchapter shall expand, reduce, or affect in any manner any hunting, fishing, trapping, gathering, or water right of the Tribe and its members.

(e) Indian Reorganization Act applicability

The Act of June 18, 1934 (25 U.S.C. 461 et seq.), shall be applicable to the Tribe and its members.

(f) Certain rights not altered

Except as specifically provided in this subchapter, nothing in this subchapter shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes levied.

(Pub. L. 103–454, title III, § 303, Nov. 2, 1994, 108 Stat. 4793.)

REFERENCES IN TEXT

Act of August 18, 1958, referred to in subsec. (b), is Pub. L. 85–671, Aug. 18, 1958, 72 Stat. 619, which is not classified to the Code.

Act of June 18, 1934, referred to in subsec. (e), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 1300m–2. Economic development

(a) Plan for economic development

The Secretary shall—

(1) enter into negotiations with the governing body of the Tribe with respect to establishing a plan for economic development for the Tribe;

(2) in accordance with this section and not later than two years after the adoption of a tribal constitution as provided in section 1300m–6 of this title, develop such a plan; and

(3) upon the approval of such plan by the governing body of the Tribe, submit such plan to the Congress.

(b) Restrictions

Any proposed transfer of real property contained in the plan developed by the Secretary under subsection (a) of this section shall be consistent with the requirements of section 1300m–3 of this title.

(Pub. L. 103–454, title III, § 304, Nov. 2, 1994, 108 Stat. 4794.)

§ 1300m–3. Transfer of land to be held in trust

(a) Lands to be taken in trust

The Secretary shall accept any real property located in Tehama County, California, for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary if, at the time of such conveyance or transfer, there are no adverse legal claims to such property, including outstanding liens, mortgages, or taxes owned. The Secretary may accept any additional acreage in the Tribe's service area pursuant to the authority of the Secretary under the Act of June 18, 1934 (25 U.S.C. 461 et seq.).

(b) Lands to be part of reservation

Subject to the conditions imposed by this section, any real property conveyed or transferred under this section shall be taken in the name of the United States in trust for the Tribe and shall be part of the Tribe's reservation.

(Pub. L. 103–454, title III, § 305, Nov. 2, 1994, 108 Stat. 4794.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in subsec. (a), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§ 1300m–4. Membership rolls

(a) Compilation of tribal membership roll

Within one year after November 2, 1994, the Secretary shall, after consultation with the Tribe, compile a membership roll of the Tribe.

(b) Criteria for membership

(1) Until a tribal constitution is adopted pursuant to section 1300m–6 of this title, an individual shall be placed on the membership roll if such individual is living, is not an enrolled member of another federally recognized Indian tribe, is of Nomlaki Indian ancestry, and if—

(A) such individual's name was listed on the Paskenta Indian Rancheria distribution roll compiled on February 26, 1959, by the Bureau of Indian Affairs and approved by the Secretary of the Interior on July 7, 1959, pursuant to Public Law 85–671;

(B) such individual was not listed on the Paskenta Indian Rancheria distribution list, but met the requirements that had to be met to be listed on the Paskenta Indian Rancheria list;

(C) such individual is identified as an Indian from Paskenta in any of the official or unofficial rolls of Indians prepared by the Bureau of Indian Affairs; or

(D) such individual is a lineal descendant of an individual, living or dead, identified in subparagraph (A), (B), or (C).

(2) After adoption of a tribal constitution pursuant to section 1300m–6 of this title, such tribal constitution shall govern membership in the Tribe.

(c) Conclusive proof of Paskenta Indian ancestry

For the purpose of subsection (b) of this section, the Secretary shall accept any available evidence establishing Paskenta Indian ancestry. The Secretary shall accept as conclusive evidence of Paskenta Indian ancestry, information contained in the census of the Indians in and near Paskenta, prepared by Special Indian Agent John J. Terrell, in any other roll or census of Paskenta Indians prepared by the Bureau of Indian Affairs, and in the Paskenta Indian Rancheria distribution list, compiled by the Bureau of Indian Affairs on February 26, 1959.

(Pub. L. 103–454, title III, § 306, Nov. 2, 1994, 108 Stat. 4794.)

REFERENCES IN TEXT

Public Law 85–671, referred to in subsec. (b)(1)(A), is Pub. L. 85–671, Aug. 18, 1958, 72 Stat. 619, which is not classified to the Code.

§ 1300m–5. Interim government

Until a new tribal constitution and bylaws are adopted and become effective under section 1300m–6 of this title, the Tribe's governing body shall be an Interim Council. The initial membership of the Interim Council shall consist of the members of the Tribal Council of the Tribe on November 2, 1994, and the Interim Council shall continue to operate in the manner prescribed for the Tribal Council under the tribal constitution adopted December 18, 1993. Any new members filling vacancies on the Interim Council shall meet the membership criteria set forth in section 1300m–4(b) of this title and be elected in the same manner as are Tribal Council members under the tribal constitution adopted December 18, 1993.

(Pub. L. 103–454, title III, § 307, Nov. 2, 1994, 108 Stat. 4795.)

§ 1300m–6. Tribal constitution

(a) Election; time and procedure

Upon the completion of the tribal membership roll under section 1300m–4(a) of this title and upon the written request of the Interim Council, the Secretary shall conduct, by secret ballot, an election for the purpose of adopting a constitu-

tion and bylaws for the Tribe. The election shall be held according to section 476 of this title, except that absentee balloting shall be permitted regardless of voter residence.

(b) Election of tribal officials; procedures

Not later than 120 days after the Tribe adopts a constitution and bylaws under subsection (a) of this section, the Secretary shall conduct an election by secret ballot for the purpose of electing tribal officials as provided in such tribal constitution. Such election shall be conducted according to the procedures specified in subsection (a) of this section except to the extent that such procedures conflict with the tribal constitution.

(Pub. L. 103–454, title III, § 308, Nov. 2, 1994, 108 Stat. 4795.)

§ 1300m–7. General provision

The Secretary may promulgate such regulations as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 103–454, title III, § 309, Nov. 2, 1994, 108 Stat. 4796.)

SUBCHAPTER LXXXV—GRATON RANCHERIA RESTORATION

§ 1300n. Findings

The Congress finds that in their 1997 Report to Congress, the Advisory Council on California Indian Policy specifically recommended the immediate legislative restoration of the Graton Rancheria.

(Pub. L. 106–568, title XIV, § 1402, Dec. 27, 2000, 114 Stat. 2939.)

SHORT TITLE

Pub. L. 106–568, title XIV, § 1401, Dec. 27, 2000, 114 Stat. 2939, provided that: ''This title [enacting this subchapter] may be cited as the 'Graton Rancheria Restoration Act'.''

§ 1300n–1. Definitions

For purposes of this subchapter:

(1) The term ''Tribe'' means the Indians of the Graton Rancheria of California.

(2) The term ''Secretary'' means the Secretary of the Interior.

(3) The term ''Interim Tribal Council'' means the governing body of the Tribe specified in section 1300n–5 of this title.

(4) The term ''member'' means an individual who meets the membership criteria under section 1300n–4(b) of this title.

(5) The term ''State'' means the State of California.

(6) The term ''reservation'' means those lands acquired and held in trust by the Secretary for the benefit of the Tribe.

(7) The term ''service area'' means the counties of Marin and Sonoma, in the State of California.

(Pub. L. 106–568, title XIV, § 1403, Dec. 27, 2000, 114 Stat. 2939.)

§ 1300n–2. Restoration of Federal recognition, rights, and privileges

(a) Federal recognition

Federal recognition is hereby restored to the Tribe. Except as otherwise provided in this subchapter, all laws and regulations of general application to Indians and nations, tribes, or bands of Indians that are not inconsistent with any specific provision of this subchapter shall be applicable to the Tribe and its members.

(b) Restoration of rights and privileges

Except as provided in subsection (d) of this section, all rights and privileges of the Tribe and its members under any Federal treaty, Executive order, agreement, or statute, or under any other authority which were diminished or lost under the Act of August 18, 1958 (Public Law 85–671; 72 Stat. 619), are hereby restored, and the provisions of such Act shall be inapplicable to the Tribe and its members after December 27, 2000.

(c) Federal services and benefits

(1) In general

Without regard to the existence of a reservation, the Tribe and its members shall be eligible, on and after December 27, 2000, for all Federal services and benefits furnished to federally recognized Indian tribes or their members. For the purposes of Federal services and benefits available to members of federally recognized Indian tribes residing on a reservation, members of the Tribe residing in the Tribe's service area shall be deemed to be residing on a reservation.

(2) Relation to other laws

The eligibility for or receipt of services and benefits under paragraph (1) by a tribe or individual shall not be considered as income, resources, or otherwise when determining the eligibility for or computation of any payment or other benefit to such tribe, individual, or household under—

(A) any financial aid program of the United States, including grants and contracts subject to the Indian Self-Determination Act [25 U.S.C. 450f et seq.]; or

(B) any other benefit to which such tribe, household, or individual would otherwise be entitled under any Federal or federally assisted program.

(d) Hunting, fishing, trapping, gathering, and water rights

Nothing in this subchapter shall expand, reduce, or affect in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and its members.

(e) Certain rights not altered

Except as specifically provided in this subchapter, nothing in this subchapter shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes levied.

(Pub. L. 106–568, title XIV, § 1404, Dec. 27, 2000, 114 Stat. 2939.)

REFERENCES IN TEXT

The Act of August 18, 1958, referred to in subsec. (b), is Pub. L. 85–671, Aug. 18, 1958, 72 Stat. 619, which is not classified to the Code.

The Indian Self-Determination Act, referred to in subsec. (c)(2)(A), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 1300n–3. Transfer of land to be held in trust

(a) Lands to be taken in trust

Upon application by the Tribe, the Secretary shall accept into trust for the benefit of the Tribe any real property located in Marin or Sonoma County, California, for the benefit of the Tribe after the property is conveyed or otherwise transferred to the Secretary and if, at the time of such conveyance or transfer, there are no adverse legal claims to such property, including outstanding liens, mortgages, or taxes.

(b) Former trust lands of the Graton Rancheria

Subject to the conditions specified in this section, real property eligible for trust status under this section shall include Indian owned fee land held by persons listed as distributees or dependent members in the distribution plan approved by the Secretary on September 17, 1959, or such distributees' or dependent members' Indian heirs or successors in interest.

(c) Lands to be part of reservation

Any real property taken into trust for the benefit of the Tribe pursuant to this subchapter shall be part of the Tribe's reservation.

(d) Lands to be nontaxable

Any real property taken into trust for the benefit of the Tribe pursuant to this section shall be exempt from all local, State, and Federal taxation as of the date that such land is transferred to the Secretary.

(Pub. L. 106–568, title XIV, § 1405, Dec. 27, 2000, 114 Stat. 2940.)

§ 1300n–4. Membership rolls

(a) Compilation of tribal membership roll

Not later than 1 year after December 27, 2000, the Secretary shall, after consultation with the Tribe, compile a membership roll of the Tribe.

(b) Criteria for membership

(1) Until a tribal constitution is adopted under section 1300n–6 of this title, an individual shall be placed on the Graton membership roll if such individual is living, is not an enrolled member of another federally recognized Indian tribe, and if—

(A) such individual's name was listed on the Graton Indian Rancheria distribution list compiled by the Bureau of Indian Affairs and approved by the Secretary on September 17, 1959, under Public Law 85–671;

(B) such individual was not listed on the Graton Indian Rancheria distribution list, but met the requirements that had to be met to be listed on the Graton Indian Rancheria distribution list;

(C) such individual is identified as an Indian from the Graton, Marshall, Bodega, Tomales, or Sebastopol, California, vicinities, in documents prepared by or at the direction of the Bureau of Indian Affairs, or in any other public or California mission records; or

(D) such individual is a lineal descendant of an individual, living or dead, identified in subparagraph (A), (B), or (C).

(2) After adoption of a tribal constitution under section 1300n–6 of this title, such tribal constitution shall govern membership in the Tribe.

(c) Conclusive proof of Graton Indian ancestry

For the purpose of subsection (b) of this section, the Secretary shall accept any available evidence establishing Graton Indian ancestry. The Secretary shall accept as conclusive evidence of Graton Indian ancestry information contained in the census of the Indians from the Graton, Marshall, Bodega, Tomales, or Sebastopol, California, vicinities, prepared by or at the direction of Special Indian Agent John J. Terrell in any other roll or census of Graton Indians prepared by or at the direction of the Bureau of Indian Affairs and in the Graton Indian Rancheria distribution list compiled by the Bureau of Indian Affairs and approved by the Secretary on September 17, 1959.

(Pub. L. 106–568, title XIV, § 1406, Dec. 27, 2000, 114 Stat. 2940.)

REFERENCES IN TEXT

Public Law 85–671, referred to in subsec. (b)(1)(A), is Pub. L. 85–671, Aug. 18, 1958, 72 Stat. 619, which is not classified to the Code.

§ 1300n–5. Interim government

Until the Tribe ratifies a final constitution consistent with section 1300n–6 of this title, the Tribe's governing body shall be an Interim Tribal Council. The initial membership of the Interim Tribal Council shall consist of the members serving on December 27, 2000, who have been elected under the tribal constitution adopted May 3, 1997. The Interim Tribal Council shall continue to operate in the manner prescribed under such tribal constitution. Any vacancy on the Interim Tribal Council shall be filled by individuals who meet the membership criteria set forth in section 1300n–4(b) of this title and who are elected in the same manner as are Tribal Council members under the tribal constitution adopted May 3, 1997.

(Pub. L. 106–568, title XIV, § 1407, Dec. 27, 2000, 114 Stat. 2941.)

§ 1300n–6. Tribal constitution

(a) Election; time; procedure

After the compilation of the tribal membership roll under section 1300n–4(a) of this title, upon the written request of the Interim Tribal Council, the Secretary shall conduct, by secret ballot, an election for the purpose of ratifying a final constitution for the Tribe. The election shall be held consistent with sections 476(c)(1) and 476(c)(2)(A) of this title. Absentee voting shall be permitted regardless of voter residence.

(b) Election of tribal officials; procedures

Not later than 120 days after the Tribe ratifies a final constitution under subsection (a) of this section, the Secretary shall conduct an election

by secret ballot for the purpose of electing tribal officials as provided in such tribal constitution. Such election shall be conducted consistent with the procedures specified in subsection (a) of this section except to the extent that such procedures conflict with the tribal constitution.

(Pub. L. 106–568, title XIV, § 1408, Dec. 27, 2000, 114 Stat. 2941.)

CHAPTER 15—CONSTITUTIONAL RIGHTS OF INDIANS

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SUBCHAPTER I—GENERALLY

§ 1301. Definitions

For purposes of this subchapter, the term—

(1) ''Indian tribe'' means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) ''powers of self-government'' means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

(3) ''Indian court'' means any Indian tribal court or court of Indian offense; and

(4) ''Indian'' means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18, if that person were to commit an offense listed in that section in Indian country to which that section applies.

(Pub. L. 90–284, title II, § 201, Apr. 11, 1968, 82 Stat. 77; Pub. L. 101–511, title VIII, § 8077(b), (c), Nov. 5, 1990, 104 Stat. 1892.)

AMENDMENTS

1990—Par. (2). Pub. L. 101–511, § 8077(b), inserted at end ''means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;''.

Par. (4). Pub. L. 101–511, § 8077(c), added par. (4).

SHORT TITLE

Title II of Pub. L. 90–284, which is classified generally to this subchapter, is popularly known as the ''Indian Civil Rights Act of 1968''.

TIME LIMITATION ON CRIMINAL MISDEMEANOR JURISDICTION OF TRIBAL COURTS OVER NON-MEMBER INDIANS

Section 8077(d) of Pub. L. 101–511, as amended by Pub. L. 102–124, § 1, Oct. 9, 1991, 105 Stat. 616, which provided that the effects of subsecs. (b) and (c), which amended this section, as those subsections affect the criminal misdemeanor jurisdiction of tribal courts over non-member Indians have no effect after Oct. 18, 1991, was repealed by Pub. L. 102–137, Oct. 28, 1991, 105 Stat. 646. Subsequent to repeal, Pub. L. 102–172, title VIII, § 8112A(b), Nov. 26, 1991, 105 Stat. 1202, purported to amend section 8077(d) of Pub. L. 101–511 by substituting ''1993'' for ''1991''.

§ 1302. Constitutional rights

No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and[1] a fine of $5,000, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(Pub. L. 90–284, title II, § 202, Apr. 11, 1968, 82 Stat. 77; Pub. L. 99–570, title IV, § 4217, Oct. 27, 1986, 100 Stat. 3207–146.)

[1] So in original. Probably should be ''or''.

AMENDMENTS

1986—Par. (7). Pub. L. 99–570, which directed that ''for a term of one year and a fine of $5,000, or both'' be substituted for ''for a term of six months and a fine of $500, or both'', was executed by making the substitution for ''for a term of six months or a fine of $500, or both'' as the probable intent of Congress.

PURPOSE OF 1986 AMENDMENT

Section 4217 of Pub. L. 99–570 provided in part that amendment of par. (7) of this section was to ''enhance the ability of tribal governments to prevent and penalize the traffic of illegal narcotics on Indian reservations''.

§ 1303. Habeas corpus

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

(Pub. L. 90–284, title II, § 203, Apr. 11, 1968, 82 Stat. 78.)

SUBCHAPTER II—MODEL CODE GOVERNING COURTS OF INDIAN OFFENSES

§ 1311. Model code

The Secretary of the Interior is authorized and directed to recommend to the Congress, on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Such code shall include provisions which will (1) assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal court for any similar offense, (2) assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the United States Constitution, and under any tribal constitution applicable to such individual, (3) establish proper qualifications for the office of judge of the court of Indian offenses, and (4) provide for the establishing of educational classes for the training of judges of courts of Indian offenses. In carrying out the provisions of this subchapter, the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States.

(Pub. L. 90–284, title III, § 301, Apr. 11, 1968, 82 Stat. 78.)

§ 1312. Authorization of appropriations

There is hereby authorized to be appropriated such sum as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 90–284, title III, § 302, Apr. 11, 1968, 82 Stat. 78.)

SUBCHAPTER III—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

§ 1321. Assumption by State of criminal jurisdiction

(a) Consent of United States; force and effect of criminal laws

The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Alienation, encumbrance, taxation, and use of property; hunting, trapping, or fishing

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(Pub. L. 90–284, title IV, § 401, Apr. 11, 1968, 82 Stat. 78.)

§ 1322. Assumption by State of civil jurisdiction

(a) Consent of United States; force and effect of civil laws

The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Alienation, encumbrance, taxation, use, and probate of property

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use

of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Force and effect of tribal ordinances or customs

Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

(Pub. L. 90–284, title IV, § 402, Apr. 11, 1968, 82 Stat. 79.)

§ 1323. Retrocession of jurisdiction by State

(a) Acceptance by United States

The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of section 1162 of title 18, section 1360 of title 28, or section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior to its repeal by subsection (b) of this section.

(b) Repeal of statutory provisions

Section 7 of the Act of August 15, 1953 (67 Stat. 588), is hereby repealed, but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal.

(Pub. L. 90–284, title IV, § 403, Apr. 11, 1968, 82 Stat. 79.)

REFERENCES IN TEXT

Section 7 of the Act of August 15, 1953, referred to in text, is section 7 of act Aug. 15, 1953, ch. 505, 67 Stat. 588, which is set out as a note under section 1360 of Title 28, Judiciary and Judicial Procedure.

EX. ORD. NO. 11435. DESIGNATING SECRETARY OF THE INTERIOR TO ACCEPT RETROCESSION OF JURISDICTION BY STATE

Ex. Ord. No. 11435, Nov. 21, 1968, 33 F.R. 17339, provided:

By virtue of the authority vested in me by section 465 of the Revised Statutes (25 U.S.C. 9) and as President of the United States, the Secretary of the Interior is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President or of any other officer of the United States, any and all authority conferred upon the United States by Section 403(a) of the Act of April 11, 1968, 82 Stat. 79 (25 U.S.C. 1323(a)): *Provided*, That acceptance of retrocession of all or any measure of civil or criminal jurisdiction, or both, by the Secretary hereunder shall be effected by publication in the FEDERAL REGISTER of a notice which shall specify the jurisdiction retroceded and the effective date of the retrocession: *Provided further*, That acceptance of such retrocession of criminal jurisdiction shall be effected only after consultation by the Secretary with the Attorney General.

LYNDON B. JOHNSON.

§ 1324. Amendment of State constitutions or statutes to remove legal impediment; effective date

Notwithstanding the provisions of any enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdiction in accordance with the provisions of this subchapter. The provisions of this subchapter shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes, as the case may be.

(Pub. L. 90–284, title IV, § 404, Apr. 11, 1968, 82 Stat. 79.)

§ 1325. Abatement of actions

(a) Pending actions or proceedings; effect of cession

No action or proceeding pending before any court or agency of the United States immediately prior to any cession of jurisdiction by the United States pursuant to this subchapter shall abate by reason of that cession. For the purposes of any such action or proceeding, such cession shall take effect on the day following the date of final determination of such action or proceeding.

(b) Criminal actions; effect of cession

No cession made by the United States under this subchapter shall deprive any court of the United States of jurisdiction to hear, determine, render judgment, or impose sentence in any criminal action instituted against any person for any offense committed before the effective date of such cession, if the offense charged in such action was cognizable under any law of the United States at the time of the commission of such offense. For the purposes of any such criminal action, such cession shall take effect on the day following the date of final determination of such action.

(Pub. L. 90–284, title IV, § 405, Apr. 11, 1968, 82 Stat. 80.)

§ 1326. Special election

State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

(Pub. L. 90–284, title IV, § 406, Apr. 11, 1968, 82 Stat. 80.)

SUBCHAPTER IV—EMPLOYMENT OF LEGAL COUNSEL

§ 1331. Approval

Notwithstanding any other provision of law, if any application made by an Indian, Indian tribe, Indian council, or any band or group of Indians

under any law requiring the approval of the Secretary of the Interior or the Commissioner of Indian Affairs of contracts or agreements relating to the employment of legal counsel (including the choice of counsel and the fixing of fees) by any such Indians, tribe, council, band, or group is neither granted nor denied within ninety days following the making of such application, such approval shall be deemed to have been granted.

(Pub. L. 90–284, title VI, § 601, Apr. 11, 1968, 82 Stat. 80.)

SUBCHAPTER V—MATERIALS AND PUBLICATIONS

§ 1341. Authorization of Secretary

(a) Revision of document on "Indian Affairs, Laws and Treaties" and treatise on "Federal Indian Laws"; compilation of official opinions; printing and republication

In order that the constitutional rights of Indians might be fully protected, the Secretary of the Interior is authorized and directed to—

(1) have the document entitled ''Indian Affairs, Laws and Treaties'' (Senate Document Numbered 319, volumes 1 and 2, Fifty-eighth Congress), revised and extended to include all treaties, laws, Executive orders, and regulations relating to Indian affairs in force on September 1, 1967, and to have such revised document printed at the Government Printing Office;

(2) have revised and republished the treatise entitled ''Federal Indian Law''; and

(3) have prepared, to the extent determined by the Secretary of the Interior to be feasible, an accurate compilation of the official opinions, published and unpublished, of the Solicitor of the Department of the Interior relating to Indian affairs rendered by the Solicitor prior to September 1, 1967, and to have such compilation printed as a Government publication at the Government Printing Office.

(b) Current services

With respect to the document entitled ''Indian Affairs, Laws and Treaties'' as revised and extended in accordance with paragraph (1) of subsection (a) of this section, and the compilation prepared in accordance with paragraph (3) of such subsection, the Secretary of the Interior shall take such action as may be necessary to keep such document and compilation current on an annual basis.

(c) Authorization of appropriations

There is authorized to be appropriated for carrying out the provisions of this subchapter such sum as may be necessary.

(Pub. L. 90–284, title VII, § 701, Apr. 11, 1968, 82 Stat. 80; Pub. L. 93–265, Apr. 12, 1974, 88 Stat. 84.)

AMENDMENTS

1974—Subsec. (c). Pub. L. 93–265 struck out '', with respect to the preparation but not including printing,'' before ''such sum''.

CHAPTER 16—DISTRIBUTION OF JUDGMENT FUNDS

Sec.
1401. Funds appropriated in satisfaction of judgments of Indian Claims Commission or United States Court of Federal Claims.
1402. Plan for use or distribution of funds.
1403. Preparation of plan.
1404. Hearing transcripts and tribal support statements; submission to Congress with plan.
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1406. Rules and regulations.
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1408. Resources exemption.

§ 1401. Funds appropriated in satisfaction of judgments of Indian Claims Commission or United States Court of Federal Claims

(a) Use and distribution

Notwithstanding any other law, all use or distribution of funds appropriated in satisfaction of a judgment of the Indian Claims Commission or the United States Court of Federal Claims in favor of any Indian tribe, band, group, pueblo, or community (hereinafter referred to as ''Indian tribe''), together with any investment income earned thereon, after payment of attorney fees and litigation expenses, shall be made pursuant to the provisions of this chapter.

(b) Amounts remaining to be held in trust unless otherwise provided

Except as provided in sections 164 and 165 of this title, amounts which the Secretary of the Interior has remaining after execution of either a plan under this chapter, or another Act enacted heretofore or hereafter providing for the use or distribution of amounts awarded in satisfaction of a judgment in favor of an Indian tribe or tribes, together with any investment income earned thereon and after payment of attorney fees and litigation expenses, shall be held in trust by the Secretary for the tribe or tribes involved if the plan or Act does not otherwise provide for the use of such amounts.

(c) Short title

This chapter may be cited as the ''Indian Tribal Judgment Funds Use or Distribution Act''.

(Pub. L. 93–134, § 1, Oct. 19, 1973, 87 Stat. 466; Pub. L. 97–164, title I, § 160(a)(1), Apr. 2, 1982, 96 Stat. 48; Pub. L. 100–153, § 4, Nov. 5, 1987, 101 Stat. 886; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in text, terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1987—Subsec. (a). Pub. L. 100–153, § 4(1), (2), designated existing provision as subsec. (a) and substituted ''any investment income'' for ''any interest''.

Subsecs. (b), (c). Pub. L. 100–153, § 4(3), added subsecs. (b) and (c).

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 1402. Plan for use or distribution of funds

(a) Preparation and submission to Congress by Secretary of the Interior; contents; copy to affected Indian tribe

Within one year after appropriation of funds to pay a judgment of the Indian Claims Commission or the United States Court of Federal Claims to any Indian tribe, the Secretary of the Interior shall prepare and submit to Congress a plan for the use and distribution of the funds. Such plan shall include identification of the present-day beneficiaries, a formula for the division of the funds among two or more beneficiary entities if such is warranted, and a proposal for the use and distribution of the funds. The Secretary shall simultaneously submit a copy of such plan to each affected tribe or group.

(b) Time for preparation and submission of plan

With respect to judgments, for which funds have been appropriated prior to January 12, 1983, but for which use or distribution has not been authorized by enactment of legislation or by an effective plan under this chapter, the Secretary shall prepare and submit such plans within one year of January 12, 1983.

(c) Submission of proposed legislation and report to Congress

In any case where the Secretary determines that the circumstances do not permit the preparation and submission of a plan as provided in this chapter, he shall submit to the Congress within the one-year period proposed legislation to authorize use or distribution of such funds, together with a report thereon.

(d) Submission of proposed legislation and report to Congress in absence of consent of tribal governments to division of judgment funds between two or more beneficiary entities

In cases where the Secretary has to submit a plan dividing judgment funds between two or more beneficiary entities, he shall obtain the consent of the tribal governments involved to the proposed division. If the Secretary cannot obtain such consent within one hundred and eighty days after appropriation of the funds for the award or within one hundred and eighty days of January 12, 1983, he shall submit proposed legislation to the Congress as provided in subsection (c) of this section.

(e) Extension of time for preparation and submission of plan

An extension of the one-year period, not to exceed one hundred and eighty days, may be requested by the Secretary or by the affected Indian tribe, submitting such request to the committees through the Secretary, and any such request will be subject to the approval of both the Senate Committee on Indian Affairs and the United States House of Representatives Committee on Natural Resources.

(Pub. L. 93–134, § 2, Oct. 19, 1973, 87 Stat. 466; Pub. L. 97–164, title I, § 160(a)(1), Apr. 2, 1982, 96 Stat. 48; Pub. L. 97–458, § 1, Jan. 12, 1983, 96 Stat. 2512; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–437, § 10(e)(1), (2)(A), Nov. 2, 1994, 108 Stat. 4589.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in subsec. (a), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

CODIFICATION

In subsec. (a), ''United States Claims Court'' [now United States Court of Federal Claims] substituted for ''Court of Claims'' pursuant to section 160(a)(1) of Pub. L. 97–164, as the probable intent of Congress, notwithstanding later amendment by section 1 of Pub. L. 97–458, which made reference to Court of Claims.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–437 substituted ''Committee on Indian'' for ''Select Committee on Indian'' and ''Natural Resources'' for ''Interior and Insular Affairs''.

1992—Subsec. (a). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1983—Subsec. (a). Pub. L. 97–458 substituted ''one year'' for ''one hundred and eighty days''; inserted provision for contents of the plan; inserted provision for submission of copy of the plan to each affected tribe or group, incorporating part of former subsec. (c); struck out proviso prescribing Oct. 19, 1973, as the commencing date with respect to judgments for which funds were appropriated and for which legislation authorizing use or distribution was not enacted prior to Oct. 19, 1973; and struck out second sentence respecting submission of proposed legislation and report to Congress, incorporated in subsec. (c). See Codification note above.

Subsec. (b). Pub. L. 97–458 added subsec. (b). Former subsec. (b) redesignated (e).

Subsec. (c). Pub. L. 97–458 redesignated second sentence of subsec. (a) as subsec. (c) and substituted ''he shall submit to the Congress within the one-year period proposed legislation to authorize use or distribution of such funds, together with a report thereon'' for ''he shall submit, within such one hundred and eighty-day period, proposed legislation as provided in section 1405(b) of this title''. Former subsec. (c) respecting notification of affected Indian tribe on the date of submission of the plan covered in part in subsec. (a) as to provision for a copy of the plan.

Subsec. (d). Pub. L. 97–458 added subsec. (d).

Subsec. (e). Pub. L. 97–458 redesignated subsec. (b) as (e); increased time allowed for submission of plans to one year from a one hundred and eighty-day period and additional time allowed for such submissions to one hundred and eighty from ninety days; and substituted the Senate Select Committee on Indian Affairs for the Senate Committee on Interior and Insular Affairs as the Senate committee approving any extensions.

1982—Subsec. (a). Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''. See Codification note above.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 1403. Preparation of plan

(a) Prerequisites for final preparation

The Secretary shall prepare a plan which shall best serve the interests of all those entities and

individuals entitled to receive funds of each Indian judgment. Prior to the final preparation of the plan, the Secretary shall—

(1) receive and consider any resolution or communication, together with any suggested use or distribution plan, which any affected Indian tribe may wish to submit to him; and

(2) hold a hearing of record, after appropriate public notice, to obtain the testimony of leaders and members of the Indian tribe which may receive any portion, or be affected by the use or distribution, of such funds, in the area in which such Indian tribe is located and at a time which shall best serve the convenience of the eligible members thereof.

(b) Guidelines

In preparing a plan for the use or distribution of the funds of each Indian judgment, the Secretary shall, among other things, be assured that—

(1) legal, financial, and other expertise of the Department of the Interior has been made fully available in an advisory capacity to the Indian tribe which is entitled to such funds to assist it to develop and communicate to the Secretary pursuant to clause (1) of subsection (a) of this section its own suggested plan for the distribution and use of such funds;

(2) the needs and desires of any groups or individuals who are in a minority position, but who are also entitled to receive such funds, have been fully ascertained and considered;

(3) the interests of minors and other legally incompetent persons who are entitled to receive any portion of such funds as are subsequently distributed to them are and will be protected and preserved;[1] *Provided*, That such funds may be disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the minor or legal incompetent's health, education, welfare, or emergencies under a plan or plans approved by the Secretary and the tribal governing body of the Indian tribe involved.[2]

(4) any provision, including enrollment provisions, of the constitution, bylaws, rules, and procedures of such tribe which may affect the distribution or other use of such funds are in full accord with the principles of fairness and equity;

(5) a significant portion of such funds shall be set aside and programed to serve common tribal needs, educational requirements, and such other purposes as the circumstances of the affected Indian tribe may justify, except not less than 20 per centum of such funds shall be so set aside and programed unless the Secretary determines that the particular circumstances of the pertinent Indian tribe clearly warrant otherwise: *Provided*, That in the development of such plan the Secretary shall survey past and present plans of the tribe for economic development, shall consider long range benefits which might accrue to the tribe from such plans, and shall encourage programing of funds for economic development purposes where appropriate; and

(6) methods exist and will be employed to insure the proper performance of the plan once it becomes effective under section 1405 of this title.

(Pub. L. 93–134, § 3, Oct. 19, 1973, 87 Stat. 467; Pub. L. 97–458, § 2, Jan. 12, 1983, 96 Stat. 2512.)

AMENDMENTS

1983—Subsec. (b)(3). Pub. L. 97–458, § 2(a), inserted proviso.

Subsec. (b)(5). Pub. L. 97–458, § 2(b), inserted proviso.

DISBURSEMENTS FOR URGENT NEEDS OF MINORS AND LEGAL INCOMPETENTS AND ACCOUNTING FOR EXPENDITURES

Section 2(a) of Pub. L. 97–458 provided in part that plan or plans approved by the Secretary and the tribal governing body of an Indian tribe for disbursements to parents or legal guardian of minors or legal incompetents for health, education, welfare, or emergencies of their charges ''shall be limited to urgent needs arising from extenuating circumstances and shall accord with general principles governing administration of trust funds of minors and legal incompetents, including a requirement for strict accounting for expenditures.''

§ 1404. Hearing transcripts and tribal support statements; submission to Congress with plan

When submitting the plan as provided in section 1402 of this title, the Secretary shall also submit to the Congress with such plan—

(1) copies of the transcripts of hearings held by him concerning the Indian judgment pursuant to clause (2) of section 1403(a) of this title and all other papers and documents considered by him in the preparation of such plan, including any resolution, communication, or suggested use or distribution plan of the pertinent Indian tribe submitted pursuant to clause (1) of section 1403(a) of this title; and

(2) a statement of the extent to which such plan reflects the desires of the Indian tribe or individuals who are entitled to such funds, which statement shall specify the alternatives, if any, proposed by such Indian tribe or individuals in lieu of such plan, together with an indication of the degree of support among the interested parties for each such alternative.

(Pub. L. 93–134, § 4, Oct. 19, 1973, 87 Stat. 467.)

§ 1405. Effective date of plan; joint resolution of disapproval

(a) Original plan

The plan prepared by the Secretary shall become effective, and he shall take immediate action to implement the plan for the use or distribution of such judgment funds, at the end of the sixty-day period (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) beginning on the day such plan is submitted to the Congress, unless during such sixty-day period a joint resolution is enacted disapproving such plans.

(b) Proposed legislation and report to Congress following Congressional disapproval

Within thirty calendar days after the date of enactment of a joint resolution disapproving a

[1] So in original. The semicolon probably should be a colon.

[2] So in original. The period probably should be a semicolon.

plan, the Secretary shall submit to the Congress proposed legislation, together with a report thereon, authorizing use or distribution of such funds.

(c) Successor plan previously withdrawn or amended prior to Congressional action; consent to amendments

Within the sixty-day period and before the adoption of any resolution disapproving a plan, the Secretary may withdraw or amend such plan: *Provided*, That any amendments affecting the division of an award between two or more beneficiary entities shall be subject to the consent of these entities as provided in section 1402(d) of this title. Any such amended plan shall become valid at the end of a sixty-day period beginning on the day such amendment is submitted to the Congress, unless during such sixty-day period, a joint resolution is enacted disapproving such plan as amended.

(d) Resubmission of successor plan within prescribed period following withdrawal of plan

Once a plan is withdrawn before the end of a sixty-day period, the Secretary has until the expiration of the original one-year deadline to resubmit a plan to Congress. Such a plan shall become valid at the end of a sixty-day period beginning on the day such new plan is submitted to the Congress, unless during such sixty-day period, a joint resolution is enacted disapproving such plan.

(e) Recomputation of sixty-day period from date of introduction of joint resolution of disapproval; reextension restriction

Upon the introduction of the first such resolution of disapproval in either the House of Representatives or the Senate, the sixty-day period shall be recomputed from the date of such introduction and shall not again be extended.

(Pub. L. 93–134, § 5, Oct. 19, 1973, 87 Stat. 468; Pub. L. 97–458, § 3, Jan. 12, 1983, 96 Stat. 2513.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 97–458, § 3(a), substituted ''unless during such sixty-day period a joint resolution is enacted'' for ''unless during such sixty-day period either House adopts a resolution disapproving such plans''.

Subsec. (b). Pub. L. 97–458, § 3(b), substituted ''date of enactment of a joint resolution disapproving a plan'' for ''date of adoption of a resolution disapproving a plan''.

Subsecs. (c) to (e). Pub. L. 97–458, § 3(c), added subsecs. (c) to (e).

§ 1406. Rules and regulations

(a) Promulgation

The Secretary shall promulgate rules and regulations to implement this chapter no later than the end of the one hundred and eighty-day period beginning on October 19, 1973. Among other things, such rules and regulations shall provide for adequate notice to all entities and persons who may receive funds under any Indian judgment of all relevant procedures pursuant to this chapter concerning any such judgment.

(b) Publication in Federal Register

No later than sixty days prior to the promulgation of such rules and regulations the Secretary shall publish the proposed rules and regulations in the Federal Register.

(c) Hearings

No later than thirty days prior to the promulgation of such rules and regulations, the Secretary shall provide, with adequate public notice, the opportunity for hearings on the proposed rules and regulations, once published, to all interested parties.

(Pub. L. 93–134, § 6, Oct. 19, 1973, 87 Stat. 468.)

§ 1407. Tax exemption; resources exemption limitation

None of the funds which—

(1) are distributed per capita or held in trust pursuant to a plan approved under the provisions of this chapter, or[1]

(2) on January 12, 1983, are to be distributed per capita or are held in trust pursuant to a plan approved by the Congress prior to January 12, 1983,

(3) were distributed pursuant to a plan approved by Congress after December 31, 1981 but prior to January 12, 1983, and any purchases made with such funds, or

(4) are paid by the State of Minnesota to the Bois Forte Band of Chippewa Indians pursuant to the agreements of such Band to voluntarily restrict tribal rights to hunt and fish in territory cede[2] under the Treaty of September 30, 1854 (10 Stat. 1109), including all interest accrued on such funds during any period in which such funds are held in a minor's trust,

including all interest and investment income accrued thereon while such funds are so held in trust, shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act [42 U.S.C. 301 et seq.] or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.

(Pub. L. 93–134, § 7, Oct. 19, 1973, 87 Stat. 468; Pub. L. 97–458, § 4, Jan. 12, 1983, 96 Stat. 2513; Pub. L. 106–568, title VIII, § 818, Dec. 27, 2000, 114 Stat. 2918.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2000—Par. (4). Pub. L. 106–568 added par. (4).

1983—Pub. L. 97–458 amended section generally. Prior to amendment, section read as follows: ''None of the funds distributed per capita or held in trust under the provisions of this chapter shall be subject to Federal or State income taxes, and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act''.

[1] So in original. The word ''or'' probably should not appear.

[2] So in original. Probably should be ''ceded''.

§ 1408. Resources exemption

Interests of individual Indians in trust or restricted lands shall not be considered a resource, and up to $2,000 per year of income received by individual Indians that is derived from such interests shall not be considered income, in determining eligibility for assistance under the Social Security Act [42 U.S.C. 301 et seq.] or any other Federal or federally assisted program.

(Pub. L. 93–134, § 8, as added Pub. L. 97–458, § 4, Jan. 12, 1983, 96 Stat. 2514; amended Pub. L. 103–66, title XIII, § 13736(a), Aug. 10, 1993, 107 Stat. 663.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1993—Pub. L. 103–66 inserted ", and up to $2,000 per year of income received by individual Indians that is derived from such interests shall not be considered income," after "resource".

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13736(b) of Pub. L. 103–66 provided that: "The amendment made by this section [amending this section] shall take effect on January 1, 1994."

CHAPTER 17—FINANCING ECONOMIC DEVELOPMENT OF INDIANS AND INDIAN ORGANIZATIONS

GENERAL PROVISIONS

Sec.
1451. Congressional declaration of policy.
1452. Definitions.
1453. Assistance or activities of other Federal agencies unaffected.

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1461. Administration as single Indian Revolving Loan Fund sums from diverse sources; availability of fund for loans to Indians and for administrative expenses.
1462. Economic development; educational loans; limitation of loans to or investments in non-Indian organizations.
1463. Repayment of loan; financing from other sources.
1464. Maturity of loans; interest rate; interest deferral on educational loans.
1465. Modification of amount of loan and document securing loan in collection of loan or in best interests of the United States.
1466. Land and personal property title.
1467. Security for loan; assignment of securities; reasonable assurance of repayment.
1468. Authorization of appropriations.
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1481. Loan guaranties and insurance.
1482. Premium charges; deposits in Indian Loan Guaranty and Insurance Fund.
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1484. Application for loan; approval by Secretary; issuance of certificate; limitations on amount of loans to individual Indians or economic enterprises; review by Secretary.
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1487. Loans eligible for insurance.
1488. Lenders authorized to make loans; decrease or increase of liability under the guaranty.
1489. Loans made by certain financial institutions without regard to limitations and restrictions of other Federal statutes with respect to certain particulars.
1490. Maturity of loans.
1491. Defaults; written notification; pro rata payments; subrogation and assignment rights of Secretary; cancellation of uncollectable portion of obligations; forbearance for benefit of borrower; interest or charges cessation date.
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1493. Loan refusal; conditions; prohibition against acquisition of additional loans; payment of claims on loans made in good faith.
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1496. Powers of Secretary; finality of financial transactions and property acquisitions, management, and dispositions.
1497. Indian Loan Guaranty and Insurance Fund.
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1499. Limitation on guarantee of debt issues; approval of bond issue sale.

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1511. Interest subsidies; rules and regulations.
1512. Authorization of appropriations for interest payments.

SUBCHAPTER IV—INDIAN BUSINESS GRANTS

1521. Indian Business Development Program; establishment; statement of purpose.
1522. Conditions.
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SUBCHAPTER V—MISCELLANEOUS PROVISIONS

1541. Competent management and technical assistance for economic enterprises.
1542. Agency cooperation; private contracts for management services and technical assistance.
1543. Funds limitation for private contracts.
1544. Additional compensation to contractors of Federal agency.

GENERAL PROVISIONS

§ 1451. Congressional declaration of policy

It is hereby declared to be the policy of Congress to provide capital on a reimbursable basis to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities.

(Pub. L. 93–262, § 2, Apr. 12, 1974, 88 Stat. 77.)

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–221, § 1(a), May 12, 2006, 120 Stat. 336, provided that: "This Act [enacting section 494a of this

title and section 1613a of Title 43, Public Lands, amending sections 348, 415, 464, 1481, 1485, 1486, 1497, 2206, 2706, and 2717 of this title and sections 1629b and 1629e of Title 43, enacting provisions set out as notes under sections 348 and 415 of this title and section 1629b of Title 43, and amending provisions set out as a note under section 2201 of this title] may be cited as the 'Native American Technical Corrections Act of 2006'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–331, title I, § 101, Dec. 13, 2002, 116 Stat. 2835, provided that: ''This Act [enacting subchapter XIII of chapter 19 of this title, amending sections 415, 1484, and 1485 of this title, and enacting provisions set out as notes under sections 415 and 1485 of this title] may be cited as the 'Indian Financing Amendments Act of 2002'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–449, § 1, Oct. 4, 1984, 98 Stat. 1725, provided: ''That this Act [enacting section 47a of this title and amending sections 1461, 1465, 1481, 1484, 1491, 1497, 1512, 1522, 1523, 1541, and 1543 of this title] may be cited as the 'Indian Financing Act Amendments of 1984'.''

SHORT TITLE

Section 1 of Pub. L. 93–262 provided: ''That this Act [enacting this chapter] may be cited as the 'Indian Financing Act of 1974'.''

§ 1452. Definitions

For the purpose of this chapter, the term—

(a) ''Secretary'' means the Secretary of the Interior.

(b) ''Indian'' means any person who is a member of any Indian tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any ''Native'' as defined in the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.].

(c) ''Tribe'' means any Indian tribe, band, group, pueblo, or community, including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(d) ''Reservation'' includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.].

(e) ''Economic enterprise'' means any Indian-owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit: *Provided*, That such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(f) ''Organization'', unless otherwise specified, shall be the governing body of any Indian tribe, as defined in subsection (c) of this section, or entity established or recognized by such governing body for the purpose of this chapter.

(g) ''Other organizations'' means any non-Indian individual, firm, corporation, partnership, or association.

(h) ''Surety'' has the same meaning as in section 694a of title 15.

(i) ''Surety Bond'' means a bid bond, payment bond, or performance bond as those terms are defined in section 694a of title 15.

(Pub. L. 93–262, § 3, Apr. 12, 1974, 88 Stat. 77; Pub. L. 100–442, § 5(b), Sept. 22, 1988, 102 Stat. 1764.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in pars. (b) to (d), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

1988—Pars. (h), (i). Pub. L. 100–442 added pars. (h) and (i).

§ 1453. Assistance or activities of other Federal agencies unaffected

No provision of this chapter or any other Act shall be construed to terminate or otherwise curtail the assistance or activities of the Small Business Administration or any other Federal agency with respect to any Indian tribe, organization, or individual because of their eligibility for assistance under this chapter.

(Pub. L. 93–262, § 4, Apr. 12, 1974, 88 Stat. 77.)

SUBCHAPTER I—INDIAN REVOLVING LOAN FUND

§ 1461. Administration as single Indian Revolving Loan Fund sums from diverse sources; availability of fund for loans to Indians and for administrative expenses

In order to provide credit that is not available from private money markets, or to supplement funds from private lenders, including loans guaranteed by the Secretary pursuant to section 1481 of this title, all funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986) [25 U.S.C. 461 et seq.], the Act of June 26, 1936 (49 Stat. 1967) [25 U.S.C. 501 et seq.], and the Act of April 19, 1950 (64 Stat. 44) [25 U.S.C. 631 et seq.], as amended and supplemented, including sums received in settlement of debts of livestock pursuant to sections 442 and 443 of this title, and sums collected in repayment of loans heretofore or hereafter made, and as interest or other charges on loans, shall hereafter be administered as a single Indian Revolving Loan Fund. The fund shall be available for loans to Indians having a form of organization that is satisfactory to the Secretary and for loans to individual Indians: *Provided*, That, where the Secretary determines a rejection of a loan application from a member of an organization making loans to its membership from moneys borrowed from the fund is unwarranted, he may, in his discretion, make a direct loan to such individual from the fund. The fund shall also be available for administrative expenses incurred in connection therewith, or, in the discretion of the Secretary of the Interior, as a contribution to the Indian Loan Guaranty and Insurance Fund authorized by section 1497 of this title, or for the payment of interest subsidies authorized by section 1511 of this title.

(Pub. L. 93–262, title I, § 101, Apr. 12, 1974, 88 Stat. 78; Pub. L. 98–449, § 2, Oct. 4, 1984, 98 Stat. 1725;

Pub. L. 101–644, title III, § 303(a), Nov. 29, 1990, 104 Stat. 4667.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of chapter 14 of this title. Provisions of the act establishing the revolving fund are set out in section 470 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

Act of June 26, 1936, referred to in text, popularly known as the Oklahoma Welfare Act, is classified generally to subchapter VIII (§ 501 et seq.) of chapter 14 of this title. Provisions of the act relating to the revolving fund appear in section 506 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 501 of this title and Tables.

Act of April 19, 1950, referred to in text, is classified generally to subchapter XXI (§ 631 et seq.) of chapter 14 of this title. Provisions of the act relating to the revolving fund appear in section 634 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1990—Pub. L. 101–644 substituted ''money markets, or to supplement funds from private lenders, including loans guaranteed by the Secretary pursuant to section 1481 of this title,'' for ''money markets,'' in first sentence and inserted before period at end of third sentence '', or, in the discretion of the Secretary of the Interior, as a contribution to the Indian Loan Guaranty and Insurance Fund authorized by section 1497 of this title, or for the payment of interest subsidies authorized by section 1511 of this title''.

1984—Pub. L. 98–449 which directed that ''which are not members of or eligible for membership in an organization which is making loans to its members'' be struck out was executed by striking out ''who are not members of or eligible for membership in an organization which is making loans to its members'' before proviso.

§ 1462. Economic development; educational loans; limitation of loans to or investments in non-Indian organizations

Loans may be made for any purpose which will promote the economic development of (a) the individual Indian borrower, including loans for educational purposes, and (b) the Indian organization and its members including loans by such organizations to other organizations and investments in other organizations regardless of whether they are organizations of Indians: *Provided*, That not more than 50 per centum of loan made to an organization shall be used by such organization for the purpose of making loans to or investments in non-Indian organizations.

(Pub. L. 93–262, title I, § 102, Apr. 12, 1974, 88 Stat. 78.)

§ 1463. Repayment of loan; financing from other sources

Loans may be made only when, in the judgment of the Secretary, there is a reasonable prospect of repayment, and only to applicants who in the opinion of the Secretary are unable to obtain financing from other sources on reasonable terms and conditions.

(Pub. L. 93–262, title I, § 103, Apr. 12, 1974, 88 Stat. 78.)

§ 1464. Maturity of loans; interest rate; interest deferral on educational loans

Loans shall be for terms that do not exceed thirty years and shall bear interest at (a) a rate determined by the Secretary of the Treasury taking into consideration the market yield on municipal bonds: *Provided*, That in no event shall the rate be greater than the rate determined by the Secretary of the Treasury taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity, plus (b) such additional charge, if any, toward covering other costs of the program as the Secretary may determine to be consistent with its purpose: *Provided*, That educational loans may provide for interest to be deferred while the borrower is in school or in the military service.

(Pub. L. 93–262, title I, § 104, Apr. 12, 1974, 88 Stat. 78.)

§ 1465. Modification of amount of loan and document securing loan in collection of loan or in best interests of the United States

The Secretary may cancel, adjust, compromise, or reduce the amount of any loan or any portion thereof heretofore or hereafter made from the revolving loan fund established by this subchapter and its predecessor constituent funds which he determines to be uncollectable in whole or in part, or which is collectable only at an unreasonable cost, or when such action would, in his judgment, be in the best interests of the United States. He may also adjust, compromise, subordinate, or modify the terms of any mortgage, lease, assignment, contract, agreement, or other document taken to secure such loans.

(Pub. L. 93–262, title I, § 105, Apr. 12, 1974, 88 Stat. 78; Pub. L. 98–449, § 3, Oct. 4, 1984, 98 Stat. 1725.)

AMENDMENTS

1984—Pub. L. 98–449 struck out proviso at end of first sentence which provided that proceedings pursuant to this section would be effective only after following the procedure set out in section 386a of this title.

§ 1466. Land and personal property title

Title to any land purchased by a tribe or by an individual Indian with loans made from the revolving loan fund may be taken in trust unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of the reservation or approved consolidation area may be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase, otherwise title shall be taken in the name of the purchasers without any restriction on alienation, control, or use. Title to any personal property purchased with a loan from the revolving loan fund shall be taken in the name of the purchaser.

(Pub. L. 93–262, title I, § 106, Apr. 12, 1974, 88 Stat. 78.)

§ 1467. Security for loan; assignment of securities; reasonable assurance of repayment

Any organization receiving a loan from the revolving loan fund shall be required to assign to the United States as security for the loan all securities acquired in connection with the loans made to its members from such funds unless the Secretary determines that the repayment of the loan to the United States is otherwise reasonably assured.

(Pub. L. 93–262, title I, § 107, Apr. 12, 1974, 88 Stat. 79.)

§ 1468. Authorization of appropriations

There is authorized to be appropriated, to provide capital and to restore any impairment of capital for the revolving loan fund $50,000,000 exclusive of prior authorizations and appropriations.

(Pub. L. 93–262, title I, § 108, Apr. 12, 1974, 88 Stat. 79.)

§ 1469. Rules and regulations

The Secretary shall promulgate rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 93–262, title I, § 109, Apr. 12, 1974, 88 Stat. 79.)

SUBCHAPTER II—LOAN GUARANTY AND INSURANCE

§ 1481. Loan guaranties and insurance

(a) In general

In order to provide access to private money sources which otherwise would not be available, the Secretary may—

(1) guarantee not to exceed 90 per centum of the unpaid principal and interest due on any loan made to any organization of Indians having a form or organization satisfactory to the Secretary, and to individual Indians; or

(2) insure loans under an agreement approved by the Secretary whereby the lender will be reimbursed for losses in an amount not to exceed 15 per centum of the aggregate of such loans made by it, but not to exceed 90 per centum of the loss on any one loan.

(b) Eligible borrowers

The Secretary may guarantee or insure loans under subsection (a) to both for-profit and nonprofit borrowers.

(Pub. L. 93–262, title II, § 201, Apr. 12, 1974, 88 Stat. 79; Pub. L. 98–449, § 4, Oct. 4, 1984, 98 Stat. 1725; Pub. L. 109–221, title IV, § 401(a), May 12, 2006, 120 Stat. 341.)

AMENDMENTS

2006—Pub. L. 109–221, § 401(a)(1), (2), (4), inserted section catchline, designated existing provisions as subsec. (a) and inserted heading, substituted ''the Secretary may—

''(1) guarantee''

for ''Secretary is authorized (a) to guarantee'', and added subsec. (b).

Pub. L. 109–221, § 401(a)(3), which directed substitution of ''members; or

''(2) insure''

for ''members; and (b) in lieu of such guaranty, to insure'', was executed by making the substitution for ''and (b) in lieu of such guaranty, to insure'' to reflect the probable intent of Congress and the amendment by Pub. L. 98–449. See 1984 Amendment note below.

1984—Pub. L. 98–449 struck out ''who are not members of or eligible for membership in an organization which is making loans to its members'' before ''; and (b)''.

§ 1482. Premium charges; deposits in Indian Loan Guaranty and Insurance Fund

The Secretary shall fix such premium charges for the insurance and guarantee of loans as are in his judgment adequate to cover expenses and probable losses, and deposit receipts from such charges in the Indian Loan Guaranty and Insurance Fund established pursuant to section 1497(a) of this title.

(Pub. L. 93–262, title II, § 202, Apr. 12, 1974, 88 Stat. 79.)

§ 1483. Interest rate

Loans guaranteed or insured pursuant to this subchapter shall bear interest (exclusive of premium charges for insurance, and service charge, if any) at rates not to exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable taking into consideration the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States.

(Pub. L. 93–262, title II, § 203, Apr. 12, 1974, 88 Stat. 79.)

§ 1484. Application for loan; approval by Secretary; issuance of certificate; limitations on amount of loans to individual Indians or economic enterprises; review by Secretary

The application for a loan to be guaranteed hereunder shall be submitted to the Secretary for approval. The Secretary may review each loan application individually and independently from the lender. Upon approval, the Secretary shall issue a certificate as evidence of the guaranty. Such certificate shall be issued only when, in the judgment of the Secretary, there is a reasonable prospect of repayment. No loan to an individual Indian may be guaranteed or insured which would cause the total unpaid principal indebtedness to exceed $500,000. No loan to an economic enterprise (as defined in section 1452 of this title) in excess of $250,000, or such lower amount as the Secretary may determine to be appropriate, shall be insured unless prior approval of the loan is obtained from the Secretary.

(Pub. L. 93–262, title II, § 204, Apr. 12, 1974, 88 Stat. 79; Pub. L. 98–449, § 5, Oct. 4, 1984, 98 Stat. 1725; Pub. L. 100–442, § 1, Sept. 22, 1988, 102 Stat. 1763; Pub. L. 101–644, title III, § 303(b), Nov. 29, 1990, 104 Stat. 4668; Pub. L. 107–331, title I, § 103(a), Dec. 13, 2002, 116 Stat. 2836.)

AMENDMENTS

2002—Pub. L. 107–331 substituted ''$250,000'' for ''$100,000''.

1990—Pub. L. 101–644 struck out ''prior'' before ''approval'' in first sentence and substituted ''may review'' for ''shall review'' in second sentence.

1988—Pub. L. 100–442 substituted ''$500,000'' for ''$350,000''.

1984—Pub. L. 98–449 substituted ''$350,000'' for ''$100,000'', and inserted after first sentence ''The Secretary shall review each loan application individually and independently from the lender.''

§ 1485. Sale or assignment of loans and underlying security

(a) In general

All or any portion of a loan guaranteed or insured under this subchapter, including the security given for the loan—

(1) may be transferred by the lender by sale or assignment to any person; and

(2) may be retransferred by the transferee.

(b) Transfers of loans

With respect to a transfer described in subsection (a)—

(1) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (h); and

(2) the transferee shall give notice of the transfer to the Secretary.

(c) Full faith and credit

(1) In general

The full faith and credit of the United States is pledged to the payment of all loan guarantees and loan insurance made under this subchapter after December 13, 2002.

(2) Validity

Except as provided in regulations in effect on the date on which a loan is made, the validity of a guarantee or insurance of a loan under this subchapter shall be incontestable.

(d) Damages

Notwithstanding section 3302 of title 31, the Secretary may recover from a lender of a loan under this subchapter any damages suffered by the Secretary as a result of a material breach of the obligations of the lender with respect to a guarantee or insurance by the Secretary of the loan.

(e) Fees

(1) In general

The Secretary may collect a fee for any loan or guaranteed or insured portion of a loan that is transferred in accordance with this section.

(2) Compensation of fiscal transfer agent

A fiscal transfer agent designated under subsection (f) may be compensated through any of the fees assessed under this section and any interest earned on any funds or fees collected by the fiscal transfer agent while the funds or fees are in the control of the fiscal transfer agent and before the time at which the fiscal transfer agent is contractually required to transfer such funds to the Secretary or to transferees or other holders.

(f) Central registration of loans

On promulgation of final regulations under subsection (h), the Secretary shall—

(1) provide for a central registration of all guaranteed or insured loans transferred under this section; and

(2) enter into 1 or more contracts with a fiscal transfer agent—

(A) to act as the designee of the Secretary under this section; and

(B) to carry out on behalf of the Secretary the central registration and fiscal transfer agent functions under this section.

(g) Pooling of loans

(1) In general

Nothing in this subchapter prohibits the pooling of whole loans or interests in loans transferred under this section.

(2) Regulations

In promulgating regulations under subsection (i),[1] the Secretary may include such regulations to effect orderly and efficient pooling procedures as the Secretary determines to be necessary.

(h) Regulations

Not later than 180 days after December 13, 2002, the Secretary shall develop such procedures and promulgate such regulations as are necessary to facilitate, administer, and promote transfers of loans and guaranteed and insured portions of loans under this section.

(Pub. L. 93–262, title II, § 205, Apr. 12, 1974, 88 Stat. 80; Pub. L. 100–442, § 2, Sept. 22, 1988, 102 Stat. 1763; Pub. L. 107–331, title I, § 103(b), Dec. 13, 2002, 116 Stat. 2836; Pub. L. 109–221, title IV, § 401(b), May 12, 2006, 120 Stat. 342.)

REFERENCES IN TEXT

Subsection (i), referred to in subsec. (g)(2), was redesignated as subsection (h) of this section by Pub. L. 109–221, title IV, § 401(b)(3), May 12, 2006, 120 Stat. 342.

AMENDMENTS

2006—Pub. L. 109–221, § 401(b)(1), inserted section catchline.

Subsecs. (a), (b). Pub. L. 109–221, § 401(b)(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b), which authorized loan sale or assignment and set forth parameters for initial transfers.

Subsec. (c). Pub. L. 109–221, § 401(b)(2), (3), redesignated subsec. (d) as (c) and struck out former subsec. (c) which set forth requirements for secondary transfers under this subchapter.

Subsec. (c)(2). Pub. L. 109–221, § 401(b)(4), added par. (2) and struck out former par (2) which provided for the incontestability of a guarantee or insurance of a loan under this subchapter with an exception for fraud or misrepresentation.

Subsec. (d). Pub. L. 109–221, § 401(b)(3), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 109–221, § 401(b)(5), designated existing provisions as par. (1), inserted heading, and added par. (2).

Pub. L. 109–221, § 401(b)(3), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 109–221, § 401(b)(6), substituted ''subsection (h)'' for ''subsection (i)'' in introductory provisions and struck out '', and issuance of acknowledgments,'' after ''agent functions'' in par. (2)(B).

Pub. L. 109–221, § 401(b)(3), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g) to (i). Pub. L. 109–221, § 401(b)(3), redesignated subsecs. (h) and (i) as (g) and (h), respectively. Former subsec. (g) redesignated (f).

2002—Pub. L. 107–331 designated existing provisions as subsec. (a), inserted heading and substituted ''Any loan guaranteed or insured'' for ''Any loan guaranteed'', and added subsecs. (b) to (i).

[1] See References in Text note below.

1988—Pub. L. 100–442 amended section generally. Prior to amendment, section read as follows: ''Any loan guaranteed hereunder, including the security given therefor, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the United States or of any State or the District of Columbia.''

FINDINGS AND PURPOSE

Pub. L. 107–331, title I, § 102, Dec. 13, 2002, 116 Stat. 2835, provided that:

''(a) FINDINGS.—Congress finds that—

''(1) the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) was intended to provide Native American borrowers with access to commercial sources of capital that otherwise would not be available through the guarantee or insurance of loans by the Secretary of the Interior;

''(2) although the Secretary of the Interior has made loan guarantees and insurance available, use of those guarantees and that insurance by lenders to benefit Native American business borrowers has been limited;

''(3) twenty-seven years after the date of enactment of the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) [Pub. L. 93–262, which was approved Apr. 12, 1974], the promotion and development of Native American-owned business remains an essential foundation for growth of economic and social stability of Native Americans;

''(4) use by commercial lenders of the available loan insurance and guarantees may be limited by liquidity and other capital market-driven concerns; and

''(5) it is in the best interest of the insured and guaranteed loan program of the Department of the Interior—

''(A) to encourage the orderly development and expansion of a secondary market for loans guaranteed or insured by the Secretary of the Interior; and

''(B) to expand the number of lenders originating loans under the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.).

''(b) PURPOSE.—The purpose of this Act [see Short Title of 2002 Amendment note set out under section 1451 of this title] is to reform and clarify the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) in order to—

''(1) stimulate the use by lenders of secondary market investors for loans guaranteed or insured under a program administered by the Secretary of the Interior;

''(2) preserve the authority of the Secretary to administer the program and regulate lenders;

''(3) clarify that a good faith investor in loans insured or guaranteed by the Secretary will receive appropriate payments;

''(4) provide for the appointment by the Secretary of a qualified fiscal transfer agent to establish and administer a system for the orderly transfer of those loans; and

''(5)(A) authorize the Secretary to promulgate regulations to encourage and expand a secondary market program for loans guaranteed or insured by the Secretary; and

''(B) allow the pooling of those loans as the secondary market develops.''

§ 1486. Loans ineligible for guaranty or insurance

Loans made by any agency or instrumentality of the Federal Government (not including an eligible Community Development Finance Institution), or by an organization of Indians from funds borrowed from the United States, and loans the interest on which is not included in gross income for the purposes of chapter 1 of title 26 shall not be eligible for guaranty or insurance hereunder.

(Pub. L. 93–262, title II, § 206, Apr. 12, 1974, 88 Stat. 80; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 109–221, title IV, § 401(c), May 12, 2006, 120 Stat. 342.)

AMENDMENTS

2006—Pub. L. 109–221 inserted ''(not including an eligible Community Development Finance Institution)'' after ''Government''.

1986—Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

§ 1487. Loans eligible for insurance

Any loans insured hereunder shall be restricted to those made by a financial institution subject to examination and supervision by an agency of the United States, a State, or the District of Columbia, and to loans made by Indian organizations from their own funds to other tribes or organizations of Indians.

(Pub. L. 93–262, title II, § 207, Apr. 12, 1974, 88 Stat. 80.)

§ 1488. Lenders authorized to make loans; decrease or increase of liability under the guaranty

Loans guaranteed hereunder may be made by any lender satisfactory to the Secretary, except as provided in section 1486 of this title. The liability under the guaranty shall decrease or increase pro rata with any decrease or increase in the unpaid portion of the obligation.

(Pub. L. 93–262, title II, § 208, Apr. 12, 1974, 88 Stat. 80.)

§ 1489. Loans made by certain financial institutions without regard to limitations and restrictions of other Federal statutes with respect to certain particulars

Any loan made by any national bank or Federal savings and loan association, or by any bank, trust company, building and loan association, or insurance company authorized to do business in the District of Columbia, at least 20 per centum of which is guaranteed hereunder, may be made without regard to the limitations and restrictions of any other Federal statute with respect to (a) ratio of amount of loan to the value of the property; (b) maturity of loans; (c) requirement of mortgage or other security; (d) priority of lien; or (e) percentage of assets which may be invested in real estate loans.

(Pub. L. 93–262, title II, § 209, Apr. 12, 1974, 88 Stat. 80.)

§ 1490. Maturity of loans

The maturity of any loan guaranteed or insured hereunder shall not exceed thirty years.

(Pub. L. 93–262, title II, § 210, Apr. 12, 1974, 88 Stat. 80.)

§ 1491. Defaults; written notification; pro rata payments; subrogation and assignment rights of Secretary; cancellation of uncollectable portion of obligations; forbearance for benefit of borrower; interest or charges cessation date

In the event of a default of a loan guaranteed hereunder, the holder of the guaranty certificate

may immediately notify the Secretary in writing of such default and the Secretary shall thereupon pay to such holder the pro rata portion of the amount guaranteed and shall be subrogated to the rights of the holder of the guaranty and receive an assignment of the obligation and security. The Secretary may cancel the uncollectable portion of any obligation, to which he has an assignment or a subrogated right under this section. Nothing in this section shall be construed to preclude any forbearance for the benefit of the borrower as may be agreed upon by the parties to the loan and approved by the Secretary. The Secretary may establish the date, not later than the date of judgment and decree of foreclosure or sale, upon which accrual of interest or charges shall cease.

(Pub. L. 93–262, title II, § 211, Apr. 12, 1974, 88 Stat. 80; Pub. L. 98–449, § 6, Oct. 4, 1984, 98 Stat. 1725.)

AMENDMENTS

1984—Pub. L. 98–449 struck out proviso at end of second sentence which provided that proceedings pursuant to this section shall be effective only after following the procedure set out in section 386a of this title.

§ 1492. Claims for losses; submission to Secretary; reimbursement: single and aggregate loss limitations, conditions; assignment of note or judgment; collection or cancellation by Secretary; interest or charges cessation date

When a lender suffers a loss on a loan insured hereunder, including accrued interest, a claim therefor shall be submitted to the Secretary. If the Secretary finds that the loss has been suffered, he shall reimburse the lender therefor: *Provided*, That the amount payable to the lender for a loss on any one loan shall not exceed 90 per centum of such loss: *Provided further*, That no reimbursement may be made for losses in excess of 15 per centum of the aggregate of insured loans made by the lender: *Provided further*, That before any reimbursement is made, all reasonable collection efforts shall have been exhausted by the lender, and the security for the loan shall have been liquidated to the extent feasible, and the proceeds applied on the debt. Upon reimbursement, in whole or in part, to the lender, the note or judgment evidencing the debt shall be assigned to the United States, and the lender shall have no further claim against the borrower or the United States. The Secretary shall then take such further collection action as may be warranted, or may cancel the uncollectable portion of any debt assigned pursuant hereto. The Secretary may establish a date upon which accrual of interest or charges shall cease.

(Pub. L. 93–262, title II, § 212, Apr. 12, 1974, 88 Stat. 80.)

§ 1493. Loan refusal; conditions; prohibition against acquisition of additional loans; payment of claims on loans made in good faith

Whenever the Secretary finds that any lender or holder of a guaranty certificate fails to maintain adequate accounting records, or to demonstrate proper ability to service adequately loans guaranteed or insured, or to exercise proper credit judgment, or has willfully or negligently engaged in practices otherwise detrimental to the interests of a borrower or of the United States, he may refuse, either temporarily or permanently, to guarantee or insure any further loans made by such lender or holder, and may bar such lender or holder from acquiring additional loans guaranteed or insured hereunder: *Provided*, That the Secretary shall not refuse to pay a valid guaranty or insurance claim on loans previously made in good faith.

(Pub. L. 93–262, title II, § 213, Apr. 12, 1974, 88 Stat. 81.)

§ 1494. Evidence of eligibility of loan for and amount of guaranty or insurance; defenses and partial defenses against original lender

Any evidence of guaranty or insurance issued by the Secretary shall be conclusive evidence of the eligibility of the loan for guaranty or insurance under the provisions of this chapter and the amount of such guaranty or insurance: *Provided*, That nothing in this section shall preclude the Secretary from establishing, as against the original lender, defenses based on fraud or material misrepresentation or bar him from establishing, by regulations in force at the date of such issuance or disbursement, whichever is the earlier, partial defenses to the amount payable on the guaranty or insurance.

(Pub. L. 93–262, title II, § 214, Apr. 12, 1974, 88 Stat. 81.)

§ 1495. Land and personal property titles

Title to any land purchased by a tribe or by an individual Indian with loans guaranteed or insured pursuant to this subchapter may be taken in trust, unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of the reservation or approved consolidation area may be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase, otherwise title shall be taken in the name of the purchaser without any restriction on alienation, control, or use. Title to any personal property purchased with loans guaranteed or insured hereunder shall be taken in the name of the purchaser.

(Pub. L. 93–262, title II, § 215, Apr. 12, 1974, 88 Stat. 81.)

§ 1496. Powers of Secretary; finality of financial transactions and property acquisitions, management, and dispositions

The financial transactions of the Secretary incident to or arising out of the guarantee or insurance of loans and surety bonds, and the acquisition, management, and disposition of property, real, personal, or mixed, incident to such activities, shall be final and conclusive upon all officers of the Government. With respect to matters arising out of the guaranty or insurance program authorized by this subchapter, and notwithstanding the provisions of any other laws, the Secretary may—

(a) sue and be sued in his official capacity in any court of competent jurisdiction;

(b) subject to the specific limitations in this subchapter, consent to the modification, with respect to the rate of interest, time of payment on principal or interest or any portion thereof, security, or any other provisions of any note, contract, mortgage, or other instrument securing a loan or surety bond which has been guaranteed or insured hereunder;

(c) subject to the specific limitations in this subchapter, pay, or compromise, any claim on, or arising because of any loan or surety bond guaranty or insurance;

(d) subject to the specific limitations in this subchapter, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including, but not limited to, any equity or right of redemption;

(e) purchase at any sale, public or private, upon such terms and for such prices as he determines to be reasonable, and take title to property, real, personal, or mixed; and similarly sell, at public or private sale, exchange, assign, convey, or otherwise dispose of such property; and

(f) complete, administer, operate, obtain, and pay for insurance on, and maintain, renovate, repair, modernize, lease, or otherwise deal with any property acquired or held pursuant to the guaranty or insurance program authorized by this subchapter.

(Pub. L. 93–262, title II, § 216, Apr. 12, 1974, 88 Stat. 81; Pub. L. 100–442, § 5(c), Sept. 22, 1988, 102 Stat. 1764.)

AMENDMENTS

1988—Pub. L. 100–442 inserted ''and surety bonds'' after ''of loans'' in introductory text, ''or surety'' after ''a loan'' in par. (b), and ''or surety'' after ''any loan'' in par. (c).

§ 1497. Indian Loan Guaranty and Insurance Fund

(a) Establishment of revolving fund

There is hereby created an Indian Loan Guaranty and Insurance Fund (hereinafter referred to as the ''fund'') which shall be available to the Secretary as a revolving fund without fiscal year limitation for carrying out the provisions of this subchapter.

(b) Aggregate loans or surety bonds limitation

The Secretary may use the fund for the purpose of fulfilling the obligations with respect to loans or surety bonds guaranteed or insured under this subchapter, but the aggregate of such loans or surety bonds which are insured or guaranteed by the Secretary shall be limited to $1,500,000,000.

(c) Assets, liabilities, and obligations of fund; loan and surety bond servicing and purchasing agreements: terms and conditions

All funds, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and all collections and proceeds therefrom, shall constitute assets of the fund; and all liabilities and obligations of such assets shall be liabilities and obligations of the fund. The Secretary is authorized to make agreements with respect to servicing loans or surety bonds held, guaranteed, or insured by him under this subchapter and purchasing such guaranteed or insured loans or surety bonds on such terms and conditions as he may prescribe.

(d) Utilization of fund for diverse payments

The Secretary may also utilize the fund to pay taxes, insurance, prior liens, expenses necessary to make fiscal adjustments in connection with the application and transmittal of collections, and other expenses and advances to protect the Secretary for loans or surety bonds which are guaranteed or insured under this subchapter or held by the Secretary, to acquire such security property at foreclosure sale or otherwise, and to pay administrative expenses.

(e) Authorization of appropriations

There are authorized to be appropriated for each fiscal year beginning in fiscal year 1985 such sums as may be necessary to fulfill obligations with respect to losses on loans or surety bonds guaranteed or insured under this subchapter. All collections and all moneys appropriated pursuant to the authority of this subsection shall remain available until expended.

(Pub. L. 93–262, title II, § 217, Apr. 12, 1974, 88 Stat. 82; Pub. L. 98–449, § 7, Oct. 4, 1984, 98 Stat. 1725; Pub. L. 100–442, §§ 3, 4(a), (b), 5(d), Sept. 22, 1988, 102 Stat. 1763, 1764; Pub. L. 105–362, title VIII, § 801(b), Nov. 10, 1998, 112 Stat. 3287; Pub. L. 109–221, title IV, § 401(d), May 12, 2006, 120 Stat. 343.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–221 substituted ''$1,500,000,000'' for ''$500,000,000''.

1998—Subsec. (f). Pub. L. 105–362 struck out subsec. (f) which read as follows: ''If the Secretary determines that the amount in the fund is not sufficient to maintain an adequate level of reserves necessary to meet the responsibilities of the fund in connection with losses on loans or surety bonds guaranteed or insured under this subchapter, the Secretary shall promptly submit a report notifying Congress of the deficiencies in the fund.''

1988—Subsec. (b). Pub. L. 100–442, §§ 3, 5(d), inserted ''or surety bonds'' after ''loans'' in two places and substituted ''$500,000,000'' for ''$200,000,000''.

Subsecs. (c), (d). Pub. L. 100–442, § 5(d), inserted ''or surety bonds'' after ''loans'' wherever appearing.

Subsec. (e). Pub. L. 100–442, §§ 4(a), 5(d), inserted ''or surety bonds'' after ''loans'' and substituted ''All collections and all moneys appropriated pursuant to the authority of this subsection shall remain available'' for ''All collections shall remain''.

Subsec. (f). Pub. L. 100–442, § 4(b), added subsec. (f).

1984—Subsec. (e). Pub. L. 98–449 added subsec. (e).

LIMITATION ON NEW CREDIT AUTHORITY

Section 4(c) of Pub. L. 100–442 provided that: ''Any new credit authority (as defined in section 3 of the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 622]) which is provided by amendments made by this Act [enacting sections 1497a, 1499, and 1544 of this title and amending this section and sections 1452, 1484, 1485, 1496, and 1498 of this title] shall be effective only to such extent and in such amounts as may be approved in advance in appropriation Acts.''

§ 1497a. Supplemental surety bond guarantee

(a) Amount; eligibility

The Secretary is authorized to provide a supplemental surety bond guarantee, not to exceed 20 percent of any loss, for any Indian individual

or economic enterprise eligible for a surety guarantee under section 694b of title 15, so that the aggregate of the two guarantees is 100 percent.

(b) Conditions

The Secretary may provide a supplemental guarantee under this section only if the Secretary determines that—

(1) the Indian individual or economic enterprise has secured or will likely secure a surety bond guarantee under section 694b of title 15;

(2) the supplemental guarantee is necessary for the Indian individual or economic enterprise to secure a surety bond;

(3) no more than 25 percent of the surety's business is comprised of bonds guaranteed pursuant to this section; and

(4) the surety will provide appropriate technical assistance and advice to, and monitor the performance of, the Indian individual or economic enterprise for the prevention or mitigation of a loss.

(c) Fees and charges

The rules and regulations promulgated by the Secretary to carry out this section shall include the setting of reasonable fees to be paid by the Indian individual or economic enterprise and reasonable premium charges to be paid by sureties. In setting fees and charges, the Secretary may take into consideration the cost to the surety of providing the services required by paragraph (4) of subsection (b) of this section. The receipts from the fees and charges shall be deposited in the Fund established by section 1497(a) of this title.

(Pub. L. 93–262, title II, § 218, as added Pub. L. 100–442, § 5(a), Sept. 22, 1988, 102 Stat. 1764.)

PRIOR PROVISIONS

A prior section 218 of Pub. L. 93–262 was renumbered section 219 by Pub. L. 100–442 and is classified to section 1498 of this title.

§ 1498. Rules and regulations

The Secretary shall promulgate rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 93–262, title II, § 219, formerly § 218, Apr. 12, 1974, 88 Stat. 82; renumbered § 219, Pub. L. 100–442, § 5(a), Sept. 22, 1988, 102 Stat. 1764.)

§ 1499. Limitation on guarantee of debt issues; approval of bond issue sale

(a) The Secretary may guarantee not to exceed 90 percent of the unpaid principal and interest due on an issue of bonds, debentures, or similar obligations issued by an organization satisfactory to the Secretary. Such an issue shall be deemed a loan for purposes of sections 1482, 1483, 1484, 1485, 1486, 1489, 1490, 1491, 1493, 1494, 1495, 1496, and 1497 of this title.

(b) The method by which an issue of bonds guaranteed under this section may be sold shall be subject to approval by the Secretary.

(Pub. L. 93–262, title II, § 220, as added Pub. L. 100–442, § 6, Sept. 22, 1988, 102 Stat. 1764.)

SUBCHAPTER III—INTEREST SUBSIDIES AND ADMINISTRATIVE EXPENSES

§ 1511. Interest subsidies; rules and regulations

The Secretary is authorized under such rules and regulations as he may prescribe to pay as an interest subsidy on loans which are guaranteed or insured under the provisions of subchapter II of this chapter amounts which are necessary to reduce the rate payable by the borrower to the rate determined under section 1464 of this title.

(Pub. L. 93–262, title III, § 301, Apr. 12, 1974, 88 Stat. 82.)

§ 1512. Authorization of appropriations for interest payments

There are authorized to be appropriated for fiscal year 1985, and for each fiscal year thereafter, an amount which does not exceed $5,500,000 for purposes of making interest payments authorized under this subchapter. Sums appropriated under this section, shall remain available until expended.

(Pub. L. 93–262, title III, § 302, Apr. 12, 1974, 88 Stat. 82; Pub. L. 98–449, § 8, Oct. 4, 1984, 98 Stat. 1725.)

AMENDMENTS

1984—Pub. L. 98–449 amended section generally, substituting provisions authorizing appropriations for payment of interest under this subchapter for provisions authorizing appropriations for the Indian Loan Guarantee and Insurance Fund, interest subsidies and administrative expenses.

SUBCHAPTER IV—INDIAN BUSINESS GRANTS

§ 1521. Indian Business Development Program; establishment; statement of purpose

There is established within the Department of the Interior the Indian Business Development Program whose purpose is to stimulate and increase Indian entrepreneurship and employment by providing equity capital through nonreimbursable grants made by the Secretary of the Interior to Indians and Indian tribes to establish and expand profit-making Indian-owned economic enterprises on or near reservations.

(Pub. L. 93–262, title IV, § 401, Apr. 12, 1974, 88 Stat. 82.)

§ 1522. Conditions

(a) Limitation of amount

No grant in excess of $100,000 in the case of an Indian and $250,000 in the case of an Indian tribe, or such lower amount as the Secretary may determine to be appropriate, may be made under this subchapter.

(b) Financing from other sources; inability to obtain funds; applicant's financial resources

A grant may be made only to an applicant who, in the opinion of the Secretary, is unable to obtain adequate financing for its economic enterprise from other sources: *Provided*, That prior to making any grant under this subchapter, the Secretary shall assure that, where practical, the applicant has reasonably made

available for the economic enterprise funds from the applicant's own financial resources.

(c) Percentage requirement

No grant may be made to an applicant who is unable to obtain at least 60 per centum of the necessary funds for the economic enterprise from other sources.

(Pub. L. 93–262, title IV, § 402, Apr. 12, 1974, 88 Stat. 83; Pub. L. 98–449, § 9, Oct. 4, 1984, 98 Stat. 1725.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–449 amended subsec. (a) generally, substituting provisions setting forth different levels of maximum grant amounts in cases of Indians and Indian tribes for provisions providing a maximum of $50,000 in cases of both Indians and Indian tribes.

§ 1523. Authorization of appropriations

There are authorized to be appropriated not to exceed the sum of $10,000,000 per year for fiscal year 1986 and each fiscal year thereafter for the purposes of this subchapter.

(Pub. L. 93–262, title IV, § 403, Apr. 12, 1974, 88 Stat. 83; Pub. L. 95–68, July 20, 1977, 91 Stat. 272; Pub. L. 98–449, § 10, Oct. 4, 1984, 98 Stat. 1726.)

AMENDMENTS

1984—Pub. L. 98–449 amended section generally, substituting "$10,000,000" for "$14,000,000" and "1986 and each fiscal year thereafter" for "1978 and 1979".

1977—Pub. L. 95–68 substituted "$14,000,000 for each of the fiscal years 1978 and 1979" for "$10,000,000 for each of the fiscal years 1975, 1976, and 1977".

§ 1524. Rules and regulations

The Secretary of the Interior is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this chapter.

(Pub. L. 93–262, title IV, § 404, Apr. 12, 1974, 88 Stat. 83.)

SUBCHAPTER V—MISCELLANEOUS PROVISIONS

§ 1541. Competent management and technical assistance for economic enterprises

Prior to and concurrent with the making or guaranteeing of any loan under subchapters I and II of this chapter and with the making of a grant under subchapter IV of this chapter, the purpose of which is to fund the development of an economic enterprise, the Secretary shall insure that the loan or grant applicant shall be provided competent management and technical assistance for preparation of the application and/or administration of funds granted consistent with the nature of the enterprise proposed to be or in fact funded.

(Pub. L. 93–262, title V, § 501, Apr. 12, 1974, 88 Stat. 83; Pub. L. 98–449, § 12, Oct. 4, 1984, 98 Stat. 1726.)

AMENDMENTS

1984—Pub. L. 98–449 amended section generally, inserting "Prior to and" and "for preparation of the application and/or administration of funds granted".

§ 1542. Agency cooperation; private contracts for management services and technical assistance

For the purpose of providing the assistance required under section 1541 of this title, the Secretary is authorized to cooperate with the Small Business Administration and the Corporation for National and Community Service and other Federal agencies in the use of existing programs of this character in those agencies. In addition, the Secretary is authorized to enter into contracts with private organizations for providing such services and assistance.

(Pub. L. 93–262, title V, § 502, Apr. 12, 1974, 88 Stat. 83; Pub. L. 93–113, title VI, § 601(d), Oct. 1, 1973, 87 Stat. 416; Pub. L. 103–82, title IV, § 405(f), Sept. 21, 1993, 107 Stat. 921.)

AMENDMENTS

1993—Pub. L. 103–82 substituted "the Corporation for National and Community Service" for "ACTION Agency".

1973—Pub. L. 93–113 substituted "ACTION Agency" for "ACTION".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

§ 1543. Funds limitation for private contracts

For the purpose of entering into contracts pursuant to section 1542 of this title in fiscal year 1985, the Secretary is authorized to use not to exceed 6 percent of any funds appropriated for any fiscal year pursuant to section 1512 of this title. For fiscal year 1986 and for each fiscal year thereafter, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 93–262, title V, § 503, Apr. 12, 1974, 88 Stat. 83; Pub. L. 98–449, § 13, Oct. 4, 1984, 98 Stat. 1726.)

AMENDMENTS

1984—Pub. L. 98–449 amended section generally, substituting provisions limiting funds expended for private contracts to 6 percent of appropriated funds in 1985 and authorizing the appropriation of such sums as may be necessary to carry out this subchapter in fiscal years after 1985 for provisions putting a 5 percent limitation on use of appropriated funds.

§ 1544. Additional compensation to contractors of Federal agency

Notwithstanding any other provision of law, a contractor of a Federal agency under any Act of Congress may be allowed an additional amount of compensation equal to 5 percent of the amount paid, or to be paid, to a subcontractor or supplier, in carrying out the contract if such subcontractor or supplier is an Indian organization or Indian-owned economic enterprise as defined in this chapter.

(Pub. L. 93–262, title V, § 504, added Pub. L. 100–442, § 7, Sept. 22, 1988, 102 Stat. 1765.)

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GENERAL PROVISIONS

§ 1601. Congressional findings

The Congress finds the following:

(a) Federal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people.

(b) A major national goal of the United States is to provide the quantity and quality of health services which will permit the health status of Indians to be raised to the highest possible level and to encourage the maximum participation of Indians in the planning and management of those services.

(c) Federal health services to Indians have resulted in a reduction in the prevalence and incidence of preventable illnesses among, and unnecessary and premature deaths of, Indians.

(d) Despite such services, the unmet health needs of the American Indian people are severe and the health status of the Indians is far below that of the general population of the United States.

(Pub. L. 94–437, § 2, Sept. 30, 1976, 90 Stat. 1400; Pub. L. 102–573, § 3(a), Oct. 29, 1992, 106 Stat. 4526.)

AMENDMENTS

1992—Pub. L. 102–573 substituted ''finds the following:'' for ''finds that—'' in introductory provisions and struck out last sentence of subsec. (d) which compared death rates of Indians to those of all Americans for tuberculosis, influenza and pneumonia, and compared death rates for infants, subsec. (e) which related to threat to fulfillment of Federal responsibility to Indians posed by low health status of American Indian people, subsec. (f) which enumerated causes imperiling improvements in Indian health, and subsec. (g) which related to confidence of Indian people in Federal Indian health services.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–417, § 1, Nov. 1, 2000, 114 Stat. 1812, provided that: ''This Act [enacting and amending section 1645 of this title, amending sections 1395qq and 1396j of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 1645 of this title] may be cited as the 'Alaska Native and American Indian Direct Reimbursement Act of 2000'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–313, § 1(a), Oct. 19, 1996, 110 Stat. 3820, provided that: ''This Act [amending sections 1603, 1613a, 1621j, 1645, 1665e, 1665j, and 1680k of this title] may be cited as the 'Indian Health Care Improvement Technical Corrections Act of 1996'.''

SHORT TITLE OF 1992 AMENDMENT

Section 1 of Pub. L. 102–573 provided that: ''This Act [see Tables for classification] may be cited as the 'Indian Health Amendments of 1992'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–630, title V, § 501, Nov. 28, 1990, 104 Stat. 4556, provided that: ''This title [enacting sections 1621h, 1637, 1659, and 1660 of this title, amending sections 1653, 1657, and 2474 of this title, and enacting provisions set out as notes under sections 1621h, 1653, and 2415 of this title] may be cited as the 'Indian Health Care Amendments of 1990'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–713, § 1, Nov. 23, 1988, 102 Stat. 4784, provided that: ''This Act [enacting sections 1616 to 1616j, 1621a to 1621g, 1636, 1651 to 1658, 1661, 1662, and 1680a to 1680j of this title and sections 254s and 295j of Title 42, The Public Health and Welfare, amending sections 1603, 1612 to 1613a, 1614, 1615, 1621, 1631, 1632, 1634, 1674, 1676, and 1678 to 1680 of this title and section 5316 of Title 5, Government Organization and Employees, repealing section 1635 of this title and section 254r of Title 42, enacting provisions set out as notes under this section and sections 1611, 1621b, 1661, and 1677 of this title and sections 254r, 1395qq, and 1396j of Title 42, amending provisions set out as a note under section 1396j of Title 42, and repealing provisions set out as a note under section 1396j of Title 42] may be cited as the 'Indian Health Care Amendments of 1988'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–537, § 1(a), Dec. 17, 1980, 94 Stat. 3173, provided that: ''this Act [enacting sections 1622, 1634, and 1676 to 1680 of this title, amending sections 1603, 1612 to 1614, 1621, 1651 to 1657, and 1674 of this title and section 294y–1 of Title 42, The Public Health and Welfare, and repealing section 1658 of this title] may be cited as the 'Indian Health Care Amendments of 1980'.''

SHORT TITLE

Section 1 of Pub. L. 94–437 provided: ''That this Act [enacting this chapter and sections 1395qq and 1396j of Title 42, The Public Health and Welfare, amending sections 234, 1395f, 1395n, and 1396d of Title 42, and enacting provisions set out as notes under section 1671 of this title and sections 1395qq and 1396j of Title 42] may be cited as the 'Indian Health Care Improvement Act'.''

SEPARABILITY

Pub. L. 100–713, title VIII, § 801, Nov. 23, 1988, 102 Stat. 4839, provided that: ''If any provision of this Act, any

amendment made by this Act [see Short Title of 1988 Amendment note above], or the application of such provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act, the remaining amendments made by this Act, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.''

AVAILABILITY OF APPROPRIATIONS

Pub. L. 100–713, § 4, Nov. 23, 1988, 102 Stat. 4785, provided that: ''Any new spending authority (described in subsection (c)(2)(A) or (B) of section 401 of the Congressional Budget Act of 1974 [2 U.S.C. 651(c)(2)(A), (B)]) which is provided under this Act [see Short Title of 1988 Amendment note above] shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.''

§ 1602. Declaration of health objectives

(a) The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to assure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy.

(b) It is the intent of the Congress that the Nation meet the following health status objectives with respect to Indians and urban Indians by the year 2000:

(1) Reduce coronary heart disease deaths to a level of no more than 100 per 100,000.

(2) Reduce the prevalence of overweight individuals to no more than 30 percent.

(3) Reduce the prevalence of anemia to less than 10 percent among children aged 1 through 5.

(4) Reduce the level of cancer deaths to a rate of no more than 130 per 100,000.

(5) Reduce the level of lung cancer deaths to a rate of no more than 42 per 100,000.

(6) Reduce the level of chronic obstructive pulmonary disease related deaths to a rate of no more than 25 per 100,000.

(7) Reduce deaths among men caused by alcohol-related motor vehicle crashes to no more than 44.8 per 100,000.

(8) Reduce cirrhosis deaths to no more than 13 per 100,000.

(9) Reduce drug-related deaths to no more than 3 per 100,000.

(10) Reduce pregnancies among girls aged 17 and younger to no more than 50 per 1,000 adolescents.

(11) Reduce suicide among men to no more than 12.8 per 100,000.

(12) Reduce by 15 percent the incidence of injurious suicide attempts among adolescents aged 14 through 17.

(13) Reduce to less than 10 percent the prevalence of mental disorders among children and adolescents.

(14) Reduce the incidence of child abuse or neglect to less than 25.2 per 1,000 children under age 18.

(15) Reduce physical abuse directed at women by male partners to no more than 27 per 1,000 couples.

(16) Increase years of healthy life to at least 65 years.

(17) Reduce deaths caused by unintentional injuries to no more than 66.1 per 100,000.

(18) Reduce deaths caused by motor vehicle crashes to no more than 39.2 per 100,000.

(19) Among children aged 6 months through 5 years, reduce the prevalence of blood lead levels exceeding 15 ug/dl and reduce to zero the prevalence of blood lead levels exceeding 25 ug/dl.

(20) Reduce dental caries (cavities) so that the proportion of children with one or more caries (in permanent or primary teeth) is no more than 45 percent among children aged 6 through 8 and no more than 60 percent among adolescents aged 15.

(21) Reduce untreated dental caries so that the proportion of children with untreated caries (in permanent or primary teeth) is no more than 20 percent among children aged 6 through 8 and no more than 40 percent among adolescents aged 15.

(22) Reduce to no more than 20 percent the proportion of individuals aged 65 and older who have lost all of their natural teeth.

(23) Increase to at least 45 percent the proportion of individuals aged 35 to 44 who have never lost a permanent tooth due to dental caries or periodontal disease.

(24) Reduce destructive periodontal disease to a prevalence of no more than 15 percent among individuals aged 35 to 44.

(25) Increase to at least 50 percent the proportion of children who have received protective sealants on the occlusal (chewing) surfaces of permanent molar teeth.

(26) Reduce the prevalence of gingivitis among individuals aged 35 to 44 to no more than 50 percent.

(27) Reduce the infant mortality rate to no more than 8.5 per 1,000 live births.

(28) Reduce the fetal death rate (20 or more weeks of gestation) to no more than 4 per 1,000 live births plus fetal deaths.

(29) Reduce the maternal mortality rate to no more than 3.3 per 100,000 live births.

(30) Reduce the incidence of fetal alcohol syndrome to no more than 2 per 1,000 live births.

(31) Reduce stroke deaths to no more than 20 per 100,000.

(32) Reverse the increase in end-stage renal disease (requiring maintenance dialysis or transplantation) to attain an incidence of no more than 13 per 100,000.

(33) Reduce breast cancer deaths to no more than 20.6 per 100,000 women.

(34) Reduce deaths from cancer of the uterine cervix to no more than 1.3 per 100,000 women.

(35) Reduce colorectal cancer deaths to no more than 13.2 per 100,000.

(36) Reduce to no more than 11 percent the proportion of individuals who experience a limitation in major activity due to chronic conditions.

(37) Reduce significant hearing impairment to a prevalence of no more than 82 per 1,000.

(38) Reduce significant visual impairment to a prevalence of no more than 30 per 1,000.

(39) Reduce diabetes-related deaths to no more than 48 per 100,000.

(40) Reduce diabetes to an incidence of no more than 2.5 per 1,000 and a prevalence of no more than 62 per 1,000.

(41) Reduce the most severe complications of diabetes as follows:

(A) End-stage renal disease, 1.9 per 1,000.

(B) Blindness, 1.4 per 1,000.

(C) Lower extremity amputation, 4.9 per 1,000.

(D) Perinatal mortality, 2 percent.

(E) Major congenital malformations, 4 percent.

(42) Confine annual incidence of diagnosed AIDS cases to no more than 1,000 cases.

(43) Confine the prevalence of HIV infection to no more than 100 per 100,000.

(44) Reduce gonorrhea to an incidence of no more than 225 cases per 100,000.

(45) Reduce chlamydia trachomatis infections, as measured by a decrease in the incidence of nongonococcal urethritis to no more than 170 cases per 100,000.

(46) Reduce primary and secondary syphilis to an incidence of no more than 10 cases per 100,000.

(47) Reduce the incidence of pelvic inflammatory disease, as measured by a reduction in hospitalization for pelvic inflammatory disease to no more than 250 per 100,000 women aged 15 through 44.

(48) Reduce viral hepatitis B infection to no more than 40 per 100,000 cases.

(49) Reduce indigenous cases of vaccine-preventable diseases as follows:

(A) Diphtheria among individuals aged 25 and younger, 0.

(B) Tetanus among individuals aged 25 and younger, 0.

(C) Polio (wild-type virus), 0.

(D) Measles, 0.

(E) Rubella, 0.

(F) Congenital Rubella Syndrome, 0.

(G) Mumps, 500.

(H) Pertussis, 1,000.

(50) Reduce epidemic-related pneumonia and influenza deaths among individuals aged 65 and older to no more than 7.3 per 100,000.

(51) Reduce the number of new carriers of viral hepatitis B among Alaska Natives to no more than 1 case.

(52) Reduce tuberculosis to an incidence of no more than 5 cases per 100,000.

(53) Reduce bacterial meningitis to no more than 8 cases per 100,000.

(54) Reduce infectious diarrhea by at least 25 percent among children.

(55) Reduce acute middle ear infections among children aged 4 and younger, as measured by days of restricted activity or school absenteeism, to no more than 105 days per 100 children.

(56) Reduce cigarette smoking to a prevalence of no more than 20 percent.

(57) Reduce smokeless tobacco use by youth to a prevalence of no more than 10 percent.

(58) Increase to at least 65 percent the proportion of parents and caregivers who use feeding practices that prevent baby bottle tooth decay.

(59) Increase to at least 75 percent the proportion of mothers who breast feed their babies in the early postpartum period, and to at least 50 percent the proportion who continue breast feeding until their babies are 5 to 6 months old.

(60) Increase to at least 90 percent the proportion of pregnant women who receive prenatal care in the first trimester of pregnancy.

(61) Increase to at least 70 percent the proportion of individuals who have received, as a minimum within the appropriate interval, all of the screening and immunization services and at least one of the counseling services appropriate for their age and gender as recommended by the United States Preventive Services Task Force.

(c) It is the intent of the Congress that the Nation increase the proportion of all degrees in the health professions and allied and associated health profession fields awarded to Indians to 0.6 percent.

(d) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report on the progress made in each area of the Service toward meeting each of the objectives described in subsection (b) of this section.

(Pub. L. 94–437, § 3, Sept. 30, 1976, 90 Stat. 1401; Pub. L. 102–573, § 3(b), Oct. 29, 1992, 106 Stat. 4526.)

AMENDMENTS

1992—Pub. L. 102–573 amended section generally. Prior to amendment, section read as follows: ''The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to meet the national goal of providing the highest possible health status to Indians and to provide existing Indian health services with all resources necessary to effect that policy.''

§ 1603. Definitions

For purposes of this chapter—

(a) ''Secretary'', unless otherwise designated, means the Secretary of Health and Human Services.

(b) ''Service'' means the Indian Health Service.

(c) ''Indians'' or ''Indian'', unless otherwise designated, means any person who is a member of an Indian tribe, as defined in subsection (d) of this section, except that, for the purpose of sections 1612 and 1613 of this title, such terms shall mean any individual who (1), irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is considered by the Secretary of the Interior to be an Indian for any purpose, or (4) is determined to be an Indian under regulations promulgated by the Secretary.

(d) ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43

U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) ''Tribal organization'' means the elected governing body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization) and which includes the maximum participation of Indians in all phases of its activities.

(f) ''Urban Indian'' means any individual who resides in an urban center, as defined in subsection (g) of this section, and who meets one or more of the four criteria in subsection (c)(1) through (4) of this section.

(g) ''Urban center'' means any community which has a sufficient urban Indian population with unmet health needs to warrant assistance under subchapter IV of this chapter, as determined by the Secretary.

(h) ''Urban Indian organization'' means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in section 1653(a) of this title.

(i) ''Area office'' means an administrative entity including a program office, within the Indian Health Service through which services and funds are provided to the service units within a defined geographic area.

(j) ''Service unit'' means—

(1) an administrative entity within the Indian Health Service, or

(2) a tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.],

through which services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.

(k) ''Health promotion'' includes—

(1) cessation of tobacco smoking,

(2) reduction in the misuse of alcohol and drugs,

(3) improvement of nutrition,

(4) improvement in physical fitness,

(5) family planning,

(6) control of stress, and

(7) pregnancy and infant care (including prevention of fetal alcohol syndrome).

(*l*) ''Disease prevention'' includes—

(1) immunizations,

(2) control of high blood pressure,

(3) control of sexually transmittable diseases,

(4) prevention and control of diabetes,

(5) control of toxic agents,

(6) occupational safety and health,

(7) accident prevention,

(8) fluoridation of water, and

(9) control of infectious agents.

(m) ''Service area'' means the geographical area served by each area office.

(n) ''Health profession'' means allopathic medicine, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, an allied health profession, or any other health profession.

(*o*) ''Substance abuse'' includes inhalant abuse.

(p) ''FAE'' means fetal alcohol effect.

(q) ''FAS'' means fetal alcohol syndrome.

(Pub. L. 94–437, § 4, Sept. 30, 1976, 90 Stat. 1401; Pub. L. 96–537, § 2, Dec. 17, 1980, 94 Stat. 3173; Pub. L. 100–713, title II, §§ 201(b), 203(b), title V, § 502, Nov. 23, 1988, 102 Stat. 4803, 4804, 4824; Pub. L. 102–573, § 3(c), title IX, § 902(1), Oct. 29, 1992, 106 Stat. 4529, 4591; Pub. L. 104–313, § 2(a), Oct. 19, 1996, 110 Stat. 3820.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (d), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43, and Tables.

The Indian Self-Determination Act, referred to in subsec. (j)(2), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1996—Subsec. (n). Pub. L. 104–313 inserted ''allopathic medicine,'' before ''family medicine'' and substituted ''an allied health profession, or any other health profession'' for ''and allied health professions''.

1992—Subsec. (c). Pub. L. 102–573, § 902(1), substituted ''sections 1612 and 1613 of this title'' for ''sections 1612, 1613, and 1621(c)(5) of this title''.

Subsecs. (m) to (q). Pub. L. 102–573, § 3(c), added subsecs. (m) to (q).

1988—Subsec. (h). Pub. L. 100–713, § 502, inserted ''urban'' after ''governed by an''.

Subsec. (i). Pub. L. 100–713, § 201(b), added subsec. (i) and struck out former subsec. (i) which defined ''rural Indian''.

Subsec. (j). Pub. L. 100–713, § 201(b), added subsec. (j) and struck out former subsec. (j) which defined ''rural community''.

Subsec. (k). Pub. L. 100–713, §§ 201(b), 203(b), added subsec. (k) and struck out former subsec. (k) which defined ''rural Indian organization''.

Subsec. (*l*). Pub. L. 100–713, § 203(b), added subsec. (*l*).

1980—Subsec. (a). Pub. L. 96–537, § 2(a), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (h). Pub. L. 96–537, § 2(b), substituted ''governed by an Indian controlled board of directors'' for ''composed of urban Indians''.

Subsecs. (i) to (k). Pub. L. 96–537, § 2(c), added subsecs. (i) to (k).

SUBCHAPTER I—INDIAN HEALTH PROFESSIONAL PERSONNEL

§ 1611. Congressional statement of purpose

The purpose of this subchapter is to increase the number of Indians entering the health pro-

fessions and to assure an adequate supply of health professionals to the Service, Indian tribes, tribal organizations, and urban Indian organizations involved in the provision of health care to Indian people.

(Pub. L. 94–437, title I, § 101, Sept. 30, 1976, 90 Stat. 1402; Pub. L. 102–573, title I, § 101, Oct. 29, 1992, 106 Stat. 4530.)

AMENDMENTS

1992—Pub. L. 102–573 amended section generally. Prior to amendment, section read as follows: ''The purpose of this subchapter is to augment the inadequate number of health professionals serving Indians and remove the multiple barriers to the entrance of health professionals into the Service and private practice among Indians.''

ADVISORY PANEL AND REPORT ON RECRUITMENT AND RETENTION

Pub. L. 100–713, title I, § 110, Nov. 23, 1988, 102 Stat. 4800, directed Secretary of Health and Human Services to establish an advisory panel composed of 10 physicians or other health professionals who are employees of, or assigned to, the Indian Health Service, 3 representatives of tribal health boards, and 1 representative of an urban health care organization, such advisory panel to conduct an investigation of (1) administrative policies and regulatory procedures which impede recruitment or retention of physicians and other health professionals by Indian Health Service, and (2) regulatory changes necessary to establish pay grades for health professionals employed by, or assigned to, the Service that correspond to the pay grades established for positions provided under 38 U.S.C. 4103 and 4104 and costs associated with establishing such pay grades, and, no later than the date that is 18 months after Nov. 23, 1988, to submit to Congress a report on the investigation, together with any recommendations for administrative or legislative changes in existing law, practices, or procedures.

§ 1612. Health professions recruitment program for Indians

(a) Grants for education and training

The Secretary, acting through the Service, shall make grants to public or nonprofit private health or educational entities or Indian tribes or tribal organizations to assist such entities in meeting the costs of—

(1) identifying Indians with a potential for education or training in the health professions and encouraging and assisting them—

(A) to enroll in courses of study in such health professions; or

(B) if they are not qualified to enroll in any such courses of study, to undertake such postsecondary education or training as may be required to qualify them for enrollment;

(2) publicizing existing sources of financial aid available to Indians enrolled in any course of study referred to in paragraph (1) of this subsection or who are undertaking training necessary to qualify them to enroll in any such course of study; or

(3) establishing other programs which the Secretary determines will enhance and facilitate the enrollment of Indians in, and the subsequent pursuit and completion by them of, courses of study referred to in paragraph (1) of this subsection.

(b) Application for grant; submittal and approval; preference; payment

(1) No grant may be made under this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe. The Secretary shall give a preference to applications submitted by Indian tribes or tribal organizations.

(2) The amount of any grant under this section shall be determined by the Secretary. Payments pursuant to grants under this section may be made in advance or by way of reimbursement, and at such intervals and on such conditions as the Secretary finds necessary.

(Pub. L. 94–437, title I, § 102, Sept. 30, 1976, 90 Stat. 1402; Pub. L. 96–537, § 3(a), Dec. 17, 1980, 94 Stat. 3173; Pub. L. 100–713, title I, § 101, Nov. 23, 1988, 102 Stat. 4785; Pub. L. 102–573, title I, §§ 102(a), 117(b)(1), title IX, § 902(2)(A), Oct. 29, 1992, 106 Stat. 4530, 4544, 4591.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–573, § 102(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''identifying Indians with a potential for education or training in the health professions and encouraging and assisting them (A) to enroll in schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health, nursing, or allied health professions; or (B), if they are not qualified to enroll in any such school, to undertake such post-secondary education or training as may be required to qualify them for enrollment;''.

Subsec. (a)(2). Pub. L. 102–573, § 102(a)(2), substituted ''course of study'' for ''school'' in two places and ''paragraph (1)'' for ''clause (1)(A)''.

Subsec. (a)(3). Pub. L. 102–573, § 102(a)(3), substituted ''enrollment of Indians in, and the subsequent pursuit and completion by them of, courses of study referred to in paragraph (1) of this subsection'' for ''enrollment of Indians, and the subsequent pursuit and completion by them of courses of study, in any school referred to in clause (1)(A) of this subsection''.

Subsec. (b)(1). Pub. L. 102–573, § 902(2)(A), substituted ''prescribe. The Secretary shall'' for '': *Provided*, That the Secretary shall''.

Subsec. (c). Pub. L. 102–573, § 117(b)(1), struck out subsec. (c) which authorized appropriations for fiscal years 1989 to 1992.

1988—Subsec. (c). Pub. L. 100–713 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For the purpose of making payments pursuant to grants under this section, there are authorized to be appropriated $900,000 for fiscal year 1978, $1,500,000 for fiscal year 1979, and $1,800,000 for fiscal year 1980. There are authorized to be appropriated to carry out this section $2,300,000 for the fiscal year ending September 30, 1981, $2,600,000 for the fiscal year ending September 30, 1982, $3,000,000 for the fiscal year ending September 30, 1983, and $3,500,000 for the fiscal year ending September 30, 1984.''

1980—Subsec. (c). Pub. L. 96–537 substituted provisions authorizing appropriation of specific amounts for fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, for provisions authorizing appropriation of such amounts as may be specifically authorized by an act enacted after Sept. 30, 1976.

§ 1613. Health professions preparatory scholarship program for Indians

(a) Requirements

The Secretary, acting through the Service, shall make scholarship grants to Indians who—

(1) have successfully completed their high school education or high school equivalency; and

(2) have demonstrated the capability to successfully complete courses of study in the health professions.

(b) Purposes and duration of grants; preprofessional and pregraduate education

Scholarship grants made pursuant to this section shall be for the following purposes:

(1) Compensatory preprofessional education of any grantee, such scholarship not to exceed two years on a full-time basis (or the part-time equivalent thereof, as determined by the Secretary).

(2) Pregraduate education of any grantee leading to a baccalaureate degree in an approved course of study preparatory to a field of study in a health profession, such scholarship not to exceed 4 years (or the part-time equivalent thereof, as determined by the Secretary).

(c) Covered expenses

Scholarship grants made under this section may cover costs of tuition, books, transportation, board, and other necessary related expenses of a grantee while attending school.

(d) Basis for denial of assistance

The Secretary shall not deny scholarship assistance to an eligible applicant under this section solely on the basis of the applicant's scholastic achievement if such applicant has been admitted to, or maintained good standing at, an accredited institution.

(e) Eligibility for assistance under other Federal programs

The Secretary shall not deny scholarship assistance to an eligible applicant under this section solely by reason of such applicant's eligibility for assistance or benefits under any other Federal program.

(Pub. L. 94–437, title I, § 103, Sept. 30, 1976, 90 Stat. 1403; Pub. L. 96–537, § 3(b), Dec. 17, 1980, 94 Stat. 3174; Pub. L. 100–713, title I, § 102, Nov. 23, 1988, 102 Stat. 4785; Pub. L. 102–573, title I, § 102(b), Oct. 29, 1992, 106 Stat. 4530.)

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–573, § 102(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''have demonstrated the capability to successfully complete courses of study in schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health, nursing, or allied health professions.''

Subsec. (b)(1). Pub. L. 102–573, § 102(b)(2), inserted before period at end ''on a full-time basis (or the part-time equivalent thereof, as determined by the Secretary)''.

Subsec. (b)(2). Pub. L. 102–573, § 102(b)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Pregraduate education of any grantee leading to a baccalaureate degree in an approved premedicine, predentistry, preosteopathy, preveterinary medicine, preoptometry, or prepodiatry curriculum, such scholarship not to exceed four years.''

Subsec. (c). Pub. L. 102–573, § 102(b)(4), struck out ''full time'' after ''while attending school''.

Subsec. (e). Pub. L. 102–573, § 102(b)(5), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

''(1) $3,000,000 for fiscal year 1989,

''(2) $3,700,000 for fiscal year 1990,

''(3) $4,400,000 for fiscal year 1991, and

''(4) $5,100,000 for fiscal year 1992.''

1988—Subsec. (c). Pub. L. 100–713, § 102(b), inserted ''of a grantee while attending school full time'' after ''expenses''.

Subsecs. (d), (e). Pub. L. 100–713, § 102(a), added subsecs. (d) and (e) and struck out former subsec. (d) which read as follows: ''There are authorized to be appropriated for the purpose of this section: $800,000 for fiscal year 1978, $1,000,000 for fiscal year 1979, and $1,300,000 for fiscal year 1980. There are authorized to be appropriated to carry out this section $3,510,000 for the fiscal year ending September 30, 1981, $4,000,000 for the fiscal year ending September 30, 1982, $4,620,000 for the fiscal year ending September 30, 1983, and $5,300,000 for the fiscal year ending September 30, 1984.''

1980—Subsec. (b). Pub. L. 96–537, § 3(b)(1), substituted provisions specifying in pars. (1) and (2), purposes for which scholarship grants could be made, for provisions that the scholarship grant shall be for a period not to exceed two academic years, which years shall be for compensatory preprofessional education of the grantee.

Subsec. (d). Pub. L. 96–537, § 3(b)(2), substituted provisions authorizing appropriation of specific amounts for fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, for provisions authorizing appropriations of such amounts as may be specifically authorized by an act enacted after Sept. 30, 1976.

§ 1613a. Indian health professions scholarships

(a) General authority

In order to provide health professionals to Indians, Indian tribes, tribal organizations, and urban Indian organizations, the Secretary, acting through the Service and in accordance with this section, shall make scholarship grants to Indians who are enrolled full or part time in appropriately accredited schools and pursuing courses of study in the health professions. Such scholarships shall be designated Indian Health Scholarships and shall be made in accordance with section 254*l* of title 42, except as provided in subsection (b) of this section.

(b) Recipients; active duty service obligation

(1) The Secretary, acting through the Service, shall determine who shall receive scholarships under subsection (a) of this section and shall determine the distribution of such scholarships among such health professions on the basis of the relative needs of Indians for additional service in such health professions.

(2) An individual shall be eligible for a scholarship under subsection (a) of this section in any year in which such individual is enrolled full or part time in a course of study referred to in subsection (a) of this section.

(3)(A) The active duty service obligation under a written contract with the Secretary under section 254*l* of title 42 that an individual has entered into under that section shall, if that individual is a recipient of an Indian Health Scholarship, be met in full-time practice, by service—

(i) in the Indian Health Service;

(ii) in a program conducted under a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.];

(iii) in a program assisted under subchapter IV of this chapter;[1]

[1] So in original. Probably should be followed by ''or''.

(iv) in the private practice of the applicable profession if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians; or[2]

(B) At the request of any individual who has entered into a contract referred to in subparagraph (A) and who receives a degree in medicine (including osteopathic or allopathic medicine), dentistry, optometry, podiatry, or pharmacy, the Secretary shall defer the active duty service obligation of that individual under that contract, in order that such individual may complete any internship, residency, or other advanced clinical training that is required for the practice of that health profession, for an appropriate period (in years, as determined by the Secretary), subject to the following conditions:

(i) No period of internship, residency, or other advanced clinical training shall be counted as satisfying any period of obligated service that is required under this section.

(ii) The active duty service obligation of that individual shall commence not later than 90 days after the completion of that advanced clinical training (or by a date specified by the Secretary).

(iii) The active duty service obligation will be served in the health profession of that individual, in a manner consistent with clauses (i) through (v) of subparagraph (A).

(C) A recipient of an Indian Health Scholarship may, at the election of the recipient, meet the active duty service obligation described in subparagraph (A) by service in a program specified in that subparagraph that—

(i) is located on the reservation of the tribe in which the recipient is enrolled; or

(ii) serves the tribe in which the recipient is enrolled.

(D) Subject to subparagraph (C), the Secretary, in making assignments of Indian Health Scholarship recipients required to meet the active duty service obligation described in subparagraph (A), shall give priority to assigning individuals to service in those programs specified in subparagraph (A) that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section.

(4) In the case of an individual receiving a scholarship under this section who is enrolled part time in an approved course of study—

(A) such scholarship shall be for a period of years not to exceed the part-time equivalent of 4 years, as determined by the Secretary;

(B) the period of obligated service described in paragraph (3)(A) shall be equal to the greater of—

(i) the part-time equivalent of one year for each year for which the individual was provided a scholarship (as determined by the Secretary); or

(ii) two years; and

(C) the amount of the monthly stipend specified in section 254*l*(g)(1)(B) of title 42 shall be reduced pro rata (as determined by the Secretary) based on the number of hours such student is enrolled.

(5)(A) An individual who has, on or after October 29, 1992, entered into a written contract with the Secretary under this section and who—

(i) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),

(ii) is dismissed from such educational institution for disciplinary reasons,

(iii) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract before the completion of such training, or

(iv) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

(B) If for any reason not specified in subparagraph (A) an individual breaches his written contract by failing either to begin such individual's service obligation under this section or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula specified in subsection (*l*) of section 1616a of this title in the manner provided for in such subsection.

(C) Upon the death of an individual who receives an Indian Health Scholarship, any obligation of that individual for service or payment that relates to that scholarship shall be canceled.

(D) The Secretary shall provide for the partial or total waiver or suspension of any obligation of service or payment of a recipient of an Indian Health Scholarship if the Secretary determines that—

(i) it is not possible for the recipient to meet that obligation or make that payment;

(ii) requiring that recipient to meet that obligation or make that payment would result in extreme hardship to the recipient; or

(iii) the enforcement of the requirement to meet the obligation or make the payment would be unconscionable.

(E) Notwithstanding any other provision of law, in any case of extreme hardship or for other good cause shown, the Secretary may waive, in whole or in part, the right of the United States to recover funds made available under this section.

(F) Notwithstanding any other provision of law, with respect to a recipient of an Indian Health Scholarship, no obligation for payment may be released by a discharge in bankruptcy under title 11, unless that discharge is granted after the expiration of the 5-year period beginning on the initial date on which that payment is due, and only if the bankruptcy court finds that the nondischarge of the obligation would be unconscionable.

[2] So in original. The ''; or'' probably should be a period.

(c) Placement Office

The Secretary shall, acting through the Service, establish a Placement Office to develop and implement a national policy for the placement, to available vacancies within the Service, of Indian Health Scholarship recipients required to meet the active duty service obligation prescribed under section 254m of title 42 without regard to any competitive personnel system, agency personnel limitation, or Indian preference policy.

(Pub. L. 94–437, title I, § 104, as added Pub. L. 100–713, title I, § 104(a), Nov. 23, 1988, 102 Stat. 4786; amended Pub. L. 102–573, title I, §§ 102(c), 103, Oct. 29, 1992, 106 Stat. 4531, 4532; Pub. L. 104–313, § 2(b), Oct. 19, 1996, 110 Stat. 3820.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (b)(3)(A)(ii), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

PRIOR PROVISIONS

A prior section 104 of Pub. L. 94–437, title I, Sept. 30, 1976, 90 Stat. 1403, amended former section 234 of Title 42, The Public Health and Welfare.

AMENDMENTS

1996—Subsec. (b)(3)(A). Pub. L. 104–313, § 2(b)(1)(A), substituted ''The active duty service obligation under a written contract with the Secretary under section 254*l* of title 42 that an individual has entered into under that section shall, if that individual is a recipient of an Indian Health Scholarship, be met in full-time practice, by service—'' for ''The active duty service obligation prescribed under section 254m of title 42 shall be met by a recipient of an Indian Health Scholarship by service—'' in introductory provisions, struck out ''or'' at end of cl. (iii), and substituted ''; or'' for period at end of cl. (iv).

Subsec. (b)(3)(B). Pub. L. 104–313, § 2(b)(1)(C), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (b)(3)(C). Pub. L. 104–313, § 2(b)(1)(D), substituted ''described in subparagraph (A) by service in a program specified in that subparagraph'' for ''prescribed under section 254m of title 42 by service in a program specified in subparagraph (A)''.

Pub. L. 104–313, § 2(b)(1)(B), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (b)(3)(D). Pub. L. 104–313, § 2(b)(1)(E), substituted ''Subject to subparagraph (C),'' for ''Subject to subparagraph (B),'' and ''described in subparagraph (A)'' for ''prescribed under section 254m of title 42''.

Pub. L. 104–313, § 2(b)(1)(B), redesignated subpar. (C) as (D).

Subsec. (b)(4)(B). Pub. L. 104–313, § 2(b)(2)(A), substituted ''the period of obligated service described in paragraph (3)(A) shall be equal to the greater of—'' for ''the period of obligated service specified in section 254*l*(f)(1)(B)(iv) of title 42 shall be equal to the greater of—'' in introductory provisions.

Subsec. (b)(4)(C). Pub. L. 104–313, § 2(b)(2)(B), made technical amendment to reference in original act which appears in text as reference to section 254*l*(g)(1)(B) of title 42.

Subsec. (b)(5)(C) to (F). Pub. L. 104–313, § 2(b)(3), added subpars. (C) to (F).

1992—Subsec. (a). Pub. L. 102–573, § 102(c)(1)(C), substituted ''accredited schools and pursuing courses of study in the health professions'' for ''accredited schools of medicine, osteopathy, podiatry, psychology, dentistry, environmental health and engineering, nursing, optometry, public health, allied health professions, and social work''.

Pub. L. 102–573, § 102(c)(1)(A), (B), substituted ''Indians, Indian tribes, tribal organizations, and urban Indian organizations'' for ''Indian communities'' and ''full or part time'' for ''full time''.

Subsec. (b)(2). Pub. L. 102–573, § 102(c)(2)(A), substituted ''full or part time'' for ''full time'' and ''course of study'' for ''health profession school''.

Subsec. (b)(3). Pub. L. 102–573, § 102(c)(2)(B), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, and added subpars. (B) and (C).

Subsec. (b)(4). Pub. L. 102–573, § 102(c)(2)(C), added par. (4).

Subsec. (b)(5). Pub. L. 102–573, § 103, added par. (5).

Subsec. (c). Pub. L. 102–573, § 102(c)(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For purposes of this section, the term 'Indian' has the same meaning given that term by subsection (c) of section 1603 of this title, including all individuals described in clauses (1) through (4) of that subsection.''

Subsec. (d). Pub. L. 102–573, § 102(c)(4), struck out subsec. (d) which authorized appropriations for fiscal years 1989 to 1992.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 102(d) of Pub. L. 102–573 provided that: ''The amendments made by subsection (c)(1)(C) and subsection (c)(2)(B) [amending this section] shall apply with respect to scholarships granted under section 104 of the Indian Health Care Improvement Act [this section] after the date of the enactment of this Act [Oct. 29, 1992].''

§ 1614. Indian health service extern programs

(a) Employment of scholarship grantees during nonacademic periods

Any individual who receives a scholarship grant pursuant to section 1613a of this title shall be entitled to employment in the Service during any nonacademic period of the year. Periods of employment pursuant to this subsection shall not be counted in determining the fulfillment of the service obligation incurred as a condition of the scholarship grant.

(b) Employment of medical and other students during nonacademic periods

Any individual enrolled in a course of study in the health professions may be employed by the Service during any nonacademic period of the year. Any such employment shall not exceed one hundred and twenty days during any calendar year.

(c) Employment without regard to competitive personnel system or agency personnel limitation; compensation

Any employment pursuant to this section shall be made without regard to any competitive personnel system or agency personnel limitation and to a position which will enable the individual so employed to receive practical experience in the health profession in which he or she is engaged in study. Any individual so employed shall receive payment for his or her services comparable to the salary he or she would receive if he or she were employed in the competitive system. Any individual so employed shall not be counted against any employment ceiling affecting the Service or the Department of Health and Human Services.

(Pub. L. 94–437, title I, § 105, Sept. 30, 1976, 90 Stat. 1404; Pub. L. 95–83, title III, § 307(n)(2), Aug.

1, 1977, 91 Stat. 393; Pub. L. 96–537, § 3(c), Dec. 17, 1980, 94 Stat. 3174; Pub. L. 100–713, title I, § 103, Nov. 23, 1988, 102 Stat. 4786; Pub. L. 102–573, title I, §§ 102(e), 117(b)(2), title IX, § 902(2)(B), Oct. 29, 1992, 106 Stat. 4532, 4544, 4591.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–573, § 102(e)(1), substituted ''section 1613a of this title'' for ''section 254r of title 42''.

Subsec. (b). Pub. L. 102–573, § 102(e)(2), substituted ''course of study in the health professions'' for ''school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health, nursing, or allied health professions''.

Subsec. (c). Pub. L. 102–573, § 902(2)(B), substituted ''Department of Health and Human Services'' for ''Department of Health, Education, and Welfare''.

Subsec. (d). Pub. L. 102–573, § 117(b)(2), struck out subsec. (d) which authorized appropriations for fiscal years 1989 to 1992.

1988—Subsec. (d). Pub. L. 100–713 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''There are authorized to be appropriated for the purpose of this section: $600,000 for fiscal year 1978, $800,000 for fiscal year 1979, and $1,000,000 for fiscal year 1980. There are authorized to be appropriated to carry out this section $990,000 for the fiscal year ending September 30, 1981, $1,140,000 for the fiscal year ending September 30, 1982, $1,310,000 for the fiscal year ending September 30, 1983, and $1,510,000 for the fiscal year ending September 30, 1984.''

1980—Subsec. (d). Pub. L. 96–537 substituted provisions authorizing appropriations of specific amounts for fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, for provisions authorizing appropriation of such amounts as may be specifically authorized by an act enacted after Sept. 30, 1976.

1977—Subsec. (a). Pub. L. 95–83 substituted reference to ''section 294y–1 of title 42'' for reference to ''section 104'' meaning section 104 of Pub. L. 94–437, which added section 234(i)(2) of Title 42, The Public Health and Welfare.

§ 1615. Continuing education allowances

(a) Discretionary authority; scope of activities

In order to encourage physicians, dentists, nurses, and other health professionals to join or continue in the Service and to provide their services in the rural and remote areas where a significant portion of the Indian people resides, the Secretary, acting through the Service, may provide allowances to health professionals employed in the Service to enable them for a period of time each year prescribed by regulation of the Secretary to take leave of their duty stations for professional consultation and refresher training courses.

(b) Limitation

Of amounts appropriated under the authority of this subchapter for each fiscal year to be used to carry out this section, not more than $1,000,000 may be used to establish postdoctoral training programs for health professionals.

(Pub. L. 94–437, title I, § 106, Sept. 30, 1976, 90 Stat. 1404; Pub. L. 100–713, title I, § 105, Nov. 23, 1988, 102 Stat. 4787; Pub. L. 102–573, title I, §§ 104(a), 115, Oct. 29, 1992, 106 Stat. 4533, 4543.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–573, § 104(a), inserted ''nurses,'' after ''physicians, dentists,''.

Subsec. (b). Pub. L. 102–573, § 115, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

''(1) $500,000 for fiscal year 1989,

''(2) $526,300 for fiscal year 1990,

''(3) $553,800 for fiscal year 1991, and

''(4) $582,500 for fiscal year 1992.''

1988—Subsec. (b). Pub. L. 100–713 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''There are authorized to be appropriated for the purpose of this section: $100,000 for fiscal year 1978, $200,000 for fiscal year 1979, and $250,000 for fiscal year 1980. For fiscal years 1981, 1982, 1983, and 1984 there are authorized to be appropriated for the purpose of this section such sums as may be specifically authorized by an Act enacted after this chapter.''

§ 1616. Community Health Representative Program

(a) Under the authority of section 13 of this title, the Secretary shall maintain a Community Health Representative Program under which the Service—

(1) provides for the training of Indians as health paraprofessionals, and

(2) uses such paraprofessionals in the provision of health care, health promotion, and disease prevention services to Indian communities.

(b) The Secretary, acting through the Community Health Representative Program of the Service, shall—

(1) provide a high standard of training for paraprofessionals to Community Health Representatives to ensure that the Community Health Representatives provide quality health care, health promotion, and disease prevention services to the Indian communities served by such Program,

(2) in order to provide such training, develop and maintain a curriculum that—

(A) combines education in the theory of health care with supervised practical experience in the provision of health care, and

(B) provides instruction and practical experience in health promotion and disease prevention activities, with appropriate consideration given to lifestyle factors that have an impact on Indian health status, such as alcoholism, family dysfunction, and poverty,

(3) maintain a system which identifies the needs of Community Health Representatives for continuing education in health care, health promotion, and disease prevention and maintain programs that meet the needs for such continuing education,

(4) maintain a system that provides close supervision of Community Health Representatives,

(5) maintain a system under which the work of Community Health Representatives is reviewed and evaluated, and

(6) promote traditional health care practices of the Indian tribes served consistent with the Service standards for the provision of health care, health promotion, and disease prevention.

(Pub. L. 94–437, title I, § 107, as added Pub. L. 100–713, title I, § 107, Nov. 23, 1988, 102 Stat. 4788; amended Pub. L. 102–573, title I, § 105, Oct. 29, 1992, 106 Stat. 4535.)

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102–573, § 105(1), inserted ''and maintain'' in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 102–573, § 105(2), inserted at end ''with appropriate consideration given to lifestyle factors that have an impact on Indian health status, such as alcoholism, family dysfunction, and poverty,''.

Subsec. (b)(3). Pub. L. 102–573, § 105(3), substituted ''maintain'' for ''develop'' in two places.

Subsec. (b)(4). Pub. L. 102–573, § 105(4), struck out ''develop and'' before ''maintain''.

Subsec. (b)(5). Pub. L. 102–573, § 105(3), substituted ''maintain'' for ''develop''.

§ 1616a. Indian Health Service Loan Repayment Program

(a) Establishment

(1) The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the ''Loan Repayment Program'') in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

(2) For the purposes of this section—

(A) the term ''Indian health program'' means any health program or facility funded, in whole or part, by the Service for the benefit of Indians and administered—

(i) directly by the Service;

(ii) by any Indian tribe or tribal or Indian organization pursuant to a contract under—

(I) the Indian Self-Determination Act [25 U.S.C. 450f et seq.], or

(II) section 23 of the Act of April 30, 1908[1] (25 U.S.C. 47), popularly known as the ''Buy-Indian'' Act; or

(iii) by an urban Indian organization pursuant to subchapter IV of this chapter; and

(B) the term ''State'' has the same meaning given such term in section 254d(i)(4)[1] of title 42.

(b) Eligibility

To be eligible to participate in the Loan Repayment Program, an individual must—

(1)(A) be enrolled—

(i) in a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

(ii) in an approved graduate training program in a health profession; or

(B) have—

(i) a degree in a health profession; and

(ii) a license to practice a health profession in a State;

(2)(A) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service;

(B) be eligible for selection for civilian service in the Regular or Reserve Corps of the Public Health Service;

(C) meet the professional standards for civil service employment in the Indian Health Service; or

(D) be employed in an Indian health program without a service obligation; and

(3) submit to the Secretary an application for a contract described in subsection (f) of this section.

(c) Application and contract forms

(1) In disseminating application forms and contract forms to individuals desiring to participate in the Loan Repayment Program, the Secretary shall include with such forms a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under subsection (*l*) of this section in the case of the individual's breach of the contract. The Secretary shall provide such individuals with sufficient information regarding the advantages and disadvantages of service as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or a civilian employee of the Indian Health Service to enable the individual to make a decision on an informed basis.

(2) The application form, contract form, and all other information furnished by the Secretary under this section shall be written in a manner calculated to be understood by the average individual applying to participate in the Loan Repayment Program.

(3) The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Loan Repayment Program on a date sufficiently early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

(d) Vacancies; priority

(1) Consistent with paragraph (3), the Secretary, acting through the Service and in accordance with subsection (k) of this section, shall annually—

(A) identify the positions in each Indian health program for which there is a need or a vacancy, and

(B) rank those positions in order of priority.

(2) Consistent with the priority determined under paragraph (1), the Secretary, in determining which applications under the Loan Repayment Program to approve (and which contracts to accept), shall give priority to applications made by—

(A) Indians; and

(B) individuals recruited through the efforts of Indian tribes or tribal or Indian organizations.

(3)(A) Subject to subparagraph (B), of the total amounts appropriated for each of the fiscal years 1993, 1994, and 1995 for loan repayment contracts under this section, the Secretary shall provide that—

(i) not less than 25 percent be provided to applicants who are nurses, nurse practitioners, or nurse midwives; and

(ii) not less than 10 percent be provided to applicants who are mental health professionals (other than applicants described in clause (i)).

(B) The requirements specified in clause (i) or clause (ii) of subparagraph (A) shall not apply if

[1] See References in Text note below.

the Secretary does not receive the number of applications from the individuals described in clause (i) or clause (ii), respectively, necessary to meet such requirements.

(e) Approval

(1) An individual becomes a participant in the Loan Repayment Program only upon the Secretary and the individual entering into a written contract described in subsection (f) of this section.

(2) The Secretary shall provide written notice to an individual promptly on—

(A) the Secretary's approving, under paragraph (1), of the individual's participation in the Loan Repayment Program, including extensions resulting in an aggregate period of obligated service in excess of 4 years; or

(B) the Secretary's disapproving an individual's participation in such Program.

(f) Contract terms

The written contract referred to in this section between the Secretary and an individual shall contain—

(1) an agreement under which—

(A) subject to paragraph (3), the Secretary agrees—

(i) to pay loans on behalf of the individual in accordance with the provisions of this section, and

(ii) to accept (subject to the availability of appropriated funds for carrying out this section) the individual into the Service or place the individual with a tribe or Indian organization as provided in subparagraph (B)(iii), and

(B) subject to paragraph (3), the individual agrees—

(i) to accept loan payments on behalf of the individual;

(ii) in the case of an individual described in subsection (b)(1) of this section—

(I) to maintain enrollment in a course of study or training described in subsection (b)(1)(A) of this section until the individual completes the course of study or training, and

(II) while enrolled in such course of study or training, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study or training);

(iii) to serve for a time period (hereinafter in this section referred to as the ''period of obligated service'') equal to 2 years or such longer period as the individual may agree to serve in the full-time clinical practice of such individual's profession in an Indian health program to which the individual may be assigned by the Secretary;

(2) a provision permitting the Secretary to extend for such longer additional periods, as the individual may agree to, the period of obligated service agreed to by the individual under paragraph (1)(B)(iii);

(3) a provision that any financial obligation of the United States arising out of a contract entered into under this section and any obligation of the individual which is conditioned thereon is contingent upon funds being appropriated for loan repayments under this section;

(4) a statement of the damages to which the United States is entitled under subsection (*l*) of this section for the individual's breach of the contract; and

(5) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with this section.

(g) Loan repayment purposes; maximum amount; tax liability reimbursement; schedule of payments

(1) A loan repayment provided for an individual under a written contract under the Loan Repayment Program shall consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for—

(A) tuition expenses;

(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and

(C) reasonable living expenses as determined by the Secretary.

(2)(A) For each year of obligated service that an individual contracts to serve under subsection (f) of this section the Secretary may pay up to $35,000 (or an amount equal to the amount specified in section 254*l*–1(g)(2)(A) of title 42) on behalf of the individual for loans described in paragraph (1). In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—

(i) affects the ability of the Secretary to maximize the number of contracts that can be provided under the Loan Repayment Program from the amounts appropriated for such contracts;

(ii) provides an incentive to serve in Indian health programs with the greatest shortages of health professionals; and

(iii) provides an incentive with respect to the health professional involved remaining in an Indian health program with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the Loan Repayment Program.

(B) Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made no later than the end of the fiscal year in which the individual completes such year of service.

(3) For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual, the Secretary—

(A) in addition to such payments, may make payments to the individual in an amount not less than 20 percent and not more than 39 percent of the total amount of loan repayments made for the taxable year involved; and

(B) may make such additional payments as the Secretary determines to be appropriate with respect to such purpose.

(4) The Secretary may enter into an agreement with the holder of any loan for which payments are made under the Loan Repayment Program to establish a schedule for the making of such payments.

(h) Effect on employment ceiling of Department of Health and Human Services

Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic training, shall not be counted against any employment ceiling affecting the Department of Health and Human Services.

(i) Recruiting programs

The Secretary shall conduct recruiting programs for the Loan Repayment Program and other health professional programs of the Service at educational institutions training health professionals or specialists identified in subsection (a) of this section.

(j) Prohibition of assignment to other government departments

Section 215 of title 42 shall not apply to individuals during their period of obligated service under the Loan Repayment Program.

(k) Staff needs of health programs administered by Indian tribes

The Secretary, in assigning individuals to serve in Indian health programs pursuant to contracts entered into under this section, shall—

(1) ensure that the staffing needs of Indian health programs administered by an Indian tribe or tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and

(2) give priority to assigning individuals to Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section.

(*l*) Voluntary termination of study or dismissal from educational institution; collection of damages

(1) An individual who has entered into a written contract with the Secretary under this section and who—

(A) is enrolled in the final year of a course of study and who—

(i) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary);

(ii) voluntarily terminates such enrollment; or

(iii) is dismissed from such educational institution before completion of such course of study; or

(B) is enrolled in a graduate training program, fails to complete such training program, and does not receive a waiver from the Secretary under subsection (b)(1)(B)(ii) of this section,

shall be liable, in lieu of any service obligation arising under such contract, to the United States for the amount which has been paid on such individual's behalf under the contract.

(2) If, for any reason not specified in paragraph (1), an individual breaches his written contract under this section by failing either to begin, or complete, such individual's period of obligated service in accordance with subsection (f) of this section, the United States shall be entitled to recover from such individual an amount to be determined in accordance with the following formula:

$$A=3Z(t-s/t)$$

in which—

(A) ''A'' is the amount the United States is entitled to recover;

(B) ''Z'' is the sum of the amounts paid under this section to, or on behalf of, the individual and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States;

(C) ''t'' is the total number of months in the individual's period of obligated service in accordance with subsection (f) of this section; and

(D) ''s'' is the number of months of such period served by such individual in accordance with this section.

Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1395ccc of title 42.

(3)(A) Any amount of damages which the United States is entitled to recover under this subsection shall be paid to the United States within the 1-year period beginning on the date of the breach or such longer period beginning on such date as shall be specified by the Secretary.

(B) If damages described in subparagraph (A) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages—

(i) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

(ii) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

(C) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. Section 3718 of title 31 shall apply to any such contract to the extent not inconsistent with this subsection.

(m) Cancellation or waiver of obligations; bankruptcy discharge

(1) Any obligation of an individual under the Loan Repayment Program for service or payment of damages shall be canceled upon the death of the individual.

(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of

any obligation of service or payment by an individual under the Loan Repayment Program whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

(3) The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.

(4) Any obligation of an individual under the Loan Repayment Program for payment of damages may be released by a discharge in bankruptcy under title 11 only if such discharge is granted after the expiration of the 5-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

(n) Annual report

The Secretary shall submit to the President, for inclusion in each report required to be submitted to the Congress under section 1671 of this title, a report concerning the previous fiscal year which sets forth—

(1) the health professional positions maintained by the Service or by tribal or Indian organizations for which recruitment or retention is difficult;

(2) the number of Loan Repayment Program applications filed with respect to each type of health profession;

(3) the number of contracts described in subsection (f) of this section that are entered into with respect to each health profession;

(4) the amount of loan payments made under this section, in total and by health profession;

(5) the number of scholarship grants that are provided under section 1613a of this title with respect to each health profession;

(6) the amount of scholarship grants provided under section 1613a of this title, in total and by health profession;

(7) the number of providers of health care that will be needed by Indian health programs, by location and profession, during the three fiscal years beginning after the date the report is filed; and

(8) the measures the Secretary plans to take to fill the health professional positions maintained by the Service or by tribes or tribal or Indian organizations for which recruitment or retention is difficult.

(Pub. L. 94–437, title I, § 108, as added Pub. L. 100–713, title I, § 108, Nov. 23, 1988, 102 Stat. 4789; amended Pub. L. 102–573, title I, §§ 106(a)–(g)(1), (h), (i), 117(b)(3), title IX, § 902(2)(C), (D), Oct. 29, 1992, 106 Stat. 4535–4537, 4544, 4591.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a)(2)(A)(ii)(I), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

Section 23 of the Act of April 30, 1908, referred to in subsec. (a)(2)(A)(ii)(II), probably should be a reference to section 23 of act June 25, 1910, ch. 431, 36 Stat. 861, which is popularly known as the ''Buy Indian Act'', and is classified to section 47 of this title. Act Apr. 30, 1908, ch. 153, 35 Stat. 70, does not contain a section 23 but does have provisions (at 35 Stat. 71) similar to those in section 23 of act June 25, 1910, ch. 431, 36 Stat. 861.

Section 254d(i)(4) of title 42, referred to in subsec. (a)(2)(B), was redesignated section 254d(j)(4) of title 42 by Pub. L. 107–251, title III, § 310(b)(1), Oct. 26, 2002, 116 Stat. 1643.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–573, § 106(a)(1), substituted ''health professionals'' for ''physicians, dentists, nurses, nurse practitioners, physician assistants, clinical and counseling psychologists, graduates of schools of public health, graduates of schools of social work, and other health professionals''.

Subsec. (b)(1)(A)(i). Pub. L. 102–573, § 106(a)(2)(A)(i), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''as a full-time student in the final year of a course of study or program in an accredited institution, as determined by the Secretary, within any State; or''.

Subsec. (b)(1)(A)(ii). Pub. L. 102–573, § 106(a)(2)(A)(ii), substituted ''a health profession'' for ''medicine, osteopathy, dentistry, or other health profession''.

Subsec. (b)(1)(B). Pub. L. 102–573, § 106(a)(2)(B), in cl. (i), substituted ''a degree in a health profession; and'' for ''a degree in medicine, osteopathy, dentistry, or other health profession;'', redesignated cl. (iii) as (ii) and substituted ''a health profession'' for ''medicine, osteopathy, dentistry, or other health profession'', and struck out former cl. (ii) which read as follows: ''completed an approved graduate training program in medicine, osteopathy, dentistry, or other health profession in a State, except that the Secretary may waive the completion requirement of this clause for good cause; and''.

Subsec. (b)(2) to (4). Pub. L. 102–573, § 106(a)(2)(C), inserted ''and'' at end of par. (2)(D), added par. (3), and struck out former pars. (3) and (4) which read as follows:

''(3) submit an application to participate in the Loan Repayment Program; and

''(4) sign and submit to the Secretary, at the time of submission of such application, a written contract (described in subsection (f) of this section) to accept repayment of educational loans and to serve (in accordance with this section) for the applicable period of obligated service in an Indian health program.''

Subsec. (d)(1). Pub. L. 102–573, § 106(b)(1), substituted ''Consistent with paragraph (3), the'' for ''The''.

Subsec. (d)(1)(A). Pub. L. 102–573, § 902(2)(C), substituted ''Indian health'' for ''Indian Health''.

Subsec. (d)(3). Pub. L. 102–573, § 106(b)(2), added par. (3).

Subsec. (e)(1). Pub. L. 102–573, § 106(c), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''An individual becomes a participant in the Loan Repayment Program only on the Secretary's approval of the individual's application submitted under subsection (b)(3) of this section and the Secretary's acceptance of the contract submitted by the individual under subsection (b)(4) of this section.''

Subsec. (e)(2)(A). Pub. L. 102–573, § 106(d), inserted '', including extensions resulting in an aggregate period of obligated service in excess of 4 years'' before ''; or''.

Subsec. (g)(1). Pub. L. 102–573, § 106(e), in introductory provisions, substituted ''loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for'' for ''loans received by the individual for''.

Subsec. (g)(2)(A). Pub. L. 102–573, § 106(f), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Except as provided in subparagraph (B) and paragraph (3), for each year of obligated service for which an individual contracts to serve under subsection (f) of this section, the Secretary may pay up to

$25,000 on behalf of the individual for loans described in paragraph (1).''

Subsec. (g)(3). Pub. L. 102–573, § 106(g)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In addition to payments made under paragraph (2), in any case in which payments on behalf of an individual under the Loan Repayment Program result in an increase in Federal, State, or local income tax liability for such individual, the Secretary may, on the request of such individual, make payments to such individual in a reasonable amount, as determined by the Secretary, to reimburse such individual for all or part of the increased tax liability of the individual.''

Subsec. (i). Pub. L. 102–573, § 902(2)(D), substituted ''health professional programs of the Service'' for ''Service manpower programs''.

Subsec. (k). Pub. L. 102–573, § 106(h), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: ''The Secretary shall ensure that the staffing needs of Indian health programs administered by any Indian tribe or tribal or Indian organization receive consideration on an equal basis with programs that are administered directly by the Service.''

Subsec. (n). Pub. L. 102–573, § 106(i), amended subsec. (n) generally. Prior to amendment, subsec. (n) consisted of pars. (1) and (2) requiring submission of annual reports to Congress by the first of March and the first of July of each year.

Subsec. (*o*). Pub. L. 102–573, § 117(b)(3), struck out subsec. (*o*) which read as follows: ''There are authorized to be appropriated such sums as may be necessary for each fiscal year to carry out the provisions of this section.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 106(g)(2) of Pub. L. 102–573 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to contracts under section 108 of the Indian Health Care Improvement Act [this section] entered into on or after the date of enactment of this Act [Oct. 29, 1992].''

§ 1616a–1. Scholarship and Loan Repayment Recovery Fund

(a) Establishment

There is established in the Treasury of the United States a fund to be known as the Indian Health Scholarship and Loan Repayment Recovery Fund (hereafter in this section referred to as the ''Fund''). The Fund shall consist of such amounts as may be appropriated to the Fund under subsection (b) of this section. Amounts appropriated for the Fund shall remain available until expended.

(b) Authorization of appropriations

For each fiscal year, there is authorized to be appropriated to the Fund an amount equal to the sum of—

(1) the amount collected during the preceding fiscal year by the Federal Government pursuant to—

(A) the liability of individuals under subparagraph (A) or (B) of section 1613a(b)(5) of this title for the breach of contracts entered into under section 1613a of this title; and

(B) the liability of individuals under section 1616a(*l*) of this title for the breach of contracts entered into under section 1616a of this title; and

(2) the aggregate amount of interest accruing during the preceding fiscal year on obligations held in the Fund pursuant to subsection (d) of this section and the amount of proceeds from the sale or redemption of such obligations during such fiscal year.

(c) Use of funds

(1) Amounts in the Fund and available pursuant to appropriation Acts may be expended by the Secretary, acting through the Service, to make payments to an Indian tribe or tribal organization administering a health care program pursuant to a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.]—

(A) to which a scholarship recipient under section 1613a of this title or a loan repayment program participant under section 1616a of this title has been assigned to meet the obligated service requirements pursuant to[1] sections; and

(B) that has a need for a health professional to provide health care services as a result of such recipient or participant having breached the contract entered into under section 1613a of this title or section 1616a of this title.

(2) An Indian tribe or tribal organization receiving payments pursuant to paragraph (1) may expend the payments to recruit and employ, directly or by contract, health professionals to provide health care services.

(d) Investment of excess funds

(1) The Secretary of the Treasury shall invest such amounts of the Fund as such Secretary determines are not required to meet current withdrawals from the Fund. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price.

(2) Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(Pub. L. 94–437, title I, § 108A, as added Pub. L. 102–573, title I, § 110, Oct. 29, 1992, 106 Stat. 4538.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (c)(1), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 1616b. Recruitment activities

(a) The Secretary may reimburse health professionals seeking positions in the Service, including individuals considering entering into a contract under section 1616a of this title, and their spouses, for actual and reasonable expenses incurred in traveling to and from their places of residence to an area in which they may be assigned for the purpose of evaluating such area with respect to such assignment.

(b) The Secretary, acting through the Service, shall assign one individual in each area office to be responsible on a full-time basis for recruitment activities.

(Pub. L. 94–437, title I, § 109, as added Pub. L. 100–713, title I, § 108, Nov. 23, 1988, 102 Stat. 4794; amended Pub. L. 102–573, title I, § 107, Oct. 29, 1992, 106 Stat. 4538.)

[1] So in original. Probably should be ''to such''.

AMENDMENTS

1992—Pub. L. 102–573, § 107(1), substituted ''Recruitment activities'' for ''Travel expenses for recruitment'' in section catchline.

Subsec. (b). Pub. L. 102–573, § 107(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''There are authorized to be appropriated $100,000 for each of the fiscal years 1990, 1991, and 1992, for the purpose of carrying out the provisions of this section.''

§ 1616c. Tribal recruitment and retention program

(a) Projects funded on competitive basis

The Secretary, acting through the Service, shall fund, on a competitive basis, projects to enable Indian tribes and tribal and Indian organizations to recruit, place, and retain health professionals to meet the staffing needs of Indian health programs (as defined in section 1616a(a)(2) of this title).

(b) Eligibility

(1) Any Indian tribe or tribal or Indian organization may submit an application for funding of a project pursuant to this section.

(2) Indian tribes and tribal and Indian organizations under the authority of the Indian Self-Determination Act [25 U.S.C. 450f et seq.] shall be given an equal opportunity with programs that are administered directly by the Service to compete for, and receive, grants under subsection (a) of this section for such projects.

(Pub. L. 94–437, title I, § 110, as added Pub. L. 100–713, title I, § 108, Nov. 23, 1988, 102 Stat. 4794; amended Pub. L. 102–573, title I, § 117(b)(4), Oct. 29, 1992, 106 Stat. 4544.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (b)(2), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–573 struck out subsec. (c) which authorized appropriations for fiscal years 1990 to 1992.

§ 1616d. Advanced training and research

(a) Establishment of program

The Secretary, acting through the Service, shall establish a program to enable health professionals to pursue advanced training or research in areas of study for which the Secretary determines a need exists. In selecting participants for a program established under this subsection, the Secretary, acting through the Service, shall give priority to applicants who are employed by the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations, at the time of the submission of the applications.

(b) Obligated service

An individual who participates in a program under subsection (a) of this section, where the educational costs are borne by the Service, shall incur an obligation to serve in an Indian health program (as defined in section 1616a(a)(2) of this title) for a period of obligated service equal to at least the period of time during which the individual participates in such program. In the event that the individual fails to complete such obligated service, the individual shall be liable to the United States for the period of service remaining. In such event, with respect to individuals entering the program after October 29, 1992, the United States shall be entitled to recover from such individual an amount to be determined in accordance with the formula specified in subsection (*l*) of section 1616a of this title in the manner provided for in such subsection.

(c) Eligibility

Health professionals from Indian tribes and tribal and Indian organizations under the authority of the Indian Self-Determination Act [25 U.S.C. 450f et seq.] shall be given an equal opportunity to participate in the program under subsection (a) of this section.

(Pub. L. 94–437, title I, § 111, as added Pub. L. 100–713, title I, § 108, Nov. 23, 1988, 102 Stat. 4795; amended Pub. L. 102–573, title I, § 108, Oct. 29, 1992, 106 Stat. 4538; Pub. L. 103–435, § 16(a), Nov. 2, 1994, 108 Stat. 4573.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (c), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–435, § 16(a)(1), struck out ''who have worked in an Indian health program (as defined in section 1616a(a)(2) of this title) for a substantial period of time'' after ''health professionals'' and inserted at end ''In selecting participants for a program established under this subsection, the Secretary, acting through the Service, shall give priority to applicants who are employed by the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations, at the time of the submission of the applications.''

Subsec. (b). Pub. L. 103–435, § 16(a)(2), inserted ''(as defined in section 1616a(a)(2) of this title)'' after ''Indian health program''.

1992—Subsec. (b). Pub. L. 102–573, § 108(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The Secretary shall develop standards for appropriate recoupment for such remaining service.''

Subsec. (d). Pub. L. 102–573, § 108(2), struck out subsec. (d) which directed Secretary to prescribe regulations to carry out this section.

§ 1616e. Nursing program

(a) Grants

The Secretary, acting through the Service, shall provide grants to—

(1) public or private schools of nursing,

(2) tribally controlled community colleges and tribally controlled postsecondary vocational institutions (as defined in section 2397h(2)[1] of title 20), and

(3) nurse midwife programs, and nurse practitioner programs, that are provided by any public or private institution,

[1] See References in Text note below.

for the purpose of increasing the number of nurses, nurse midwives, and nurse practitioners who deliver health care services to Indians.

(b) Purposes

Grants provided under subsection (a) of this section may be used to—

(1) recruit individuals for programs which train individuals to be nurses, nurse midwives, or nurse practitioners,

(2) provide scholarships to individuals enrolled in such programs that may pay the tuition charged for such program and other expenses incurred in connection with such program, including books, fees, room and board, and stipends for living expenses,

(3) provide a program that encourages nurses, nurse midwives, and nurse practitioners to provide, or continue to provide, health care services to Indians,

(4) provide a program that increases the skills of, and provides continuing education to, nurses, nurse midwives, and nurse practitioners, or

(5) provide any program that is designed to achieve the purpose described in subsection (a) of this section.

(c) Application

Each application for a grant under subsection (a) of this section shall include such information as the Secretary may require to establish the connection between the program of the applicant and a health care facility that primarily serves Indians.

(d) Preference

In providing grants under subsection (a) of this section, the Secretary shall extend a preference to—

(1) programs that provide a preference to Indians,

(2) programs that train nurse midwives or nurse practitioners,

(3) programs that are interdisciplinary, and

(4) programs that are conducted in cooperation with a center for gifted and talented Indian students established under section 2624(a)[1] of this title.

(e) Quentin N. Burdick American Indians Into Nursing Program

The Secretary shall provide one of the grants authorized under subsection (a) of this section to establish and maintain a program at the University of North Dakota to be known as the ''Quentin N. Burdick American Indians Into Nursing Program''. Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick Indian Health Programs established under section 1616g(b) of this title and the Quentin N. Burdick American Indians Into Psychology Program established under section 1621p(b) of this title.

(f) Service obligation

The active duty service obligation prescribed under section 254m of title 42 shall be met by each individual who receives training or assistance described in paragraph (1) or (2) of subsection (b) of this section that is funded by a grant provided under subsection (a) of this section. Such obligation shall be met by service—

(A) in the Indian Health Service;

(B) in a program conducted under a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.];

(C) in a program assisted under subchapter IV of this chapter; or

(D) in the private practice of nursing if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

(g) Authorization of appropriations

Beginning with fiscal year 1993, of the amounts appropriated under the authority of this subchapter for each fiscal year to be used to carry out this section, not less than $1,000,000 shall be used to provide grants under subsection (a) of this section for the training of nurse midwives, nurse anesthetists, and nurse practitioners.

(Pub. L. 94–437, title I, § 112, as added Pub. L. 100–713, title I, § 108, Nov. 23, 1988, 102 Stat. 4795; amended Pub. L. 102–573, title I, §§ 104(b), (c), 114(a), Oct. 29, 1992, 106 Stat. 4533, 4543.)

REFERENCES IN TEXT

Section 2397h of title 20, referred to in subsec. (a)(2), was omitted in the general amendment of chapter 44 (§ 2301 et seq.) of Title 20, Education, by Pub. L. 105–332, § 1(b), Oct. 31, 1998, 112 Stat. 3076.

Section 2624 of this title, referred to in subsec. (d)(4), was repealed by Pub. L. 103–382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976. See section 7454 of Title 20, Education.

The Indian Self-Determination Act, referred to in subsec. (f)(B), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–573, § 114(a), inserted ''and tribally controlled postsecondary vocational institutions (as defined in section 2397h(2) of title 20)'' after ''community colleges''.

Subsecs. (e), (f). Pub. L. 102–573, § 104(b), added subsec. (e) and redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 102–573, § 104(c), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows:

''(1) There are authorized to be appropriated for each of the fiscal years 1990, 1991, and 1992, $5,000,000 for the purpose of carrying out the provisions of this section.

''(2) Of the amounts appropriated under the authority of paragraph (1) for each fiscal year, the Secretary shall use at least $1,000,000 to provide grants under subsection (a) of this section for the training of nurse midwives.''

Pub. L. 102–573, § 104(b)(1), redesignated subsec. (f) as (g).

§ 1616e–1. Nursing school clinics

(a) Grants

In addition to the authority of the Secretary under section 1616e(a)(1) of this title, the Secretary, acting through the Service, is authorized to provide grants to public or private schools of nursing for the purpose of establishing, develop-

ing, operating, and administering clinics to address the health care needs of Indians, and to provide primary health care services to Indians who reside on or within 50 miles of Indian country, as defined in section 1151 of title 18.

(b) Purposes

Grants provided under subsection (a) of this section may be used to—

(1) establish clinics, to be run and staffed by the faculty and students of a grantee school, to provide primary care services in areas in or within 50 miles of Indian country (as defined in section 1151 of title 18);

(2) provide clinical training, program development, faculty enhancement, and student scholarships in a manner that would benefit such clinics; and

(3) carry out any other activities determined appropriate by the Secretary.

(c) Amount and conditions

The Secretary may award grants under this section in such amounts and subject to such conditions as the Secretary deems appropriate.

(d) Design

The clinics established under this section shall be designed to provide nursing students with a structured clinical experience that is similar in nature to that provided by residency training programs for physicians.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(f) Authorization to use amounts

Out of amounts appropriated to carry out this subchapter for each of the fiscal years 1993 through 2000 not more than $5,000,000 may be used to carry out this section.

(Pub. L. 94–437, title I, § 112A, as added Pub. L. 102–573, title I, § 104(f), Oct. 29, 1992, 106 Stat. 4534.)

§ 1616f. Tribal culture and history

(a) Program established

The Secretary, acting through the Service, shall establish a program under which appropriate employees of the Service who serve particular Indian tribes shall receive educational instruction in the history and culture of such tribes and in the history of the Service.

(b) Tribally controlled institutions

To the extent feasible, the program established under subsection (a) of this section shall—

(1) be carried out through tribally controlled colleges or universities (within the meaning of section 1801(a)(4) of this title) and tribally controlled postsecondary vocational institutions (as defined in section 2397h(2)[1] of title 20),

(2) be developed in consultation with the affected tribal government, and

(3) include instruction in Native American studies.

(Pub. L. 94–437, title I, § 113, as added Pub. L. 100–713, title I, § 109, Nov. 23, 1988, 102 Stat. 4796; amended Pub. L. 102–573, title I, §§ 114(b), 117(b)(5), Oct. 29, 1992, 106 Stat. 4543, 4544; Pub. L. 105–244, title IX, § 901(d), Oct. 7, 1998, 112 Stat. 1828; Pub. L. 110–315, title IX, § 941(k)(2)(I)(i), Aug. 14, 2008, 122 Stat. 3467.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 2397h of title 20, referred to in subsec. (b)(1), was omitted in the general amendment of chapter 44 (§ 2301 et seq.) of Title 20, Education, by Pub. L. 105–332, § 1(b), Oct. 31, 1998, 112 Stat. 3076.

AMENDMENTS

2008—Subsec. (b)(1). Pub. L. 110–315 substituted ''tribally controlled colleges or universities (within the meaning of section 1801(a)(4) of this title)'' for ''tribally-controlled community colleges (within the meaning of section 1801(4) of this title)''.

1998—Subsec. (b)(1). Pub. L. 105–244 made technical amendment to reference in original act which appears in text as reference to section 1801(4) of this title.

1992—Subsec. (b)(1). Pub. L. 102–573, § 114(b), inserted before comma at end ''and tribally controlled postsecondary vocational institutions (as defined in section 2397h(2) of title 20)''.

Subsec. (c). Pub. L. 102–573, § 117(b)(5), struck out subsec. (c) which authorized appropriations for fiscal years 1990 to 1992.

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.

§ 1616g. INMED program

(a) Grants

The Secretary is authorized to provide grants to at least 3 colleges and universities for the purpose of maintaining and expanding the Native American health careers recruitment program known as the ''Indians into Medicine Program'' (hereinafter in this section referred to as ''INMED'') as a means of encouraging Indians to enter the health professions.

(b) University of North Dakota

The Secretary shall provide one of the grants authorized under subsection (a) of this section to maintain the INMED program at the University of North Dakota, to be known as the ''Quentin N. Burdick Indian Health Programs'', unless the Secretary makes a determination, based upon program reviews, that the program is not meeting the purposes of this section. Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick American Indians Into Psychology Program established under section 1621p(b) of this title and the Quentin N. Burdick American Indians Into Nursing Program established under section 1616e(e) of this title.

(c) Regulations; contents of recruitment program

(1) The Secretary shall develop regulations for the competitive awarding of the grants provided under this section.

(2) Applicants for grants provided under this section shall agree to provide a program which—

(A) provides outreach and recruitment for health professions to Indian communities including elementary, secondary and community colleges located on Indian reservations which will be served by the program,

(B) incorporates a program advisory board comprised of representatives from the tribes and communities which will be served by the program,

(C) provides summer preparatory programs for Indian students who need enrichment in the subjects of math and science in order to pursue training in the health professions,

(D) provides tutoring, counseling and support to students who are enrolled in a health career program of study at the respective college or university, and

(E) to the maximum extent feasible, employs qualified Indians in the program.

(d) Report to Congress

By no later than the date that is 3 years after November 23, 1988, the Secretary shall submit a report to the Congress on the program established under this section including recommendations for expansion or changes to the program.

(Pub. L. 94–437, title I, § 114, as added Pub. L. 100–713, title I, § 109, Nov. 23, 1988, 102 Stat. 4796; amended Pub. L. 102–573, title I, §§ 109, 117(b)(6), Oct. 29, 1992, 106 Stat. 4538, 4544.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–573, § 109, inserted ''to be known as the 'Quentin N. Burdick Indian Health Programs','' after ''North Dakota,'' and ''Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick American Indians Into Psychology Program established under section 1621p(b) of this title and the Quentin N. Burdick American Indians Into Nursing Program established under section 1616e(e) of this title.'' at end.

Subsec. (e). Pub. L. 102–573, § 117(b)(6), struck out subsec. (e) which authorized appropriations for fiscal years 1990 to 1992.

§ 1616h. Health training programs of community colleges

(a) Grants

(1) The Secretary, acting through the Service, shall award grants to community colleges for the purpose of assisting the community college in the establishment of programs which provide education in a health profession leading to a degree or diploma in a health profession for individuals who desire to practice such profession on an Indian reservation or in a tribal clinic.

(2) The amount of any grant awarded to a community college under paragraph (1) for the first year in which such a grant is provided to the community college shall not exceed $100,000.

(b) Eligibility

(1) The Secretary, acting through the Service, shall award grants to community colleges that have established a program described in subsection (a)(1) of this section for the purpose of maintaining the program and recruiting students for the program.

(2) Grants may only be made under this section to a community college which—

(A) is accredited,

(B) has access to a hospital facility, Service facility, or hospital that could provide training of nurses or health professionals,

(C) has entered into an agreement with an accredited college or university medical school, the terms of which—

(i) provide a program that enhances the transition and recruitment of students into advanced baccalaureate or graduate programs which train health professionals, and

(ii) stipulate certifications necessary to approve internship and field placement opportunities at service unit facilities of the Service or at tribal health facilities,

(D) has a qualified staff which has the appropriate certifications, and

(E) is capable of obtaining State or regional accreditation of the program described in subsection (a)(1) of this section.

(c) Agreements and technical assistance

The Secretary shall encourage community colleges described in subsection (b)(2) of this section to establish and maintain programs described in subsection (a)(1) of this section by—

(1) entering into agreements with such colleges for the provision of qualified personnel of the Service to teach courses of study in such programs, and

(2) providing technical assistance and support to such colleges.

(d) Advanced training

Any program receiving assistance under this section that is conducted with respect to a health profession shall also offer courses of study which provide advanced training for any health professional who—

(1) has already received a degree or diploma in such health profession, and

(2) provides clinical services on an Indian reservation, at a Service facility, or at a tribal clinic.

Such courses of study may be offered in conjunction with the college or university with which the community college has entered into the agreement required under subsection (b)(2)(C) of this section.

(e) Definitions

For purposes of this section—

(1) The term ''community college'' means—

(A) a junior or community college that is a tribally controlled college or university, or

(B) a junior or community college.

(2) The term ''tribally controlled college or university'' has the meaning given to such term by section 1801(a)(4) of this title.

(3) The term ''junior or community college'' has the meaning given to such term by section 1058(e)[1] of title 20.

(Pub. L. 94–437, title I, § 115, as added Pub. L. 100–713, title I, § 109, Nov. 23, 1988, 102 Stat. 4797; amended Pub. L. 102–573, title I, § 117(b)(7), Oct. 29, 1992, 106 Stat. 4544; Pub. L. 105–244, title IX, § 901(d), Oct. 7, 1998, 112 Stat. 1828; Pub. L. 110–315, title IX, § 941(k)(2)(I)(ii), Aug. 14, 2008, 122 Stat. 3467.)

REFERENCES IN TEXT

Section 1058 of title 20, referred to in subsec. (e)(3), was amended by Pub. L. 105–244, title III, § 303(b)(1), Oct. 7, 1998, 112 Stat. 1639, which redesignated subsecs. (d) and (e) as (e) and (f), respectively.

[1] See References in Text note below.

AMENDMENTS

2008—Subsec. (e)(1)(A). Pub. L. 110–315, § 941(k)(2)(I)(ii)(I), substituted ''a junior or community college that is a tribally controlled college or university'' for ''a tribally controlled community college''.

Subsec. (e)(2). Pub. L. 110–315, § 941(k)(2)(I)(ii)(II), added par. (2) and struck out former par. (2) which read as follows: ''The term 'tribally controlled community college' has the meaning given to such term by section 1801(4) of this title.''

1998—Subsec. (e)(2). Pub. L. 105–244 made technical amendment to reference in original act which appears in text as reference to section 1801(4) of this title.

1992—Subsec. (f). Pub. L. 102–573 struck out subsec. (f) which authorized appropriations for fiscal years 1990 to 1992.

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.

§ 1616i. Additional incentives for health professionals

(a) Incentive special pay

The Secretary may provide the incentive special pay authorized under section 302(b) of title 37 to civilian medical officers of the Indian Health Service who are assigned to, and serving in, positions included in the list established under subsection (b)(1) of this section for which recruitment or retention of personnel is difficult.

(b) List of positions; bonus pay

(1) The Secretary shall establish and update on an annual basis a list of positions of health care professionals employed by, or assigned to, the Service for which recruitment or retention is difficult.

(2)(A) The Secretary may pay a bonus to any commissioned officer or civil service employee, other than a commissioned medical officer, dental officer, optometrist, and veterinarian, who is employed in or assigned to, and serving in, a position in the Service included in the list established by the Secretary under paragraph (1).

(B) The total amount of bonus payments made by the Secretary under this paragraph to any employee during any 1-year period shall not exceed $2,000.

(c) Work schedules

The Secretary may establish programs to allow the use of flexible work schedules, and compressed work schedules, in accordance with the provisions of subchapter II of chapter 61 of title 5, for health professionals employed by, or assigned to, the Service.

(Pub. L. 94–437, title I, § 116, as added Pub. L. 100–713, title I, § 109, Nov. 23, 1988, 102 Stat. 4798; amended Pub. L. 102–573, title I, § 117(b)(8), title IX, § 901(1), Oct. 29, 1992, 106 Stat. 4544, 4590.)

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–573, § 901(1), struck out subsec. (d) which required a report to Congress by the Secretary no later than 6 months after Nov. 23, 1988, relating to overtime pay for individuals employed by the Service.

Subsec. (e). Pub. L. 102–573, § 117(b)(8), struck out subsec. (e) which authorized appropriations for fiscal years 1990 to 1992.

§ 1616j. Retention bonus

(a) Eligibility

The Secretary may pay a retention bonus to any physician or nurse employed by, or assigned to, and serving in, the Service either as a civilian employee or as a commissioned officer in the Regular or Reserve Corps of the Public Health Service who—

(1) is assigned to, and serving in, a position included in the list established under section 1616i(b)(1) of this title for which recruitment or retention of personnel is difficult,

(2) the Secretary determines is needed by the Service,

(3) has—

(A) completed 3 years of employment with the Service, or

(B) completed any service obligations incurred as a requirement of—

(i) any Federal scholarship program, or

(ii) any Federal education loan repayment program, and

(4) enters into an agreement with the Service for continued employment for a period of not less than 1 year.

(b) Minimum award percentage to nurses

Beginning with fiscal year 1993, not less than 25 percent of the retention bonuses awarded each year under subsection (a) of this section shall be awarded to nurses.

(c) Rates; maximum rate

The Secretary may establish rates for the retention bonus which shall provide for a higher annual rate for multiyear agreements than for single year agreements referred to in subsection (a)(4) of this section, but in no event shall the annual rate be more than $25,000 per annum.

(d) Time of payment

The retention bonus for the entire period covered by the agreement described in subsection (a)(4) of this section shall be paid at the beginning of the agreed upon term of service.

(e) Refund; interest

Any physician or nurse failing to complete the agreed upon term of service, except where such failure is through no fault of the individual, shall be obligated to refund to the Government the full amount of the retention bonus for the period covered by the agreement, plus interest as determined by the Secretary in accordance with section 1616a(*l*)(2)(B) of this title.

(f) Physicians and nurses employed under Indian Self-Determination Act

The Secretary may pay a retention bonus to any physician or nurse employed by an organization providing health care services to Indians pursuant to a contract under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] if such physician or nurse is serving in a position which the Secretary determines is—

(1) a position for which recruitment or retention is difficult; and

(2) necessary for providing health care services to Indians.

(Pub. L. 94–437, title I, § 117, as added Pub. L. 100–713, title I, § 109, Nov. 23, 1988, 102 Stat. 4799;

amended Pub. L. 102–573, title I, § 104(d), Oct. 29, 1992, 106 Stat. 4533.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (f), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Subsecs. (b) to (f). Pub. L. 102–573 added subsec. (b), redesignated former subsecs. (b) to (e) as (c) to (f), respectively, and amended subsec. (f) generally, substituting provisions relating to physicians and nurses employed under the Indian Self-Determination Act for provisions which authorized appropriations for fiscal years 1990 to 1992.

§ 1616k. Nursing residency program

(a) Establishment

The Secretary, acting through the Service, shall establish a program to enable licensed practical nurses, licensed vocational nurses, and registered nurses who are working in an Indian health program (as defined in section 1616a(a)(2)(A) of this title), and have done so for a period of not less than one year, to pursue advanced training.

(b) Program components

Such program shall include a combination of education and work study in an Indian health program (as defined in section 1616a(a)(2)(A) of this title) leading to an associate or bachelor's degree (in the case of a licensed practical nurse or licensed vocational nurse) or a bachelor's degree (in the case of a registered nurse) or a Master's degree.

(c) Service obligation of program participant

An individual who participates in a program under subsection (a) of this section, where the educational costs are paid by the Service, shall incur an obligation to serve in an Indian health program for a period of obligated service equal to at least three times the period of time during which the individual participates in such program. In the event that the individual fails to complete such obligated service, the United States shall be entitled to recover from such individual an amount determined in accordance with the formula specified in subsection (*l*) of section 1616a of this title in the manner provided for in such subsection.

(Pub. L. 94–437, title I, § 118, as added Pub. L. 102–573, title I, § 104(e), Oct. 29, 1992, 106 Stat. 4534; amended Pub. L. 103–435, § 16(b), Nov. 2, 1994, 108 Stat. 4573.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–435 inserted before period at end "or a Master's degree".

§ 1616*l*. Community Health Aide Program for Alaska

(a) Maintenance of Program

Under the authority of section 13 of this title, the Secretary shall maintain a Community Health Aide Program in Alaska under which the Service—

(1) provides for the training of Alaska Natives as health aides or community health practitioners;

(2) uses such aides or practitioners in the provision of health care, health promotion, and disease prevention services to Alaska Natives living in villages in rural Alaska; and

(3) provides for the establishment of teleconferencing capacity in health clinics located in or near such villages for use by community health aides or community health practitioners.

(b) Training; curriculum; Certification Board

The Secretary, acting through the Community Health Aide Program of the Service, shall—

(1) using trainers accredited by the Program, provide a high standard of training to community health aides and community health practitioners to ensure that such aides and practitioners provide quality health care, health promotion, and disease prevention services to the villages served by the Program;

(2) in order to provide such training, develop a curriculum that—

(A) combines education in the theory of health care with supervised practical experience in the provision of health care;

(B) provides instruction and practical experience in the provision of acute care, emergency care, health promotion, disease prevention, and the efficient and effective management of clinic pharmacies, supplies, equipment, and facilities; and

(C) promotes the achievement of the health status objectives specified in section 1602(b) of this title;

(3) establish and maintain a Community Health Aide Certification Board to certify as community health aides or community health practitioners individuals who have successfully completed the training described in paragraph (1) or can demonstrate equivalent experience;

(4) develop and maintain a system which identifies the needs of community health aides and community health practitioners for continuing education in the provision of health care, including the areas described in paragraph (2)(B), and develop programs that meet the needs for such continuing education;

(5) develop and maintain a system that provides close supervision of community health aides and community health practitioners; and

(6) develop a system under which the work of community health aides and community health practitioners is reviewed and evaluated to assure the provision of quality health care, health promotion, and disease prevention services.

(Pub. L. 94–437, title I, § 119, as added Pub. L. 102–573, title I, § 111, Oct. 29, 1992, 106 Stat. 4539.)

§ 1616m. Matching grants to tribes for scholarship programs

(a) In general

(1) The Secretary shall make grants to Indian tribes and tribal organizations for the purpose of assisting such tribes and tribal organizations in

educating Indians to serve as health professionals in Indian communities.

(2) Amounts available for grants under paragraph (1) for any fiscal year shall not exceed 5 percent of amounts available for such fiscal year for Indian Health Scholarships under section 1613a of this title.

(3) An application for a grant under paragraph (1) shall be in such form and contain such agreements, assurances, and information as the Secretary determines are necessary to carry out this section.

(b) Compliance with requirements

(1) An Indian tribe or tribal organization receiving a grant under subsection (a) of this section shall agree to provide scholarships to Indians pursuing education in the health professions in accordance with the requirements of this section.

(2) With respect to the costs of providing any scholarship pursuant to paragraph (1)—

(A) 80 percent of the costs of the scholarship shall be paid from the grant made under subsection (a) of this section to the Indian tribe or tribal organization; and

(B) 20 percent of such costs shall be paid from non-Federal contributions by the Indian tribe or tribal organization through which the scholarship is provided.

(3) In determining the amount of non-Federal contributions that have been provided for purposes of subparagraph (B) of paragraph (2), any amounts provided by the Federal Government to the Indian tribe or tribal organization involved or to any other entity shall not be included.

(4) Non-Federal contributions required by subparagraph (B) of paragraph (2) may be provided directly by the Indian tribe or tribal organization involved or through donations from public and private entities.

(c) Course of study in health professions

An Indian tribe or tribal organization shall provide scholarships under subsection (b) of this section only to Indians enrolled or accepted for enrollment in a course of study (approved by the Secretary) in one of the health professions described in section 1613a(a) of this title.

(d) Contract requirements

In providing scholarships under subsection (b) of this section, the Secretary and the Indian tribe or tribal organization shall enter into a written contract with each recipient of such scholarship. Such contract shall—

(1) obligate such recipient to provide service in an Indian health program (as defined in section 1616a(a)(2)(A) of this title), in the same service area where the Indian tribe or tribal organization providing the scholarship is located, for—

(A) a number of years equal to the number of years for which the scholarship is provided (or the part-time equivalent thereof, as determined by the Secretary), or for a period of 2 years, whichever period is greater; or

(B) such greater period of time as the recipient and the Indian tribe or tribal organization may agree;

(2) provide that the amount of such scholarship—

(A) may be expended only for—

(i) tuition expenses, other reasonable educational expenses, and reasonable living expenses incurred in attendance at the educational institution; and

(ii) payment to the recipient of a monthly stipend of not more than the amount authorized by section 254*l*(g)(1)(B) of title 42, such amount to be reduced pro rata (as determined by the Secretary) based on the number of hours such student is enrolled; and

(B) may not exceed, for any year of attendance for which the scholarship is provided, the total amount required for the year for the purposes authorized in subparagraph (A);

(3) require the recipient of such scholarship to maintain an acceptable level of academic standing (as determined by the educational institution in accordance with regulations issued by the Secretary); and

(4) require the recipient of such scholarship to meet the educational and licensure requirements necessary to be a physician, certified nurse practitioner, certified nurse midwife, or physician assistant.

(e) Breach of contract

(1) An individual who has entered into a written contract with the Secretary and an Indian tribe or tribal organization under subsection (d) of this section and who—

(A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),

(B) is dismissed from such educational institution for disciplinary reasons,

(C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract before the completion of such training, or

(D) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the Federal share of the amount which has been paid to him, or on his behalf, under the contract.

(2) If for any reason not specified in paragraph (1), an individual breaches his written contract by failing either to begin such individual's service obligation required under such contract or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula specified in subsection (*l*) of section 1616a of this title in the manner provided for in such subsection.

(3) The Secretary may carry out this subsection on the basis of information submitted by the tribes or tribal organizations involved, or on the basis of information collected through such other means as the Secretary determines to be appropriate.

(f) Nondiscriminatory practice

The recipient of a scholarship under subsection (b) of this section shall agree, in provid-

ing health care pursuant to the requirements of subsection (d)(1) of this section—

(1) not to discriminate against an individual seeking such care on the basis of the ability of the individual to pay for such care or on the basis that payment for such care will be made pursuant to the program established in title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] or pursuant to the program established in title XIX of such Act [42 U.S.C. 1396 et seq.]; and

(2) to accept assignment under section 1842(b)(3)(B)(ii) of the Social Security Act [42 U.S.C. 1395u(b)(3)(B)(ii)] for all services for which payment may be made under part B of title XVIII of such Act [42 U.S.C. 1395j et seq.], and to enter into an appropriate agreement with the State agency that administers the State plan for medical assistance under title XIX of such Act [42 U.S.C. 1396 et seq.] to provide service to individuals entitled to medical assistance under the plan.

(g) Payments for subsequent fiscal years

The Secretary may not make any payments under subsection (a) of this section to an Indian tribe or tribal organization for any fiscal year subsequent to the first fiscal year of such payments unless the Secretary determines that, for the immediately preceding fiscal year, the Indian tribe or tribal organization has complied with requirements of this section.

(Pub. L. 94–437, title I, § 120, as added Pub. L. 102–573, title I, § 112, Oct. 29, 1992, 106 Stat. 4540.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (f), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare, respectively. Part B of title XVIII of the Act is classified generally to part B (§ 1395j et seq.) of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

§ 1616n. Tribal health program administration

The Secretary shall, by contract or otherwise, provide training for individuals in the administration and planning of tribal health programs.

(Pub. L. 94–437, title I, § 121, as added Pub. L. 102–573, title I, § 113, Oct. 29, 1992, 106 Stat. 4542.)

§ 1616*o*. University of South Dakota pilot program

(a) Establishment

The Secretary may make a grant to the School of Medicine of the University of South Dakota (hereafter in this section referred to as ''USDSM'') to establish a pilot program on an Indian reservation at one or more service units in South Dakota to address the chronic manpower shortage in the Aberdeen Area of the Service.

(b) Purposes

The purposes of the program established pursuant to a grant provided under subsection (a) of this section are—

(1) to provide direct clinical and practical experience at a service unit to medical students and residents from USDSM and other medical schools;

(2) to improve the quality of health care for Indians by assuring access to qualified health care professionals; and

(3) to provide academic and scholarly opportunities for physicians, physician assistants, nurse practitioners, nurses, and other allied health professionals serving Indian people by identifying and utilizing all academic and scholarly resources of the region.

(c) Composition; designation

The pilot program established pursuant to a grant provided under subsection (a) of this section shall—

(1) incorporate a program advisory board composed of representatives from the tribes and communities in the area which will be served by the program; and

(2) shall be designated as an extension of the USDSM campus and program participants shall be under the direct supervision and instruction of qualified medical staff serving at the service unit who shall be members of the USDSM faculty.

(d) Coordination with other schools

The USDSM shall coordinate the program established pursuant to a grant provided under subsection (a) of this section with other medical schools in the region, nursing schools, tribal community colleges, and other health professional schools.

(e) Development of additional professional opportunities

The USDSM, in cooperation with the Service, shall develop additional professional opportunities for program participants on Indian reservations in order to improve the recruitment and retention of qualified health professionals in the Aberdeen Area of the Service.

(Pub. L. 94–437, title I, § 122, as added Pub. L. 102–573, title I, § 116, Oct. 29, 1992, 106 Stat. 4543.)

§ 1616p. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this subchapter.

(Pub. L. 94–437, title I, § 123, as added Pub. L. 102–573, title I, § 117(a), Oct. 29, 1992, 106 Stat. 4544.)

SUBCHAPTER II—HEALTH SERVICES

§ 1621. Indian Health Care Improvement Fund

(a) Approved expenditures

The Secretary is authorized to expend funds which are appropriated under the authority of this section, through the Service, for the purposes of—

(1) eliminating the deficiencies in health status and resources of all Indian tribes,

(2) eliminating backlogs in the provision of health care services to Indians,

(3) meeting the health needs of Indians in an efficient and equitable manner, and

(4) augmenting the ability of the Service to meet the following health service responsibil-

ities, either through direct or contract care or through contracts entered into pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.], with respect to those Indian tribes with the highest levels of health status and resource deficiencies:

(A) clinical care (direct and indirect) including clinical eye and vision care;

(B) preventive health, including screening mammography in accordance with section 1621k of this title;

(C) dental care (direct and indirect);

(D) mental health, including community mental health services, inpatient mental health services, dormitory mental health services, therapeutic and residential treatment centers, and training of traditional Indian practitioners;

(E) emergency medical services;

(F) treatment and control of, and rehabilitative care related to, alcoholism and drug abuse (including fetal alcohol syndrome) among Indians;

(G) accident prevention programs;

(H) home health care;

(I) community health representatives; and

(J) maintenance and repair.

(b) Effect on other appropriations; allocation to service units

(1) Any funds appropriated under the authority of this section shall not be used to offset or limit any appropriations made to the Service under section 13 of this title, or any other provision of law.

(2)(A) Funds appropriated under the authority of this section may be allocated on a service unit basis. The funds allocated to each service unit under this subparagraph shall be used by the service unit to reduce the health status and resource deficiency of each tribe served by such service unit.

(B) The apportionment of funds allocated to a service unit under subparagraph (A) among the health service responsibilities described in subsection (a)(4) of this section shall be determined by the Service in consultation with, and with the active participation of, the affected Indian tribes.

(c) Health resources deficiency levels

For purposes of this section—

(1) The term ''health status and resource deficiency'' means the extent to which—

(A) the health status objectives set forth in section 1602(b) of this title are not being achieved; and

(B) the Indian tribe does not have available to it the health resources it needs, taking into account the actual cost of providing health care services given local geographic, climatic, rural, or other circumstances.

(2) The health resources available to an Indian tribe include health resources provided by the Service as well as health resources used by the Indian tribe, including services and financing systems provided by any Federal programs, private insurance, and programs of State or local governments.

(3) The Secretary shall establish procedures which allow any Indian tribe to petition the Secretary for a review of any determination of the extent of the health status and resource deficiency of such tribe.

(d) Programs administered by Indian tribe

(1) Programs administered by any Indian tribe or tribal organization under the authority of the Indian Self-Determination Act [25 U.S.C. 450f et seq.] shall be eligible for funds appropriated under the authority of this section on an equal basis with programs that are administered directly by the Service.

(2) If any funds allocated to a tribe or service unit under the authority of this section are used for a contract entered into under the Indian Self-Determination Act, a reasonable portion of such funds may be used for health planning, training, technical assistance, and other administrative support functions.

(e) Report to Congress

By no later than the date that is 3 years after October 29, 1992, the Secretary shall submit to the Congress the current health status and resource deficiency report of the Service for each Indian tribe or service unit, including newly recognized or acknowledged tribes. Such report shall set out—

(1) the methodology then in use by the Service for determining tribal health status and resource deficiencies, as well as the most recent application of that methodology;

(2) the extent of the health status and resource deficiency of each Indian tribe served by the Service;

(3) the amount of funds necessary to eliminate the health status and resource deficiencies of all Indian tribes served by the Service; and

(4) an estimate of—

(A) the amount of health service funds appropriated under the authority of this chapter, or any other Act, including the amount of any funds transferred to the Service, for the preceding fiscal year which is allocated to each service unit, Indian tribe, or comparable entity;

(B) the number of Indians eligible for health services in each service unit or Indian tribe; and

(C) the number of Indians using the Service resources made available to each service unit or Indian tribe.

(f) Appropriated funds included in base budget of Service

Funds appropriated under authority of this section for any fiscal year shall be included in the base budget of the Service for the purpose of determining appropriations under this section in subsequent fiscal years.

(g) Continuation of Service responsibilities for backlogs and parity

Nothing in this section is intended to diminish the primary responsibility of the Service to eliminate existing backlogs in unmet health care needs, nor are the provisions of this section intended to discourage the Service from undertaking additional efforts to achieve parity among Indian tribes.

(h) Authorization of appropriations

Any funds appropriated under the authority of this section shall be designated as the ''Indian Health Care Improvement Fund''.

(Pub. L. 94–437, title II, § 201, Sept. 30, 1976, 90 Stat. 1404; Pub. L. 96–537, § 4, Dec. 17, 1980, 94 Stat. 3174; Pub. L. 100–713, title II, § 201(a), Nov. 23, 1988, 102 Stat. 4800; Pub. L. 102–573, title II, § 201(a), (c), 207(b), 217(b)(1), Oct. 29, 1992, 106 Stat. 4544, 4546, 4551, 4559.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsecs. (a)(4) and (d), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–573, § 201(c), amended section catchline generally.

Subsec. (a). Pub. L. 102–573, § 201(a)(1)(A), substituted ''this section'' for ''subsection (h) of this section'' in introductory provisions.

Subsec. (a)(1). Pub. L. 102–573, § 201(a)(1)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''raising the health status of Indians to zero deficiency,''.

Subsec. (a)(4). Pub. L. 102–573, § 201(a)(1)(C), in introductory provisions inserted '', either through direct or contract care or through contracts entered into pursuant to the Indian Self-Determination Act,'' after ''responsibilities'' and substituted ''status and resource deficiencies'' for ''resources deficiency''.

Subsec. (a)(4)(B). Pub. L. 102–573, § 207(b), substituted ''preventive health, including screening mammography in accordance with section 1621k of this title'' for ''preventive health''.

Subsec. (b)(1). Pub. L. 102–573, § 201(a)(2)(A), substituted ''this section'' for ''subsection (h) of this section''.

Subsec. (b)(2). Pub. L. 102–573, § 201(a)(2)(B), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Funds which are appropriated under the authority of subsection (h) of this section may be allocated to, or used for the benefit of, any Indian tribe which has a health resources deficiency level at level I or II only if a sufficient amount of funds have been appropriated under the authority of subsection (h) of this section to raise all Indian tribes to health resources deficiency level II.''

Subsec. (b)(2)(A). Pub. L. 102–573, § 201(a)(2)(C), in first sentence, substituted ''this section'' for ''subsection (h) of this section'' and struck out ''but such allocation shall be made in a manner which ensures that the requirement of paragraph (2) is met'' after ''service unit basis'' and, in second sentence, struck out ''(in accordance with paragraph (2))'' after ''the service unit'' and substituted ''reduce the health status and resource deficiency'' for ''raise the deficiency level''.

Subsec. (b)(2)(B). Pub. L. 102–573, § 201(a)(2)(D), inserted '', and with the active participation of,'' after ''in consultation with''.

Subsec. (b)(3). Pub. L. 102–573, § 201(a)(2)(B), redesignated par. (3) as (2).

Subsec. (c)(1). Pub. L. 102–573, § 201(a)(3)(B), amended par. (1) generally, substituting provisions defining ''health status and resource deficiency'' for former provisions defining ''health resources deficiency''.

Pub. L. 102–573, § 201(a)(3)(A), redesignated par. (2) as (1) and struck out former par. (1) which specified the health resource deficiency levels of an Indian tribe.

Subsec. (c)(2). Pub. L. 102–573, § 201(a)(3)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (c)(3). Pub. L. 102–573, § 201(a)(3)(A), (C), redesignated par. (4) as (3) and substituted ''The'' for ''Under regulations, the'' and ''extent of the health status and resource deficiency'' for ''health resources deficiency level''. Former par. (3) redesignated (2).

Subsec. (c)(4). Pub. L. 102–573, § 201(a)(3)(A), redesignated par. (4) as (3).

Subsec. (d)(1). Pub. L. 102–573, § 201(a)(4), substituted ''this section'' for ''subsection (h) of this section''.

Subsec. (e). Pub. L. 102–573, § 201(a)(5)(A), in introductory provisions, substituted ''3 years after October 29, 1992, the Secretary shall submit to the Congress the current health status and resource deficiency report'' for ''60 days after November 23, 1988, the Secretary shall submit to the Congress the current health services priority system report''.

Subsec. (e)(1). Pub. L. 102–573, § 201(a)(5)(B), substituted ''health status and resource deficiencies'' for ''health resources deficiencies''.

Subsec. (e)(2). Pub. L. 102–573, § 201(a)(5)(C), substituted ''the extent of the health status and resource deficiency of'' for ''the level of health resources deficiency for''.

Subsec. (e)(3). Pub. L. 102–573, § 201(a)(5)(D), substituted ''eliminate the health status and resource deficiencies of all Indian tribes served by the Service; and'' for ''raise all Indian tribes served by the Service below health resources deficiency level II to health resources deficiency level II;''.

Subsec. (e)(4) to (6). Pub. L. 102–573, § 201(a)(5)(E), redesignated par. (6) as (4) and struck out former pars. (4) and (5) which read as follows:

''(4) the amount of funds necessary to raise all tribes served by the Service below health resources deficiency level I to health resources deficiency level I;

''(5) the amount of funds necessary to raise all tribes served by the Service to zero health resources deficiency; and''.

Subsec. (f). Pub. L. 102–573, § 201(a)(6), redesignated par. (2) as entire subsec. and struck out former par. (1) which read as follows: ''The President shall include with the budget submitted to the Congress under section 1105 of title 31 for each fiscal year a separate statement which specifies the amount of funds requested to carry out the provisions of this section for such fiscal year.''

Subsec. (h). Pub. L. 102–573, § 217(b)(1), substituted ''this section'' for ''this subsection'' and struck out former first sentence which authorized appropriations for fiscal years 1990 to 1992.

1988—Pub. L. 100–713 amended section generally, substituting subsecs. (a) to (h) relating to improvement of Indian health status for former subsecs. (a) to (e) relating to direct patient care program.

1980—Subsec. (c)(1). Pub. L. 96–537, § 4(a)(1), inserted provisions authorizing appropriation of specific amounts for fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, and further authorizing additional positions as may be necessary for each such fiscal year.

Subsec. (c)(2). Pub. L. 96–537, § 4(a)(2), inserted provisions authorizing appropriation of specific amounts for fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, and further authorizing additional positions as may be necessary for each such fiscal year.

Subsec. (c)(3). Pub. L. 96–537, § 4(a)(3), inserted provisions authorizing appropriation of specific amounts for fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, and further authorizing additional positions as may be necessary for each such fiscal year.

Subsec. (c)(4)(A). Pub. L. 96–537, § 4(b)(1), inserted provisions authorizing appropriation of specific amounts for fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, and further authorizing additional positions as may be necessary for each such fiscal year.

Subsec. (c)(4)(B). Pub. L. 96–537, § 4(b)(2), inserted provisions authorizing appropriation of specific amounts for fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, and further authorizing addi-

tional positions as may be necessary for each such fiscal year.

Subsec. (c)(4)(C). Pub. L. 96–537, § 4(b)(3), inserted provisions authorizing appropriation of specific amounts for fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, and further authorizing additional positions as may be necessary for each such fiscal year.

Subsec. (c)(4)(D). Pub. L. 96–537, § 4(b)(4), inserted provisions authorizing appropriation of specific amounts for fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, and further authorizing additional positions as may be necessary for each such fiscal year.

Subsec. (c)(4)(E). Pub. L. 96–537, § 4(b)(5), inserted provisions authorizing appropriation of specific amounts for fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984.

Subsec. (c)(5). Pub. L. 96–537, § 4(c)(1), inserted provisions authorizing appropriation of specific amounts for fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984.

Subsec. (c)(6). Pub. L. 96–537, § 4(c)(2), inserted provisions authorizing appropriation of specific amounts for fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, and further authorizing additional positions as may be necessary for each such fiscal year.

Subsec. (c)(7). Pub. L. 96–537, § 4(c)(3), struck out par. (7) which authorized appropriation for the items referred to in subsecs. (c)(1) to (c)(6) of such sums as may be specifically authorized by an act enacted after Sept. 30, 1976, for fiscal years 1981, 1982, 1983, and 1984, and which further authorized positions for items referred to in subsecs. (c)(1) to (c)(6) other than subsecs. (c)(4)(E) and (c)(5), as may be specified in an act enacted after Sept. 30, 1976.

EFFECTIVE DATE OF 1992 AMENDMENTS

Section 201(b) of Pub. L. 102–573 provided that: ''Except with respect to the amendments made by subsection (a)(5) [amending this section], the amendments made by subsection (a) [amending this section] shall take effect three years after the date of the enactment of this Act [Oct. 29, 1992]. The amendments made by subsection (a)(5) shall take effect upon the date of the enactment of this Act.''

CONTRACT MEDICAL CARE FUNDS

Pub. L. 108–7, div. F, title II, Feb. 20, 2003, 117 Stat. 261, provided in part: ''That contract medical care funds appropriated heretofore and hereafter for tribes recognized after January 1, 1995, may be used to provide medical services directly or through contract medical care''.

§ 1621a. Catastrophic Health Emergency Fund

(a) Establishment; administration; purpose

(1) There is hereby established an Indian Catastrophic Health Emergency Fund (hereafter in this section referred to as the ''Fund'') consisting of—

(A) the amounts deposited under subsection (d) of this section, and

(B) the amounts appropriated to the Fund under this section.

(2) The Fund shall be administered by the Secretary, acting through the central office of the Service, solely for the purpose of meeting the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service.

(3) The Fund shall not be allocated, apportioned, or delegated on a service unit, area office, or any other basis.

(4) No part of the Fund or its administration shall be subject to contract or grant under any law, including the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(b) Regulations; procedures for payment

The Secretary shall, through the promulgation of regulations consistent with the provisions of this section—

(1) establish a definition of disasters and catastrophic illnesses for which the cost of treatment provided under contract would qualify for payment from the Fund;

(2) provide that a service unit shall not be eligible for reimbursement for the cost of treatment from the Fund until its cost of treating any victim of such catastrophic illness or disaster has reached a certain threshold cost which the Secretary shall establish at—

(A) for 1993, not less than $15,000 or not more than $25,000; and

(B) for any subsequent year, not less than the threshold cost of the previous year increased by the percentage increase in the medical care expenditure category of the consumer price index for all urban consumers (United States city average) for the 12-month period ending with December of the previous year;

(3) establish a procedure for the reimbursement of the portion of the costs incurred by—

(A) service units or facilities of the Service, or

(B) whenever otherwise authorized by the Service, non-Service facilities or providers,

in rendering treatment that exceeds such threshold cost;

(4) establish a procedure for payment from the Fund in cases in which the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service; and

(5) establish a procedure that will ensure that no payment shall be made from the Fund to any provider of treatment to the extent that such provider is eligible to receive payment for the treatment from any other Federal, State, local, or private source of reimbursement for which the patient is eligible.

(c) Effect on other appropriations

Amounts appropriated to the Fund under this section shall not be used to offset or limit appropriations made to the Service under authority of section 13 of this title or any other law.

(d) Reimbursements to Fund

There shall be deposited into the Fund all reimbursements to which the Service is entitled from any Federal, State, local, or private source (including third party insurance) by reason of treatment rendered to any victim of a disaster or catastrophic illness the cost of which was paid from the Fund.

(Pub. L. 94–437, title II, § 202, as added Pub. L. 100–713, title II, § 202, Nov. 23, 1988, 102 Stat. 4803; amended Pub. L. 102–573, title II, §§ 202(a), 217(b)(2), Oct. 29, 1992, 106 Stat. 4546, 4559.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a)(4), is title I of Pub. L. 93–638, Jan. 4, 1975, 88

Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(1)(B). Pub. L. 102–573, § 202(a)(1), substituted ''to the Fund under this section'' for ''under subsection (e) of this section''.

Subsec. (b)(2). Pub. L. 102–573, § 202(a)(2), substituted ''shall establish at—'' and subpars. (A) and (B) for ''shall establish at not less than $10,000 or not more than $20,000;''.

Subsec. (c). Pub. L. 102–573, § 202(a)(3), substituted ''Amounts appropriated to the Fund under this section'' for ''Funds appropriated under subsection (e) of this section''.

Subsec. (e). Pub. L. 102–573, § 217(b)(2), struck out subsec. (e) which authorized appropriations for fiscal years 1989 to 1992.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 202(b) of Pub. L. 102–573 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall take effect January 1, 1993.''

§ 1621b. Health promotion and disease prevention services

(a) Authorization

The Secretary, acting through the Service, shall provide health promotion and disease prevention services to Indians so as to achieve the health status objectives set forth in section 1602(b) of this title.

(b) Evaluation statement for Presidential budget

The Secretary shall submit to the President for inclusion in each statement which is required to be submitted to the Congress under section 1671 of this title an evaluation of—

(1) the health promotion and disease prevention needs of Indians,

(2) the health promotion and disease prevention activities which would best meet such needs,

(3) the internal capacity of the Service to meet such needs, and

(4) the resources which would be required to enable the Service to undertake the health promotion and disease prevention activities necessary to meet such needs.

(Pub. L. 94–437, title II, § 203, as added Pub. L. 100–713, title II, § 203(c), Nov. 23, 1988, 102 Stat. 4805; amended Pub. L. 102–573, title II, § 203, Oct. 29, 1992, 106 Stat. 4546.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–573, § 203(1), inserted before period at end ''so as to achieve the health status objectives set forth in section 1602(b) of this title''.

Subsec. (b). Pub. L. 102–573, § 203(2), in introductory provisions, substituted ''section 1671'' for ''section 1621(f)''.

Subsec. (c). Pub. L. 102–573, § 203(3), struck out subsec. (c) which directed establishment of between 1 and 4 health-related demonstration projects to terminate 30 months after Nov. 23, 1988.

CONGRESSIONAL FINDINGS ON HEALTH PROMOTION AND DISEASE PREVENTION

Section 203(a) of Pub. L. 100–713 provided that: ''The Congress finds that health promotion and disease prevention activities will—

''(1) improve the health and well being of Indians, and

''(2) reduce the expenses for medical care of Indians.''

§ 1621c. Diabetes prevention, treatment, and control

(a) Incidence and complications

The Secretary, in consultation with the tribes, shall determine—

(1) by tribe and by Service unit of the Service, the incidence of, and the types of complications resulting from, diabetes among Indians; and

(2) based on paragraph (1), the measures (including patient education) each Service unit should take to reduce the incidence of, and prevent, treat, and control the complications resulting from, diabetes among tribes within that Service unit.

(b) Screening

The Secretary shall screen each Indian who receives services from the Service for diabetes and for conditions which indicate a high risk that the individual will become diabetic. Such screening may be done by a tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(c) Model diabetes projects

(1) The Secretary shall continue to maintain through fiscal year 2000 each model diabetes project in existence on October 29, 1992, and located—

(A) at the Claremore Indian Hospital in Oklahoma;

(B) at the Fort Totten Health Center in North Dakota;

(C) at the Sacaton Indian Hospital in Arizona;

(D) at the Winnebago Indian Hospital in Nebraska;

(E) at the Albuquerque Indian Hospital in New Mexico;

(F) at the Perry, Princeton, and Old Town Health Centers in Maine;

(G) at the Bellingham Health Center in Washington;

(H) at the Fort Berthold Reservation;

(I) at the Navajo Reservation;

(J) at the Papago Reservation;

(K) at the Zuni Reservation; or

(L) in the States of Alaska, California, Minnesota, Montana, Oregon, or Utah.

(2) The Secretary may establish new model diabetes projects under this section taking into consideration applications received under this section from all service areas, except that the Secretary may not establish a greater number of such projects in one service area than in any other service area until there is an equal number of such projects established with respect to all service areas from which the Secretary receives qualified applications during the application period (as determined by the Secretary).

(d) Control officer; registry of patients

The Secretary shall—

(1) employ in each area office of the Service at least one diabetes control officer who shall coordinate and manage on a full-time basis activities within that area office for the prevention, treatment, and control of diabetes;

(2) establish in each area office of the Service a registry of patients with diabetes to track the incidence of diabetes and the complications from diabetes in that area;

(3) ensure that data collected in each area office regarding diabetes and related complications among Indians is disseminated to all other area offices; and

(4) evaluate the effectiveness of services provided through model diabetes projects established under this section.

(e) Authorization of appropriations

Funds appropriated under this section in any fiscal year shall be in addition to base resources appropriated to the Service for that year.

(Pub. L. 94–437, title II, § 204, as added Pub. L. 100–713, title II, § 203(c), Nov. 23, 1988, 102 Stat. 4806; amended Pub. L. 102–573, title II, §§ 204, 217(b)(3), title IX, § 901(2), Oct. 29, 1992, 106 Stat. 4546, 4559, 4590.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (b), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–573, § 901(2), redesignated par. (1) as entire subsec., redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, substituted ''paragraph (1)'' for ''subparagraph (A)'' in par. (2), and struck out former par. (2) which read as follows: ''Within 18 months after November 23, 1988, the Secretary shall prepare and transmit to the President and the Congress a report describing the determinations made and measures taken under paragraph (1) and making recommendations for additional funding to prevent, treat, and control diabetes among Indians.''

Subsec. (c). Pub. L. 102–573, § 204(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(1) The Secretary shall continue to maintain during fiscal years 1988 through 1991 each of the following model diabetes projects which are in existence on November 23, 1988:

''(A) Claremore Indian Hospital in Oklahoma;

''(B) Fort Totten Health Center in North Dakota;

''(C) Sacaton Indian Hospital in Arizona;

''(D) Winnebago Indian Hospital in Nebraska;

''(E) Albuquerque Indian Hospital in New Mexico;

''(F) Perry, Princeton, and Old Town Health Centers in Maine; and

''(G) Bellingham Health Center in Washington.

''(2) The Secretary shall establish in fiscal year 1989, and maintain during fiscal years 1989 through 1991, a model diabetes project in each of the following locations:

''(A) Fort Berthold Reservation;

''(B) the Navajo Reservation;

''(C) the Papago Reservation;

''(D) the Zuni Reservation; and

''(E) the States of Alaska, California, Minnesota, Montana, Oregon, and Utah.''

Subsec. (d)(4). Pub. L. 102–573, § 204(2), added par. (4).

Subsec. (e). Pub. L. 102–573, § 217(b)(3), substituted ''this section'' for ''subsection (c) of this section'' and struck out at beginning ''There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.''

§ 1621d. Hospice care feasibility study

(a) Duty of Secretary

The Secretary, acting through the Service and in consultation with representatives of Indian tribes, tribal organizations, Indian Health Service personnel, and hospice providers, shall conduct a study—

(1) to assess the feasibility and desirability of furnishing hospice care to terminally ill Indians; and

(2) to determine the most efficient and effective means of furnishing such care.

(b) Functions of study

Such study shall—

(1) assess the impact of Indian culture and beliefs concerning death and dying on the provision of hospice care to Indians;

(2) estimate the number of Indians for whom hospice care may be appropriate and determine the geographic distribution of such individuals;

(3) determine the most appropriate means to facilitate the participation of Indian tribes and tribal organizations in providing hospice care;

(4) identify and evaluate various means for providing hospice care, including—

(A) the provision of such care by the personnel of a Service hospital pursuant to a hospice program established by the Secretary at such hospital; and

(B) the provision of such care by a community-based hospice program under contract to the Service; and

(5) identify and assess any difficulties in furnishing such care and the actions needed to resolve such difficulties.

(c) Report to Congress

Not later than the date which is 12 months after October 29, 1992, the Secretary shall transmit to the Congress a report containing—

(1) a detailed description of the study conducted pursuant to this section; and

(2) a discussion of the findings and conclusions of such study.

(d) Definitions

For the purposes of this section—

(1) the term ''terminally ill'' means any Indian who has a medical prognosis (as certified by a physician) of a life expectancy of six months or less; and

(2) the term ''hospice program'' means any program which satisfies the requirements of section 1395x(dd)((2) of title 42; and

(3) the term ''hospice care'' means the items and services specified in subparagraphs (A) through (H) of section 1395x(dd)(1) of title 42.

(Pub. L. 94–437, title II, § 205, as added Pub. L. 102–573, title II, § 206(a), Oct. 29, 1992, 106 Stat. 4548.)

PRIOR PROVISIONS

A prior section 1621d, Pub. L. 94–437, title II, § 205, as added Pub. L. 100–713, title II, § 203(c), Nov. 23, 1988, 102

Stat. 4807, related to Native Hawaiian health promotion and disease prevention, prior to repeal by Pub. L. 100–579, § 14, formerly § 10, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100–690, title II, § 2310, Nov. 18, 1988, 102 Stat. 4229; renumbered § 14, Pub. L. 102–396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948. See section 11701 et seq. of Title 42, The Public Health and Welfare.

§ 1621e. Reimbursement from certain third parties of costs of health services

(a) Right of recovery

Except as provided in subsection (f) of this section, the United States, an Indian tribe, or a tribal organization shall have the right to recover the reasonable expenses incurred by the Secretary, an Indian tribe, or a tribal organization in providing health services, through the Service, an Indian tribe, or a tribal organization, to any individual to the same extent that such individual, or any nongovernmental provider of such services, would be eligible to receive reimbursement or indemnification for such expenses if—

(1) such services had been provided by a nongovernmental provider, and

(2) such individual had been required to pay such expenses and did pay such expenses.

(b) Recovery against State with workers' compensation laws or no-fault automobile accident insurance program

Subsection (a) of this section shall provide a right of recovery against any State only if the injury, illness, or disability for which health services were provided is covered under—

(1) workers' compensation laws, or

(2) a no-fault automobile accident insurance plan or program.

(c) Prohibition of State law or contract provision impeding right of recovery

No law of any State, or of any political subdivision of a State, and no provision of any contract entered into or renewed after November 23, 1988, shall prevent or hinder the right of recovery of the United States, an Indian tribe, or a tribal organization under subsection (a) of this section.

(d) Right to damages

No action taken by the United States, an Indian tribe, or a tribal organization to enforce the right of recovery provided under subsection (a) of this section shall affect the right of any person to any damages (other than damages for the cost of health services provided by the Secretary through the Service).

(e) Intervention or separate civil action

The United States, an Indian tribe, or a tribal organization may enforce the right of recovery provided under subsection (a) of this section by—

(1) intervening or joining in any civil action or proceeding brought—

(A) by the individual for whom health services were provided by the Secretary, an Indian tribe, or a tribal organization, or

(B) by any representative or heirs of such individual, or

(2) instituting a separate civil action, after providing to such individual, or to the representative or heirs of such individual, notice of the intention of the United States, an Indian tribe, or a tribal organization to institute a separate civil action.

(f) Right of recovery for services when self-insurance plan provides coverage

The United States shall not have a right of recovery under this section if the injury, illness, or disability for which health services were provided is covered under a self-insurance plan funded by an Indian tribe or tribal organization.

(Pub. L. 94–437, title II, § 206, as added Pub. L. 100–713, title II, § 204, Nov. 23, 1988, 102 Stat. 4811; amended Pub. L. 102–573, title II, § 209, Oct. 29, 1992, 106 Stat. 4551.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–573, § 209(b)(1), substituted ''Except as provided in subsection (f) of this section, the'' for ''The''.

Pub. L. 102–573, § 209(a)(1)–(3), inserted '', an Indian tribe, or a tribal organization'' after ''United States'', after ''Service'', and after ''Secretary''.

Subsec. (b). Pub. L. 102–573, § 209(a)(4), struck out '', or any political subdivision of a State,'' after ''against any State''.

Subsecs. (c), (d). Pub. L. 102–573, § 209(a)(1), inserted '', an Indian tribe, or a tribal organization'' after ''United States''.

Subsec. (e). Pub. L. 102–573, § 209(a)(1), (3), inserted '', an Indian tribe, or a tribal organization'' after ''United States'' in two places and after ''Secretary''.

Subsec. (f). Pub. L. 102–573, § 209(b)(2), added subsec. (f).

§ 1621f. Crediting of reimbursements

(a) Except as provided in section 1621a(d) of this title, subchapter III–A of this chapter, and section 1680c of this title, all reimbursements received or recovered, under authority of this chapter, Public Law 87–693 (42 U.S.C. 2651, et seq.), or any other provision of law, by reason of the provision of health services by the Service or by a tribe or tribal organization under a contract pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.] shall be retained by the Service or that tribe or tribal organization and shall be available for the facilities, and to carry out the programs, of the Service or that tribe or tribal organization to provide health care services to Indians.

(b) The Service may not offset or limit the amount of funds obligated to any service unit or any entity under contract with the Service because of the receipt of reimbursements under subsection (a) of this section.

(Pub. L. 94–437, title II, § 207, as added Pub. L. 100–713, title II, § 204, Nov. 23, 1988, 102 Stat. 4812; amended Pub. L. 102–573, title VII, § 701(c)(1), Oct. 29, 1992, 106 Stat. 4572.)

REFERENCES IN TEXT

Public Law 87–693, referred to in subsec. (a), is Pub. L. 87–693, Sept. 25, 1962, 76 Stat. 593, which is classified generally to chapter 32 (§ 2651 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

The Indian Self-Determination Act, referred to in subsec. (a), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to

the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–573 made technical amendment to reference to section 1680c of this title to reflect renumbering of corresponding section of original act.

§ 1621g. Health services research

Of the amounts appropriated for the Service in any fiscal year, other than amounts made available for the Indian Health Care Improvement Fund, not less than $200,000 shall be available only for research to further the performance of the health service responsibilities of the Service. Indian tribes and tribal organizations contracting with the Service under the authority of the Indian Self-Determination Act [25 U.S.C. 450f et seq.] shall be given an equal opportunity to compete for, and receive, research funds under this section.

(Pub. L. 94–437, title II, § 208, as added Pub. L. 100–713, title II, § 204, Nov. 23, 1988, 102 Stat. 4812.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in text, is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 1621h. Mental health prevention and treatment services

(a) National plan for Indian Mental Health Services

(1) Not later than 120 days after November 28, 1990, the Secretary, acting through the Service, shall develop and publish in the Federal Register a final national plan for Indian Mental Health Services. The plan shall include—

(A) an assessment of the scope of the problem of mental illness and dysfunctional and self-destructive behavior, including child abuse and family violence, among Indians, including—

(i) the number of Indians served by the Service who are directly or indirectly affected by such illness or behavior, and

(ii) an estimate of the financial and human cost attributable to such illness or behavior;

(B) an assessment of the existing and additional resources necessary for the prevention and treatment of such illness and behavior; and

(C) an estimate of the additional funding needed by the Service to meet its responsibilities under the plan.

(2) The Secretary shall submit a copy of the national plan to the Congress.

(b) Memorandum of agreement

Not later than 180 days after November 28, 1990, the Secretary and the Secretary of the Interior shall develop and enter into a memorandum of agreement under which the Secretaries shall, among other things—

(1) determine and define the scope and nature of mental illness and dysfunctional and self-destructive behavior, including child abuse and family violence, among Indians;

(2) make an assessment of the existing Federal, tribal, State, local, and private services, resources, and programs available to provide mental health services for Indians;

(3) make an initial determination of the unmet need for additional services, resources, and programs necessary to meet the needs identified pursuant to paragraph (1);

(4)(A) ensure that Indians, as citizens of the United States and of the States in which they reside, have access to mental health services to which all citizens have access;

(B) determine the right of Indians to participate in, and receive the benefit of, such services; and

(C) take actions necessary to protect the exercise of such right;

(5) delineate the responsibilities of the Bureau of Indian Affairs and the Service, including mental health identification, prevention, education, referral, and treatment services (including services through multidisciplinary resource teams), at the central, area, and agency and service unit levels to address the problems identified in paragraph (1);

(6) provide a strategy for the comprehensive coordination of the mental health services provided by the Bureau of Indian Affairs and the Service to meet the needs identified pursuant to paragraph (1), including—

(A) the coordination of alcohol and substance abuse programs of the Service, the Bureau of Indian Affairs, and the various tribes (developed under the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 [25 U.S.C. 2401 et seq.]) with the mental health initiatives pursuant to this chapter, particularly with respect to the referral and treatment of dually-diagnosed individuals requiring mental health and substance abuse treatment; and

(B) ensuring that Bureau of Indian Affairs and Service programs and services (including multidisciplinary resource teams) addressing child abuse and family violence are coordinated with such non-Federal programs and services;

(7) direct appropriate officials of the Bureau of Indian Affairs and the Service, particularly at the agency and service unit levels, to cooperate fully with tribal requests made pursuant to subsection (d) of this section; and

(8) provide for an annual review of such agreement by the two Secretaries.

(c) Community mental health plan

(1) The governing body of any Indian tribe may, at its discretion, adopt a resolution for the establishment of a community mental health plan providing for the identification and coordination of available resources and programs to identify, prevent, or treat mental illness or dysfunctional and self-destructive behavior, including child abuse and family violence, among its members.

(2) In furtherance of a plan established pursuant to paragraph (1) and at the request of a tribe, the appropriate agency, service unit, or other officials of the Bureau of Indian Affairs

and the Service shall cooperate with, and provide technical assistance to, the tribe in the development of such plan. Upon the establishment of such a plan and at the request of the tribe, such officials, as directed by the memorandum of agreement developed pursuant to subsection (c) of this section, shall cooperate with the tribe in the implementation of such plan.

(3) Two or more Indian tribes may form a coalition for the adoption of resolutions and the establishment and development of a joint community mental health plan under this subsection.

(4) The Secretary, acting through the Service, may make grants to Indian tribes adopting a resolution pursuant to paragraph (1) to obtain technical assistance for the development of a community mental health plan and to provide administrative support in the implementation of such plan.

(d) Mental health training and community education programs

(1) The Secretary and the Secretary of the Interior, in consultation with representatives of Indian tribes, shall conduct a study and compile a list, of the types of staff positions specified in paragraph (2) whose qualifications include, or should include, training in the identification, prevention, education, referral, or treatment of mental illness or dysfunctional and self-destructive behavior.

(2) The positions referred to in paragraph (1) are—

(A) staff positions within the Bureau of Indian Affairs, including existing positions, in the fields of—

(i) elementary and secondary education;

(ii) social services and family and child welfare;

(iii) law enforcement and judicial services; and

(iv) alcohol and substance abuse;

(B) staff positions with the Service; and

(C) staff positions similar to those identified in subparagraphs (A) and (B) established and maintained by Indian tribes, including positions established in contracts entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(3)(A) The appropriate Secretary shall provide training criteria appropriate to each type of position identified in paragraph (2)(A) and ensure that appropriate training has been, or will be, provided to any individual in any such position. With respect to any such individual in a position identified pursuant to paragraph (2)(C), the respective Secretaries shall provide appropriate training to, or provide funds to an Indian tribe for the training of, such individual. In the case of positions funded under a contract entered into under the Indian Self-Determination Act, the appropriate Secretary shall ensure that such training costs are included in the contract, if necessary.

(B) Funds authorized to be appropriated pursuant to this section may be used to provide training authorized by this paragraph for community education programs described in paragraph (5) if a plan adopted pursuant to subsection (d) of this section identifies individuals or employment categories, other than those identified pursuant to paragraph (1), for which such training or community education is deemed necessary or desirable.

(4) Position-specific training criteria described in paragraph (3) shall be culturally relevant to Indians and Indian tribes and shall ensure that appropriate information regarding traditional Indian healing and treatment practices is provided.

(5) The Service shall develop and implement or, upon the request of an Indian tribe, assist such tribe to develop and implement, a program of community education on mental illness and dysfunctional and self-destructive behavior for individuals, as determined in a plan adopted pursuant to subsection (d) of this section. In carrying out this paragraph, the Service shall provide, upon the request of an Indian tribe, technical assistance to the Indian tribe to obtain or develop community education and training materials on the identification, prevention, referral, and treatment of mental illness and dysfunctional and self-destructive behavior.

(e) Staffing

(1) Within 90 days after November 28, 1990, the Secretary shall develop a plan under which the Service will increase the health care staff providing mental health services by at least 500 positions within five years after November 28, 1990, with at least 200 of such positions devoted to child, adolescent, and family services. Such additional staff shall be primarily assigned to the service unit level for services which shall include outpatient, emergency, aftercare and follow-up, and prevention and education services.

(2) The plan developed under paragraph (1) shall be implemented under section 13 of this title.

(f) Staff recruitment and retention

(1) The Secretary shall provide for the recruitment of the additional personnel required by subsection (f) of this section and the retention of all Service personnel providing mental health services. In carrying out this subsection, the Secretary shall give priority to practitioners providing mental health services to children and adolescents with mental health problems.

(2) In carrying out paragraph (1), the Secretary shall develop a program providing for—

(A) the payment of bonuses (which shall not be more favorable than those provided for under sections 1616i and 1616j of this title) for service in hardship posts;

(B) the repayment of loans (for which the provisions of repayment contracts shall not be more favorable than the repayment contracts under section 1616a of this title) for health professions education as a recruitment incentive; and

(C) a system of postgraduate rotations as a retention incentive.

(3) This subsection shall be carried out in coordination with the recruitment and retention programs under subchapter I of this chapter.

(g) Mental Health Technician program

(1) Under the authority of section 13 of this title, the Secretary shall establish and maintain a Mental Health Technician program within the Service which—

(A) provides for the training of Indians as mental health technicians; and

(B) employs such technicians in the provision of community-based mental health care that includes identification, prevention, education, referral, and treatment services.

(2) In carrying out paragraph (1)(A), the Secretary shall provide high standard paraprofessional training in mental health care necessary to provide quality care to the Indian communities to be served. Such training shall be based upon a curriculum developed or approved by the Secretary which combines education in the theory of mental health care with supervised practical experience in the provision of such care.

(3) The Secretary shall supervise and evaluate the mental health technicians in the training program.

(4) The Secretary shall ensure that the program established pursuant to this subsection involves the utilization and promotion of the traditional Indian health care and treatment practices of the Indian tribes to be served.

(h) Mental health research

The Secretary, acting through the Service and in consultation with the National Institute of Mental Health, shall enter into contracts with, or make grants to, appropriate institutions for the conduct of research on the incidence and prevalence of mental disorders among Indians on Indian reservations and in urban areas. Research priorities under this subsection shall include—

(1) the inter-relationship and inter-dependence of mental disorders with alcoholism, suicide, homicides, accidents, and the incidence of family violence, and

(2) the development of models of prevention techniques.

The effect of the inter-relationships and interdependencies referred to in paragraph (1) on children, and the development of prevention techniques under paragraph (2) applicable to children, shall be emphasized.

(i) Facilities assessment

Within one year after November 28, 1990, the Secretary, acting through the Service, shall make an assessment of the need for inpatient mental health care among Indians and the availability and cost of inpatient mental health facilities which can meet such need. In making such assessment, the Secretary shall consider the possible conversion of existing, under-utilized service hospital beds into psychiatric units to meet such need.

(j) Annual report

The Service shall develop methods for analyzing and evaluating the overall status of mental health programs and services for Indians and shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report on the mental health status of Indians which shall describe the progress being made to address mental health problems of Indian communities.

(k) Mental health demonstration grant program

(1) The Secretary, acting through the Service, is authorized to make grants to Indian tribes and inter-tribal consortia to pay 75 percent of the cost of planning, developing, and implementing programs to deliver innovative community-based mental health services to Indians. The 25 percent tribal share of such cost may be provided in cash or through the provision of property or services.

(2) The Secretary may award a grant for a project under paragraph (1) to an Indian tribe or inter-tribal consortium which meets the following criteria:

(A) The project will address significant unmet mental health needs among Indians.

(B) The project will serve a significant number of Indians.

(C) The project has the potential to deliver services in an efficient and effective manner.

(D) The tribe or consortium has the administrative and financial capability to administer the project.

(E) The project will deliver services in a manner consistent with traditional Indian healing and treatment practices.

(F) The project is coordinated with, and avoids duplication of, existing services.

(3) For purposes of this subsection, the Secretary shall, in evaluating applications for grants for projects to be operated under any contract entered into with the Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], use the same criteria that the Secretary uses in evaluating any other application for such a grant.

(4) The Secretary may only award one grant under this subsection with respect to a service area until the Secretary has awarded grants for all service areas with respect to which the Secretary receives applications during the application period, as determined by the Secretary, which meet the criteria specified in paragraph (2).

(5) Not later than 180 days after the close of the term of the last grant awarded pursuant to this subsection, the Secretary shall submit to the Congress a report evaluating the effectiveness of the innovative community-based projects demonstrated pursuant to this subsection. Such report shall include findings and recommendations, if any, relating to the reorganization of the programs of the Service for delivery of mental health services to Indians.

(6) Grants made pursuant to this section may be expended over a period of three years and no grant may exceed $1,000,000 for the fiscal years involved.

(*l*) Licensing requirement for mental health care workers

Any person employed as a psychologist, social worker, or marriage and family therapist for the purpose of providing mental health care services to Indians in a clinical setting under the authority of this chapter or through a contract pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.] shall—

(1) in the case of a person employed as a psychologist, be licensed as a clinical psychologist or working under the direct supervision of a licensed clinical psychologist;

(2) in the case of a person employed as a social worker, be licensed as a social worker or

working under the direct supervision of a licensed social worker; or

(3) in the case of a person employed as a marriage and family therapist, be licensed as a marriage and family therapist or working under the direct supervision of a licensed marriage and family therapist.

(m) Intermediate adolescent mental health services

(1) The Secretary, acting through the Service, may make grants to Indian tribes and tribal organizations to provide intermediate mental health services to Indian children and adolescents, including—

(A) inpatient and outpatient services;

(B) emergency care;

(C) suicide prevention and crisis intervention; and

(D) prevention and treatment of mental illness, and dysfunctional and self-destructive behavior, including child abuse and family violence.

(2) Funds provided under this subsection may be used—

(A) to construct or renovate an existing health facility to provide intermediate mental health services;

(B) to hire mental health professionals;

(C) to staff, operate, and maintain an intermediate mental health facility, group home, or youth shelter where intermediate mental health services are being provided; and

(D) to make renovations and hire appropriate staff to convert existing hospital beds into adolescent psychiatric units.

(3) Funds provided under this subsection may not be used for the purposes described in section 1621*o*(b)(1) of this title.

(4) An Indian tribe or tribal organization receiving a grant under this subsection shall ensure that intermediate adolescent mental health services are coordinated with other tribal, Service, and Bureau of Indian Affairs mental health, alcohol and substance abuse, and social services programs on the reservation of such tribe or tribal organization.

(5) The Secretary shall establish criteria for the review and approval of applications for grants made pursuant to this subsection.

(6) There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(Pub. L. 94–437, title II, § 209, as added Pub. L. 101–630, title V, § 503(b), Nov. 28, 1990, 104 Stat. 4557; amended Pub. L. 102–573, title II, §§ 205, 217(b)(4), title IX, § 902(3), Oct. 29, 1992, 106 Stat. 4547, 4559, 4591.)

REFERENCES IN TEXT

The Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, referred to in subsec. (b)(6)(A), is subtitle C of title IV of Pub. L. 99–570, Oct. 27, 1986, 100 Stat. 3207–137, as amended, which is classified generally to chapter 26 (§ 2401 et seq.) of this title. For complete classification of subtitle C to the Code, see Short Title note set out under section 2401 of this title and Tables.

The Indian Self-Determination Act, referred to in subsecs. (d)(2)(C), (3)(A), (k)(3), and (*l*), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–573, § 902(3)(A), made technical amendment to section catchline.

Subsec. (b). Pub. L. 102–573, § 902(3)(B), redesignated subsec. (c) as (b). Prior to amendment, no subsec. (b) had been enacted.

Subsec. (c). Pub. L. 102–573, §§ 217(b)(4)(A), 902(3)(B), redesignated subsec. (d) as (c) and struck out par. (5) which authorized appropriations of $500,000 for fiscal year 1991 and $1,000,000 for fiscal year 1992 to carry out this subsec. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 102–573, §§ 217(b)(4)(A), (D), 902(3)(B), redesignated subsec. (e) as (d), substituted ''this section'' for ''this subsection'' in par. (3)(B), and struck out par. (6) which authorized appropriations of $500,000 for fiscal year 1991 and $5,000,000 for fiscal year 1992 to carry out this subsec., with certain amounts to be allocated for community education. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 102–573, § 902(3)(B), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 102–573, §§ 217(b)(4)(A), 902(3)(B), redesignated subsec. (g) as (f) and struck out par. (4) which appropriated $1,200,000 for fiscal year 1992 to carry out this subsec. Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 102–573, §§ 217(b)(4)(A), 902(3)(B), redesignated subsec. (h) as (g) and struck out par. (5) which authorized appropriation of $1,000,000 for fiscal year 1992 for purposes of providing training required under this subsec. Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 102–573, §§ 217(b)(4)(B), 902(3)(B), redesignated subsec. (i) as (h), struck out par. (1) designation before ''The Secretary, acting'', redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, substituted ''paragraph (1)'' and ''paragraph (2)'' for ''subparagraph (A)'' and ''subparagraph (B)'', respectively, in closing provisions, and struck out former par. (2) which authorized appropriation of $2,000,000 for fiscal year 1992 to carry out this subsec., to remain available until expended. Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 102–573, §§ 217(b)(4)(C), 902(3)(B), redesignated subsec. (j) as (i), struck out par. (1) designation before ''Within one year'', and struck out par. (2) which authorized appropriation of $500,000 for fiscal year 1992 to make the assessment required by this subsec. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 102–573, §§ 205(1), 902(3)(B), redesignated subsec. (k) as (j) and substituted ''submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report'' for ''submit to the Congress an annual report''. Former subsec. (j) redesignated (i).

Subsec. (k). Pub. L. 102–573, §§ 217(b)(4)(E), 902(3)(B), redesignated subsec. (*l*) as (k), and in par. (6) substituted ''section'' for ''subsection'' in second sentence and struck out first sentence which authorized appropriations of $2,000,000 for fiscal year 1991 and $3,000,000 for fiscal year 1992 to carry out purposes of this subsec. Former subsec. (k) redesignated (j).

Subsecs. (*l*), (m). Pub. L. 102–573, § 205(2), added subsecs. (*l*) and (m). Former subsec. (*l*) redesignated (k).

STATEMENT OF PURPOSES

Section 503(a) of Pub. L. 101–630 provided that: ''The purposes of this section [enacting this section] are to—

''(1) authorize and direct the Indian Health Service to develop a comprehensive mental health prevention and treatment program;

''(2) provide direction and guidance relating to mental illness and dysfunctional and self-destructive behavior, including child abuse and family violence,

to those Federal, tribal, State, and local agencies responsible for programs in Indian communities in areas of health care, education, social services, child and family welfare, alcohol and substance abuse, law enforcement, and judicial services;

''(3) assist Indian tribes to identify services and resources available to address mental illness and dysfunctional and self-destructive behavior;

''(4) provide authority and opportunities for Indian tribes to develop and implement, and coordinate with, community-based mental health programs which include identification, prevention, education, referral, and treatment services, including through multidisciplinary resource teams;

''(5) ensure that Indians, as citizens of the United States and of the States in which they reside, have the same access to mental health services to which all such citizens have access; and

''(6) modify or supplement existing programs and authorities in the areas identified in paragraph (2).''

§ 1621i. Managed care feasibility study

(a) The Secretary, acting through the Service, shall conduct a study to assess the feasibility of allowing an Indian tribe to purchase, directly or through the Service, managed care coverage for all members of the tribe from—

(1) a tribally owned and operated managed care plan; or

(2) a State licensed managed care plan.

(b) Not later than the date which is 12 months after October 29, 1992, the Secretary shall transmit to the Congress a report containing—

(1) a detailed description of the study conducted pursuant to this section; and

(2) a discussion of the findings and conclusions of such study.

(Pub. L. 94–437, title II, § 210, as added Pub. L. 102–573, title II, § 206(b), Oct. 29, 1992, 106 Stat. 4549.)

§ 1621j. California contract health services demonstration program

(a) Establishment

The Secretary shall establish a demonstration program to evaluate the use of a contract care intermediary to improve the accessibility of health services to California Indians.

(b) Agreement with California Rural Indian Health Board

(1) In establishing such program, the Secretary shall enter into an agreement with the California Rural Indian Health Board to reimburse the Board for costs (including reasonable administrative costs) incurred, during the period of the demonstration program, in providing medical treatment under contract to California Indians described in section 1679(b) of this title throughout the California contract health services delivery area described in section 1680 of this title with respect to high-cost contract care cases.

(2) Not more than 5 percent of the amounts provided to the Board under this section for any fiscal year may be for reimbursement for administrative expenses incurred by the Board during such fiscal year.

(3) No payment may be made for treatment provided under the demonstration program to the extent payment may be made for such treatment under the Catastrophic Health Emergency Fund described in section 1621a of this title or from amounts appropriated or otherwise made available to the California contract health service delivery area for a fiscal year.

(c) Advisory board

There is hereby established an advisory board which shall advise the California Rural Indian Health Board in carrying out the demonstration pursuant to this section. The advisory board shall be composed of representatives, selected by the California Rural Indian Health Board, from not less than 8 tribal health programs serving California Indians covered under such demonstration, at least one half of whom are not affiliated with the California Rural Indian Health Board.

(d) Commencement and termination dates

The demonstration program described in this section shall begin on January 1, 1993, and shall terminate on September 30, 1997.

(e) Report

Not later than July 1, 1998, the California Rural Indian Health Board shall submit to the Secretary a report on the demonstration program carried out under this section, including a statement of its findings regarding the impact of using a contract care intermediary on—

(1) access to needed health services;

(2) waiting periods for receiving such services; and

(3) the efficient management of high-cost contract care cases.

(f) "High-cost contract care cases" defined

For the purposes of this section, the term ''high-cost contract care cases'' means those cases in which the cost of the medical treatment provided to an individual—

(1) would otherwise be eligible for reimbursement from the Catastrophic Health Emergency Fund established under section 1621a of this title, except that the cost of such treatment does not meet the threshold cost requirement established pursuant to section 1621a(b)(2) of this title; and

(2) exceeds $1,000.

(g) Authorization of appropriations

There are authorized to be appropriated for each of the fiscal years 1996 through 2000 such sums as may be necessary to carry out the purposes of this section.

(Pub. L. 94–437, title II, § 211, as added Pub. L. 102–573, title II, § 206(c), Oct. 29, 1992, 106 Stat. 4549; amended Pub. L. 104–313, § 2(c), Oct. 19, 1996, 110 Stat. 3822.)

AMENDMENTS

1996—Subsec. (g). Pub. L. 104–313 substituted ''1996 through 2000'' for ''1993, 1994, 1995, 1996, and 1997''.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided

by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1621k. Coverage of screening mammography

The Secretary, through the Service, shall provide for screening mammography (as defined in section 1861(jj) of the Social Security Act [42 U.S.C. 1395x(jj)]) for Indian and urban Indian women 35 years of age or older at a frequency, determined by the Secretary (in consultation with the Director of the National Cancer Institute), appropriate to such women, and under such terms and conditions as are consistent with standards established by the Secretary to assure the safety and accuracy of screening mammography under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.].

(Pub. L. 94–437, title II, § 212, as added Pub. L. 102–573, title II, § 207(a), Oct. 29, 1992, 106 Stat. 4550.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part B of title XVIII of the Act is classified generally to part B (§ 1395j et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

§ 1621*l*. Patient travel costs

(a) The Secretary, acting through the Service, shall provide funds for the following patient travel costs associated with receiving health care services provided (either through direct or contract care or through contracts entered into pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.]) under this chapter—

(1) emergency air transportation; and

(2) nonemergency air transportation where ground transportation is infeasible.

(b) There are authorized to be appropriated to carry out this section $15,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(Pub. L. 94–437, title II, § 213, as added Pub. L. 102–573, title II, § 208, Oct. 29, 1992, 106 Stat. 4551.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 1621m. Epidemiology centers

(a)(1) The Secretary shall establish an epidemiology center in each Service area to carry out the functions described in paragraph (3).

(2) To assist such centers in carrying out such functions, the Secretary shall perform the following:

(A) In consultation with the Centers for Disease Control and Indian tribes, develop sets of data (which to the extent practicable, shall be consistent with the uniform data sets used by the States with respect to the year 2000 health objectives) for uniformly defining health status for purposes of the objectives specified in section 1602(b) of this title. Such sets shall consist of one or more categories of information. The Secretary shall develop formats for the uniform collecting and reporting of information on such categories.

(B) Establish and maintain a system for monitoring the progress made toward meeting each of the health status objectives described in section 1602(b) of this title.

(3) In consultation with Indian tribes and urban Indian communities, each area epidemiology center established under this subsection shall, with respect to such area—

(A) collect data relating to, and monitor progress made toward meeting, each of the health status objectives described in section 1602(b) of this title using the data sets and monitoring system developed by the Secretary pursuant to paragraph (2);

(B) evaluate existing delivery systems, data systems, and other systems that impact the improvement of Indian health;

(C) assist tribes and urban Indian communities in identifying their highest priority health status objectives and the services needed to achieve such objectives, based on epidemiological data;

(D) make recommendations for the targeting of services needed by tribal, urban, and other Indian communities;

(E) make recommendations to improve health care delivery systems for Indians and urban Indians;

(F) work cooperatively with tribal providers of health and social services in order to avoid duplication of existing services; and

(G) provide technical assistance to Indian tribes and urban Indian organizations in the development of local health service priorities and incidence and prevalence rates of disease and other illness in the community.

(4) Epidemiology centers established under this subsection shall be subject to the provisions of the Indian Self-Determination Act (25 U.S.C. 450f et seq.).

(5) The director of the Centers for Disease Control shall provide technical assistance to the centers in carrying out the requirements of this subsection.

(6) The Service shall assign one epidemiologist from each of its area offices to each area epidemiology center to provide such center with technical assistance necessary to carry out this subsection.

(b)(1) The Secretary may make grants to Indian tribes, tribal organizations, and eligible intertribal consortia or Indian organizations to conduct epidemiological studies of Indian communities.

(2) An intertribal consortia or Indian organization is eligible to receive a grant under this subsection if—

(A) it is incorporated for the primary purpose of improving Indian health; and

(B) it is representative of the tribes or urban Indian communities in which it is located.

(3) An application for a grant under this subsection shall be submitted in such manner and at such time as the Secretary shall prescribe.

(4) Applicants for grants under this subsection shall—

(A) demonstrate the technical, administrative, and financial expertise necessary to carry out the functions described in paragraph (5);

(B) consult and cooperate with providers of related health and social services in order to avoid duplication of existing services; and

(C) demonstrate cooperation from Indian tribes or urban Indian organizations in the area to be served.

(5) A grant awarded under paragraph (1) may be used to—

(A) carry out the functions described in subsection (a)(3) of this section;

(B) provide information to and consult with tribal leaders, urban Indian community leaders, and related health staff, on health care and health services management issues; and

(C) provide, in collaboration with tribes and urban Indian communities, the Service with information regarding ways to improve the health status of Indian people.

(6) There are authorized to be appropriated to carry out the purposes of this subsection not more than $12,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(Pub. L. 94–437, title II, § 214, as added Pub. L. 102–573, title II, § 210, Oct. 29, 1992, 106 Stat. 4551.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a)(4), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 1621n. Comprehensive school health education programs

(a) Award of grants

The Secretary, acting through the Service and in consultation with the Secretary of the Interior, may award grants to Indian tribes to develop comprehensive school health education programs for children from preschool through grade 12 in schools located on Indian reservations.

(b) Use of grants

Grants awarded under this section may be used to—

(1) develop health education curricula;

(2) train teachers in comprehensive school health education curricula;

(3) integrate school-based, community-based, and other public and private health promotion efforts;

(4) encourage healthy, tobacco-free school environments;

(5) coordinate school-based health programs with existing services and programs available in the community;

(6) develop school programs on nutrition education, personal health, and fitness;

(7) develop mental health wellness programs;

(8) develop chronic disease prevention programs;

(9) develop substance abuse prevention programs;

(10) develop accident prevention and safety education programs;

(11) develop activities for the prevention and control of communicable diseases; and

(12) develop community and environmental health education programs.

(c) Assistance

The Secretary shall provide technical assistance to Indian tribes in the development of health education plans, and the dissemination of health education materials and information on existing health programs and resources.

(d) Criteria for review and approval of applications

The Secretary shall establish criteria for the review and approval of applications for grants made pursuant to this section.

(e) Report of recipient

Recipients of grants under this section shall submit to the Secretary an annual report on activities undertaken with funds provided under this section. Such reports shall include a statement of—

(1) the number of preschools, elementary schools, and secondary schools served;

(2) the number of students served;

(3) any new curricula established with funds provided under this section;

(4) the number of teachers trained in the health curricula; and

(5) the involvement of parents, members of the community, and community health workers in programs established with funds provided under this section.

(f) Program development

(1) The Secretary of the Interior, acting through the Bureau of Indian Affairs and in cooperation with the Secretary, shall develop a comprehensive school health education program for children from preschool through grade 12 in schools operated by the Bureau of Indian Affairs.

(2) Such program shall include—

(A) school programs on nutrition education, personal health, and fitness;

(B) mental health wellness programs;

(C) chronic disease prevention programs;

(D) substance abuse prevention programs;

(E) accident prevention and safety education programs; and

(F) activities for the prevention and control of communicable diseases.

(3) The Secretary of the Interior shall—

(A) provide training to teachers in comprehensive school health education curricula;

(B) ensure the integration and coordination of school-based programs with existing services and health programs available in the community; and

(C) encourage healthy, tobacco-free school environments.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section $15,000,000 for fiscal year

1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(Pub. L. 94–437, title II, § 215, as added Pub. L. 102–573, title II, § 211, Oct. 29, 1992, 106 Stat. 4553.)

§ 1621*o*. Indian youth grant program

(a) Grants

The Secretary, acting through the Service, is authorized to make grants to Indian tribes, tribal organizations, and urban Indian organizations for innovative mental and physical disease prevention and health promotion and treatment programs for Indian preadolescent and adolescent youths.

(b) Use of funds

(1) Funds made available under this section may be used to—

(A) develop prevention and treatment programs for Indian youth which promote mental and physical health and incorporate cultural values, community and family involvement, and traditional healers; and

(B) develop and provide community training and education.

(2) Funds made available under this section may not be used to provide services described in section 1621h(m) of this title.

(c) Models for delivery of comprehensive health care services

The Secretary shall—

(1) disseminate to Indian tribes information regarding models for the delivery of comprehensive health care services to Indian and urban Indian adolescents;

(2) encourage the implementation of such models; and

(3) at the request of an Indian tribe, provide technical assistance in the implementation of such models.

(d) Criteria for review and approval of applications

The Secretary shall establish criteria for the review and approval of applications under this section.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(Pub. L. 94–437, title II, § 216, as added Pub. L. 102–573, title II, § 212, Oct. 29, 1992, 106 Stat. 4554.)

§ 1621p. American Indians Into Psychology Program

(a) Grants

The Secretary may provide grants to at least 3 colleges and universities for the purpose of developing and maintaining American Indian psychology career recruitment programs as a means of encouraging Indians to enter the mental health field.

(b) Quentin N. Burdick American Indians Into Psychology Program

The Secretary shall provide one of the grants authorized under subsection (a) of this section to develop and maintain a program at the University of North Dakota to be known as the ''Quentin N. Burdick American Indians Into Psychology Program''. Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick Indian Health Programs authorized under section 1616g(b) of this title, the Quentin N. Burdick American Indians Into Nursing Program authorized under section 1616e(e) of this title, and existing university research and communications networks.

(c) Issuance of regulations

(1) The Secretary shall issue regulations for the competitive awarding of the grants provided under this section.

(2) Applicants for grants under this section shall agree to provide a program which, at a minimum—

(A) provides outreach and recruitment for health professions to Indian communities including elementary, secondary and community colleges located on Indian reservations that will be served by the program;

(B) incorporates a program advisory board comprised of representatives from the tribes and communities that will be served by the program;

(C) provides summer enrichment programs to expose Indian students to the varied fields of psychology through research, clinical, and experiential activities;

(D) provides stipends to undergraduate and graduate students to pursue a career in psychology;

(E) develops affiliation agreements with tribal community colleges, the Service, university affiliated programs, and other appropriate entities to enhance the education of Indian students;

(F) to the maximum extent feasible, utilizes existing university tutoring, counseling and student support services; and

(G) to the maximum extent feasible, employs qualified Indians in the program.

(d) Active duty service obligation

The active duty service obligation prescribed under section 254m of title 42 shall be met by each graduate student who receives a stipend described in subsection (c)(2)(D) of this section that is funded by a grant provided under this section. Such obligation shall be met by service—

(1) in the Indian Health Service;

(2) in a program conducted under a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.];

(3) in a program assisted under subchapter IV of this chapter; or

(4) in the private practice of psychology if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

(Pub. L. 94–437, title II, § 217, as added Pub. L. 102–573, title II, § 213, Oct. 29, 1992, 106 Stat. 4555.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (d)(2), is title I of Pub. L. 93–638, Jan. 4, 1975, 88

Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 1621q. Prevention, control, and elimination of tuberculosis

(a) Grants

The Secretary, acting through the Service after consultation with the Centers for Disease Control, may make grants to Indian tribes and tribal organizations for—

(1) projects for the prevention, control, and elimination of tuberculosis;

(2) public information and education programs for the prevention, control, and elimination of tuberculosis; and

(3) education, training, and clinical skills improvement activities in the prevention, control, and elimination of tuberculosis for health professionals, including allied health professionals.

(b) Application for grant

The Secretary may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains the assurances required by subsection (c) of this section and such other agreements, assurances, and information as the Secretary may require.

(c) Eligibility for grant

To be eligible for a grant under subsection (a) of this section, an applicant must provide assurances satisfactory to the Secretary that—

(1) the applicant will coordinate its activities for the prevention, control, and elimination of tuberculosis with activities of the Centers for Disease Control, and State and local health agencies; and

(2) the applicant will submit to the Secretary an annual report on its activities for the prevention, control, and elimination of tuberculosis.

(d) Duties of Secretary

In carrying out this section, the Secretary—

(1) shall establish criteria for the review and approval of applications for grants under subsection (a) of this section, including requirement of public health qualifications of applicants;

(2) shall, subject to available appropriations, make at least one grant under subsection (a) of this section within each area office;

(3) may, at the request of an Indian tribe or tribal organization, provide technical assistance; and

(4) shall prepare and submit a report to the Committee on Energy and Commerce and the Committee on Natural Resources of the House and the Committee on Indian Affairs of the Senate not later than February 1, 1994, and biennially thereafter, on the use of funds under this section and on the progress made toward the prevention, control, and elimination of tuberculosis among Indian tribes and tribal organizations.

(e) Reduction of amount of grant

The Secretary may, at the request of a recipient of a grant under subsection (a) of this section, reduce the amount of such grant by—

(1) the fair market value of any supplies or equipment furnished the grant recipient; and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) of this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(Pub. L. 94–437, title II, § 218, as added Pub. L. 102–573, title II, § 214, Oct. 29, 1992, 106 Stat. 4556; amended Pub. L. 103–437, § 10(e)(1), (2)(B), Nov. 2, 1994, 108 Stat. 4589.)

AMENDMENTS

1994—Subsec. (d)(4). Pub. L. 103–437 substituted ''Committee on Indian'' for ''Select Committee on Indian'' and ''Natural Resources'' for ''Interior and Insular Affairs''.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 1621r. Contract health services payment study

(a) Duty of Secretary

The Secretary, acting through the Service and in consultation with representatives of Indian tribes and tribal organizations operating contract health care programs under the Indian Self-Determination Act (25 U.S.C. 450f et seq.) or under self-governance compacts, Service personnel, private contract health services providers, the Indian Health Service Fiscal Intermediary, and other appropriate experts, shall conduct a study—

(1) to assess and identify administrative barriers that hinder the timely payment for services delivered by private contract health services providers to individual Indians by the Service and the Indian Health Service Fiscal Intermediary;

(2) to assess and identify the impact of such delayed payments upon the personal credit histories of individual Indians who have been treated by such providers; and

(3) to determine the most efficient and effective means of improving the Service's contract health services payment system and ensuring the development of appropriate consumer protection policies to protect individual Indians who receive authorized services from private contract health services providers from billing and collection practices, including the development of materials and programs explaining patients' rights and responsibilities.

(b) Functions of study

The study required by subsection (a) of this section shall—

(1) assess the impact of the existing contract health services regulations and policies upon the ability of the Service and the Indian Health Service Fiscal Intermediary to process, on a timely and efficient basis, the payment of bills submitted by private contract health services providers;

(2) assess the financial and any other burdens imposed upon individual Indians and private contract health services providers by delayed payments;

(3) survey the policies and practices of collection agencies used by contract health services providers to collect payments for services rendered to individual Indians;

(4) identify appropriate changes in Federal policies, administrative procedures, and regulations, to eliminate the problems experienced by private contract health services providers and individual Indians as a result of delayed payments; and

(5) compare the Service's payment processing requirements with private insurance claims processing requirements to evaluate the systemic differences or similarities employed by the Service and private insurers.

(c) Report to Congress

Not later than 12 months after October 29, 1992, the Secretary shall transmit to the Congress a report that includes—

(1) a detailed description of the study conducted pursuant to this section; and

(2) a discussion of the findings and conclusions of such study.

(Pub. L. 94–437, title II, § 219, as added Pub. L. 102–573, title II, § 215, Oct. 29, 1992, 106 Stat. 4557.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 1621s. Prompt action on payment of claims

(a) Time of response

The Service shall respond to a notification of a claim by a provider of a contract care service with either an individual purchase order or a denial of the claim within 5 working days after the receipt of such notification.

(b) Failure to timely respond

If the Service fails to respond to a notification of a claim in accordance with subsection (a) of this section, the Service shall accept as valid the claim submitted by the provider of a contract care service.

(c) Time of payment

The Service shall pay a completed contract care service claim within 30 days after completion of the claim.

(Pub. L. 94–437, title II, § 220, as added Pub. L. 102–573, title II, § 215, Oct. 29, 1992, 106 Stat. 4558.)

§ 1621t. Demonstration of electronic claims processing

(a) Not later than June 15, 1993, the Secretary shall develop and implement, directly or by contract, 2 projects to demonstrate in a pilot setting the use of claims processing technology to improve the accuracy and timeliness of the billing for, and payment of, contract health services.

(b) The Secretary shall conduct one of the projects authorized in subsection (a) of this section in the Service area served by the area office located in Phoenix, Arizona.

(Pub. L. 94–437, title II, § 221, as added Pub. L. 102–573, title II, § 215, Oct. 29, 1992, 106 Stat. 4559.)

§ 1621u. Liability for payment

(a) A patient who receives contract health care services that are authorized by the Service shall not be liable for the payment of any charges or costs associated with the provision of such services.

(b) The Secretary shall notify a contract care provider and any patient who receives contract health care services authorized by the Service that such patient is not liable for the payment of any charges or costs associated with the provision of such services.

(Pub. L. 94–437, title II, § 222, as added Pub. L. 102–573, title II, § 215, Oct. 29, 1992, 106 Stat. 4559.)

§ 1621v. Office of Indian Women's Health Care

There is established within the Service an Office of Indian Women's Health Care to oversee efforts of the Service to monitor and improve the quality of health care for Indian women of all ages through the planning and delivery of programs administered by the Service, in order to improve and enhance the treatment models of care for Indian women.

(Pub. L. 94–437, title II, § 223, as added Pub. L. 102–573, title II, § 216, Oct. 29, 1992, 106 Stat. 4559.)

§ 1621w. Authorization of appropriations

Except as provided in sections 1621h(m), 1621j, 1621*l*, 1621m(b)(5), 1621n, and 1621*o* of this title, there are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this subchapter.

(Pub. L. 94–437, title II, § 224, as added Pub. L. 102–573, title II, § 217(a), Oct. 29, 1992, 106 Stat. 4559.)

§ 1621x. Limitation on use of funds

Amounts appropriated to carry out this subchapter may not be used in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.].

(Pub. L. 94–437, title II, § 225, as added Pub. L. 105–12, § 9(f), Apr. 30, 1997, 111 Stat. 27.)

REFERENCES IN TEXT

The Assisted Suicide Funding Restriction Act of 1997, referred to in text, is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of Title 42 and Tables.

EFFECTIVE DATE

Section effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as a note under section 14401 of Title 42, The Public Health and Welfare.

§ 1622. Transferred

CODIFICATION

Section, Pub. L. 94–437, title IV, § 404, as added Pub. L. 96–537, § 6, Dec. 17, 1980, 94 Stat. 3176, which related to grants to and contracts with tribal organizations, was transferred to section 1644 of this title.

SUBCHAPTER III—HEALTH FACILITIES

§ 1631. Consultation; closure of facilities; reports

(a) Consultation; standards for accreditation

Prior to the expenditure of, or the making of any firm commitment to expend, any funds appropriated for the planning, design, construction, or renovation of facilities pursuant to section 13 of this title, the Secretary, acting through the Service, shall—

(1) consult with any Indian tribe that would be significantly affected by such expenditure for the purpose of determining and, whenever practicable, honoring tribal preferences concerning size, location, type, and other characteristics of any facility on which such expenditure is to be made, and

(2) ensure, whenever practicable, that such facility meets the standards of the Joint Commission on Accreditation of Health Care Organizations by not later than 1 year after the date on which the construction or renovation of such facility is completed.

(b) Closure; report on proposed closure

(1) Notwithstanding any provision of law other than this subsection, no Service hospital or outpatient health care facility of the Service, or any portion of such a hospital or facility, may be closed if the Secretary has not submitted to the Congress at least 1 year prior to the date such hospital or facility (or portion thereof) is proposed to be closed an evaluation of the impact of such proposed closure which specifies, in addition to other considerations—

(A) the accessibility of alternative health care resources for the population served by such hospital or facility;

(B) the cost effectiveness of such closure;

(C) the quality of health care to be provided to the population served by such hospital or facility after such closure;

(D) the availability of contract health care funds to maintain existing levels of service;

(E) the views of the Indian tribes served by such hospital or facility concerning such closure;

(F) the level of utilization of such hospital or facility by all eligible Indians; and

(G) the distance between such hospital or facility and the nearest operating Service hospital.

(2) Paragraph (1) shall not apply to any temporary closure of a facility or of any portion of a facility if such closure is necessary for medical, environmental, or safety reasons.

(c) Annual report on health facility priority system

(1) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report which sets forth—

(A) the current health facility priority system of the Service,

(B) the planning, design, construction, and renovation needs for the 10 top-priority inpatient care facilities and the 10 top-priority ambulatory care facilities (together with required staff quarters),

(C) the justification for such order of priority,

(D) the projected cost of such projects, and

(E) the methodology adopted by the Service in establishing priorities under its health facility priority system.

(2) In preparing each report required under paragraph (1) (other than the initial report), the Secretary shall—

(A) consult with Indian tribes and tribal organizations including those tribes or tribal organizations operating health programs or facilities under any contract entered into with the Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], and

(B) review the needs of such tribes and tribal organizations for inpatient and outpatient facilities, including their needs for renovation and expansion of existing facilities.

(3) For purposes of this subsection, the Secretary shall, in evaluating the needs of facilities operated under any contract entered into with the Service under the Indian Self-Determination Act, use the same criteria that the Secretary uses in evaluating the needs of facilities operated directly by the Service.

(4) The Secretary shall ensure that the planning, design, construction, and renovation needs of Service and non-Service facilities which are the subject of a contract for health services entered into with the Service under the Indian Self-Determination Act are fully and equitably integrated into the development of the health facility priority system.

(d) Funds appropriated subject to section 450f of this title

All funds appropriated under section 13 of this title for the planning, design, construction, or renovation of health facilities for the benefit of an Indian tribe or tribes shall be subject to the provisions of section 102 of the Indian Self-Determination Act [25 U.S.C. 450f].

(Pub. L. 94–437, title III, § 301, Sept. 30, 1976, 90 Stat. 1406; Pub. L. 100–713, title III, § 301, Nov. 23, 1988, 102 Stat. 4812; Pub. L. 102–573, title III, § 301, title IX, § 902(4)(B), Oct. 29, 1992, 106 Stat. 4560, 4591.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (c)(2) to (4), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–573, § 301(1), substituted ''Health Care Organizations'' for ''Hospitals''.

Subsec. (b)(1). Pub. L. 102–573, § 301(2), struck out ''other'' before ''outpatient health care facility'' in introductory provisions and added subpars. (F) and (G).

Subsec. (c). Pub. L. 102–573, § 301(3), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''The President shall include with the budget submitted under section 1105 of title 31, for each of the fiscal years 1990, 1991, and 1992, program information documents for the construction of 10 Indian health facilities which—

''(1) comply with applicable construction standards, and

''(2) have been approved by the Secretary.''

Subsec. (c)(1). Pub. L. 102–573, § 301(4), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The Secretary shall submit to the Congress an annual report which sets forth—''.

Subsec. (c)(2) to (5). Pub. L. 102–573, § 301(5), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''The first report required under paragraph (1) shall be submitted by no later than the date that is 180 days after November 23, 1988, and, beginning in 1990, each subsequent annual report shall be submitted by the date that is 60 days after the date on which the President submits the budget to the Congress under section 1105 of title 31.''

Subsecs. (d), (e). Pub. L. 102–573, §§ 301(3), 902(4)(B), redesignated subsec. (e) as (d) and substituted ''section 102 of the Indian Self-Determination Act'' for ''sections 102 and 103(b) of the Indian Self-Determination Act''. Former subsec. (d) redesignated (c).

1988—Pub. L. 100–713 amended section generally, substituting subsecs. (a) to (e) relating to consultation, closure of facilities, and reports for former subsecs. (a) to (c) relating to construction and renovation of Service facilities.

§ 1632. Safe water and sanitary waste disposal facilities

(a) Congressional findings

The Congress hereby finds and declares that—

(1) the provision of safe water supply systems and sanitary sewage and solid waste disposal systems is primarily a health consideration and function;

(2) Indian people suffer an inordinately high incidence of disease, injury, and illness directly attributable to the absence or inadequacy of such systems;

(3) the long-term cost to the United States of treating and curing such disease, injury, and illness is substantially greater than the short-term cost of providing such systems and other preventive health measures;

(4) many Indian homes and communities still lack safe water supply systems and sanitary sewage and solid waste disposal systems; and

(5) it is in the interest of the United States, and it is the policy of the United States, that all Indian communities and Indian homes, new and existing, be provided with safe and adequate water supply systems and sanitary sewage waste disposal systems as soon as possible.

(b) Authority; assistance; transfer of funds

(1) In furtherance of the findings and declarations made in subsection (a) of this section, Congress reaffirms the primary responsibility and authority of the Service to provide the necessary sanitation facilities and services as provided in section 2004a of title 42.

(2) The Secretary, acting through the Service, is authorized to provide under section 2004a of title 42—

(A) financial and technical assistance to Indian tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities;

(B) ongoing technical assistance and training in the management of utility organizations which operate and maintain sanitation facilities; and

(C) operation and maintenance assistance for, and emergency repairs to, tribal sanitation facilities when necessary to avoid a health hazard or to protect the Federal investment in sanitation facilities.

(3) Notwithstanding any other provision of law—

(A) the Secretary of Housing and Urban Affairs is authorized to transfer funds appropriated under the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.) to the Secretary of Health and Human Services, and

(B) the Secretary of Health and Human Services is authorized to accept and use such funds for the purpose of providing sanitation facilities and services for Indians under section 2004a of title 42.

(c) 10-year plan

Beginning in fiscal year 1990, the Secretary, acting through the Service, shall develop and begin implementation of a 10-year plan to provide safe water supply and sanitation sewage and solid waste disposal facilities to existing Indian homes and communities and to new and renovated Indian homes.

(d) Tribal capability

The financial and technical capability of an Indian tribe or community to safely operate and maintain a sanitation facility shall not be a prerequisite to the provision or construction of sanitation facilities by the Secretary.

(e) Amount of assistance

(1) The Secretary is authorized to provide financial assistance to Indian tribes and communities in an amount equal to the Federal share of the costs of operating, managing, and maintaining the facilities provided under the plan described in subsection (c) of this section.

(2) For the purposes of paragraph (1), the term ''Federal share'' means 80 percent of the costs described in paragraph (1).

(3) With respect to Indian tribes with fewer than 1,000 enrolled members, the non-Federal portion of the costs of operating, managing, and maintaining such facilities may be provided, in part, through cash donations or in kind property, fairly evaluated.

(f) Eligibility of programs administered by Indian tribes

Programs administered by Indian tribes or tribal organizations under the authority of the Indian Self-Determination Act [25 U.S.C. 450f et seq.] shall be eligible for—

(1) any funds appropriated pursuant to this section, and

(2) any funds appropriated for the purpose of providing water supply or sewage disposal services,

on an equal basis with programs that are administered directly by the Service.

(g) Annual report; sanitation deficiency levels

(1) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report which sets forth—

(A) the current Indian sanitation facility priority system of the Service;

(B) the methodology for determining sanitation deficiencies;

(C) the level of sanitation deficiency for each sanitation facilities project of each Indian tribe or community;

(D) the amount of funds necessary to raise all Indian tribes and communities to a level I sanitation deficiency; and

(E) the amount of funds necessary to raise all Indian tribes and communities to zero sanitation deficiency.

(2) In preparing each report required under paragraph (1) (other than the initial report), the Secretary shall consult with Indian tribes and tribal organizations (including those tribes or tribal organizations operating health care programs or facilities under any contract entered into with the Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.]) to determine the sanitation needs of each tribe.

(3) The methodology used by the Secretary in determining sanitation deficiencies for purposes of paragraph (1) shall be applied uniformly to all Indian tribes and communities.

(4) For purposes of this subsection, the sanitation deficiency levels for an Indian tribe or community are as follows:

(A) level I is an Indian tribe or community with a sanitation system—

(i) which complies with all applicable water supply and pollution control laws, and

(ii) in which the deficiencies relate to routine replacement, repair, or maintenance needs;

(B) level II is an Indian tribe or community with a sanitation system—

(i) which complies with all applicable water supply and pollution control laws, and

(ii) in which the deficiencies relate to capital improvements that are necessary to improve the facilities in order to meet the needs of such tribe or community for domestic sanitation facilities;

(C) level III is an Indian tribe or community with a sanitation system which—

(i) has an inadequate or partial water supply and a sewage disposal facility that does not comply with applicable water supply and pollution control laws, or

(ii) has no solid waste disposal facility;

(D) level IV is an Indian tribe or community with a sanitation system which lacks either a safe water supply system or a sewage disposal system; and

(E) level V is an Indian tribe or community that lacks a safe water supply and a sewage disposal system.

(5) For purposes of this subsection, any Indian tribe or community that lacks the operation and maintenance capability to enable its sanitation system to meet pollution control laws may not be treated as having a level I or II sanitation deficiency.

(Pub. L. 94–437, title III, § 302, Sept. 30, 1976, 90 Stat. 1407; Pub. L. 100–713, title III, § 302, Nov. 23, 1988, 102 Stat. 4814; Pub. L. 102–573, title III, §§ 302, 307(b)(1), Oct. 29, 1992, 106 Stat. 4560, 4564.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (b)(3)(A), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

The Indian Self-Determination Act, referred to in subsecs. (f) and (g)(2), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Subsec. (e). Pub. L. 102–573, § 302(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The provisions of this section shall not diminish the primary responsibility of the Indian family, community, or tribe to establish, collect, and utilize reasonable user fees, or otherwise set aside funding, for the purpose of operating and maintaining sanitation facilities.''

Subsec. (f)(1). Pub. L. 102–573, § 302(2), substituted ''this section'' for ''subsection (h) of this section''.

Subsec. (g)(1). Pub. L. 102–573, § 302(3)(A), substituted ''The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report'' for ''The Secretary shall submit to the Congress an annual report''.

Subsec. (g)(2) to (6). Pub. L. 102–573, § 302(3)(B), redesignated pars. (3) to (6) as (2) to (5), respectively, and struck out former par. (2) which read as follows: ''The first report required under paragraph (1) shall be submitted by no later than the date that is 180 days after November 23, 1988, and, beginning in 1990, each subsequent annual report shall be submitted by the date

that is 60 days after the date on which the President submits the budget to the Congress under section 1105 of title 31.''

Subsec. (h). Pub. L. 102–573, § 307(b)(1), struck out subsec. (h) which authorized appropriations to carry out subsec. (b)(2) for fiscal years 1990 to 1992.

1988—Pub. L. 100–713 amended section generally, substituting subsecs. (a) to (h) relating to safe water and sanitary waste disposal facilities for former subsecs. (a) to (c) relating to construction of safe water and sanitary waste disposal facilities.

§ 1633. Preferences to Indians and Indian firms

(a) Discretionary authority; covered activities

The Secretary, acting through the Service, may utilize the negotiating authority of section 47 of this title, to give preference to any Indian or any enterprise, partnership, corporation, or other type of business organization owned and controlled by an Indian or Indians including former or currently federally recognized Indian tribes in the State of New York (hereinafter referred to as an ''Indian firm'') in the construction and renovation of Service facilities pursuant to section 1631 of this title and in the construction of safe water and sanitary waste disposal facilities pursuant to section 1632 of this title. Such preference may be accorded by the Secretary unless he finds, pursuant to rules and regulations promulgated by him, that the project or function to be contracted for will not be satisfactory or such project or function cannot be properly completed or maintained under the proposed contract. The Secretary, in arriving at his finding, shall consider whether the Indian or Indian firm will be deficient with respect to (1) ownership and control by Indians, (2) equipment, (3) bookkeeping and accounting procedures, (4) substantive knowledge of the project or function to be contracted for, (5) adequately trained personnel, or (6) other necessary components of contract performance.

(b) Pay rates

For the purpose of implementing the provisions of this subchapter, the Secretary shall assure that the rates of pay for personnel engaged in the construction or renovation of facilities constructed or renovated in whole or in part by funds made available pursuant to this subchapter are not less than the prevailing local wage rates for similar work as determined in accordance with sections 3141–3144, 3146, and 3147 of title 40.

(Pub. L. 94–437, title III, § 303, Sept. 30, 1976, 90 Stat. 1407.)

CODIFICATION

''Sections 3141–3144, 3146, and 3147 of title 40'' substituted in subsec. (b) for ''the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 1634. Expenditure of non-Service funds for renovation

(a) Authority of Secretary

(1) Notwithstanding any other provision of law, the Secretary is authorized to accept any major renovation or modernization by any Indian tribe of any Service facility, or of any other Indian health facility operated pursuant to a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], including—

(A) any plans or designs for such renovation or modernization; and

(B) any renovation or modernization for which funds appropriated under any Federal law were lawfully expended,

but only if the requirements of subsection (b) of this section are met.

(2) The Secretary shall maintain a separate priority list to address the needs of such facilities for personnel or equipment.

(3) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, the priority list maintained pursuant to paragraph (2).

(b) Requirements

The requirements of this subsection are met with respect to any renovation or modernization if—

(1) the tribe or tribal organization—

(A) provides notice to the Secretary of its intent to renovate or modernize; and

(B) applies to the Secretary to be placed on a separate priority list to address the needs of such new facilities for personnel or equipment; and

(2) the renovation or modernization—

(A) is approved by the appropriate area director of the Service; and

(B) is administered by the tribe in accordance with the rules and regulations prescribed by the Secretary with respect to construction or renovation of Service facilities.

(c) Recovery for non-use as Service facility

If any Service facility which has been renovated or modernized by an Indian tribe under this section ceases to be used as a Service facility during the 20-year period beginning on the date such renovation or modernization is completed, such Indian tribe shall be entitled to recover from the United States an amount which bears the same ratio to the value of such facility at the time of such cessation as the value of such renovation or modernization (less the total amount of any funds provided specifically for such facility under any Federal program that were expended for such renovation or modernization) bore to the value of such facility at the time of the completion of such renovation or modernization.

(Pub. L. 94–437, title III, § 305, as added Pub. L. 96–537, § 5, Dec. 17, 1980, 94 Stat. 3175; amended Pub. L. 100–713, title III, § 303(a), Nov. 23, 1988, 102 Stat. 4816; Pub. L. 102–573, title III, § 305, Oct. 29, 1992, 106 Stat. 4563.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a)(1), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–573 amended section generally, substituting present provisions for former provisions which related to: in subsec. (a), authority of Secretary; in subsec. (b), requirements; in subsec. (c), higher priority project; and in subsec. (d), recovery for non-use as Service facility.

1988—Pub. L. 100–713 amended section generally, substituting ''Expenditure of non-Service funds for renovation'' for ''Authorization of appropriations'' in section catchline and subsecs. (a) to (d) for former single unlettered par.

§ 1635. Repealed. Pub. L. 100–713, title III, § 303(b), Nov. 23, 1988, 102 Stat. 4817

Section, Pub. L. 98–473, title I, § 101(c) [title II, § 201], Oct. 12, 1984, 98 Stat. 1837, 1865, related to renovation and modernization of facilities.

§ 1636. Grant program for construction, expansion, and modernization of small ambulatory care facilities

(a) Authorization

(1) The Secretary, acting through the Service, shall make grants to tribes and tribal organizations for the construction, expansion, or modernization of facilities for the provision of ambulatory care services to eligible Indians (and noneligible persons as provided in subsection (c)(1)(C) of this section). A grant made under this section may cover up to 100 percent of the costs of such construction, expansion, or modernization. For the purposes of this section, the term ''construction'' includes the replacement of an existing facility.

(2) A grant under paragraph (1) may only be made to a tribe or tribal organization operating an Indian health facility (other than a facility owned or constructed by the Service, including a facility originally owned or constructed by the Service and transferred to a tribe or tribal organization) pursuant to a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(b) Use of grant

(1) A grant provided under this section may be used only for the construction, expansion, or modernization (including the planning and design of such construction, expansion, or modernization) of an ambulatory care facility—

(A) located apart from a hospital;

(B) not funded under section 1631 of this title or section 1637 of this title; and

(C) which, upon completion of such construction, expansion, or modernization will—

(i) have a total capacity appropriate to its projected service population;

(ii) serve no less than 500 eligible Indians annually; and

(iii) provide ambulatory care in a service area (specified in the contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.]) with a population of not less than 2,000 eligible Indians.

(2) The requirements of clauses (ii) and (iii) of paragraph (1)(C) shall not apply to a tribe or tribal organization applying for a grant under this section whose tribal government offices are located on an island.

(c) Application for grant

(1) No grant may be made under this section unless an application for such a grant has been submitted to and approved by the Secretary. An application for a grant under this section shall be submitted in such form and manner as the Secretary shall by regulation prescribe and shall set forth reasonable assurance by the applicant that, at all times after the construction, expansion, or modernization of a facility carried out pursuant to a grant received under this section—

(A) adequate financial support will be available for the provision of services at such facility;

(B) such facility will be available to eligible Indians without regard to ability to pay or source of payment; and

(C) such facility will, as feasible without diminishing the quality or quantity of services provided to eligible Indians, serve noneligible persons on a cost basis.

(2) In awarding grants under this section, the Secretary shall give priority to tribes and tribal organizations that demonstrate—

(A) a need for increased ambulatory care services; and

(B) insufficient capacity to deliver such services.

(d) Transfer of interest to United States upon cessation of facility

If any facility (or portion thereof) with respect to which funds have been paid under this section, ceases, at any time after completion of the construction, expansion, or modernization carried out with such funds, to be utilized for the purposes of providing ambulatory care services to eligible Indians, all of the right, title, and interest in and to such facility (or portion thereof) shall transfer to the United States.

(Pub. L. 94–437, title III, § 306, as added Pub. L. 100–713, title III, § 304, Nov. 23, 1988, 102 Stat. 4817; amended Pub. L. 102–573, title III, § 303, Oct. 29, 1992, 106 Stat. 4561.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsecs. (a)(2) and (b)(1)(C)(iii), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–573 amended section generally, substituting provisions relating to grant program for construction, expansion, and modernization of small ambulatory care facilities for provisions relating to conveyance of certain real property under Alaska Native Claims Settlement Act.

§ 1637. Indian health care delivery demonstration project

(a) Health care delivery demonstration projects

The Secretary, acting through the Service, is authorized to enter into contracts with, or make grants to, Indian tribes or tribal organizations for the purpose of carrying out a health care delivery demonstration project to test alternative means of delivering health care and services through health facilities to Indians.

(b) Use of funds

The Secretary, in approving projects pursuant to this section, may authorize funding for the

construction and renovation of hospitals, health centers, health stations, and other facilities to deliver health care services and is authorized to—

(1) waive any leasing prohibition;

(2) permit carryover of funds appropriated for the provision of health care services;

(3) permit the use of non-Service Federal funds and non-Federal funds;

(4) permit the use of funds or property donated from any source for project purposes; and

(5) provide for the reversion of donated real or personal property to the donor.

(c) Criteria

(1) Within 180 days after November 28, 1990, the Secretary, after consultation with Indian tribes and tribal organizations, shall develop and publish in the Federal Register criteria for the review and approval of applications submitted under this section. The Secretary may enter into a contract or award a grant under this section for projects which meet the following criteria:

(A) There is a need for a new facility or program or the reorientation of an existing facility or program.

(B) A significant number of Indians, including those with low health status, will be served by the project.

(C) The project has the potential to address the health needs of Indians in an innovative manner.

(D) The project has the potential to deliver services in an efficient and effective manner.

(E) The project is economically viable.

(F) The Indian tribe or tribal organization has the administrative and financial capability to administer the project.

(G) The project is integrated with providers of related health and social services and is coordinated with, and avoids duplication of, existing services.

(2) The Secretary may provide for the establishment of peer review panels, as necessary, to review and evaluate applications and to advise the Secretary regarding such applications using the criteria developed pursuant to paragraph (1).

(3)(A) On or before September 30, 1995, the Secretary shall enter into contracts or award grants under this section for a demonstration project in each of the following service units which meets the criteria specified in paragraph (1) and for which a completed application has been received by the Secretary:

(i) Cass Lake, Minnesota.

(ii) Clinton, Oklahoma.

(iii) Harlem, Montana.

(iv) Mescalero, New Mexico.

(v) Owyhee, Nevada.

(vi) Parker, Arizona.

(vii) Schurz, Nevada.

(viii) Winnebago, Nebraska.

(ix) Ft. Yuma, California.

(B) The Secretary may also enter into contracts or award grants under this section taking into consideration applications received under this section from all service areas. The Secretary may not award a greater number of such contracts or grants in one service area than in any other service area until there is an equal number of such contracts or grants awarded with respect to all service areas from which the Secretary receives applications during the application period (as determined by the Secretary) which meet the criteria specified in paragraph (1).

(d) Technical assistance

The Secretary shall provide such technical and other assistance as may be necessary to enable applicants to comply with the provisions of this section.

(e) Service to ineligible persons

The authority to provide services to persons otherwise ineligible for the health care benefits of the Service and the authority to extend hospital privileges in service facilities to non-Service health care practitioners as provided in section 1680c of this title may be included, subject to the terms of such section, in any demonstration project approved pursuant to this section.

(f) Equitable treatment

For purposes of subsection (c)(1)(A) of this section, the Secretary shall, in evaluating facilities operated under any contract entered into with the Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], use the same criteria that the Secretary uses in evaluating facilities operated directly by the Service.

(g) Equitable integration of facilities

The Secretary shall ensure that the planning, design, construction, and renovation needs of Service and non-Service facilities which are the subject of a contract for health services entered into with the Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], are fully and equitably integrated into the implementation of the health care delivery demonstration projects under this section.

(h) Report to Congress

(1) The Secretary shall submit to the President, for inclusion in the report which is required to be submitted to the Congress under section 1671 of this title for fiscal year 1997, an interim report on the findings and conclusions derived from the demonstration projects established under this section.

(2) The Secretary shall submit to the President, for inclusion in the report which is required to be submitted to the Congress under section 1671 of this title for fiscal year 1999, a final report on the findings and conclusions derived from the demonstration projects established under this section, together with legislative recommendations.

(Pub. L. 94–437, title III, § 307, as added Pub. L. 101–630, title V, § 504, Nov. 28, 1990, 104 Stat. 4562; amended Pub. L. 102–573, title III, §§ 304, 307(b)(2), title VII, § 701(c)(2), title IX, § 902(4)(A), Oct. 29, 1992, 106 Stat. 4562, 4564, 4572, 4591.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsecs. (f) and (g), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this

Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–573, § 902(4)(A), made technical amendment to section catchline.

Subsec. (c)(1)(A). Pub. L. 102–573, § 304(a)(1), inserted ''or program'' after ''facility'' in two places.

Subsec. (c)(3)(A). Pub. L. 102–573, § 304(a)(2), substituted ''On or before September 30, 1995, the'' for ''The'' and inserted ''and for which a completed application has been received by the Secretary'' after ''paragraph (1)''.

Subsec. (c)(3)(B). Pub. L. 102–573, § 304(a)(3), which directed amendment of subsec. (c) by striking subpar. (B) and inserting a new subpar. (B), was executed by making the amendment in par. (3) of subsec. (c) to reflect the probable intent of Congress. Prior to amendment, subpar. (B) read as follows: ''After entering into contracts or awarding grants in accordance with subparagraph (A), and taking into account contracts entered into and grants awarded under such subparagraph, the Secretary may only enter into one contract or award one grant under this subsection with respect to a service area until the Secretary has entered into contracts or awarded grants for all service areas with respect to which the Secretary receives applications during the application period, as determined by the Secretary, which meet the criteria developed under paragraph (1).''

Subsec. (e). Pub. L. 102–573, § 701(c)(2), made technical amendment to the reference to section 1680c of this title to reflect renumbering of corresponding section of original act.

Subsec. (h). Pub. L. 102–573, § 304(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''Within 90 days after the end of the period set out in subsection (a) of this section, the Secretary shall prepare and submit to Congress a report, together with legislative recommendations, on the findings and conclusions derived from the demonstration projects.''

Subsec. (i). Pub. L. 102–573, § 307(b)(2), struck out subsec. (i) which authorized appropriation of such sums as necessary for fiscal years 1991 and 1992 for purpose of carrying out this section.

§ 1638. Land transfer

The Bureau of Indian Affairs is authorized to transfer, at no cost, up to 5 acres of land at the Chemawa Indian School, Salem, Oregon, to the Service for the provision of health care services. The land authorized to be transferred by this section is that land adjacent to land under the jurisdiction of the Service and occupied by the Chemawa Indian Health Center.

(Pub. L. 94–437, title III, § 308, as added Pub. L. 102–573, title III, § 306, Oct. 29, 1992, 106 Stat. 4564.)

§ 1638a. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this subchapter.

(Pub. L. 94–437, title III, § 309, as added Pub. L. 102–573, title III, § 307(a), Oct. 29, 1992, 106 Stat. 4564.)

§ 1638b. Applicability of Buy American requirement

(a) Duty of Secretary

The Secretary shall ensure that the requirements of the Buy American Act [41 U.S.C. 10a et seq.] apply to all procurements made with funds provided pursuant to the authorization contained in section 1638a of this title.

(b) Report to Congress

The Secretary shall submit to the Congress a report on the amount of procurements from foreign entities made in fiscal years 1993 and 1994 with funds provided pursuant to the authorization contained in section 1638a of this title. Such report shall separately indicate the dollar value of items procured with such funds for which the Buy American Act [41 U.S.C. 10a et seq.] was waived pursuant to the Trade Agreement Act of 1979 or any international agreement to which the United States is a party.

(c) Fraudulent use of Made-in-America label

If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a ''Made in America'' inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or subcontract made with funds provided pursuant to the authorization contained in section 1638a of this title, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

(d) "Buy American Act" defined

For purposes of this section, the term ''Buy American Act'' means title III of the Act entitled ''An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes'', approved March 3, 1933 (41 U.S.C. 10a et seq.).

(Pub. L. 94–437, title III, § 310, as added Pub. L. 102–573, title III, § 308, Oct. 29, 1992, 106 Stat. 4564.)

REFERENCES IN TEXT

The Buy American Act, referred to in subsecs. (a), (b), and (d), is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which is classified generally to sections 10a, 10b, and 10c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 10a of Title 41 and Tables.

The Trade Agreement Act of 1979, referred to in subsec. (b), probably means the Trade Agreements Act of 1979, Pub. L. 96–39, July 26, 1979, 93 Stat. 144, as amended. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of Title 19, Customs Duties, and Tables.

§ 1638c. Contracts for personal services in Indian Health Service facilities

In fiscal year 1995 and thereafter (a) the Secretary may enter into personal services contracts with entities, either individuals or organizations, for the provision of services in facilities owned, operated or constructed under the jurisdiction of the Indian Health Service; (b) the Secretary may exempt such a contract from competitive contracting requirements upon adequate notice of contracting opportunities to individuals and organizations residing in the geographic vicinity of the health facility; (c) consideration of individuals and organizations shall be based solely on the qualifications established

for the contract and the proposed contract price; and (d) individuals providing health care services pursuant to these contracts are covered by the Federal Tort Claims Act.

(Pub. L. 103–332, title II, Sept. 30, 1994, 108 Stat. 2530.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in text, is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1995, and not as part of the Indian Health Care Improvement Act which comprises this chapter.

§ 1638d. Credit to appropriations of money collected for meals at Indian Health Service facilities

Money before, on, and after September 30, 1994, collected for meals served at Indian Health Service facilities will be credited to the appropriations from which the services were furnished and shall be credited to the appropriation when received.

(Pub. L. 103–332, title II, Sept. 30, 1994, 108 Stat. 2530.)

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1995, and not as part of the Indian Health Care Improvement Act which comprises this chapter.

SUBCHAPTER III–A—ACCESS TO HEALTH SERVICES

CODIFICATION

This subchapter was in the original title IV of Pub. L. 94–437, as amended. Prior to amendment by Pub. L. 102–573, title IV enacted section 1622 of this title and sections 1395qq and 1396j of Title 42, The Public Health and Welfare, amended sections 1395f, 1395n, and 1396d of Title 42, and enacted provisions set out as notes under section 1671 of this title and sections 1395qq and 1396j of Title 42.

§ 1641. Treatment of payments under medicare program

(a) Determination of appropriations

Any payments received by a hospital or skilled nursing facility of the Service (whether operated by the Service or by an Indian tribe or tribal organization pursuant to a contract under the Indian Self-Determination Act [25 U.S.C. 450f et seq.]) for services provided to Indians eligible for benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] shall not be considered in determining appropriations for health care and services to Indians.

(b) Preferences

Nothing in this chapter authorizes the Secretary to provide services to an Indian beneficiary with coverage under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], as amended, in preference to an Indian beneficiary without such coverage.

(Pub. L. 94–437, title IV, § 401, Sept. 30, 1976, 90 Stat. 1408; Pub. L. 102–573, title IV, § 401(a), Oct. 29, 1992, 106 Stat. 4565.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Social Security Act, referred to in subsecs. (a) and (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

CODIFICATION

Prior to general amendment by Pub. L. 102–573, section 401 of Pub. L. 94–437, in subsec. (a) amended sections 1395f and 1395n of Title 42, The Public Health and Welfare, in subsec. (b) enacted section 1395qq of Title 42, and in subsecs. (c) and (d) enacted provisions set out as notes under section 1395qq of Title 42 which were restated in this section.

AMENDMENTS

1992—Pub. L. 102–573 amended section generally, substituting subsecs. (a) and (b) for former subsecs. (a) to (d). See Codification note above.

§ 1642. Treatment of payments under medicaid program

(a) Payments to special fund

Notwithstanding any other provision of law, payments to which any facility of the Service (including a hospital, nursing facility, intermediate care facility for the mentally retarded, or any other type of facility which provides services for which payment is available under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]) is entitled under a State plan by reason of section 1911 of such Act [42 U.S.C. 1396j] shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of such title. In making payments from such fund, the Secretary shall ensure that each service unit of the Service receives at least 80 percent of the amounts to which the facilities of the Service, for which such service unit makes collections, are entitled by reason of section 1911 of the Social Security Act.

(b) Determination of appropriations

Any payments received by such facility for services provided to Indians eligible for benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] shall not be considered in de-

termining appropriations for the provision of health care and services to Indians.

(Pub. L. 94–437, title IV, § 402, Sept. 30, 1976, 90 Stat. 1409; Pub. L. 100–713, title IV, § 401(a), (b), Nov. 23, 1988, 102 Stat. 4818; Pub. L. 102–573, title IV, § 401(b)(1), Oct. 29, 1992, 106 Stat. 4565.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

CODIFICATION

Prior to general amendment by Pub. L. 102–573, section 402 of Pub. L. 94–437, in subsec. (a) enacted section 1396j of Title 42, The Public Health and Welfare, in subsecs. (b) to (d) enacted provisions set out as notes under section 1396j of Title 42 (of which subsecs. (c) and (d) were restated in this section), and in subsec. (e) amended section 1396d of Title 42.

AMENDMENTS

1992—Pub. L. 102–573 amended section generally, substituting subsecs. (a) and (b) for former subsecs. (a) to (e). See Codification note above.

1988—Subsec. (b). Pub. L. 100–713, § 401(b), struck out subsec. (b) which authorized Secretary of Health and Human Services to enter into agreements to reimburse State agencies for health care and services provided in Indian Health Service facilities to Indians eligible for medical assistance under title XIX of the Social Security Act.

Subsec. (c). Pub. L. 100–713, § 401(a), substituted ''skilled nursing facility, or any other type of facility which provides services of a type otherwise covered under a State plan for medical assistance approved under title XIX of the Social Security Act'' for ''or skilled nursing facility'', ''such a State plan'' for ''a State plan approved under title XIX of the Social Security Act'', and ''In making payments from such fund, the Secretary shall ensure that each service unit of the Indian Health Service receives at least 50 percent of the amounts to which the facilities of the Indian Health Service, for which such service unit makes collections, are entitled by reason of section 1911 of the Social Security Act, if such amount is necessary for the purpose of making improvements in such facilities in order to achieve compliance with the conditions and requirements of title XIX of the Social Security Act. This subsection shall'' for ''The preceding sentence shall''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 401(b)(2) of Pub. L. 102–573 provided that: ''The increase (from 50 percent) in the percentage of the payments from the fund to be made to each service unit of the Service specified in the amendment made by paragraph (1) [amending this section] shall take effect beginning with payments made on January 1, 1993.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 401(c) of Pub. L. 100–713 provided that: ''The amendments made by this section [amending this section] shall apply to services performed on or after the date of the enactment of this Act [Nov. 23, 1988].''

§ 1643. Amount and use of funds reimbursed through medicare and medicaid available to Indian Health Service

The Secretary shall submit to the President, for inclusion in the report required to be transmitted to the Congress under section 1671 of this title, an accounting on the amount and use of funds made available to the Service pursuant to this subchapter as a result of reimbursements through titles XVIII and XIX of the Social Security Act, as amended [42 U.S.C. 1395 et seq., 1396 et seq.].

(Pub. L. 94–437, title IV, § 403, Sept. 30, 1976, 90 Stat. 1410; Pub. L. 102–573, title IV, § 402, Oct. 29, 1992, 106 Stat. 4566.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

CODIFICATION

Section was formerly set out as a note under section 1671 of this title.

AMENDMENTS

1992—Pub. L. 102–573 substituted ''The Secretary shall submit to the President, for inclusion in the report required to be transmitted to the Congress under section 1671 of this title,'' for ''The Secretary shall include in his annual report required by section 1671 of this title''.

§ 1644. Grants to and contracts with tribal organizations

(a) Access to health services

The Secretary, acting through the Service, shall make grants to or enter into contracts with tribal organizations to assist such organizations in establishing and administering programs on or near Federal Indian reservations and trust areas and in or near Alaska Native villages to assist individual Indians to—

(1) enroll under section 1818 of part A and sections 1836 and 1837 of part B of title XVIII of the Social Security Act [42 U.S.C. 1395i–2, 1395*o*, 1395p];

(2) pay monthly premiums for coverage due to financial need of such individual; and

(3) apply for medical assistance provided pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(b) Terms and conditions

The Secretary, acting through the Service, shall place conditions as deemed necessary to effect the purpose of this section in any contract or grant which the Secretary makes with any tribal organization pursuant to this section. Such conditions shall include, but are not limited to, requirements that the organization successfully undertake to—

(1) determine the population of Indians to be served that are or could be recipients of benefits under titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.];

(2) assist individual Indians in becoming familiar with and utilizing such benefits;

(3) provide transportation to such individual Indians to the appropriate offices for enrollment or application for medical assistance;

(4) develop and implement—

(A) a schedule of income levels to determine the extent of payments of premiums by such organizations for coverage of needy individuals; and

(B) methods of improving the participation of Indians in receiving the benefits provided under titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.].

(c) Application for medical assistance

The Secretary, acting through the Service, may enter into an agreement with an Indian tribe, tribal organization, or urban Indian organization which provides for the receipt and processing of applications for medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] at a Service facility or a health care facility administered by such tribe or organization pursuant to a contract under the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(Pub. L. 94–437, title IV, § 404, as added Pub. L. 96–537, § 6, Dec. 17, 1980, 94 Stat. 3176; amended Pub. L. 102–573, title IV, § 403, Oct. 29, 1992, 106 Stat. 4566.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (3), (b)(1), (4)(B), and (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Indian Self-Determination Act, referred to in subsec. (c), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

CODIFICATION

Section was formerly classified to section 1622 of this title.

AMENDMENTS

1992—Subsec. (b)(4). Pub. L. 102–573, § 403(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''develop and implement a schedule of income levels to determine the extent of payment of premiums by such organization for coverage of needy individuals; and methods of improving the participation of Indians in receiving the benefits provided pursuant to titles XVIII and XIX of the Social Security Act.''

Subsec. (c). Pub. L. 102–573, § 403(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''There are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1981, $5,750,000 for the fiscal year ending September 30, 1982, $6,615,000 for the fiscal year ending September 30, 1983, and $7,610,000 for the fiscal year ending September 30, 1984.''

§ 1645. Direct billing of medicare, medicaid, and other third party payors

(a) Establishment of direct billing program

(1) In general

The Secretary shall establish a program under which Indian tribes, tribal organizations, and Alaska Native health organizations that contract or compact for the operation of a hospital or clinic of the Service under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] may elect to directly bill for, and receive payment for, health care services provided by such hospital or clinic for which payment is made under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) (in this section referred to as the ''medicare program''), under a State plan for medical assistance approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (in this section referred to as the ''medicaid program''), or from any other third party payor.

(2) Application of 100 percent FMAP

The third sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) shall apply for purposes of reimbursement under the medicaid program for health care services directly billed under the program established under this section.

(b) Direct reimbursement

(1) Use of funds

Each hospital or clinic participating in the program described in subsection (a) of this section shall be reimbursed directly under the medicare and medicaid programs for services furnished, without regard to the provisions of section 1880(c) of the Social Security Act (42 U.S.C. 1395qq(c)) and sections 1642(a) and 1680c(b)(2)(A) of this title, but all funds so reimbursed shall first be used by the hospital or clinic for the purpose of making any improvements in the hospital or clinic that may be necessary to achieve or maintain compliance with the conditions and requirements applicable generally to facilities of such type under the medicare or medicaid programs. Any funds so reimbursed which are in excess of the amount necessary to achieve or maintain such conditions shall be used—

(A) solely for improving the health resources deficiency level of the Indian tribe; and

(B) in accordance with the regulations of the Service applicable to funds provided by the Service under any contract entered into under the Indian Self-Determination Act (25 U.S.C. 450f et seq.).

(2) Audits

The amounts paid to the hospitals and clinics participating in the program established under this section shall be subject to all auditing requirements applicable to programs administered directly by the Service and to facilities participating in the medicare and medicaid programs.

(3) Secretarial oversight

The Secretary shall monitor the performance of hospitals and clinics participating in the program established under this section, and shall require such hospitals and clinics to submit reports on the program to the Secretary on an annual basis.

(4) No payments from special funds

Notwithstanding section 1880(c) of the Social Security Act (42 U.S.C. 1395qq(c)) or section 1642(a) of this title, no payment may be made out of the special funds described in such sections for the benefit of any hospital or clinic

during the period that the hospital or clinic participates in the program established under this section.

(c) Requirements for participation

(1) Application

Except as provided in paragraph (2)(B), in order to be eligible for participation in the program established under this section, an Indian tribe, tribal organization, or Alaska Native health organization shall submit an application to the Secretary that establishes to the satisfaction of the Secretary that—

(A) the Indian tribe, tribal organization, or Alaska Native health organization contracts or compacts for the operation of a facility of the Service;

(B) the facility is eligible to participate in the medicare or medicaid programs under section 1880 or 1911 of the Social Security Act (42 U.S.C. 1395qq; 1396j);

(C) the facility meets the requirements that apply to programs operated directly by the Service; and

(D) the facility—

(i) is accredited by an accrediting body as eligible for reimbursement under the medicare or medicaid programs; or

(ii) has submitted a plan, which has been approved by the Secretary, for achieving such accreditation.

(2) Approval

(A) In general

The Secretary shall review and approve a qualified application not later than 90 days after the date the application is submitted to the Secretary unless the Secretary determines that any of the criteria set forth in paragraph (1) are not met.

(B) Grandfather of demonstration program participants

Any participant in the demonstration program authorized under this section as in effect on the day before November 1, 2000, shall be deemed approved for participation in the program established under this section and shall not be required to submit an application in order to participate in the program.

(C) Duration

An approval by the Secretary of a qualified application under subparagraph (A), or a deemed approval of a demonstration program under subparagraph (B), shall continue in effect as long as the approved applicant or the deemed approved demonstration program meets the requirements of this section.

(d) Examination and implementation of changes

(1) In general

The Secretary, acting through the Service, and with the assistance of the Administrator of the Centers for Medicare & Medicaid Services, shall examine on an ongoing basis and implement—

(A) any administrative changes that may be necessary to facilitate direct billing and reimbursement under the program established under this section, including any agreements with States that may be necessary to provide for direct billing under the medicaid program; and

(B) any changes that may be necessary to enable participants in the program established under this section to provide to the Service medical records information on patients served under the program that is consistent with the medical records information system of the Service.

(2) Accounting information

The accounting information that a participant in the program established under this section shall be required to report shall be the same as the information required to be reported by participants in the demonstration program authorized under this section as in effect on the day before November 1, 2000. The Secretary may from time to time, after consultation with the program participants, change the accounting information submission requirements.

(e) Withdrawal from program

A participant in the program established under this section may withdraw from participation in the same manner and under the same conditions that a tribe or tribal organization may retrocede a contracted program to the Secretary under authority of the Indian Self-Determination Act [25 U.S.C. 450f et seq.]. All cost accounting and billing authority under the program established under this section shall be returned to the Secretary upon the Secretary's acceptance of the withdrawal of participation in this program.

(Pub. L. 94–437, title IV, § 405, as added Pub. L. 100–713, title IV, § 402, Nov. 23, 1988, 102 Stat. 4818; amended Pub. L. 102–573, title IV, § 404, title VII, § 701(c)(3), Oct. 29, 1992, 106 Stat. 4566, 4572; Pub. L. 104–313, § 2(d), Oct. 19, 1996, 110 Stat. 3822; Pub. L. 105–277, div. A, § 101(e) [title III, § 336], Oct. 21, 1998, 112 Stat. 2681–231, 2681–295; Pub. L. 105–362, title VI, § 601(a)(2)(B), Nov. 10, 1998, 112 Stat. 3285; Pub. L. 106–417, §§ 3(a), 4, Nov. 1, 2000, 114 Stat. 1813, 1816; Pub. L. 108–173, title IX, § 900(e)(6)(B), Dec. 8, 2003, 117 Stat. 2373.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a)(1), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Social Security Act, referred to in subsec. (a)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Indian Self-Determination Act, referred to in subsecs. (b)(1)(B) and (e), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

CODIFICATION

November 1, 2000, referred to in subsecs. (c)(2)(B) and (d)(2), was in the original "the date of enactment of the

Alaska Native and American Indian Direct Reimbursement Act of 1999'', which was translated as meaning the date of enactment of Pub. L. 106–417, the Alaska Native and American Indian Direct Reimbursement Act of 2000, to reflect the probable intent of Congress.

Section was formerly set out as a note under section 1395qq of Title 42, The Public Health and Welfare.

AMENDMENTS

2003—Subsec. (d)(1). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in introductory provisions.

2000—Pub. L. 106–417, §4(a), reenacted section as in effect on Nov. 9, 1998. For text of section as reenacted, see 1998 Amendment note below.

Pub. L. 106–417, §3(a), amended section generally. For text of section prior to amendment, see subsecs. (a) to (d) of section as set out in 1998 Amendment note below.

Subsec. (e). Pub. L. 106–417, §4(b), struck out subsec. (e). For text of subsec. (e) prior to amendment, see subsec. (e) of section as set out in 1998 Amendment note below.

1998—Pub. L. 105–362 repealed section. Prior to repeal, section read as follows:

''§1645. Demonstration program for direct billing of medicare, medicaid, and other third party payors

''(a) The Secretary shall establish a demonstration program under which Indian tribes, tribal organizations, and Alaska Native health organizations, which are contracting the entire operation of an entire hospital or clinic of the Service under the authority of the Indian Self-Determination Act, shall directly bill for, and receive payment for, health care services provided by such hospital or clinic for which payment is made under title XVIII of the Social Security Act (medicare), under a State plan for medical assistance approved under title XIX of the Social Security Act (medicaid), or from any other third-party payor. The last sentence of section 1905(b) of the Social Security Act shall apply for purposes of the demonstration program.

''(b)(1) Each hospital or clinic participating in the demonstration program described in subsection (a) of this section shall be reimbursed directly under the medicare and medicaid programs for services furnished, without regard to the provisions of section 1880(c) of the Social Security Act and sections 1642(a) and 1680c(b)(2)(A) of this title, but all funds so reimbursed shall first be used by the hospital or clinic for the purpose of making any improvements in the hospital or clinic that may be necessary to achieve or maintain compliance with the conditions and requirements applicable generally to facilities of such type under the medicare or medicaid program. Any funds so reimbursed which are in excess of the amount necessary to achieve or maintain such conditions or requirements shall be used—

''(A) solely for improving the health resources deficiency level of the Indian tribe, and

''(B) in accordance with the regulations of the Service applicable to funds provided by the Service under any contract entered into under the Indian Self-Determination Act.

''(2) The amounts paid to the hospitals and clinics participating in the demonstration program described in subsection (a) of this section shall be subject to all auditing requirements applicable to programs administered directly by the Service and to facilities participating in the medicare and medicaid programs.

''(3) The Secretary shall monitor the performance of hospitals and clinics participating in the demonstration program described in subsection (a) of this section, and shall require such hospitals and clinics to submit reports on the program to the Secretary on a quarterly basis (or more frequently if the Secretary deems it to be necessary).

''(4) Notwithstanding section 1880(c) of the Social Security Act or section 1642(a) of this title, no payment may be made out of the special fund described in section 1880(c) of the Social Security Act, or section 1642(a) of this title, for the benefit of any hospital or clinic participating in the demonstration program described in subsection (a) of this section during the period of such participation.

''(c)(1) In order to be considered for participation in the demonstration program described in subsection (a) of this section, a hospital or clinic must submit an application to the Secretary which establishes to the satisfaction of the Secretary that—

''(A) the Indian tribe, tribal organization, or Alaska Native health organization contracts the entire operation of the Service facility;

''(B) the facility is eligible to participate in the medicare and medicaid programs under sections 1880 and 1911 of the Social Security Act;

''(C) the facility meets any requirements which apply to programs operated directly by the Service; and

''(D) the facility is accredited by the Joint Commission on Accreditation of Hospitals, or has submitted a plan, which has been approved by the Secretary, for achieving such accreditation prior to October 1, 1990.

''(2) From among the qualified applicants, the Secretary shall, prior to October 1, 1989, select no more than 4 facilities to participate in the demonstration program described in subsection (a) of this section. The demonstration program described in subsection (a) of this section shall begin by no later than October 1, 1991, and end on September 30, 2000.

''(d)(1) On November 23, 1988, the Secretary, acting through the Service, shall commence an examination of—

''(A) any administrative changes which may be necessary to allow direct billing and reimbursement under the demonstration program described in subsection (a) of this section, including any agreements with States which may be necessary to provide for such direct billing under the medicaid program; and

''(B) any changes which may be necessary to enable participants in such demonstration program to provide to the Service medical records information on patients served under such demonstration program which is consistent with the medical records information system of the Service.

''(2) Prior to the commencement of the demonstration program described in subsection (a) of this section, the Secretary shall implement all changes required as a result of the examinations conducted under paragraph (1).

''(3) Prior to October 1, 1990, the Secretary shall determine any accounting information which a participant in the demonstration program described in subsection (a) of this section would be required to report.

''(e) The Secretary shall submit a final report at the end of fiscal year 1996, on the activities carried out under the demonstration program described in subsection (a) of this section which shall include an evaluation of whether such activities have fulfilled the objectives of such program. In such report the Secretary shall provide a recommendation, based upon the results of such demonstration program, as to whether direct billing of, and reimbursement by, the medicare and medicaid programs and other third-party payors should be authorized for all Indian tribes and Alaska Native health organizations which are contracting the entire operation of a facility of the Service.

''(f) The Secretary shall provide for the retrocession of any contract entered into between a participant in the demonstration program described in subsection (a) of this section and the Service under the authority of the Indian Self-Determination Act. All cost accounting and billing authority shall be retroceded to the Secretary upon the Secretary's acceptance of a retroceded contract.''

Subsec. (c)(2). Pub. L. 105–277 substituted ''2000'' for ''1998''.

1996—Subsec. (c)(2). Pub. L. 104–313 substituted ''1998'' for ''1996''.

1992—Subsec. (b)(1). Pub. L. 102–573, §701(c)(3)(A), substituted ''sections 1642(a)'' for ''sections 402(c)'' and

made technical amendment to reference to section 1680c(b)(2)(A) to reflect renumbering of corresponding section of original act.

Subsec. (b)(4). Pub. L. 102–573, § 701(c)(3)(B), substituted ''section 1642(a)'' for ''section 402(c)'' in two places.

Subsec. (c)(2). Pub. L. 102–573, § 404(1), substituted ''1996'' for ''1995''.

Subsec. (e). Pub. L. 102–573, § 404(2), substituted ''1996'' for ''1995''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–417, § 3(c), Nov. 1, 2000, 114 Stat. 1816, provided that: ''The amendments made by this section [amending this section and sections 1395qq and 1396j of Title 42, The Public Health and Welfare] shall take effect on October 1, 2000.''

Pub. L. 106–417, § 4(a), Nov. 1, 2000, 114 Stat. 1816, provided that the reenactment of this section by section 4(a) is effective Nov. 9, 1998.

Pub. L. 106–417, § 4(b), Nov. 1, 2000, 114 Stat. 1816, provided that the amendment made by section 4(b) is effective Nov. 10, 1998.

FINDINGS

Pub. L. 106–417, § 2, Nov. 1, 2000, 114 Stat. 1812, provided that: ''Congress finds the following:

''(1) In 1988, Congress enacted section 405 of the Indian Health Care Improvement Act (25 U.S.C. 1645) that established a demonstration program to authorize 4 tribally-operated Indian Health Service hospitals or clinics to test methods for direct billing and receipt of payment for health services provided to patients eligible for reimbursement under the medicare or medicaid programs under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq.; 1396 et seq.), and other third party payors.

''(2) The 4 participants selected by the Indian Health Service for the demonstration program began the direct billing and collection program in fiscal year 1989 and unanimously expressed success and satisfaction with the program. Benefits of the program include dramatically increased collections for services provided under the medicare and medicaid programs, a significant reduction in the turn-around time between billing and receipt of payments for services provided to eligible patients, and increased efficiency of participants being able to track their own billings and collections.

''(3) The success of the demonstration program confirms that the direct involvement of tribes and tribal organizations in the direct billing of, and collection of payments from, the medicare and medicaid programs, and other third party payor reimbursements, is more beneficial to Indian tribes than the current system of Indian Health Service-managed collections.

''(4) Allowing tribes and tribal organizations to directly manage their medicare and medicaid billings and collections, rather than channeling all activities through the Indian Health Service, will enable the Indian Health Service to reduce its administrative costs, is consistent with the provisions of the Indian Self-Determination Act [25 U.S.C. 450f et seq.], and furthers the commitment of the Secretary to enable tribes and tribal organizations to manage and operate their health care programs.

''(5) The demonstration program was originally to expire on September 30, 1996, but was extended by Congress, so that the current participants would not experience an interruption in the program while Congress awaited a recommendation from the Secretary of Health and Human Services on whether to make the program permanent.

''(6) It would be beneficial to the Indian Health Service and to Indian tribes, tribal organizations, and Alaska Native organizations to provide permanent status to the demonstration program and to extend participation in the program to other Indian tribes, tribal organizations, and Alaska Native health organizations who operate a facility of the Indian Health Service.''

§ 1646. Authorization for emergency contract health services

With respect to an elderly or disabled Indian receiving emergency medical care or services from a non-Service provider or in a non-Service facility under the authority of this chapter, the time limitation (as a condition of payment) for notifying the Service of such treatment or admission shall be 30 days.

(Pub. L. 94–437, title IV, § 406, as added Pub. L. 102–573, title IV, § 405, Oct. 29, 1992, 106 Stat. 4566.)

§ 1647. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this subchapter.

(Pub. L. 94–437, title IV, § 407, as added Pub. L. 102–573, title IV, § 406, Oct. 29, 1992, 106 Stat. 4566.)

SUBCHAPTER IV—HEALTH SERVICES FOR URBAN INDIANS

CODIFICATION

This subchapter was in the original title V of Pub. L. 94–437. Title IV of Pub. L. 94–437 is classified to subchapter III–A of this chapter.

§ 1651. Purpose

The purpose of this subchapter is to establish programs in urban centers to make health services more accessible to urban Indians.

(Pub. L. 94–437, title V, § 501, as added Pub. L. 100–713, title V, § 501, Nov. 23, 1988, 102 Stat. 4820.)

PRIOR PROVISIONS

A prior section 1651, Pub. L. 94–437, title V, § 501, Sept. 30, 1976, 90 Stat. 1410; Pub. L. 96–537, § 7, Dec. 17, 1980, 94 Stat. 3176, related to Congressional statement of purpose, prior to the general revision of this subchapter by Pub. L. 100–713.

§ 1652. Contracts with, and grants to, urban Indian organizations

Under authority of section 13 of this title, the Secretary, through the Service, shall enter into contracts with, or make grants to, urban Indian organizations to assist such organizations in the establishment and administration, within the urban centers in which such organizations are situated, of programs which meet the requirements set forth in this subchapter. The Secretary, through the Service, shall include such conditions as the Secretary considers necessary to effect the purpose of this subchapter in any contract which the Secretary enters into with, or in any grant the Secretary makes to, any urban Indian organization pursuant to this subchapter.

(Pub. L. 94–437, title V, § 502, as added Pub. L. 100–713, title V, § 501, Nov. 23, 1988, 102 Stat. 4820; amended Pub. L. 102–573, title V, § 501(a), Oct. 29, 1992, 106 Stat. 4567.)

PRIOR PROVISIONS

A prior section 1652, Pub. L. 94–437, title V, § 502, Sept. 30, 1976, 90 Stat. 1410; Pub. L. 96–537, § 7, Dec. 17, 1980, 94

Stat. 3177, related to contracts with urban and rural Indian organizations, prior to the general revision of this subchapter by Pub. L. 100–713.

AMENDMENTS

1992—Pub. L. 102–573 substituted ''Contracts with, and grants to, urban Indian organizations'' for ''Contracts with urban Indian organizations'' in section catchline, and in text substituted ''contracts with, or make grants to,'' for ''contracts with'' and inserted '', or in any grant the Secretary makes to,'' after ''enters into with''.

§ 1653. Contracts and grants for provision of health care and referral services

(a) Requirements

Under authority of section 13 of this title, the Secretary, through the Service, shall enter into contracts with, or make grants to, urban Indian organizations for the provision of health care and referral services for urban Indians residing in the urban centers in which such organizations are situated. Any such contract or grant shall include requirements that the urban Indian organization successfully undertake to—

(1) estimate the population of urban Indians residing in the urban center in which such organization is situated who are or could be recipients of health care or referral services;

(2) estimate the current health status of urban Indians residing in such urban center;

(3) estimate the current health care needs of urban Indians residing in such urban center;

(4) identify all public and private health services resources within such urban center which are or may be available to urban Indians;

(5) determine the use of public and private health services resources by the urban Indians residing in such urban center;

(6) assist such health services resources in providing services to urban Indians;

(7) assist urban Indians in becoming familiar with and utilizing such health services resources;

(8) provide basic health education, including health promotion and disease prevention education, to urban Indians;

(9) establish and implement training programs to accomplish the referral and education tasks set forth in paragraphs (6) through (8) of this subsection;

(10) identify gaps between unmet health needs of urban Indians and the resources available to meet such needs;

(11) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians; and

(12) where necessary, provide, or enter into contracts for the provision of, health care services for urban Indians.

(b) Criteria for selection of organizations to enter into contracts or receive grants

The Secretary, through the Service, shall by regulation prescribe the criteria for selecting urban Indian organizations to enter into contracts or receive grants under this section. Such criteria shall, among other factors, include—

(1) the extent of unmet health care needs of urban Indians in the urban center involved;

(2) the size of the urban Indian population in the urban center involved;

(3) the accessibility to, and utilization of, health care services (other than services provided under this subchapter) by urban Indians in the urban center involved;

(4) the extent, if any, to which the activities set forth in subsection (a) of this section would duplicate—

(A) any previous or current public or private health services project in an urban center that was or is funded in a manner other than pursuant to this subchapter; or

(B) any project funded under this subchapter;

(5) the capability of an urban Indian organization to perform the activities set forth in subsection (a) of this section and to enter into a contract with the Secretary or to meet the requirements for receiving a grant under this section;

(6) the satisfactory performance and successful completion by an urban Indian organization of other contracts with the Secretary under this subchapter;

(7) the appropriateness and likely effectiveness of conducting the activities set forth in subsection (a) of this section in an urban center; and

(8) the extent of existing or likely future participation in the activities set forth in subsection (a) of this section by appropriate health and health-related Federal, State, local, and other agencies.

(c) Grants for health promotion and disease prevention services

The Secretary, acting through the Service, shall facilitate access to, or provide, health promotion and disease prevention services for urban Indians through grants made to urban Indian organizations administering contracts entered into pursuant to this section or receiving grants under subsection (a) of this section.

(d) Grants for immunization services

(1) The Secretary, acting through the Service, shall facilitate access to, or provide, immunization services for urban Indians through grants made to urban Indian organizations administering contracts entered into pursuant to this section or receiving grants under subsection (a) of this section.

(2) In making any grant to carry out this subsection, the Secretary shall take into consideration—

(A) the size of the urban Indian population to be served;

(B) the immunization levels of the urban Indian population, particularly the immunization levels of infants, children, and the elderly;

(C) the utilization by the urban Indians of alternative resources from State and local governments for no-cost or low-cost immunization services to the general population; and

(D) the capability of the urban Indian organization to carry out services pursuant to this subsection.

(3) For purposes of this subsection, the term ''immunization services'' means services to pro-

vide without charge immunizations against vaccine-preventable diseases.

(e) Grants for mental health services

(1) The Secretary, acting through the Service, shall facilitate access to, or provide, mental health services for urban Indians through grants made to urban Indian organizations administering contracts entered into pursuant to this section or receiving grants under subsection (a) of this section.

(2) A grant may not be made under this subsection to an urban Indian organization until that organization has prepared, and the Service has approved, an assessment of the mental health needs of the urban Indian population concerned, the mental health services and other related resources available to that population, the barriers to obtaining those services and resources, and the needs that are unmet by such services and resources.

(3) Grants may be made under this subsection—

(A) to prepare assessments required under paragraph (2);

(B) to provide outreach, educational, and referral services to urban Indians regarding the availability of direct mental health services, to educate urban Indians about mental health issues and services, and effect coordination with existing mental health providers in order to improve services to urban Indians;

(C) to provide outpatient mental health services to urban Indians, including the identification and assessment of illness, therapeutic treatments, case management, support groups, family treatment, and other treatment; and

(D) to develop innovative mental health service delivery models which incorporate Indian cultural support systems and resources.

(f) Grants for prevention and treatment of child abuse

(1) The Secretary, acting through the Service, shall facilitate access to, or provide, services for urban Indians through grants to urban Indian organizations administering contracts entered into pursuant to this section or receiving grants under subsection (a) of this section to prevent and treat child abuse (including sexual abuse) among urban Indians.

(2) A grant may not be made under this subsection to an urban Indian organization until that organization has prepared, and the Service has approved, an assessment that documents the prevalence of child abuse in the urban Indian population concerned and specifies the services and programs (which may not duplicate existing services and programs) for which the grant is requested.

(3) Grants may be made under this subsection—

(A) to prepare assessments required under paragraph (2);

(B) for the development of prevention, training, and education programs for urban Indian populations, including child education, parent education, provider training on identification and intervention, education on reporting requirements, prevention campaigns, and establishing service networks of all those involved in Indian child protection; and

(C) to provide direct outpatient treatment services (including individual treatment, family treatment, group therapy, and support groups) to urban Indians who are child victims of abuse (including sexual abuse) or adult survivors of child sexual abuse, to the families of such child victims, and to urban Indian perpetrators of child abuse (including sexual abuse).

(4) In making grants to carry out this subsection, the Secretary shall take into consideration—

(A) the support for the urban Indian organization demonstrated by the child protection authorities in the area, including committees or other services funded under the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.), if any;

(B) the capability and expertise demonstrated by the urban Indian organization to address the complex problem of child sexual abuse in the community; and

(C) the assessment required under paragraph (2).

(Pub. L. 94–437, title V, § 503, as added Pub. L. 100–713, title V, § 501, Nov. 23, 1988, 102 Stat. 4821; amended Pub. L. 101–630, title V, § 505, Nov. 28, 1990, 104 Stat. 4564; Pub. L. 102–573, title V, §§ 501(b)(1), 505(b)(1), Oct. 29, 1992, 106 Stat. 4567, 4570.)

REFERENCES IN TEXT

The Indian Child Welfare Act of 1978, referred to in subsec. (f)(4)(A), is Pub. L. 95–608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§ 1901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of this title and Tables.

PRIOR PROVISIONS

A prior section 1653, Pub. L. 94–437, title V, § 503, Sept. 30, 1976, 90 Stat. 1410; Pub. L. 96–537, § 7, Dec. 17, 1980, 94 Stat. 3177, related to contract eligibility, prior to the general revision of this subchapter by Pub. L. 100–713.

AMENDMENTS

1992—Pub. L. 102–573, § 501(b)(1)(G), inserted ''and grants'' in section catchline.

Subsec. (a). Pub. L. 102–573, § 501(b)(1)(A), inserted '', or make grants to,'' after ''contracts with'' and ''or grant'' after ''such contract''.

Subsec. (b). Pub. L. 102–573, § 501(b)(1)(B), inserted ''or receive grants'' after ''enter into contracts'' in introductory provisions and ''or to meet the requirements for receiving a grant'' after ''Secretary'' in par. (5).

Subsec. (c). Pub. L. 102–573, § 505(b)(1)(A), struck out par. (1) designation before ''The Secretary, acting'' and struck out par. (2) which authorized appropriation of $1,000,000 for fiscal year 1992 to carry out this subsec.

Subsec. (c)(1). Pub. L. 102–573, § 501(b)(1)(C), inserted before period at end ''or receiving grants under subsection (a) of this section''.

Subsec. (d)(1). Pub. L. 102–573, § 501(b)(1)(D), inserted before period at end ''or receiving grants under subsection (a) of this section''.

Subsec. (d)(4). Pub. L. 102–573, § 505(b)(1)(B), struck out par. (4) which authorized appropriation of $1,000,000 for fiscal year 1992 to carry out this subsec.

Subsec. (e)(1). Pub. L. 102–573, § 501(b)(1)(E), inserted before period at end ''or receiving grants under subsection (a) of this section''.

Subsec. (e)(4). Pub. L. 102–573, § 505(b)(1)(C), struck out par. (4) which authorized appropriations of $500,000 for fiscal year 1991 and $2,000,000 for fiscal year 1992 to carry out this subsec.

Subsec. (f)(1). Pub. L. 102–573, § 501(b)(1)(F), inserted ''or receiving grants under subsection (a) of this section'' after ''pursuant to this section''.

Subsec. (f)(5). Pub. L. 102–573, § 505(b)(1)(D), struck out par. (5) which authorized appropriations of $500,000 for fiscal year 1991 and $2,000,000 for fiscal year 1992 to carry out this subsec.

1990—Subsecs. (c) to (f). Pub. L. 101–630 added subsecs. (c) to (f).

FACILITIES ASSESSMENT

Section 506(a), (b) of Pub. L. 101–630 provided that:

''(a) SURVEY.—The Secretary shall conduct a survey of all facilities used by contractors under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.] and shall submit a report to the Congress on such survey not later than one year after the date of enactment of this Act [Nov. 28, 1990]. The report shall, at a minimum, contain the following information for each location:

''(1) The extent to which the facility meets safety and building codes and, if direct care is provided, the extent of compliance with Joint Commission for Accreditation of Health Care Organizations (JCAHO) standards.

''(2) The extent to which improvements, expansion, or relocation is necessary to meet program requirements, provide adequate services, or achieve building code compliance.

''(3) Any lease restriction that would hamper accomplishment of needed improvement, expansion, or relocation.

''(4) The term of the lease, if appropriate, the age of the structure, and the structure's life expectancy with and without improvement.

''(5) An assessment of the deficiencies of the facility.

''(b) REPORT.—The report shall contain general recommendations for addressing the deficiencies of facilities in which programs funded under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.] are located and shall propose specific policies for accomplishing those recommendations.''

§ 1654. Contracts and grants for determination of unmet health care needs

(a) Authority

Under authority of section 13 of this title, the Secretary, through the Service, may enter into contracts with, or make grants to, urban Indian organizations situated in urban centers for which contracts have not been entered into, or grants have not been made, under section 1653 of this title. The purpose of a contract or grant made under this section shall be the determination of the matters described in subsection (b)(1) of this section in order to assist the Secretary in assessing the health status and health care needs of urban Indians in the urban center involved and determining whether the Secretary should enter into a contract or make a grant under section 1653 of this title with respect to the urban Indian organization which the Secretary has entered into a contract with, or made a grant to, under this section.

(b) Requirements

Any contract entered into, or grant made, by the Secretary under this section shall include requirements that—

(1) the urban Indian organization successfully undertake to—

(A) document the health care status and unmet health care needs of urban Indians in the urban center involved; and

(B) with respect to urban Indians in the urban center involved, determine the matters described in clauses (2), (3), (4), and (8) of section 1653(b) of this title; and

(2) the urban Indian organization complete performance of the contract, or carry out the requirements of the grant, within one year after the date on which the Secretary and such organization enter into such contract, or within one year after such organization receives such grant, whichever is applicable.

(c) Renewal

The Secretary may not renew any contract entered into, or grant made, under this section.

(Pub. L. 94–437, title V, § 504, as added Pub. L. 100–713, title V, § 501, Nov. 23, 1988, 102 Stat. 4822; amended Pub. L. 102–573, title V, § 501(b)(2), Oct. 29, 1992, 106 Stat. 4567.)

PRIOR PROVISIONS

A prior section 1654, Pub. L. 94–437, title V, § 504, Sept. 30, 1976, 90 Stat. 1411; Pub. L. 96–537, § 7, Dec. 17, 1980, 94 Stat. 3178, related to other contract requirements, prior to the general revision of this subchapter by Pub. L. 100–713.

AMENDMENTS

1992—Pub. L. 102–573, § 501(b)(2)(D), inserted ''and grants'' in section catchline.

Subsec. (a). Pub. L. 102–573, § 501(b)(2)(A), added subsec. (a) and struck out former subsec. (a) which read as follows: ''Under authority of section 13 of this title, the Secretary, through the Service, may enter into contracts with urban Indian organizations situated in urban centers for which contracts have not been entered into under section 1653 of this title. The purpose of a contract under this section shall be the determination of the matters described in subsection (b)(1) of this section in order to assist the Secretary in assessing the health status and health care needs of urban Indians in the urban center involved and determining whether the Secretary should enter into a contract under section 1653 of this title with the urban Indian organization with which the Secretary has entered into a contract under this section.''

Subsec. (b). Pub. L. 102–573, § 501(b)(2)(B), inserted '', or grant made,'' after ''contract entered into'' in introductory provisions and substituted '', or carry out the requirements of the grant, within one year after the date on which the Secretary and such organization enter into such contract, or within one year after such organization receives such grant, whichever is applicable.'' for ''within one year after the date on which the Secretary and such organization enter into such contract.'' in par. (2).

Subsec. (c). Pub. L. 102–573, § 501(b)(2)(C), inserted '', or grant made,'' after ''entered into''.

§ 1655. Evaluations; renewals

(a) Contract compliance and performance

The Secretary, through the Service, shall develop procedures to evaluate compliance with grant requirements under this subchapter and compliance with, and performance of contracts entered into by urban Indian organizations under this subchapter. Such procedures shall include provisions for carrying out the requirements of this section.

(b) Annual onsite evaluation

The Secretary, through the Service, shall conduct an annual onsite evaluation of each urban Indian organization which has entered into a

contract or received a grant under section 1653 of this title for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract or the terms of such grant.

(c) Noncompliance or unsatisfactory performance

If, as a result of the evaluations conducted under this section, the Secretary determines that an urban Indian organization has not complied with the requirements of a grant or complied with or satisfactorily performed a contract under section 1653 of this title, the Secretary shall, prior to renewing such contract or grant, attempt to resolve with such organization the areas of noncompliance or unsatisfactory performance and modify such contract or grant to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract or grant with such organization and is authorized to enter into a contract or make a grant under section 1653 of this title with another urban Indian organization which is situated in the same urban center as the urban Indian organization whose contract or grant is not renewed under this section.

(d) Contract and grant renewals

In determining whether to renew a contract or grant with an urban Indian organization under section 1653 of this title which has completed performance of a contract or grant under section 1654 of this title, the Secretary shall review the records of the urban Indian organization, the reports submitted under section 1657 of this title, and, in the case of a renewal of a contract or grant under section 1653 of this title, shall consider the results of the onsite evaluations conducted under subsection (b) of this section.

(Pub. L. 94–437, title V, § 505, as added Pub. L. 100–713, title V, § 501, Nov. 23, 1988, 102 Stat. 4822; amended Pub. L. 102–573, title V, § 501(b)(3), Oct. 29, 1992, 106 Stat. 4568.)

PRIOR PROVISIONS

A prior section 1655, Pub. L. 94–437, title V, § 505, Sept. 30, 1976, 90 Stat. 1412; Pub. L. 96–537, § 7, Dec. 17, 1980, 94 Stat. 3179, related to reports by urban Indian organizations and rural Indian organizations to Secretary, contents, audit of reports and records, prior to the general revision of this subchapter by Pub. L. 100–713.

AMENDMENTS

1992—Pub. L. 102–573, § 501(b)(3)(E), substituted ''renewals'' for ''contract renewals'' in section catchline.

Subsec. (a). Pub. L. 102–573, § 501(b)(3)(A), inserted ''compliance with grant requirements under this subchapter and'' before ''compliance with, and''.

Subsec. (b). Pub. L. 102–573, § 501(b)(3)(B), inserted ''or received a grant'' after ''entered into a contract'' and ''or the terms of such grant'' before period at end.

Subsec. (c). Pub. L. 102–573, § 501(b)(3)(C), inserted ''the requirements of a grant or complied with'' after ''has not complied with'', ''or grant'' after ''such contract'' wherever appearing, ''or make a grant'' after ''enter into a contract'', and ''or grant'' after ''whose contract''.

Subsec. (d). Pub. L. 102–573, § 501(b)(3)(D), inserted ''or grant'' after ''a contract'' wherever appearing.

§ 1656. Other contract and grant requirements

(a) Federal regulations; exceptions

Contracts with urban Indian organizations entered into pursuant to this subchapter shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provisions of sections 3131 and 3133 of title 40.

(b) Payment

Payments under any contracts or grants pursuant to this subchapter may be made in advance or by way of reimbursement and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of this subchapter.

(c) Revision or amendment

Notwithstanding any provision of law to the contrary, the Secretary may, at the request or consent of an urban Indian organization, revise or amend any contract entered into by the Secretary with such organization under this subchapter as necessary to carry out the purposes of this subchapter.

(d) Existing Government facilities

In connection with any contract or grant entered into pursuant to this subchapter, the Secretary may permit an urban Indian organization to utilize, in carrying out such contract or grant, existing facilities owned by the Federal Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for the use and maintenance of such facilities.

(e) Uniform provision of services and assistance

Contracts with, or grants to, urban Indian organizations and regulations adopted pursuant to this subchapter shall include provisions to assure the fair and uniform provision to urban Indians of services and assistance under such contracts or grants by such organizations.

(f) Eligibility for health care or referral services

Urban Indians, as defined in section 1603(f) of this title, shall be eligible for health care or referral services provided pursuant to this subchapter.

(Pub. L. 94–437, title V, § 506, as added Pub. L. 100–713, title V, § 501, Nov. 23, 1988, 102 Stat. 4823; amended Pub. L. 102–573, title V, § 501(b)(4), Oct. 29, 1992, 106 Stat. 4568.)

CODIFICATION

''Sections 3131 and 3133 of title 40'' substituted in subsec. (a) for ''the Act of August 24, 1935 (40 U.S.C. 270a, et seq.)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 1656, Pub. L. 94–437, title V, § 506, Sept. 30, 1976, 90 Stat. 1412; Pub. L. 96–537, § 7, Dec. 17, 1980, 94 Stat. 3179, authorized appropriations, prior to the general revision of this subchapter by Pub. L. 100–713.

AMENDMENTS

1992—Pub. L. 102–573, § 501(b)(4)(D), inserted ''and grant'' in section catchline.

Subsec. (b). Pub. L. 102–573, § 501(b)(4)(A), inserted ''or grants'' after ''any contracts''.

Subsec. (d). Pub. L. 102–573, § 501(b)(4)(B), inserted ''or grant'' after ''contract'' in two places.

Subsec. (e). Pub. L. 102–573, § 501(b)(4)(C), inserted '', or grants to,'' after ''Contracts with'' and ''or grants'' after ''such contracts''.

§ 1657. Reports and records

(a) Quarterly reports

For each fiscal year during which an urban Indian organization receives or expends funds pursuant to a contract entered into, or a grant received, pursuant to this subchapter, such organization shall submit to the Secretary a quarterly report including—

(1) in the case of a contract or grant under section 1653 of this title, information gathered pursuant to clauses (10) and (11) of subsection (a) of such section;

(2) information on activities conducted by the organization pursuant to the contract or grant;

(3) an accounting of the amounts and purposes for which Federal funds were expended; and

(4) such other information as the Secretary may request.

(b) Audit by Secretary and Comptroller General

The reports and records of the urban Indian organization with respect to a contract or grant under this subchapter shall be subject to audit by the Secretary and the Comptroller General of the United States.

(c) Cost of annual private audit

The Secretary shall allow as a cost of any contract or grant entered into under section 1653 of this title the cost of an annual private audit conducted by a certified public accountant.

(d) Health status, services, and areas of unmet needs; child welfare

(1) The Secretary, acting through the Service, shall submit a report to the Congress not later than March 31, 1992, evaluating—

(A) the health status of urban Indians;

(B) the services provided to Indians through this subchapter;

(C) areas of unmet needs in urban areas served under this subchapter; and

(D) areas of unmet needs in urban areas not served under this subchapter.

(2) In preparing the report under paragraph (1), the Secretary shall consult with urban Indian health providers and may contract with a national organization representing urban Indian health concerns to conduct any aspect of the report.

(3) The Secretary and the Secretary of the Interior shall—

(A) assess the status of the welfare of urban Indian children, including the volume of child protection cases, the prevalence of child sexual abuse, and the extent of urban Indian coordination with tribal authorities with respect to child sexual abuse; and

(B) submit a report on the assessment required under subparagraph (A), together with recommended legislation to improve Indian child protection in urban Indian populations, to the Congress no later than March 31, 1992.

(Pub. L. 94–437, title V, § 507, as added Pub. L. 100–713, title V, § 501, Nov. 23, 1988, 102 Stat. 4823; amended Pub. L. 101–630, title V, § 507, Nov. 28, 1990, 104 Stat. 4566; Pub. L. 102–573, title V, § 501(b)(5), Oct. 29, 1992, 106 Stat. 4568.)

PRIOR PROVISIONS

A prior section 1657, Pub. L. 94–437, title V, § 507, Sept. 30, 1976, 90 Stat. 1412; Pub. L. 96–537, § 7, Dec. 17, 1980, 94 Stat. 3179, related to review of program by Secretary and report to Congress, prior to the general revision of this subchapter by Pub. L. 100–713.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–573, § 501(b)(5)(A), inserted '', or a grant received,'' after ''entered into'' in introductory provisions and ''or grant'' after ''contract'' in pars. (1) and (2).

Subsecs. (b), (c). Pub. L. 102–573, § 501(b)(5)(B), inserted ''or grant'' after ''contract''.

1990—Subsec. (d). Pub. L. 101–630 added subsec. (d).

§ 1658. Limitation on contract authority

The authority of the Secretary to enter into contracts under this subchapter shall be to the extent, and in an amount, provided for in appropriation Acts.

(Pub. L. 94–437, title V, § 508, as added Pub. L. 100–713, title V, § 501, Nov. 23, 1988, 102 Stat. 4824.)

PRIOR PROVISIONS

A prior section 1658, Pub. L. 94–437, title V, § 508, Sept. 30, 1976, 90 Stat. 1412, provided that not to exceed 1 per centum of the amounts authorized by section 1656 of this title be available for not to exceed two pilot projects providing outreach services to eligible Indians residing in rural communities near Indian reservations, prior to the general revision of this subchapter by Pub. L. 96–537, § 7, Dec. 17, 1980, 94 Stat. 3176.

§ 1659. Facilities renovation

The Secretary may make funds available to contractors or grant recipients under this subchapter for minor renovations to facilities, including leased facilities, to assist such contractors or grant recipients in meeting or maintaining the Joint Commission for Accreditation of Health Care Organizations (JCAHO) standards.

(Pub. L. 94–437, title V, § 509, formerly § 409, as added Pub. L. 101–630, title V, § 506(c), Nov. 28, 1990, 104 Stat. 4566; renumbered § 509 and amended Pub. L. 102–573, title V, §§ 501(b)(6), 505(b)(2), title IX, § 902(5)(A), Oct. 29, 1992, 106 Stat. 4569, 4571, 4591.)

AMENDMENTS

1992—Pub. L. 102–573, § 902(5)(A), made technical amendment to section catchline.

Pub. L. 102–573, § 505(b)(2), struck out last sentence which authorized appropriation of $1,000,000 for fiscal year 1992 to carry out this section.

Pub. L. 102–573, § 501(b)(6), inserted ''or grant recipients'' after ''contractors'' in two places.

§ 1660. Urban Health Programs Branch

(a) Establishment

There is hereby established within the Service a Branch of Urban Health Programs which shall be responsible for carrying out the provisions of this subchapter and for providing central oversight of the programs and services authorized under this subchapter.

(b) Staff, services, and equipment

The Secretary shall appoint such employees to work in the branch, including a program director, and shall provide such services and equipment, as may be necessary for it to carry out its responsibilities. The Secretary shall also analyze the need to provide at least one urban health program analyst for each area office of the Indian Health Service and shall submit his findings to the Congress as a part of the Department's fiscal year 1993 budget request.

(Pub. L. 94–437, title V, § 510, formerly § 511, as added Pub. L. 101–630, title V, § 508, Nov. 28, 1990, 104 Stat. 4567; renumbered § 510 and amended Pub. L. 102–573, title V, § 501(b)(7), title IX, § 902(5)(B), Oct. 29, 1992, 106 Stat. 4569, 4591.)

AMENDMENTS

1992—Pub. L. 102–573, § 902(5)(B), made technical amendment to section catchline.

Subsec. (a). Pub. L. 102–573, § 501(b)(7), inserted ''and for providing central oversight of the programs and services authorized under this subchapter'' before period at end.

§ 1660a. Grants for alcohol and substance abuse related services

(a) Grants

The Secretary may make grants for the provision of health-related services in prevention of, treatment of, rehabilitation of, or school and community-based education in, alcohol and substance abuse in urban centers to those urban Indian organizations with whom the Secretary has entered into a contract under this subchapter or under section 1621 of this title.

(b) Goals of grant

Each grant made pursuant to subsection (a) of this section shall set forth the goals to be accomplished pursuant to the grant. The goals shall be specific to each grant as agreed to between the Secretary and the grantee.

(c) Criteria

The Secretary shall establish criteria for the grants made under subsection (a) of this section, including criteria relating to the—

(1) size of the urban Indian population;

(2) accessibility to, and utilization of, other health resources available to such population;

(3) duplication of existing Service or other Federal grants or contracts;

(4) capability of the organization to adequately perform the activities required under the grant;

(5) satisfactory performance standards for the organization in meeting the goals set forth in such grant, which standards shall be negotiated and agreed to between the Secretary and the grantee on a grant-by-grant basis; and

(6) identification of need for services.

The Secretary shall develop a methodology for allocating grants made pursuant to this section based on such criteria.

(d) Treatment of funds received by urban Indian organizations

Any funds received by an urban Indian organization under this chapter for substance abuse prevention, treatment, and rehabilitation shall be subject to the criteria set forth in subsection (c) of this section.

(Pub. L. 94–437, title V, § 511, as added Pub. L. 102–573, title V, § 502, Oct. 29, 1992, 106 Stat. 4569.)

PRIOR PROVISIONS

A prior section 511 of Pub. L. 94–437 was renumbered section 510 and is classified to section 1660 of this title.

§ 1660b. Treatment of certain demonstration projects

(a) In general

Notwithstanding any other provision of law, the Oklahoma City Clinic demonstration project and the Tulsa Clinic demonstration project shall be treated as service units in the allocation of resources and coordination of care and shall not be subject to the provisions of the Indian Self-Determination Act [25 U.S.C. 450f et seq.] for the term of such projects. The Secretary shall provide assistance to such projects in the development of resources and equipment and facility needs.

(b) Report

The Secretary shall submit to the President, for inclusion in the report required to be submitted to the Congress under section 1671 of this title for fiscal year 1999, a report on the findings and conclusions derived from the demonstration projects specified in subsection (a) of this section.

(c) Appropriations

In addition to the amounts made available under section 1660d of this title to carry out this section through fiscal year 2000, there are authorized to be appropriated such sums as may be necessary to carry out this section for each of fiscal years 2001 and 2002.

(Pub. L. 94–437, title V, § 512, as added Pub. L. 102–573, title V, § 503, Oct. 29, 1992, 106 Stat. 4569; amended Pub. L. 105–256, § 4(b), Oct. 14, 1998, 112 Stat. 1897.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–256 added subsec. (c).

PERMANENT PROGRAMS UNDER THE DIRECT CARE PROGRAM OF THE INDIAN HEALTH SERVICE

Pub. L. 108–447, div. E, title II, Dec. 8, 2004, 118 Stat. 3087, provided in part that: ''Notwithstanding any other provision of law, the Tulsa and Oklahoma City Clinic demonstration projects shall be permanent programs under the direct care program of the Indian Health Service; shall be treated as service units and operating units in the allocation of resources and coordination of care; shall continue to meet the requirements applicable to an Urban Indian organization under this title [title II of div. E of Pub. L. 108–447, see Tables for classification]; and shall not be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).''

EXTENSION OF TERMS OF PROJECTS

Pub. L. 105–256, § 4(a), Oct. 14, 1998, 112 Stat. 1897, provided that: ''The Secretary of the Interior shall take

such action as may be necessary to extend the terms of the projects referred to in section 512 of the Indian Health Care Improvement Act (25 U.S.C. 1660b) so that the term of each such project expires on October 1, 2002.''

§ 1660c. Urban NIAAA transferred programs

(a) Duty of Secretary

The Secretary shall, within the Branch of Urban Health Programs of the Service, make grants or enter into contracts for the administration of urban Indian alcohol programs that were originally established under the National Institute on Alcoholism and Alcohol Abuse (hereafter in this section referred to as ''NIAAA'') and transferred to the Service.

(b) Use of grants

Grants provided or contracts entered into under this section shall be used to provide support for the continuation of alcohol prevention and treatment services for urban Indian populations and such other objectives as are agreed upon between the Service and a recipient of a grant or contract under this section.

(c) Eligibility for grants

Urban Indian organizations that operate Indian alcohol programs originally funded under NIAAA and subsequently transferred to the Service are eligible for grants or contracts under this section.

(d) Combination of funds

For the purpose of carrying out this section, the Secretary may combine NIAAA alcohol funds with other substance abuse funds currently administered through the Branch of Urban Health Programs of the Service.

(e) Evaluation and report to Congress

The Secretary shall evaluate and report to the Congress on the activities of programs funded under this section at least every 5 years.

(Pub. L. 94–437, title V, § 513, as added Pub. L. 102–573, title V, § 504, Oct. 29, 1992, 106 Stat. 4570; amended Pub. L. 105–362, title VI, § 602(a), Nov. 10, 1998, 112 Stat. 3286.)

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–362 substituted ''every 5 years'' for ''every two years''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e) of this section relating to reporting to Congress on the activities of programs funded under this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 97 of House Document No. 103–7.

§ 1660d. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this subchapter.

(Pub. L. 94–437, title V, § 514, as added Pub. L. 102–573, title V, § 505(a), Oct. 29, 1992, 106 Stat. 4570.)

SUBCHAPTER V—ORGANIZATIONAL IMPROVEMENTS

CODIFICATION

This subchapter was in the original title VI of Pub. L. 94–437. Titles IV and V of Pub. L. 94–437 are classified to subchapters III–A and IV of this chapter, respectively.

§ 1661. Establishment of Indian Health Service as an agency of Public Health Service

(a) Establishment

In order to more effectively and efficiently carry out the responsibilities, authorities, and functions of the United States to provide health care services to Indians and Indian tribes, as are or may be on and after November 23, 1988, provided by Federal statute or treaties, there is established within the Public Health Service of the Department of Health and Human Services the Indian Health Service. The Indian Health Service shall be administered by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Indian Health Service shall report to the Secretary through the Assistant Secretary for Health of the Department of Health and Human Services. Effective with respect to an individual appointed by the President, by and with the advice and consent of the Senate, after January 1, 1993, the term of service of the Director shall be 4 years. A Director may serve more than 1 term.

(b) Agency status

The Indian Health Service shall be an agency within the Public Health Service of the Department of Health and Human Services, and shall not be an office, component, or unit of any other agency of the Department.

(c) Duties

The Secretary shall carry out through the Director of the Indian Health Service—

(1) all functions which were, on the day before November 23, 1988, carried out by or under the direction of the individual serving as Director of the Indian Health Service on such day;

(2) all functions of the Secretary relating to the maintenance and operation of hospital and health facilities for Indians and the planning for, and provision and utilization of, health services for Indians;

(3) all health programs under which health care is provided to Indians based upon their status as Indians which are administered by the Secretary, including (but not limited to) programs under—

(A) this chapter;

(B) section 13 of this title;

(C) the Act of August 5, 1954 (42 U.S.C. 2001, et seq.);

(D) the Act of August 16, 1957 (42 U.S.C. 2005 et seq.); and

(E) the Indian Self-Determination Act (25 U.S.C. 450f, et seq.); and

(4) all scholarship and loan functions carried out under subchapter I of this chapter.

(d) Authority of Secretary

(1) The Secretary, acting through the Director of the Indian Health Service, shall have the authority—

(A) except to the extent provided in paragraph (2), to appoint and compensate employees for the Service in accordance with title 5;

(B) to enter into contracts for the procurement of goods and services to carry out the functions of the Service; and

(C) to manage, expend, and obligate all funds appropriated for the Service.

(2) Notwithstanding any other law, the provisions of section 472 of this title shall apply to all personnel actions taken with respect to new positions created within the Service as a result of its establishment under subsection (a) of this section.

(Pub. L. 94–437, title VI, § 601, as added Pub. L. 100–713, title VI, § 601(a), Nov. 23, 1988, 102 Stat. 4824; amended Pub. L. 102–573, title VI, §§ 601, 602(a)(1), (c), title IX, § 902(6), (7), Oct. 29, 1992, 106 Stat. 4571, 4592.)

REFERENCES IN TEXT

Act of August 5, 1954, referred to in subsec. (c)(3)(C), is act Aug. 5, 1954, ch. 658, 68 Stat. 674, as amended, which is classified generally to subchapter I (§ 2001 et seq.) of chapter 22 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

Act of August 16, 1957, referred to in subsec. (c)(3)(D), is Pub. L. 85–151, Aug. 16, 1957, 71 Stat. 370, which is classified generally to subchapter II (§ 2005 et seq.) of chapter 22 of Title 42. For complete classification of this Act to the Code, see Tables.

The Indian Self-Determination Act, referred to in subsec. (c)(3)(E), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

PRIOR PROVISIONS

A prior section 1661, Pub. L. 94–437, title VI, § 601, Sept. 30, 1976, 90 Stat. 1412, related to feasibility study and report to Congress, prior to the general revision of this subchapter by Pub. L. 100–713.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–573, § 602(c), inserted at end ''Effective with respect to an individual appointed by the President, by and with the advice and consent of the Senate, after January 1, 1993, the term of service of the Director shall be 4 years. A Director may serve more than 1 term.''

Pub. L. 102–573, § 602(a)(1), substituted ''President, by and with the advice and consent of the Senate'' for ''Secretary'' in second sentence.

Subsec. (c)(3)(D). Pub. L. 102–573, § 902(6), substituted ''(42 U.S.C. 2005 et seq.)'' for ''(25 U.S.C. 2005, et seq.)''.

Subsec. (c)(4). Pub. L. 102–573, § 601, added par. (4).

Subsec. (d)(1)(C). Pub. L. 102–573, § 902(7), substituted ''appropriated'' for ''appropriate''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 602(a)(2) of Pub. L. 102–573 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect January 1, 1993.''

EFFECTIVE DATE

Section 601(c) of Pub. L. 100–713 provided that:

''(1) Except as provided in paragraph (2), section 601 of the Indian Health Care Improvement Act [this section] added by subsection (a) of this section shall take effect 9 months from the date of the enactment of this section [Nov. 23, 1988].

''(2) Notwithstanding subsections (b) [set out below] and (c)(1), any action which carries out such section 601 that is taken by the Secretary before the effective date of such section 601 shall be effective beginning on the date such action was taken.''

INTERIM APPOINTMENT

Section 602(b) of Pub. L. 102–573 provided that: ''The President may appoint an individual to serve as Interim Director of the Service from January 1, 1993, until such time as a Director is appointed and confirmed as provided in section 601(a) of the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) [25 U.S.C. 1661(a)] (as amended by subsection (a) of this section).''

TRANSFER OF PERSONNEL, RECORDS, EQUIPMENT, ETC., TO INDIAN HEALTH SERVICE

Section 601(b) of Pub. L. 100–713 provided that: ''All personnel, records, equipment, facilities, and interests in property that are administered by the Indian Health Service on the day before the date on which the amendments made by this section take effect [see Effective Date note above] shall be transferred to the Indian Health Service established by the amendment made by subsection (a) of this section [enacting this section and section 1662 of this title]. All transfers must be accomplished within 9 months of the date of enactment of this section [Nov. 23, 1988]. The Secretary is authorized to waive the Indian preference laws on a case-by-case basis for temporary transfers involved in implementing this section during such 9-month period.''

§ 1662. Automated management information system

(a) Establishment

(1) The Secretary shall establish an automated management information system for the Service.

(2) The information system established under paragraph (1) shall include—

(A) a financial management system,

(B) a patient care information system for each area served by the Service,

(C) a privacy component that protects the privacy of patient information held by, or on behalf of, the Service, and

(D) a services-based cost accounting component that provides estimates of the costs associated with the provision of specific medical treatments or services in each area office of the Service.

(b) Provision to Indian tribes and organizations; reimbursement

(1) The Secretary shall provide each Indian tribe and tribal organization that provides health services under a contract entered into with the Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] automated management information systems which—

(A) meet the management information needs of such Indian tribe or tribal organization with respect to the treatment by the Indian tribe or tribal organization of patients of the Service, and

(B) meet the management information needs of the Service.

(2) The Secretary shall reimburse each Indian tribe or tribal organization for the part of the cost of the operation of a system provided under paragraph (1) which is attributable to the treatment by such Indian tribe or tribal organization of patients of the Service.

(3) The Secretary shall provide systems under paragraph (1) to Indian tribes and tribal organi-

zations providing health services in California by no later than September 30, 1990.

(c) Access to records

Notwithstanding any other provision of law, each patient shall have reasonable access to the medical or health records of such patient which are held by, or on behalf of, the Service.

(Pub. L. 94–437, title VI, § 602, as added Pub. L. 100–713, title VI, § 601(a), Nov. 23, 1988, 102 Stat. 4825; amended Pub. L. 102–573, title IX, § 901(3), Oct. 29, 1992, 106 Stat. 4591.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (b)(1), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–573 struck out par. (3) which directed Secretary to submit report to Congress no later than Sept. 30, 1989.

§ 1663. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this subchapter.

(Pub. L. 94–437, title VI, § 603, as added Pub. L. 102–573, title VI, § 603, Oct. 29, 1992, 106 Stat. 4571.)

SUBCHAPTER V–A—SUBSTANCE ABUSE PROGRAMS

CODIFICATION

This subchapter was in the original title VII of Pub. L. 94–437, as added by Pub. L. 102–573. Former title VII was renumbered VIII by Pub. L. 102–573 and is classified to subchapter VI of this chapter. Titles IV, V, and VI of Pub. L. 102–437 are classified to subchapters III–A, IV, and V of this chapter, respectively.

§ 1665. Indian Health Service responsibilities

The Memorandum of Agreement entered into pursuant to section 2411 of this title shall include specific provisions pursuant to which the Service shall assume responsibility for—

(1) the determination of the scope of the problem of alcohol and substance abuse among Indian people, including the number of Indians within the jurisdiction of the Service who are directly or indirectly affected by alcohol and substance abuse and the financial and human cost;

(2) an assessment of the existing and needed resources necessary for the prevention of alcohol and substance abuse and the treatment of Indians affected by alcohol and substance abuse; and

(3) an estimate of the funding necessary to adequately support a program of prevention of alcohol and substance abuse and treatment of Indians affected by alcohol and substance abuse.

(Pub. L. 94–437, title VII, § 701, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4572.)

§ 1665a. Indian Health Service program

(a) Comprehensive prevention and treatment program

(1) The Secretary, acting through the Service, shall provide a program of comprehensive alcohol and substance abuse prevention and treatment which shall include—

(A) prevention, through educational intervention, in Indian communities;

(B) acute detoxification and treatment;

(C) community-based rehabilitation;

(D) community education and involvement, including extensive training of health care, educational, and community-based personnel; and

(E) residential treatment programs for pregnant and post partum women and their children.

(2) The target population of such program shall be members of Indian tribes. Efforts to train and educate key members of the Indian community shall target employees of health, education, judicial, law enforcement, legal, and social service programs.

(b) Contract health services

(1) The Secretary, acting through the Service, may enter into contracts with public or private providers of alcohol and substance abuse treatment services for the purpose of assisting the Service in carrying out the program required under subsection (a) of this section.

(2) In carrying out this subsection, the Secretary shall provide assistance to Indian tribes to develop criteria for the certification of alcohol and substance abuse service providers and accreditation of service facilities which meet minimum standards for such services and facilities as may be determined pursuant to section 2411(a)(3) of this title.

(c) Grants for model program

(1) The Secretary, acting through the Service shall make a grant to the Standing Rock Sioux Tribe to develop a community-based demonstration project to reduce drug and alcohol abuse on the Standing Rock Sioux Reservation and to rehabilitate Indian families afflicted by such abuse.

(2) Funds shall be used by the Tribe to—

(A) develop and coordinate community-based alcohol and substance abuse prevention and treatment services for Indian families;

(B) develop prevention and intervention models for Indian families;

(C) conduct community education on alcohol and substance abuse; and

(D) coordinate with existing Federal, State, and tribal services on the reservation to develop a comprehensive alcohol and substance abuse program that assists in the rehabilitation of Indian families that have been or are afflicted by alcoholism.

(3) The Secretary shall submit to the President for inclusion in the report to be transmitted to the Congress under section 1671 of this title for fiscal year 1995 an evaluation of the demonstration project established under paragraph (1).

(Pub. L. 94–437, title VII, § 702, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4573.)

§ 1665b. Indian women treatment programs

(a) Grants

The Secretary may make grants to Indian tribes and tribal organizations to develop and implement a comprehensive alcohol and substance abuse program of prevention, intervention, treatment, and relapse prevention services that specifically addresses the cultural, historical, social, and child care needs of Indian women, regardless of age.

(b) Use of grants

Grants made pursuant to this section may be used to—

(1) develop and provide community training, education, and prevention programs for Indian women relating to alcohol and substance abuse issues, including fetal alcohol syndrome and fetal alcohol effect;

(2) identify and provide appropriate counseling, advocacy, support, and relapse prevention to Indian women and their families; and

(3) develop prevention and intervention models for Indian women which incorporate traditional healers, cultural values, and community and family involvement.

(c) Criteria for review and approval of grant applications

The Secretary shall establish criteria for the review and approval of applications for grants under this section.

(d) Authorization of appropriations

(1) There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(2) Twenty percent of the funds appropriated pursuant to this subsection shall be used to make grants to urban Indian organizations funded under subchapter IV of this chapter.

(Pub. L. 94–437, title VII, § 703, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4573.)

§ 1665c. Indian Health Service youth program

(a) Detoxification and rehabilitation

The Secretary shall develop and implement a program for acute detoxification and treatment for Indian youth who are alcohol and substance abusers. The program shall include regional treatment centers designed to include detoxification and rehabilitation for both sexes on a referral basis. These regional centers shall be integrated with the intake and rehabilitation programs based in the referring Indian community.

(b) Treatment centers or facilities

(1) The Secretary shall construct, renovate, or, as necessary, purchase, and appropriately staff and operate, a youth regional treatment center in each area under the jurisdiction of an area office. For the purposes of this subsection, the area offices of the Service in Tucson and Phoenix, Arizona, shall be considered one area office and the area office in California shall be considered to be two area offices, one office whose jurisdiction shall be considered to encompass the northern area of the State of California, and one office whose jurisdiction shall be considered to encompass the remainder of the State of California.

(2) For the purpose of staffing and operating such centers or facilities, funding shall be pursuant to section 13 of this title.

(3) A youth treatment center constructed or purchased under this subsection shall be constructed or purchased at a location within the area described in paragraph (1) agreed upon (by appropriate tribal resolution) by a majority of the tribes to be served by such center.

(4)(A) Notwithstanding any other provision of this subchapter, the Secretary may, from amounts authorized to be appropriated for the purposes of carrying out this section, make funds available to—

(i) the Tanana Chiefs Conference, Incorporated, for the purpose of leasing, constructing, renovating, operating and maintaining a residential youth treatment facility in Fairbanks, Alaska; and

(ii) the Southeast Alaska Regional Health Corporation to staff and operate a residential youth treatment facility without regard to the proviso set forth in section 450b(*l*) of this title.

(B) Until additional residential youth treatment facilities are established in Alaska pursuant to this section, the facilities specified in subparagraph (A) shall make every effort to provide services to all eligible Indian youth residing in such State.

(c) Federally owned structures

(1) The Secretary, acting through the Service, shall, in consultation with Indian tribes—

(A) identify and use, where appropriate, federally owned structures suitable as local residential or regional alcohol and substance abuse treatment centers for Indian youth; and

(B) establish guidelines for determining the suitability of any such federally owned structure to be used as a local residential or regional alcohol and substance abuse treatment center for Indian youth.

(2) Any structure described in paragraph (1) may be used under such terms and conditions as may be agreed upon by the Secretary and the agency having responsibility for the structure.

(d) Rehabilitation and aftercare services

(1) The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each Service service unit community-based rehabilitation and follow-up services for Indian youth who are alcohol or substance abusers which are designed to integrate long-term treatment and to monitor and support the Indian youth after their return to their home community.

(2) Services under paragraph (1) shall be administered within each service unit by trained staff within the community who can assist the Indian youth in continuing development of self-image, positive problem-solving skills, and non-alcohol or substance abusing behaviors. Such staff shall include alcohol and substance abuse counselors, mental health professionals, and other health professionals and paraprofessionals, including community health representatives.

(e) Inclusion of family in youth treatment program

In providing the treatment and other services to Indian youth authorized by this section, the Secretary shall provide for the inclusion of family members of such youth in the treatment programs or other services as may be appropriate. Not less than 10 percent of the funds appropriated for the purposes of carrying out subsection (d) of this section shall be used for outpatient care of adult family members related to the treatment of an Indian youth under that subsection.

(f) Multidrug abuse study

(1) The Secretary shall conduct a study to determine the incidence and prevalence of the abuse of multiple forms of drugs, including alcohol, among Indian youth residing on Indian reservations and in urban areas and the interrelationship of such abuse with the incidence of mental illness among such youth.

(2) The Secretary shall submit a report detailing the findings of such study, together with recommendations based on such findings, to the Congress no later than two years after October 29, 1992.

(Pub. L. 94–437, title VII, § 704, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4574.)

§ 1665d. Training and community education

(a) Community education

The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each service unit a program of community education and involvement which shall be designed to provide concise and timely information to the community leadership of each tribal community. Such program shall include education in alcohol and substance abuse to political leaders, tribal judges, law enforcement personnel, members of tribal health and education boards, and other critical members of each tribal community.

(b) Training

The Secretary shall, either directly or by contract, provide instruction in the area of alcohol and substance abuse, including instruction in crisis intervention and family relations in the context of alcohol and substance abuse, youth alcohol and substance abuse, and the causes and effects of fetal alcohol syndrome to appropriate employees of the Bureau of Indian Affairs and the Service, and to personnel in schools or programs operated under any contract with the Bureau of Indian Affairs or the Service, including supervisors of emergency shelters and halfway houses described in section 2433 of this title.

(c) Community-based training models

In carrying out the education and training programs required by this section, the Secretary, acting through the Service and in consultation with tribes and Indian alcohol and substance abuse prevention experts, shall develop and provide community-based training models. Such models shall address—

(1) the elevated risk of alcohol and substance abuse faced by children of alcoholics;

(2) the cultural and multigenerational aspects of alcohol and substance abuse prevention and recovery; and

(3) community-based and multidisciplinary strategies for preventing and treating alcohol and substance abuse.

(Pub. L. 94–437, title VII, § 705, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4576.)

§ 1665e. Gallup alcohol and substance abuse treatment center

(a) Grants for residential treatment

The Secretary shall make grants to the Navajo Nation for the purpose of providing residential treatment for alcohol and substance abuse for adult and adolescent members of the Navajo Nation and neighboring tribes.

(b) Purposes of grants

Grants made pursuant to this section shall (to the extent appropriations are made available) be used to—

(1) provide at least 15 residential beds each year for adult long-term treatment, including beds for specialized services such as polydrug abusers, dual diagnosis, and specialized services for women with fetal alcohol syndrome children;

(2) establish clinical assessment teams consisting of a clinical psychologist, a part-time addictionologist, a master's level assessment counselor, and a certified medical records technician which shall be responsible for conducting individual assessments and matching Indian clients with the appropriate available treatment;

(3) provide at least 12 beds for an adolescent shelterbed program in the city of Gallup, New Mexico, which shall serve as a satellite facility to the Acoma/Canoncito/Laguna Hospital and the adolescent center located in Shiprock, New Mexico, for emergency crisis services, assessment, and family intervention;

(4) develop a relapse program for the purposes of identifying sources of job training and job opportunity in the Gallup area and providing vocational training, job placement, and job retention services to recovering substance abusers; and

(5) provide continuing education and training of treatment staff in the areas of intensive outpatient services, development of family support systems, and case management in cooperation with regional colleges, community colleges, and universities.

(c) Contract for residential treatment

The Navajo Nation, in carrying out the purposes of this section, shall enter into a contract with an institution in the Gallup, New Mexico, area which is accredited by the Joint Commission of the Accreditation of Health Care Organizations to provide comprehensive alcohol and drug treatment as authorized in subsection (b) of this section.

(d) Authorization of appropriations

There are authorized to be appropriated, for each of fiscal years 1996 through 2000, such sums as may be necessary to carry out subsection (b) of this section.

(Pub. L. 94–437, title VII, § 706, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4576; amended Pub. L. 104–313, § 2(e), Oct. 19, 1996, 110 Stat. 3822.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–313 amended heading and text of subsec. (d) generally, extending appropriation authorization for programs under subsection (b) of this section through fiscal year 2000.

§ 1665f. Reports

(a) Compilation of data

The Secretary, with respect to the administration of any health program by a service unit, directly or through contract, including a contract under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], shall require the compilation of data relating to the number of cases or incidents in which any Service personnel or services were involved and which were related, either directly or indirectly, to alcohol or substance abuse. Such report shall include the type of assistance provided and the disposition of these cases.

(b) Referral of data

The data compiled under subsection (a) of this section shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan under section 2412 of this title.

(c) Comprehensive report

Each service unit director shall be responsible for assembling the data compiled under this section and section 2434 of this title into an annual tribal comprehensive report. Such report shall be provided to the affected tribe and to the Director of the Service who shall develop and publish a biennial national report based on such tribal comprehensive reports.

(Pub. L. 94–437, title VII, § 707, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4577.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 1665g. Fetal alcohol syndrome and fetal alcohol effect grants

(a) Award; use; review criteria

(1) The Secretary may make grants to Indian tribes and tribal organizations to establish fetal alcohol syndrome and fetal alcohol effect programs as provided in this section for the purposes of meeting the health status objectives specified in section 1602(b) of this title.

(2) Grants made pursuant to this section shall be used to—

(A) develop and provide community and in-school training, education, and prevention programs relating to FAS and FAE;

(B) identify and provide alcohol and substance abuse treatment to high-risk women;

(C) identify and provide appropriate educational and vocational support, counseling, advocacy, and information to FAS and FAE affected persons and their families or caretakers;

(D) develop and implement counseling and support programs in schools for FAS and FAE affected children;

(E) develop prevention and intervention models which incorporate traditional healers, cultural values and community involvement;

(F) develop, print, and disseminate education and prevention materials on FAS and FAE; and

(G) develop and implement, through the tribal consultation process, culturally sensitive assessment and diagnostic tools for use in tribal and urban Indian communities.

(3) The Secretary shall establish criteria for the review and approval of applications for grants under this section.

(b) Plan; study; national clearinghouse

The Secretary, acting through the Service, shall—

(1) develop an annual plan for the prevention, intervention, treatment, and aftercare for those affected by FAS and FAE in Indian communities;

(2) conduct a study, directly or by contract with any organization, entity, or institution of higher education with significant knowledge of FAS and FAE and Indian communities, of the special educational, vocational, school-to-work transition, and independent living needs of adolescent and adult Indians and Alaska Natives with FAS or FAE; and

(3) establish a national clearinghouse for prevention and educational materials and other information on FAS and FAE effect in Indian and Alaska Native communities and ensure access to clearinghouse materials by any Indian tribe or urban Indian organization.

(c) Task force

The Secretary shall establish a task force to be known as the FAS/FAE Task Force to advise the Secretary in carrying out subsection (b) of this section. Such task force shall be composed of representatives from the National Institute on Drug Abuse, the National Institute on Alcohol and Alcoholism, the Office of Substance Abuse Prevention, the National Institute of Mental Health, the Service, the Office of Minority Health of the Department of Health and Human Services, the Administration for Native Americans, the Bureau of Indian Affairs, Indian tribes, tribal organizations, urban Indian communities, and Indian FAS/FAE experts.

(d) Cooperative projects; research projects

The Secretary, acting through the Substance Abuse and Mental Health Services Administration, shall make grants to Indian tribes, tribal organizations, universities working with Indian tribes on cooperative projects, and urban Indian organizations for applied research projects which propose to elevate the understanding of methods to prevent, intervene, treat, or provide aftercare for Indians and urban Indians affected by FAS or FAE.

(e) Report

(1) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report on the status of FAS and FAE in the Indian population. Such report shall include, in addition to the information required under section 1602(d) of this title with respect to the health status objective specified in section 1602(b)(27) of this title, the following:

(A) The progress of implementing a uniform assessment and diagnostic methodology in Service and tribally based service delivery systems.

(B) The incidence of FAS and FAE babies born for all births by reservation and urban-based sites.

(C) The prevalence of FAS and FAE affected Indian persons in Indian communities, their primary means of support, and recommendations to improve the support system for these individuals and their families or caretakers.

(D) The level of support received from the entities specified in subsection (c) of this section in the area of FAS and FAE.

(E) The number of inpatient and outpatient substance abuse treatment resources which are specifically designed to meet the unique needs of Indian women, and the volume of care provided to Indian women through these means.

(F) Recommendations regarding the prevention, intervention, and appropriate vocational, educational and other support services for FAS and FAE affected individuals in Indian communities.

(2) The Secretary may contract the production of this report to a national organization specifically addressing FAS and FAE in Indian communities.

(f) Authorization of appropriations

(1) There are authorized to be appropriated to carry out this section $22,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(2) Ten percent of the funds appropriated pursuant to this section shall be used to make grants to urban Indian organizations funded under subchapter IV of this chapter.

(Pub. L. 94–437, title VII, § 708, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4578.)

§ 1665h. Pueblo substance abuse treatment project for San Juan Pueblo, New Mexico

The Secretary, acting through the Service, shall continue to make grants, through fiscal year 1995, to the 8 Northern Indian Pueblos Council, San Juan Pueblo, New Mexico, for the purpose of providing substance abuse treatment services to Indians in need of such services.

(Pub. L. 94–437, title VII, § 709, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4579.)

§ 1665i. Thunder Child Treatment Center

(a) The Secretary, acting through the Service, shall make a grant to the Intertribal Addictions Recovery Organization, Inc. (commonly known as the Thunder Child Treatment Center) at Sheridan, Wyoming, for the completion of construction of a multiple approach substance abuse treatment center which specializes in the treatment of alcohol and drug abuse of Indians.

(b) For the purposes of carrying out subsection (a) of this section, there are authorized to be appropriated $2,000,000 for fiscal years 1993 and 1994. No funding shall be available for staffing or operation of this facility. None of the funding appropriated to carry out subsection (a) of this section shall be used for administrative purposes.

(Pub. L. 94–437, title VII, § 710, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4580.)

§ 1665j. Substance abuse counselor education demonstration project

(a) Contracts and grants

The Secretary, acting through the Service, may enter into contracts with, or make grants to, accredited tribally controlled community colleges, tribally controlled postsecondary vocational institutions, and eligible community colleges to establish demonstration projects to develop educational curricula for substance abuse counseling.

(b) Use of funds

Funds provided under this section shall be used only for developing and providing educational curricula for substance abuse counseling (including paying salaries for instructors). Such curricula may be provided through satellite campus programs.

(c) Effective period of contract or grant; renewal

A contract entered into or a grant provided under this section shall be for a period of one year. Such contract or grant may be renewed for an additional one year period upon the approval of the Secretary.

(d) Criteria for review and approval of applications

Not later than 180 days after October 29, 1992, the Secretary, after consultation with Indian tribes and administrators of accredited tribally controlled community colleges, tribally controlled postsecondary vocational institutions, and eligible community colleges, shall develop and issue criteria for the review and approval of applications for funding (including applications for renewals of funding) under this section. Such criteria shall ensure that demonstration projects established under this section promote the development of the capacity of such entities to educate substance abuse counselors.

(e) Assistance to recipients

The Secretary shall provide such technical and other assistance as may be necessary to enable grant recipients to comply with the provisions of this section.

(f) Report

The Secretary shall submit to the President, for inclusion in the report which is required to be submitted under section 1671 of this title for fiscal year 1999, a report on the findings and con-

clusions derived from the demonstration projects conducted under this section.

(g) Definitions

For the purposes of this section, the following definitions apply:

(1) The term ''educational curriculum'' means one or more of the following:

(A) Classroom education.

(B) Clinical work experience.

(C) Continuing education workshops.

(2) The term ''eligible community college'' means an accredited community college that—

(i) is located on or near an Indian reservation;

(ii) has entered into a cooperative agreement with the governing body of such Indian reservation to carry out a demonstration project under this section; and

(iii) has a student enrollment of not less than 10 percent Indian.

(3) The term ''tribally controlled community college'' means a community college that is a tribally controlled college or university, as such term is defined in section 1801(a)(4) of this title.

(4) The term ''tribally controlled postsecondary vocational institution'' has the meaning given such term in section 2397h(2)[1] of title 20.

(h) Authorization of appropriations

There are authorized to be appropriated for each of fiscal years 1996 through 2000,[2] such sums as may be necessary to carry out the purposes of this section. Such sums shall remain available until expended.

(Pub. L. 94–437, title VII, § 711, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4580; amended Pub. L. 104–313, § 2(f), Oct. 19, 1996, 110 Stat. 3822; Pub. L. 105–244, title IX, § 901(d), Oct. 7, 1998, 112 Stat. 1828; Pub. L. 105–256, § 13(a), Oct. 14, 1998, 112 Stat. 1900; Pub. L. 110–315, title IX, § 941(k)(2)(I)(iii), Aug. 14, 2008, 122 Stat. 3467.)

REFERENCES IN TEXT

Section 2397h of title 20, referred to in subsec. (g)(4), was omitted in the general amendment of chapter 44 (§ 2301 et seq.) of Title 20, Education, by Pub. L. 105–332, § 1(b), Oct. 31, 1998, 112 Stat. 3076.

AMENDMENTS

2008—Subsec. (g)(3). Pub. L. 110–315 added par. (3) and struck out former par. (3) which read as follows: ''The term 'tribally controlled community college' has the meaning given such term in section 1801(a)(4) of this title.''

1998—Subsec. (g)(3). Pub. L. 105–244 made technical amendment to reference in original act which appears in text as reference to section 1801(a)(4) of this title.

Subsec. (h). Pub. L. 105–256 substituted ''of fiscal years'' for ''of the fiscal years'' in first sentence.

1996—Subsec. (h). Pub. L. 104–313 substituted ''1996 through 2000'' for ''1993, 1994, 1995, 1996, and 1997''.

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.

[1] See References in Text note below.

[2] So in original. The comma probably should not appear.

§ 1665k. Gila River alcohol and substance abuse treatment facility

(a) Regional center

The Secretary, acting through the Service, shall establish a regional youth alcohol and substance abuse prevention and treatment center in Sacaton, Arizona, on the Gila River Indian Reservation. The center shall be established within facilities leased, with the consent of the Gila River Indian Community, by the Service from such Community.

(b) Name of regional center

The center established pursuant to this section shall be known as the ''Regional Youth Alcohol and Substance Abuse Prevention and Treatment Center''.

(c) Unit of regional center

The Secretary, acting through the Service, shall establish, as a unit of the regional center, a youth alcohol and substance abuse prevention and treatment facility in Fallon, Nevada.

(Pub. L. 94–437, title VII, § 712, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4581.)

§ 1665*l*. Alaska Native drug and alcohol abuse demonstration project

(a) The Secretary, acting through the Service, shall make grants to the Alaska Native Health Board for the conduct of a two-part community-based demonstration project to reduce drug and alcohol abuse in Alaska Native villages and to rehabilitate families afflicted by such abuse. Sixty percent of such grant funds shall be used by the Health Board to stimulate coordinated community development programs in villages seeking to organize to combat alcohol and drug use. Forty percent of such grant funds shall be transferred to a qualified nonprofit corporation providing alcohol recovery services in the village of St. Mary's, Alaska, to enlarge and strengthen a family life demonstration program of rehabilitation for families that have been or are afflicted by alcoholism.

(b) The Secretary shall submit to the President for inclusion in the report required to be submitted to the Congress under section 1671 of this title for fiscal year 1995 an evaluation of the demonstration project established under subsection (a) of this section.

(Pub. L. 94–437, title VII, § 713, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4581.)

§ 1665m. Authorization of appropriations

Except as provided in sections 1665b, 1665e, 1665g, 1665i, and 1665j of this title, there are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out the provisions of this subchapter.

(Pub. L. 94–437, title VII, § 714, as added Pub. L. 102–573, title VII, § 702(a), Oct. 29, 1992, 106 Stat. 4581.)

SUBCHAPTER VI—MISCELLANEOUS

CODIFICATION

This subchapter was in the original title VIII, formerly VII, of Pub. L. 94–437, as renumbered by Pub. L. 102–573. Titles IV, V, VI, and VII of Pub. L. 94–437 are classified to subchapters III–A, IV, V, and V–A of this chapter, respectively.

§ 1671. Reports

The President shall, at the time the budget is submitted under section 1105 of title 31, for each fiscal year transmit to the Congress a report containing—

(1) a report on the progress made in meeting the objectives of this chapter, including a review of programs established or assisted pursuant to this chapter and an assessment and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Indians, and ensure a health status for Indians, which are at a parity with the health services available to and the health status of, the general population;

(2) a report on whether, and to what extent, new national health care programs, benefits, initiatives, or financing systems have had an impact on the purposes of this chapter and any steps that the Secretary may have taken to consult with Indian tribes to address such impact;

(3) a report on the use of health services by Indians—

(A) on a national and area or other relevant geographical basis;

(B) by gender and age;

(C) by source of payment and type of service; and

(D) comparing such rates of use with rates of use among comparable non-Indian populations.[1]

(4) a separate statement which specifies the amount of funds requested to carry out the provisions of section 1621 of this title;

(5) a separate statement of the total amount obligated or expended in the most recently completed fiscal year to achieve each of the objectives described in section 1680d of this title, relating to infant and maternal mortality and fetal alcohol syndrome;

(6) the reports required by sections 1602(d), 1616a(n), 1621b(b), 1621h(j), 1631(c), 1632(g), 1634(a)(3), 1643, 1665g(e), and 1680g(a), and 1680*l*(f) of this title;

(7) for fiscal year 1995, the report required by sections 1665a(c)(3) and 1665*l*(b) of this title;

(8) for fiscal year 1997, the interim report required by section 1637(h)(1) of this title; and

(9) for fiscal year 1999, the reports required by sections 1637(h)(2), 1660b(b), 1665j(f), and 1680k(g) of this title.

(Pub. L. 94–437, title VIII, § 801, formerly title VII, § 701, Sept. 30, 1976, 90 Stat. 1413; renumbered title VIII, § 801, and amended Pub. L. 102–573, title VII, § 701(a), (b), title VIII, § 801, Oct. 29, 1992, 106 Stat. 4572, 4584.)

AMENDMENTS

1992—Pub. L. 102–573, § 801, amended section generally. Prior to amendment, section read as follows: ''The Secretary shall report annually to the President and the Congress on progress made in effecting the purposes of this chapter. Within three months after the end of fiscal year 1979, the Secretary shall review expenditures and progress made under this chapter and make recommendations to the Congress concerning any additional authorizations for fiscal years 1981 through 1984 for programs authorized under this chapter which he deems appropriate. In the event the Congress enacts legislation authorizing appropriations for programs under this chapter for fiscal years 1981 through 1984, within three months after the end of fiscal year 1983, the Secretary shall review programs established or assisted pursuant to this chapter and shall submit to the Congress his assessment and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Indians, and insure a health status for Indians, which are at a parity with the health services available to, and the health status, of the general population.''

COMMISSION ON INDIAN AND NATIVE ALASKAN HEALTH CARE

Pub. L. 106–310, div. B, title XXXIII, § 3307, Oct. 17, 2000, 114 Stat. 1216, provided that:

''(a) IN GENERAL.—There is established a commission to be known as the Commission on Indian and Native Alaskan Health Care that shall examine the health concerns of Indians and Native Alaskans who reside on reservations and tribal lands (hereafter in this section referred to as the 'Commission').

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The Commission established under subsection (a) shall consist of—

''(A) the Secretary;

''(B) 15 members who are experts in the health care field and issues that the Commission is established to examine; and

''(C) the Director of the Indian Health Service and the Commissioner of Indian Affairs, who shall be nonvoting members.

''(2) APPOINTING AUTHORITY.—Of the 15 members of the Commission described in paragraph (1)(B)—

''(A) two shall be appointed by the Speaker of the House of Representatives;

''(B) two shall be appointed by the Minority Leader of the House of Representatives;

''(C) two shall be appointed by the Majority Leader of the Senate;

''(D) two shall be appointed by the Minority Leader of the Senate; and

''(E) seven shall be appointed by the Secretary.

''(3) LIMITATION.—Not fewer than 10 of the members appointed to the Commission shall be Indians or Native Alaskans.

''(4) CHAIRPERSON.—The Secretary shall serve as the Chairperson of the Commission.

''(5) EXPERTS.—The Commission may seek the expertise of any expert in the health care field to carry out its duties.

''(c) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filed [sic] in the same manner as the original appointment.

''(d) DUTIES OF THE COMMISSION.—The Commission shall—

''(1) study the health concerns of Indians and Native Alaskans; and

''(2) prepare the reports described in subsection (i).

''(e) POWERS OF THE COMMISSION.—

''(1) HEARINGS.—The Commission may hold such hearings, including hearings on reservations, sit and act at such times and places, take such testimony, and receive such information as the Commission considers advisable to carry out the purpose for which the Commission was established.

''(2) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Com-

[1] So in original. The period probably should be a semicolon.

mission considers necessary to carry out the purpose for which the Commission was established. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

''(f) COMPENSATION OF MEMBERS.—

''(1) IN GENERAL.—Except as provided in subparagraph (B), each member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time), during which that member is engaged in the actual performance of the duties of the Commission.

''(2) LIMITATION.—Members of the Commission who are officers or employees of the United States shall receive no additional pay on account of their service on the Commission.

''(g) TRAVEL EXPENSES OF MEMBERS.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under section 5703 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

''(h) COMMISSION PERSONNEL MATTERS.—

''(1) IN GENERAL.—The Secretary, in accordance with rules established by the Commission, may select and appoint a staff director and other personnel necessary to enable the Commission to carry out its duties.

''(2) COMPENSATION OF PERSONNEL.—The Secretary, in accordance with rules established by the Commission, may set the amount of compensation to be paid to the staff director and any other personnel that serve the Commission.

''(3) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and the detail shall be without interruption or loss of civil service status or privilege.

''(4) CONSULTANT SERVICES.—The Chairperson of the Commission is authorized to procure the temporary and intermittent services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of such title.

''(i) REPORT.—

''(1) IN GENERAL.—Not later than 3 years after the date of the enactment of the Youth Drug and Mental Health Services Act [Oct. 17, 2000], the Secretary shall prepare and submit, to the Committee on Health, Education, Labor, and Pensions of the Senate, a report that shall—

''(A) detail the health problems faced by Indians and Native Alaskans who reside on reservations;

''(B) examine and explain the causes of such problems;

''(C) describe the health care services available to Indians and Native Alaskans who reside on reservations and the adequacy of such services;

''(D) identify the reasons for the provision of inadequate health care services for Indians and Native Alaskans who reside on reservations, including the availability of resources;

''(E) develop measures for tracking the health status of Indians and Native Americans who reside on reservations; and

''(F) make recommendations for improvements in the health care services provided for Indians and Native Alaskans who reside on reservations, including recommendations for legislative change.

''(2) EXCEPTION.—In addition to the report required under paragraph (1), not later than 2 years after the date of the enactment of the Youth Drug and Mental Health Services Act [Oct. 17, 2000], the Secretary shall prepare and submit, to the Committee on Health, Education, Labor, and Pensions of the Senate, a report that describes any alcohol and drug abuse among Indians and Native Alaskans who reside on reservations.

''(j) PERMANENT COMMISSION.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

''(k) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $5,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 and 2003.''

REFERENCES TO SECTIONS 701 TO 720 OF PUBLIC LAW 94–437

Section 701(d) of Pub. L. 102–573 provided that: ''Any reference in a provision of law other than the Indian Health Care Improvement Act [25 U.S.C. 1601 et seq.] to sections redesignated by subsection (b) [renumbering sections 701 to 720 of Pub. L. 94–437 as sections 801 to 820 of Pub. L. 94–437, which are classified to sections 1671 to 1680j of this title] shall be deemed to refer to the section as so redesignated.''

§ 1672. Regulations

Prior to any revision of or amendment to rules or regulations promulgated pursuant to this chapter, the Secretary shall consult with Indian tribes and appropriate national or regional Indian organizations and shall publish any proposed revision or amendment in the Federal Register not less than sixty days prior to the effective date of such revision or amendment in order to provide adequate notice to, and receive comments from, other interested parties.

(Pub. L. 94–437, title VIII, § 802, formerly title VII, § 702, Sept. 30, 1976, 90 Stat. 1413; renumbered title VIII, § 802, and amended Pub. L. 102–573, title VII, § 701(a), (b), title VIII, § 802, Oct. 29, 1992, 106 Stat. 4572, 4585.)

AMENDMENTS

1992—Pub. L. 102–573, § 802, amended section generally, substituting present provisions for former provisions relating in subsec. (a) to consideration, formulation, proposal, and promulgation of regulations and in subsec. (b) to revision and amendment of regulations.

§ 1673. Repealed. Pub. L. 102–573, title IX, § 901(4), Oct. 29, 1992, 106 Stat. 4591

Section, Pub. L. 94–437, title VIII, § 803, formerly title VII, § 703, Sept. 30, 1976, 90 Stat. 1413; renumbered title VIII, § 803, Pub. L. 102–573, title VII, § 701(a), (b), Oct. 29, 1992, 106 Stat. 4572, related to submission by Secretary to Congress of plan to implement provisions of this chapter.

§ 1674. Leases with Indian tribes

(a) Notwithstanding any other provision of law, the Secretary is authorized, in carrying out the purposes of this chapter, to enter into leases with Indian tribes for periods not in excess of twenty years. Property leased by the Secretary from an Indian tribe may be reconstructed or renovated by the Secretary pursuant to an agreement with such Indian tribe.

(b) The Secretary may enter into leases, contracts, and other legal agreements with Indian tribes or tribal organizations which hold—

(1) title to;

(2) a leasehold interest in; or

(3) a beneficial interest in (where title is held by the United States in trust for the benefit of a tribe);

facilities used for the administration and delivery of health services by the Service or by programs operated by Indian tribes or tribal organizations to compensate such Indian tribes or tribal organizations for costs associated with the use of such facilities for such purposes. Such costs include rent, depreciation based on the useful life of the building, principal and interest paid or accrued, operation and maintenance expenses, and other expenses determined by regulation to be allowable.

(Pub. L. 94–437, title VIII, § 804, formerly title VII, § 704, Sept. 30, 1976, 90 Stat. 1414; Pub. L. 96–537, § 8(a), Dec. 17, 1980, 94 Stat. 3179; Pub. L. 100–713, title VII, § 701, Nov. 23, 1988, 102 Stat. 4826; renumbered title VIII, § 804, Pub. L. 102–573, title VII, § 701(a), (b), Oct. 29, 1992, 106 Stat. 4572.)

AMENDMENTS

1988—Pub. L. 100–713 designated existing provisions as subsec. (a) and added subsec. (b).

1980—Pub. L. 96–537 inserted provision that property leased by the Secretary from an Indian tribe may be reconstructed or renovated by the Secretary pursuant to an agreement with such Indian tribe.

§ 1675. Availability of funds

The funds appropriated pursuant to this chapter shall remain available until expended.

(Pub. L. 94–437, title VIII, § 805, formerly title VII, § 705, Sept. 30, 1976, 90 Stat. 1414; renumbered title VIII, § 805, Pub. L. 102–573, title VII, § 701(a), (b), Oct. 29, 1992, 106 Stat. 4572.)

§ 1676. Limitation on use of funds appropriated to Indian Health Service

Any limitation on the use of funds contained in an Act providing appropriations for the Department of Health and Human Services for a period with respect to the performance of abortions shall apply for that period with respect to the performance of abortions using funds contained in an Act providing appropriations for the Indian Health Service.

(Pub. L. 94–437, title VIII, § 806, formerly title VII, § 706, as added Pub. L. 96–537, § 8(b), Dec. 17, 1980, 94 Stat. 3179; amended Pub. L. 100–713, title VII, § 718, Nov. 23, 1988, 102 Stat. 4837; renumbered title VIII, § 806, Pub. L. 102–573, title VII, § 701(a), (b), Oct. 29, 1992, 106 Stat. 4572.)

AMENDMENTS

1988—Pub. L. 100–713 inserted section catchline and amended text generally. Prior to amendment, text read as follows: ''Within one year from December 17, 1980, the Secretary shall submit to the Congress a resource allocation plan. Such plan shall explain the future allocation of services and funds among the service population of the Service and shall provide a schedule for reducing deficiencies in resources of tribes and nontribal specific entities.''

§ 1677. Nuclear resource development health hazards

(a) Study

The Secretary and the Service shall conduct, in conjunction with other appropriate Federal agencies and in consultation with concerned Indian tribes and organizations, a study of the health hazards to Indian miners and Indians on or near Indian reservations and in Indian communities as a result of nuclear resource development. Such study shall include—

(1) an evaluation of the nature and extent of nuclear resource development related health problems currently exhibited among Indians and the causes of such health problems;

(2) an analysis of the potential effect of ongoing and future nuclear resource development on or near Indian reservations and communities;

(3) an evaluation of the types and nature of activities, practices, and conditions causing or affecting such health problems, including uranium mining and milling, uranium mine tailing deposits, nuclear powerplant operation and construction, and nuclear waste disposal;

(4) a summary of any findings and recommendations provided in Federal and State studies, reports, investigations, and inspections during the five years prior to December 17, 1980, that directly or indirectly relate to the activities, practices, and conditions affecting the health or safety of such Indians; and

(5) the efforts that have been made by Federal and State agencies and mining and milling companies to effectively carry out an education program for such Indians regarding the health and safety hazards of such nuclear resource development.

(b) Health care plan; development

Upon completion of such study the Secretary and the Service shall take into account the results of such study and develop a health care plan to address the health problems studied under subsection (a) of this section. The plan shall include—

(1) methods for diagnosing and treating Indians currently exhibiting such health problems;

(2) preventive care for Indians who may be exposed to such health hazards, including the monitoring of the health of individuals who have or may have been exposed to excessive amounts of radiation, or affected by other nuclear development activities that have had or could have a serious impact upon the health of such individuals; and

(3) a program of education for Indians who, by reason of their work or geographic proximity to such nuclear development activities, may experience health problems.

(c) Reports to Congress

The Secretary and the Service shall submit to Congress the study prepared under subsection (a) of this section no later than the date eighteen months after December 17, 1980. The health care plan prepared under subsection (b) of this section shall be submitted in a report no later than the date one year after the date that the study prepared under subsection (a) of this section is submitted to Congress. Such report shall include recommended activities for the implementation of the plan, as well as an evaluation of any activities previously undertaken by the Service to address such health problems.

(d) Intergovernmental Task Force; establishment and functions

(1) There is established an Intergovernmental Task Force to be composed of the following indi-

viduals (or their designees): the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Director of the United States Bureau of Mines, the Assistant Secretary for Occupational Safety and Health, and the Secretary of the Interior.

(2) The Task Force shall identify existing and potential operations related to nuclear resource development that affect or may affect the health of Indians on or near an Indian reservation or in an Indian community and enter into activities to correct existing health hazards and insure that current and future health problems resulting from nuclear resource development activities are minimized or reduced.

(3) The Secretary shall be Chairman of the Task Force. The Task Force shall meet at least twice each year. Each member of the Task Force shall furnish necessary assistance to the Task Force.

(e) Medical care

In the case of any Indian who—

(1) as a result of employment in or near a uranium mine or mill, suffers from a work related illness or condition;

(2) is eligible to receive diagnosis and treatment services from a Service facility; and

(3) by reason of such Indian's employment, is entitled to medical care at the expense of such mine or mill operator;

the Service shall, at the request of such Indian, render appropriate medical care to such Indian for such illness or condition and may recover the costs of any medical care so rendered to which such Indian is entitled at the expense of such operator from such operator. Nothing in this subsection shall affect the rights of such Indian to recover damages other than such costs paid to the Service from the employer for such illness or condition.

(Pub. L. 94–437, title VIII, § 807, formerly title VII, § 707, as added Pub. L. 96–537, § 8(b), Dec. 17, 1980, 94 Stat. 3179; amended Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172; renumbered title VIII, § 807, and amended Pub. L. 102–573, title VII, § 701(a), (b), title VIII, § 813(b), Oct. 29, 1992, 106 Stat. 4572, 4590.)

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–573, § 813(b), struck out subsec. (f) which authorized appropriation of $300,000 to carry out the study as provided in subsec. (a), such amount to be expended by the date eighteen months after Dec. 17, 1980.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in subsec. (d)(1) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of Title 30, Mineral Lands and Mining. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see note set out under section 1 of Title 30, Minerals and Mining.

NUCLEAR RESOURCE DEVELOPMENT HEALTH HAZARDS; STUDY AND REPORT

Pub. L. 100–713, title VII, § 717, Nov. 23, 1988, 102 Stat. 4837, provided that:

''(a) The Secretary of Health and Human Services (acting through the Indian Health Service), the Secretary of the Interior (acting through the Bureau of Indian Affairs), and the Secretary of Energy shall jointly conduct a study for the purpose of determining—

''(1) the number of active nuclear resource development sites on Indian lands in the United States;

''(2) the Federal agencies that carry out Federal responsibilities with respect to each such site;

''(3) the health hazards that exist as a result of such sites;

''(4) the remedial actions which have been undertaken with respect to such health hazards;

''(5) remedial actions that are needed with respect to such health hazards; and

''(6) the amount of funds that would be necessary each year to implement and maintain such needed remedial actions and the date by which the remedial actions would be implemented if sufficient funds were to provide for the remedial actions.

''(b) By no later than the date that is 2 years after the date of enactment of this Act [Nov. 23, 1988], a report shall be submitted to the Congress describing the findings and conclusions made as a result of carrying out the study required in subsection (a).''

§ 1678. Arizona as a contract health service delivery area

(a) Designation

For the fiscal years beginning with the fiscal year ending September 30, 1982, and ending with the fiscal year ending September 30, 2000, the State of Arizona shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health care services to members of federally recognized Indian tribes of Arizona.

(b) Curtailment of health services prohibited

The Service shall not curtail any health care services provided to Indians residing on Federal reservations in the State of Arizona if such curtailment is due to the provision of contract services in such State pursuant to the designation of such State as a contract health service delivery area pursuant to subsection (a) of this section.

(Pub. L. 94–437, title VIII, § 808, formerly title VII, § 708, as added Pub. L. 96–537, § 8(b), Dec. 17, 1980, 94 Stat. 3181; amended Pub. L. 100–713, title VII, § 702, Nov. 23, 1988, 102 Stat. 4827; renumbered title VIII, § 808, and amended Pub. L. 102–573, title VII, § 701(a), (b), title VIII, § 803, Oct. 29, 1992, 106 Stat. 4572, 4585.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–573, § 803, substituted ''2000'' for ''1991''.

1988—Subsec. (a). Pub. L. 100–713, § 702(a), substituted ''1991'' for ''1984'' and ''members of federally recognized Indian tribes of Arizona'' for ''Indians in such State''.

Subsec. (c). Pub. L. 100–713, § 702(b), struck out subsec. (c) which authorized appropriations for fiscal years 1982 to 1984.

§ 1679. Eligibility of California Indians

(a) Report to Congress

(1) In order to provide the Congress with sufficient data to determine which Indians in the State of California should be eligible for health services provided by the Service, the Secretary shall, by no later than the date that is 3 years after November 23, 1988, prepare and submit to the Congress a report which sets forth—

(A) a determination by the Secretary of the number of Indians described in subsection

(b)(2) of this section, and the number of Indians described in subsection (b)(3) of this section, who are not members of an Indian tribe recognized by the Federal Government,

(B) the geographic location of such Indians,

(C) the Indian tribes of which such Indians are members,

(D) an assessment of the current health status, and health care needs, of such Indians, and

(E) an assessment of the actual availability and accessibility of alternative resources for the health care of such Indians that such Indians would have to rely on if the Service did not provide for the health care of such Indians.

(2) The report required under paragraph (1) shall be prepared by the Secretary—

(A) in consultation with the Secretary of the Interior, and

(B) with the assistance of the tribal health programs providing services to the Indians described in paragraph (2) or (3) of subsection (b) of this section who are not members of any Indian tribe recognized by the Federal Government.

(b) Eligible Indians

Until such time as any subsequent law may otherwise provide, the following California Indians shall be eligible for health services provided by the Service:

(1) Any member of a federally recognized Indian tribe.

(2) Any descendant of an Indian who was residing in California on June 1, 1852, but only if such descendant—

(A) is living in California,

(B) is a member of the Indian community served by a local program of the Service, and

(C) is regarded as an Indian by the community in which such descendant lives.

(3) Any Indian who holds trust interests in public domain, national forest, or Indian reservation allotments in California.

(4) Any Indian in California who is listed on the plans for distribution of the assets of California rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.

(c) Scope of eligibility

Nothing in this section may be construed as expanding the eligibility of California Indians for health services provided by the Service beyond the scope of eligibility for such health services that applied on May 1, 1986.

(Pub. L. 94–437, title VIII, § 809, formerly title VII, § 709, as added Pub. L. 96–537, § 8(b), Dec. 17, 1980, 94 Stat. 3181; amended Pub. L. 100–713, title VII, § 703, Nov. 23, 1988, 102 Stat. 4827; renumbered title VIII, § 809, Pub. L. 102–573, title VII, § 701(a), (b), Oct. 29, 1992, 106 Stat. 4572.)

REFERENCES IN TEXT

Act of August 18, 1958, referred to in subsec. (b)(4), is Pub. L. 85–671, Aug. 18, 1958, 72 Stat. 619, which was not classified to the Code.

AMENDMENTS

1988—Pub. L. 100–713 inserted section catchline and amended text generally. Prior to amendment, text read as follows: ''Indians in the State of California who are members or descendants of members of former federally recognized tribes of the State of California shall be eligible for services from the Service in the fiscal years beginning with the fiscal year ending September 30, 1982, and ending with the fiscal year ending September 30, 1984.''

§ 1680. California as a contract health service delivery area

The State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health services to Indians in such State.

(Pub. L. 94–437, title VIII, § 810, formerly title VII, § 710, as added Pub. L. 96–537, § 8(b), Dec. 17, 1980, 94 Stat. 3181; amended Pub. L. 100–713, title VII, § 704, Nov. 23, 1988, 102 Stat. 4828; renumbered title VIII, § 810, Pub. L. 102–573, title VII, § 701(a), (b), Oct. 29, 1992, 106 Stat. 4572.)

AMENDMENTS

1988—Pub. L. 100–713 inserted section catchline and amended text generally, substituting provisions designating parts of California as a contract health service delivery area for former provisions which authorized a demonstration project for lifting personnel ceilings for the Indian Health Service.

§ 1680a. Contract health facilities

The Service shall provide funds for health care programs and facilities operated by tribes and tribal organizations under contracts with the Service entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.]—

(1) for the maintenance and repair of clinics owned or leased by such tribes or tribal organizations,

(2) for employee training,

(3) for cost-of-living increases for employees, and

(4) for any other expenses relating to the provision of health services,

on the same basis as such funds are provided to programs and facilities operated directly by the Service.

(Pub. L. 94–437, title VIII, § 811, formerly title VII, § 711, as added Pub. L. 100–713, title VII, § 705, Nov. 23, 1988, 102 Stat. 4828; renumbered title VIII, § 811, Pub. L. 102–573, title VII, § 701(a), (b), Oct. 29, 1992, 106 Stat. 4572.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in text, is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 1680b. National Health Service Corps

The Secretary of Health and Human Services shall not—

(1) remove a member of the National Health Service Corps from a health facility operated

by the Indian Health Service or by a tribe or tribal organization under contract with the Indian Health Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], or

(2) withdraw funding used to support such member,

unless the Secretary, acting through the Service, has ensured that the Indians receiving services from such member will experience no reduction in services.

(Pub. L. 94–437, title VIII, § 812, formerly title VII, § 712, as added Pub. L. 100–713, title VII, § 706, Nov. 23, 1988, 102 Stat. 4828; renumbered title VIII, § 812, Pub. L. 102–573, title VII, § 701(a), (b), Oct. 29, 1992, 106 Stat. 4572.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in par. (1), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 1680c. Health services for ineligible persons

(a) Individuals not otherwise eligible

(1) Any individual who—

(A) has not attained 19 years of age,

(B) is the natural or adopted child, stepchild, foster-child, legal ward, or orphan of an eligible Indian, and

(C) is not otherwise eligible for the health services provided by the Service,

shall be eligible for all health services provided by the Service on the same basis and subject to the same rules that apply to eligible Indians until such individual attains 19 years of age. The existing and potential health needs of all such individuals shall be taken into consideration by the Service in determining the need for, or the allocation of, the health resources of the Service. If such an individual has been determined to be legally incompetent prior to attaining 19 years of age, such individual shall remain eligible for such services until one year after the date such disability has been removed.

(2) Any spouse of an eligible Indian who is not an Indian, or who is of Indian descent but not otherwise eligible for the health services provided by the Service, shall be eligible for such health services if all of such spouses are made eligible, as a class, by an appropriate resolution of the governing body of the Indian tribe of the eligible Indian. The health needs of persons made eligible under this paragraph shall not be taken into consideration by the Service in determining the need for, or allocation of, its health resources.

(b) Health facilities providing health service

(1)(A) The Secretary is authorized to provide health services under this subsection through health facilities operated directly by the Service to individuals who reside within the service area of a service unit and who are not eligible for such health services under any other subsection of this section or under any other provision of law if—

(i) the Indian tribe (or, in the case of a multi-tribal service area, all the Indian tribes) served by such service unit requests such provision of health services to such individuals, and

(ii) the Secretary and the Indian tribe or tribes have jointly determined that—

(I) the provision of such health services will not result in a denial or diminution of health services to eligible Indians, and

(II) there is no reasonable alternative health facility or services, within or without the service area of such service unit, available to meet the health needs of such individuals.

(B) In the case of health facilities operated under a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], the governing body of the Indian tribe or tribal organization providing health services under such contract is authorized to determine whether health services should be provided under such contract to individuals who are not eligible for such health services under any other subsection of this section or under any other provision of law. In making such determinations, the governing body of the Indian tribe or tribal organization shall take into account the considerations described in subparagraph (A)(ii).

(2)(A) Persons receiving health services provided by the Service by reason of this subsection shall be liable for payment of such health services under a schedule of charges prescribed by the Secretary which, in the judgment of the Secretary, results in reimbursement in an amount not less than the actual cost of providing the health services. Notwithstanding section 1880(c) of the Social Security Act [42 U.S.C. 1395qq(c)], section 1642(a) of this title, or any other provision of law, amounts collected under this subsection, including medicare or medicaid reimbursements under titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.], shall be credited to the account of the facility providing the service and shall be used solely for the provision of health services within that facility. Amounts collected under this subsection shall be available for expenditure within such facility for not to exceed one fiscal year after the fiscal year in which collected.

(B) Health services may be provided by the Secretary through the Service under this subsection to an indigent person who would not be eligible for such health services but for the provisions of paragraph (1) only if an agreement has been entered into with a State or local government under which the State or local government agrees to reimburse the Service for the expenses incurred by the Service in providing such health services to such indigent person.

(3)(A) In the case of a service area which serves only one Indian tribe, the authority of the Secretary to provide health services under paragraph (1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which the governing body of the Indian tribe revokes its concurrence to the provision of such health services.

(B) In the case of a multi-tribal service area, the authority of the Secretary to provide health services under paragraph (1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which at least 51 percent of the num-

ber of Indian tribes in the service area revoke their concurrence to the provision of such health services.

(c) Purposes served in providing health services to otherwise ineligible individuals

The Service may provide health services under this subsection to individuals who are not eligible for health services provided by the Service under any other subsection of this section or under any other provision of law in order to—

(1) achieve stability in a medical emergency,

(2) prevent the spread of a communicable disease or otherwise deal with a public health hazard,

(3) provide care to non-Indian women pregnant with an eligible Indian's child for the duration of the pregnancy through post partum, or

(4) provide care to immediate family members of an eligible person if such care is directly related to the treatment of the eligible person.

(d) Extension of hospital privileges to non-Service health care practitioners

Hospital privileges in health facilities operated and maintained by the Service or operated under a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] may be extended to non-Service health care practitioners who provide services to persons described in subsection (a) or (b) of this section. Such non-Service health care practitioners may be regarded as employees of the Federal Government for purposes of section 1346(b) and chapter 171 of title 28 (relating to Federal tort claims) only with respect to acts or omissions which occur in the course of providing services to eligible persons as a part of the conditions under which such hospital privileges are extended.

(e) "Eligible Indian" defined

For purposes of this section, the term ''eligible Indian'' means any Indian who is eligible for health services provided by the Service without regard to the provisions of this section.

(Pub. L. 94–437, title VIII, § 813, formerly title VII, § 713, as added Pub. L. 100–713, title VII, § 707(a), Nov. 23, 1988, 102 Stat. 4829; renumbered title VIII, § 813, and amended Pub. L. 102–573, title VII, § 701(a), (b), title IX, § 902(8), Oct. 29, 1992, 106 Stat. 4572, 4592.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsecs. (b)(1)(B) and (d), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Social Security Act, referred to in subsec. (b)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1992—Subsec. (b)(2)(A). Pub. L. 102–573, § 902(8), substituted ''section 1642(a) of this title'' for ''section 402(c) of this Act''.

§ 1680d. Infant and maternal mortality; fetal alcohol syndrome

By no later than January 1, 1990, the Secretary shall develop and begin implementation of a plan to achieve the following objectives by January 1, 1994:

(1) reduction of the rate of Indian infant mortality in each area office of the Service to the lower of—

(A) twelve deaths per one thousand live births, or

(B) the rate of infant mortality applicable to the United States population as a whole;

(2) reduction of the rate of maternal mortality in each area office of the Service to the lower of—

(A) five deaths per one hundred thousand live births, or

(B) the rate of maternal mortality applicable to the United States population as a whole; and

(3) reduction of the rate of fetal alcohol syndrome among Indians served by, or on behalf of, the Service to one per one thousand live births.

(Pub. L. 94–437, title VIII, § 814, formerly title VII, § 714, as added Pub. L. 100–713, title VII, § 708, Nov. 23, 1988, 102 Stat. 4831; renumbered title VIII, § 814, and amended Pub. L. 102–573, title VII, § 701(a), (b), title VIII, § 804, Oct. 29, 1992, 106 Stat. 4572, 4585.)

AMENDMENTS

1992—Pub. L. 102–573, § 804, struck out subsec. (a) designation before ''By no later'' and struck out subsec. (b) which read as follows: ''The President shall include with the budget submitted under section 1105 of title 31 for each fiscal year a separate statement which specifies the total amount obligated or expended in the most recently completed fiscal year to achieve each of the objectives described in subsection (a) of this section.''

§ 1680e. Contract health services for the Trenton Service Area

(a) Service to Turtle Mountain Band

The Secretary, acting through the Service, is directed to provide contract health services to members of the Turtle Mountain Band of Chippewa Indians that reside in the Trenton Service Area of Divide, McKenzie, and Williams counties in the State of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the State of Montana.

(b) Band member eligibility not expanded

Nothing in this section may be construed as expanding the eligibility of members of the Turtle Mountain Band of Chippewa Indians for health services provided by the Service beyond the scope of eligibility for such health services that applied on May 1, 1986.

(Pub. L. 94–437, title VIII, § 815, formerly title VII, § 715, as added Pub. L. 100–713, title VII, § 709, Nov. 23, 1988, 102 Stat. 4831; renumbered title VIII, § 815, Pub. L. 102–573, title VII, § 701(a), (b), Oct. 29, 1992, 106 Stat. 4572.)

§ 1680f. Indian Health Service and Department of Veterans Affairs health facilities and services sharing

(a) Feasibility study and report

The Secretary shall examine the feasibility of entering into an arrangement for the sharing of medical facilities and services between the Indian Health Service and the Department of Veterans Affairs and shall, in accordance with subsection (b) of this section, prepare a report on the feasibility of such an arrangement and submit such report to the Congress by no later than September 30, 1990.

(b) Nonimpairment of service quality, eligibility, or priority of access

The Secretary shall not take any action under this section or under subchapter IV of chapter 81 of title 38 which would impair—

(1) the priority access of any Indian to health care services provided through the Indian Health Service;

(2) the quality of health care services provided to any Indian through the Indian Health Service;

(3) the priority access of any veteran to health care services provided by the Department of Veterans Affairs;

(4) the quality of health care services provided to any veteran by the Department of Veterans Affairs;

(5) the eligibility of any Indian to receive health services through the Indian Health Service; or

(6) the eligibility of any Indian who is a veteran to receive health services through the Department of Veterans Affairs.

(c) Cross utilization of services

(1) Not later than December 23, 1988, the Director of the Indian Health Service and the Secretary of Veterans Affairs shall implement an agreement under which—

(A) individuals in the vicinity of Roosevelt, Utah, who are eligible for health care from the Department of Veterans Affairs could obtain health care services at the facilities of the Indian Health Service located at Fort Duchesne, Utah; and

(B) individuals eligible for health care from the Indian Health Service at Fort Duchesne, Utah, could obtain health care services at the George E. Wahlen Department of Veterans Affairs Medical Center located in Salt Lake City, Utah.

(2) Not later than November 23, 1990, the Secretary and the Secretary of Veterans Affairs shall jointly submit a report to the Congress on the health care services provided as a result of paragraph (1).

(d) Right to health services

Nothing in this section may be construed as creating any right of a veteran to obtain health services from the Indian Health Service except as provided in an agreement under subsection (c) of this section.

(Pub. L. 94–437, title VIII, § 816, formerly title VII, § 716, as added Pub. L. 100–713, title VII, § 710, Nov. 23, 1988, 102 Stat. 4832; amended Pub. L. 102–54, § 13(j)(2), June 13, 1991, 105 Stat. 276; renumbered title VIII, § 816, and amended Pub. L. 102–573, title VII, § 701(a), (b), title IX, § 902(9), Oct. 29, 1992, 106 Stat. 4572, 4592; Pub. L. 108–170, title II, § 244, Dec. 6, 2003, 117 Stat. 2054.)

AMENDMENTS

2003—Subsec. (c)(1)(B). Pub. L. 108–170 substituted ''George E. Wahlen Department of Veterans Affairs Medical Center'' for ''Department of Veterans Affairs medical center''.

1992—Pub. L. 102–573, § 902(9), amended section catchline.

1991—Subsecs. (a), (b)(3), (4), (6). Pub. L. 102–54, § 13(j)(2)(A), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (c)(1). Pub. L. 102–54, § 13(j)(2)(B), substituted ''Not later than December 23, 1988, the Director of the Indian Health Service and the Secretary of Veterans Affairs shall'' for ''Within 30 days after November 23, 1988, the Director of the Indian Health Service and the Administrator of Veterans' Affairs are authorized and directed to''.

Subsec. (c)(1)(A), (B). Pub. L. 102–54, § 13(j)(2)(A), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (c)(2). Pub. L. 102–54, § 13(j)(2)(C), substituted ''Not later than November 23, 1990, the Secretary and the Secretary of Veterans Affairs shall'' for ''Not later than 2 years after November 23, 1988, the Secretary and the Administrator of Veterans' Affairs shall''.

DESIGNATION OF GEORGE E. WAHLEN DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

Pub. L. 108–170, title II, § 244, Dec. 6, 2003, 117 Stat. 2054, provided that: ''The Department of Veterans Affairs Medical Center in Salt Lake City, Utah, shall after the date of the enactment of this Act [Dec. 6, 2003] be known and designated as the 'George E. Wahlen Department of Veterans Affairs Medical Center'. Any references to such facility in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the George E. Wahlen Department of Veterans Affairs Medical Center.''

§ 1680g. Reallocation of base resources

(a) Report to Congress

Notwithstanding any other provision of law, any allocation of Service funds for a fiscal year that reduces by 5 percent or more from the previous fiscal year the funding for any recurring program, project, or activity of a service unit may be implemented only after the Secretary has submitted to the President, for inclusion in the report required to be transmitted to the Congress under section 1671 of this title, a report on the proposed change in allocation of funding, including the reasons for the change and its likely effects.

(b) Appropriated amounts

Subsection (a) of this section shall not apply if the total amount appropriated to the Service for a fiscal year is less than the amount appropriated to the Service for previous fiscal year.

(Pub. L. 94–437, title VIII, § 817, formerly title VII, § 717, as added Pub. L. 100–713, title VII, § 711, Nov. 23, 1988, 102 Stat. 4833; renumbered title VIII, § 817, and amended Pub. L. 102–573, title VII, § 701(a), (b), title VIII, § 805, Oct. 29, 1992, 106 Stat. 4572, 4585.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–573, § 805, substituted ''Secretary has submitted to the President, for inclu-

sion in the report required to be transmitted to the Congress under section 1671 of this title,'' for ''Secretary has submitted to the Congress''.

§ 1680h. Demonstration projects for tribal management of health care services

(a) Establishment; grants

(1) The Secretary, acting through the Service, shall make grants to Indian tribes to establish demonstration projects under which the Indian tribe will develop and test a phased approach to assumption by the Indian tribe of the health care delivery system of the Service for members of the Indian tribe living on or near the reservations of the Indian tribe through the use of Service, tribal, and private sector resources.

(2) A grant may be awarded to an Indian tribe under paragraph (1) only if the Secretary determines that the Indian tribe has the administrative and financial capabilities necessary to conduct a demonstration project described in paragraph (1).

(b) Health care contracts

During the period in which a demonstration project established under subsection (a) of this section is being conducted by an Indian tribe, the Secretary shall award all health care contracts, including community, behavioral, and preventive health care contracts, to the Indian tribe in the form of a single grant to which the regulations prescribed under part A of title XIX of the Public Health Service Act [42 U.S.C. 300w et seq.] (as modified as necessary by any agreement entered into between the Secretary and the Indian tribe to achieve the purposes of the demonstration project established under subsection (a) of this section) shall apply.

(c) Waiver of procurement laws

The Secretary may waive such provisions of Federal procurement law as are necessary to enable any Indian tribe to develop and test administrative systems under the demonstration project established under subsection (a) of this section, but only if such waiver does not diminish or endanger the delivery of health care services to Indians.

(d) Termination; evaluation and report

(1) The demonstration project established under subsection (a) of this section shall terminate on September 30, 1993, or, in the case of a demonstration project for which a grant is made after September 30, 1990, three years after the date on which such grant is made.

(2) By no later than September 30, 1996, the Secretary shall evaluate the performance of each Indian tribe that has participated in a demonstration project established under subsection (a) of this section and shall submit to the Congress a report on such evaluations and demonstration projects.

(e) Joint venture demonstration projects

(1) The Secretary, acting through the Service, shall make arrangements with Indian tribes to establish joint venture demonstration projects under which an Indian tribe shall expend tribal, private, or other available nontribal funds, for the acquisition or construction of a health facility for a minimum of 20 years, under a no-cost lease, in exchange for agreement by the Service to provide the equipment, supplies, and staffing for the operation and maintenance of such a health facility. A tribe may utilize tribal funds, private sector, or other available resources, including loan guarantees, to fulfill its commitment under this subsection.

(2) The Secretary shall make such an arrangement with an Indian tribe only if the Secretary first determines that the Indian tribe has the administrative and financial capabilities necessary to complete the timely acquisition or construction of the health facility described in paragraph (1).

(3) An Indian tribe or tribal organization that has entered into a written agreement with the Secretary under this subsection, and that breaches or terminates without cause such agreement, shall be liable to the United States for the amount that has been paid to the tribe, or paid to a third party on the tribe's behalf, under the agreement. The Secretary has the right to recover tangible property (including supplies), and equipment, less depreciation, and any funds expended for operations and maintenance under this section. The preceding sentence does not apply to any funds expended for the delivery of health care services, or for personnel or staffing, shall be recoverable.[1]

(Pub. L. 94–437, title VIII, § 818, formerly title VII, § 718, as added Pub. L. 100–713, title VII, § 713, Nov. 23, 1988, 102 Stat. 4833; renumbered title VIII, § 818, and amended Pub. L. 102–573, title VII, § 701(a), (b), title VIII, § 808, Oct. 29, 1992, 106 Stat. 4572, 4586.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (b), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part A of title XIX of the Public Health Service Act is classified generally to part A (§ 300w et seq.) of subchapter XVII of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

AMENDMENTS

1992—Subsec. (d)(1). Pub. L. 102–573, § 808(1)(A), inserted before period at end '', or, in the case of a demonstration project for which a grant is made after September 30, 1990, three years after the date on which such grant is made''.

Subsec. (d)(2). Pub. L. 102–573, § 808(1)(B), substituted ''1996'' for ''1994''.

Subsec. (e). Pub. L. 102–573, § 808(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.''

§ 1680i. Child sexual abuse treatment programs

(a) Continuation of existing demonstration programs

The Secretary and the Secretary of the Interior shall, for each fiscal year through fiscal year 1995, continue the demonstration programs involving treatment for child sexual abuse provided through the Hopi Tribe and the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

[1] So in original. The words '', shall be recoverable'' probably should not appear.

(b) Establishment of new demonstration programs

Beginning October 1, 1995, the Secretary and the Secretary of the Interior may establish, in any service area, demonstration programs involving treatment for child sexual abuse, except that the Secretaries may not establish a greater number of such programs in one service area than in any other service area until there is an equal number of such programs established with respect to all service areas from which the Secretary receives qualified applications during the application period (as determined by the Secretary).

(Pub. L. 94–437, title VIII, § 819, formerly title VII, § 719, as added Pub. L. 100–713, title VII, § 715, Nov. 23, 1988, 102 Stat. 4836; renumbered title VIII, § 819, and amended Pub. L. 102–573, title VII, § 701(a), (b), title VIII, § 806, Oct. 29, 1992, 106 Stat. 4572, 4586.)

AMENDMENTS

1992—Pub. L. 102–573, § 806, amended section generally. Prior to amendment, section read as follows:

''(a) The Secretary and the Secretary of the Interior shall, for each of the fiscal years 1989, 1990, and 1991, continue to provide through the Hopi Tribe and the Asiniboine and Sioux Tribes of the Fort Peck Reservation the demonstration programs involving treatment for child sexual abuse that were conducted during fiscal year 1988 through such tribes.

''(b) There are authorized to be appropriated for each of the fiscal years 1989, 1990, and 1991 such sums as may be necessary to carry out the provisions of this section.''

§ 1680j. Tribal leasing

Indian tribes providing health care services pursuant to a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] may lease permanent structures for the purpose of providing such health care services without obtaining advance approval in appropriation Acts.

(Pub. L. 94–437, title VIII, § 820, formerly title VII, § 720, as added Pub. L. 100–713, title VII, § 716, Nov. 23, 1988, 102 Stat. 4837; renumbered title VIII, § 820, and amended Pub. L. 102–573, title VII, § 701(a), (b), title VIII, § 807, Oct. 29, 1992, 106 Stat. 4572, 4586.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in text, is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–573, § 807, amended section generally. Prior to amendment, section read as follows:

''(a) The Secretary, through the Service, shall make grants to the Eight Northern Indian Pueblos Council, San Juan Pueblo, New Mexico, for the purpose of providing substance abuse treatment services to Indians in need of such services.

''(b) There are authorized to be appropriated to carry out this section $250,000 for each of the fiscal years 1990 and 1991.''

§ 1680k. Home- and community-based care demonstration project

(a) Authority of Secretary

The Secretary, acting through the Service, is authorized to enter into contracts with, or make grants to, Indian tribes or tribal organizations providing health care services pursuant to a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], to establish demonstration projects for the delivery of home- and community-based services to functionally disabled Indians.

(b) Use of funds

(1) Funds provided for a demonstration project under this section shall be used only for the delivery of home- and community-based services (including transportation services) to functionally disabled Indians.

(2) Such funds may not be used—

(A) to make cash payments to functionally disabled Indians;

(B) to provide room and board for functionally disabled Indians;

(C) for the construction or renovation of facilities or the purchase of medical equipment; or

(D) for the provision of nursing facility services.

(c) Criteria for approval of applications

Not later than 180 days after October 29, 1992, the Secretary, after consultation with Indian tribes and tribal organizations, shall develop and issue criteria for the approval of applications submitted under this section. Such criteria shall ensure that demonstration projects established under this section promote the development of the capacity of tribes and tribal organizations to deliver, or arrange for the delivery of, high quality, culturally appropriate home- and community-based services to functionally disabled Indians;[1]

(d) Assistance to applicants

The Secretary shall provide such technical and other assistance as may be necessary to enable applicants to comply with the provisions of this section.

(e) Services to ineligible persons

At the discretion of the tribe or tribal organization, services provided under a demonstration project established under this section may be provided (on a cost basis) to persons otherwise ineligible for the health care benefits of the Service.

(f) Maximum number of demonstration projects

The Secretary shall establish not more than 24 demonstration projects under this section. The Secretary may not establish a greater number of demonstration projects under this section in one service area than in any other service area until there is an equal number of such demonstration projects established with respect to all service areas from which the Secretary receives applications during the application period (as determined by the Secretary) which meet the criteria issued pursuant to subsection (c) of this section.

[1] So in original. The semicolon probably should be a period.

(g) Report

The Secretary shall submit to the President, for inclusion in the report which is required to be submitted under section 1671 of this title for fiscal year 1999, a report on the findings and conclusions derived from the demonstration projects conducted under this section, together with legislative recommendations.

(h) Definitions

For the purposes of this section, the following definitions shall apply:

(1) The term ''home- and community-based services'' means one or more of the following:

(A) Homemaker/home health aide services.

(B) Chore services.

(C) Personal care services.

(D) Nursing care services provided outside of a nursing facility by, or under the supervision of, a registered nurse.

(E) Respite care.

(F) Training for family members in managing a functionally disabled individual.

(G) Adult day care.

(H) Such other home- and community-based services as the Secretary may approve.

(2) The term ''functionally disabled'' means an individual who is determined to require home- and community-based services based on an assessment that uses criteria (including, at the discretion of the tribe or tribal organization, activities of daily living) developed by the tribe or tribal organization.

(i) Authorization of appropriations

There are authorized to be appropriated for each of the fiscal years 1996 through 2000 such sums as may be necessary to carry out this section. Such sums shall remain available until expended.

(Pub. L. 94–437, title VIII, § 821, as added Pub. L. 102–573, title VIII, § 809, Oct. 29, 1992, 106 Stat. 4587; amended Pub. L. 104–313, § 2(g), Oct. 19, 1996, 110 Stat. 3822.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1996—Subsec. (i). Pub. L. 104–313 substituted ''1996 through 2000'' for ''1993, 1994, 1995, 1996, and 1997''.

§ 1680*l*. Shared services demonstration project

(a) Authority of Secretary

The Secretary, acting through the Service and notwithstanding any other provision of law, is authorized to enter into contracts with Indian tribes or tribal organizations to establish not more than 6 shared services demonstration projects for the delivery of long-term care to Indians. Such projects shall provide for the sharing of staff or other services between a Service facility and a nursing facility owned and operated (directly or by contract) by such Indian tribe or tribal organization.

(b) Contract requirements

A contract entered into pursuant to subsection (a) of this section—

(1) may, at the request of the Indian tribe or tribal organization, delegate to such tribe or tribal organization such powers of supervision and control over Service employees as the Secretary deems necessary to carry out the purposes of this section;

(2) shall provide that expenses (including salaries) relating to services that are shared between the Service facility and the tribal facility be allocated proportionately between the Service and the tribe or tribal organization; and

(3) may authorize such tribe or tribal organization to construct, renovate, or expand a nursing facility (including the construction of a facility attached to a Service facility), except that no funds appropriated for the Service shall be obligated or expended for such purpose.

(c) Eligibility

To be eligible for a contract under this section, a tribe or tribal organization, shall, as of October 29, 1992—

(1) own and operate (directly or by contract) a nursing facility;

(2) have entered into an agreement with a consultant to develop a plan for meeting the long-term needs of the tribe or tribal organization; or

(3) have adopted a tribal resolution providing for the construction of a nursing facility.

(d) Nursing facilities

Any nursing facility for which a contract is entered into under this section shall meet the requirements for nursing facilities under section 1396r of title 42.

(e) Assistance to applicants

The Secretary shall provide such technical and other assistance as may be necessary to enable applicants to comply with the provisions of this section.

(f) Report

The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report on the findings and conclusions derived from the demonstration projects conducted under this section.

(Pub. L. 94–437, title VIII, § 822, as added Pub. L. 102–573, title VIII, § 810, Oct. 29, 1992, 106 Stat. 4588.)

CODIFICATION

October 29, 1992, referred to in subsec. (c), was in the original ''the date of the enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 102–573, which enacted this section, to reflect the probable intent of Congress.

§ 1680m. Results of demonstration projects

The Secretary shall provide for the dissemination to Indian tribes of the findings and results of demonstration projects conducted under this chapter.

(Pub. L. 94–437, title VIII, § 823, as added Pub. L. 102–573, title VIII, § 811, Oct. 29, 1992, 106 Stat. 4589.)

§ 1680n. Priority for Indian reservations

(a) Facilities and projects

Beginning on October 29, 1992, the Bureau of Indian Affairs and the Service shall, in all matters involving the reorganization or development of Service facilities, or in the establishment of related employment projects to address unemployment conditions in economically depressed areas, give priority to locating such facilities and projects on Indian lands if requested by the Indian tribe with jurisdiction over such lands.

(b) "Indian lands" defined

For purposes of this section, the term ''Indian lands'' means—

(1) all lands within the limits of any Indian reservation; and

(2) any lands title which is held in trust by the United States for the benefit of any Indian tribe or individual Indian, or held by any Indian tribe or individual Indian subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

(Pub. L. 94–437, title VIII, § 824, as added Pub. L. 102–573, title VIII, § 812, Oct. 29, 1992, 106 Stat. 4589.)

§ 1680*o*. Authorization of appropriations

Except as provided in section 1680k of this title, there are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this subchapter.

(Pub. L. 94–437, title VIII, § 825, as added Pub. L. 102–573, title VIII, § 813(a), Oct. 29, 1992, 106 Stat. 4590.)

§ 1681. Omitted

CODIFICATION

Section, Pub. L. 104–134, title I, § 101(c) [title II], Apr. 26, 1996, 110 Stat. 1321–156, 1321–190; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, which provided that the Indian Health Service was to neither bill nor charge those Indians who may have economic means to pay unless and until Congress directs Service to implement policy to do so, was from the Department of the Interior and Related Agencies Appropriations Act, 1996, and was not repeated in subsequent appropriations acts. Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 103–332, title II, Sept. 30, 1994, 108 Stat. 2529.

Pub. L. 103–138, title II, Nov. 11, 1993, 107 Stat. 1409.

Pub. L. 102–381, title II, Oct. 5, 1992, 106 Stat. 1409.

Pub. L. 102–154, title II, Nov. 13, 1991, 105 Stat. 1027.

Pub. L. 101–512, title II, Nov. 5, 1990, 104 Stat. 1952.

Pub. L. 101–121, title II, Oct. 23, 1989, 103 Stat. 734.

Pub. L. 100–446, title II, Sept. 27, 1988, 102 Stat. 1816.

Pub. L. 100–202, § 101(g) [title II], Dec. 22, 1987, 101 Stat. 1329–213, 1329–245.

Pub. L. 99–500, § 101(h) [title II], Oct. 18, 1986, 100 Stat. 1783–242, 1783–277, and Pub. L. 99–591, § 101(h) [title II], Oct. 30, 1986, 100 Stat. 3341–242, 3341–277.

Pub. L. 99–190, § 101(d) [title II], Dec. 19, 1985, 99 Stat. 1224, 1256.

Pub. L. 98–473, title I, § 101(c) [title II], Oct. 12, 1984, 98 Stat. 1837, 1865.

§ 1682. Subrogation of claims by Indian Health Service

On and after October 18, 1986, the Indian Health Service may seek subrogation of claims including but not limited to auto accident claims, including no-fault claims, personal injury, disease, or disability claims, and worker's compensation claims, the proceeds of which shall be credited to the funds established by sections 401 and 402[1] of the Indian Health Care Improvement Act.

(Pub. L. 99–500, § 101(h) [title II], Oct. 18, 1986, 100 Stat. 1783–242, 1783–277, and Pub. L. 99–591, § 101(h) [title II], Oct. 30, 1986, 100 Stat. 3341–242, 3341–277.)

REFERENCES IN TEXT

Sections 401 and 402 of the Indian Health Care Improvement Act, referred to in text, probably means former sections 401 and 402 of Pub. L. 94–437, title IV, Sept. 30, 1976, 90 Stat. 1408, 1409, which enacted sections 1395qq and 1396j of Title 42, The Public Health and Welfare, amended sections 1395f, 1395n, and 1396d of Title 42, and enacted provisions set out as notes under sections 1395qq and 1396j of Title 42. Sections 401 and 402 of the Act were amended generally by section 401(a), (b)(1) of Pub. L. 102–573, title IV, Oct. 29, 1992, 106 Stat. 4565, and are classified to sections 1641 and 1642 of this title, respectively.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1987, as enacted by Pub. L. 99–500 and Pub. L. 99–591, and not as part of the Indian Health Care Improvement Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 1682, Pub. L. 98–473, title I, § 101(c) [title II], Oct. 12, 1984, 98 Stat. 1837, 1865, which related to subrogation of claims by Indian Health Service, was omitted as superseded by section 101(h) [title II] of Pub. L. 99–500 and Pub. L. 99–591.

§ 1683. Indian Catastrophic Health Emergency Fund

$10,000,000 shall remain available until expended, for the establishment of an Indian Catastrophic Health Emergency Fund (hereinafter referred to as the ''Fund''). On and after October 18, 1986, the Fund is to cover the Indian Health Service portion of the medical expenses of catastrophic illness falling within the responsibility of the Service and shall be administered by the Secretary of Health and Human Services, acting through the central office of the Indian Health Service. No part of the Fund or its administration shall be subject to contract or grant under the Indian Self-Determination and Education Assistance Act (Public Law 93–638) [25 U.S.C. 450 et seq.]. There shall be deposited into the Fund all amounts recovered under the authority of the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.), which shall become available for obligation upon receipt and which shall remain available for obligation until expended. The Fund shall not be used to pay for health services provided to eligible Indians to the extent that alternate Federal, State, local, or private insurance resources for payment: (1) are available and accessible to the beneficiary; or (2) would be available and accessible if the beneficiary were to apply for them; or (3) would be available and accessible to other citizens simi-

[1] See References in Text note below.

larly situated under Federal, State, or local law or regulation or private insurance program notwithstanding Indian Health Service eligibility or residency on or off a Federal Indian reservation.

(Pub. L. 99–500, § 101(h) [title II], Oct. 18, 1986, 100 Stat. 1783–242, 1783–276, and Pub. L. 99–591, § 101(h) [title II], Oct. 30, 1986, 100 Stat. 3341–242, 3341–276.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act (Public Law 93–638), referred to in text, is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.), referred to in text, probably means Pub. L. 87–693, Sept. 25, 1962, 76 Stat. 593, which is classified generally to chapter 32 (§ 2651 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1987, as enacted by Pub. L. 99–500 and Pub. L. 99–591, and not as part of the Indian Health Care Improvement Act which comprises this chapter.

CHAPTER 19—INDIAN LAND CLAIMS SETTLEMENTS

SUBCHAPTER I—RHODE ISLAND INDIAN CLAIMS SETTLEMENT

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SUBCHAPTER I—RHODE ISLAND INDIAN CLAIMS SETTLEMENT

PART A—GENERAL PROVISIONS

§ 1701. Congressional findings and declaration of policy

Congress finds and declares that—

(a) there are pending before the United States District Court for the District of Rhode Island two consolidated actions that involve Indian claims to certain public and private lands within the town of Charlestown, Rhode Island;

(b) the pendency of these lawsuits has resulted in severe economic hardships for the residents of the town of Charlestown by clouding the titles to much of the land in the town, including lands not involved in the lawsuits;

(c) the Congress shares with the State of Rhode Island and the parties to the lawsuits a desire to remove all clouds on titles resulting from such Indian land claims within the State of Rhode Island; and

(d) the parties to the lawsuits and others interested in the settlement of Indian land claims within the State of Rhode Island have executed a Settlement Agreement which requires implementing legislation by the Congress of the United States and the legislature of the State of Rhode Island.

(Pub. L. 95–395, § 2, Sept. 30, 1978, 92 Stat. 813.)

SHORT TITLE

Section 1 of Pub. L. 95–395 provided: ''That this Act [enacting this subchapter] may be cited as the 'Rhode Island Indian Claims Settlement Act'.''

For short title of Pub. L. 96–420, which enacted subchapter II of this chapter, as the ''Maine Indian Claims Settlement Act of 1980'', see section 1 of Pub. L. 96–420, set out as a note under section 1721 of this title.

For short title of Pub. L. 97–399, which enacted subchapter III of this chapter, as the ''Florida Indian Land Claims Settlement Act of 1982'', see section 1 of Pub. L. 97–399, set out as a note under section 1741 of this title.

For short title of Pub. L. 98–134, which enacted subchapter IV of this chapter, as the ''Mashantucket Pequot Indian Claims Settlement Act'', see section 1 of Pub. L. 98–134, set out as a note under section 1751 of this title.

For short title of Pub. L. 100–95, which enacted subchapter V of this chapter, as the ''Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987'', see section 1 of Pub. L. 100–95, set out as a note under section 1771 of this title.

For short title of Pub. L. 100–228, which enacted subchapter VI of this chapter, as the ''Seminole Indian Land Claims Settlement Act of 1987'', see section 1 of Pub. L. 100–228, set out as a note under section 1772 of this title.

For short title of Pub. L. 101–41, which enacted subchapter VII of this chapter, as the ''Puyallup Tribe of Indians Settlement Act of 1989'', see section 1 of Pub. L. 101–41, set out as a note under section 1773 of this title.

For short title of Pub. L. 101–503, which enacted subchapter VIII of this chapter, as the ''Seneca Nation Settlement Act of 1990'', see section 1 of Pub. L. 101–503, set out as a note under section 1774 of this title.

For short title of Pub. L. 103–377, which enacted subchapter IX of this chapter, as the ''Mohegan Nation of Connecticut Land Claims Settlement Act of 1994'', see section 1 of Pub. L. 103–377, set out as a note under section 1775 of this title.

For short title of Pub. L. 103–444, which enacted subchapter X of this chapter, as the ''Crow Boundary Settlement Act of 1994'', see section 1 of Pub. L. 103–444, set out as a note under section 1776 of this title.

For short title of Pub. L. 106–425, which enacted subchapter XI of this chapter, as the ''Santo Domingo Pueblo Claims Settlement Act of 2000'', see section 1 of Pub. L. 106–425, set out as a note under section 1777 of this title.

For short title of title VI of Pub. L. 106–568, which enacted subchapter XII of this chapter, as the ''Torres-Martinez Desert Cahuilla Indians Claims Settlement Act'', see section 601 of Pub. L. 106–568, set out as a note under section 1778 of this title.

For short title of title VI of Pub. L. 107–331, which enacted subchapter XIII of this chapter, as the ''Cherokee, Choctaw, and Chickasaw Nations Claims Settlement Act'', see section 601 of Pub. L. 107–331, set out as a note under section 1779 of this title.

For short title of Pub. L. 109–286, which enacted subchapter XIV of this chapter, as the ''Pueblo de San Ildefonso Claims Settlement Act of 2005'', see section 1 of Pub. L. 109–286, set out as a note under section 1780 of this title.

§ 1702. Definitions

For the purposes of this subchapter, the term—

(a) ''Indian Corporation'' means the Rhode Island nonbusiness corporation known as the ''Narragansett Tribe of Indians'';

(b) ''land or natural resources'' means any real property or natural resources, or any interest in or right involving any real property or natural resource, including but not limited to, minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish;

(c) ''lawsuits'' means the actions entitled ''Narragansett Tribe of Indians v. Southern Rhode Island Land Development Co., et al., C.A. No. 75–0006 (D.R.I.)'' and ''Narragansett Tribe of Indians v. Rhode Island Director of Environmental Management, C.A. No. 75–0005 (D.R.I.)'';

(d) ''private settlement lands'' means approximately nine hundred acres of privately held land outlined in red in the map marked ''Exhibit A'' attached to the Settlement Agreement that are to be acquired by the Secretary from certain private landowners pursuant to sections 1704 and 1707 of this title;

(e) ''public settlement lands'' means the lands described in paragraph 2 of the Settlement Agreement that are to be conveyed by the State of Rhode Island to the State Corporation pursuant to legislation as described in section 1706 of this title;

(f) ''settlement lands'' means those lands defined in subsections (d) and (e) of this section;

(g) ''Secretary'' means the Secretary of the Interior;

(h) ''settlement agreement'' means the document entitled ''Joint Memorandum of Understanding Concerning Settlement of the Rhode Island Indian Land Claims'', executed as of February 28, 1978, by representatives of the State of Rhode Island, of the town of Charlestown, and of the parties to the lawsuits, as filed with the Secretary of the State of Rhode Island;

(i) ''State Corporation'' means the corporation created or to be created by legislation enacted by the State of Rhode Island as described in section 1706 of this title; and

(j) ''transfer'' includes but is not limited to any sale, grant, lease, allotment, partition, or conveyance, any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance, or any event or events that resulted in a change of possession or control of land or natural resources.

(Pub. L. 95–395, § 3, Sept. 30, 1978, 92 Stat. 813.)

§ 1703. Rhode Island Indian Claims Settlement Fund; establishment

There is hereby established in the United States Treasury a fund to be known as the Rhode Island Indian Claims Settlement Fund into which $3,500,000 shall be deposited following the appropriation authorized by section 1710 of this title.

(Pub. L. 95–395, § 4, Sept. 30, 1978, 92 Stat. 814.)

§ 1704. Option agreements to purchase private settlement lands

(a) Acceptance of option agreement assignments; reasonableness of terms and conditions

The Secretary shall accept assignment of reasonable two-year option agreements negotiated by the Governor of the State of Rhode Island or his designee for the purchase of the private settlement lands: *Provided*, That the terms and conditions specified in such options are reasonable and that the total price for the acquisition of

such lands, including reasonable costs of acquisition, will not exceed the amount specified in section 1703 of this title. If the Secretary does not determine that any such option agreement is unreasonable within sixty days of its submission, the Secretary will be deemed to have accepted the assignment of the option.

(b) Amount of payment

Payment for any option entered into pursuant to subsection (a) of this section shall be in the amount of 5 per centum of the fair market value of the land or natural resources as of the date of the agreement and shall be paid from the fund established by section 1703 of this title.

(c) Limitation on option fees

The total amount of the option fees paid pursuant to subsection (b) of this section shall not exceed $175,000.

(d) Application of option fee

The option fee for each option agreement shall be applied to the agreed purchase price in the agreement if the purchase of the defendant's land or natural resources is completed in accordance with the terms of the option agreement.

(e) Retention of option payment

The payment for each option may be retained by the party granting the option if the property transfer contemplated by the option agreement is not completed in accordance with the terms of the option agreement.

(Pub. L. 95–395, § 5, Sept. 30, 1978, 92 Stat. 814.)

§ 1705. Publication of findings

(a) Prerequisites; consequences

If the Secretary finds that the State of Rhode Island has satisfied the conditions set forth in section 1706 of this title, he shall publish such findings in the Federal Register and upon such publication—

(1) any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, and any transfer of land or natural resources located anywhere within the town of Charlestown, Rhode Island, by, from, or on behalf of any Indian, Indian nation, or tribe of Indians, including but not limited to a transfer pursuant to any statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Act of July 22, 1790, ch. 33, sec. 4, 1 Stat. 137, and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve any such transfer effective as of the date of said transfer;

(2) to the extent that any transfer of land or natural resources described in subsection (a) of this section may involve land or natural resources to which the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, or any other Indian, Indian nation, or tribe of Indians, had aboriginal title, subsection (a) of this section shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer; and

(3) by virtue of the approval of a transfer of land or natural resources effected by this section, or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, or any other Indian, Indian nation, or tribe of Indians, arising subsequent to the transfer and based upon any interest in or right involving such land or natural resources (including but not limited to claims for trespass damages or claims for use and occupancy) shall be regarded as extinguished as of the date of the transfer.

(b) Maintenance of action; remedy

Any Indian, Indian nation, or tribe of Indians (other than the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof) whose transfer of land or natural resources was approved or whose aboriginal title or claims were extinguished by subsection (a) of this section may, within a period of one hundred and eighty days after publication of the Secretary's findings pursuant to this section, bring an action against the State Corporation in lieu of an action against any other person against whom a cause may have existed in the absence of this section. In any such action, the remedy shall be limited to a right of possession of the settlement lands.

(Pub. L. 95–395, § 6, Sept. 30, 1978, 92 Stat. 815.)

REFERENCES IN TEXT

The Trade and Intercourse Act of 1790, Act of July 22, 1790, ch. 33, sec. 4, 1 Stat. 137, referred to in subsec. (a)(1), was not classified to the Code. See sections 177, 179, 180, 193, 194, 201, 229, 230, 251, 263, and 264 of this title.

§ 1706. Findings by Secretary

Section 1705 of this title shall not take effect until the Secretary finds—

(a) that the State of Rhode Island has enacted legislation creating or authorizing the creation of a State chartered corporation satisfying the following criteria:

(1) the corporation shall be authorized to acquire, perpetually manage, and hold the settlement lands;

(2) the corporation shall be controlled by a board of directors, the majority of the members of which shall be selected by the Indian Corporation or its successor, and the re-

maining members of which shall be selected by the State of Rhode Island; and

(3) the corporation shall be authorized, after consultation with appropriate State officials, to establish its own regulations concerning hunting and fishing on the settlement lands, which need not comply with regulations of the State of Rhode Island but which shall establish minimum standards for the safety of persons and protection of wildlife and fish stock; and

(b) that State of Rhode Island has enacted legislation authorizing the conveyance to the State Corporation of land and natural resources that substantially conform to the public settlement lands as described in paragraph 2 of the Settlement Agreement.

(Pub. L. 95–395, § 7, Sept. 30, 1978, 92 Stat. 816.)

§ 1707. Purchase and transfer of private settlement lands

(a) Determination by Secretary; assignment of settlement lands to State Corporation

When the Secretary determines that the State Corporation described in section 1706(a) of this title has been created and will accept the settlement lands, the Secretary shall exercise within sixty days the options entered into pursuant to section 1704 of this title and assign the private settlement lands thereby purchased to the State Corporation.

(b) Moneys remaining in fund

Any moneys remaining in the fund established by section 1703 of this title after the purchase described in subsection (a) of this section shall be returned to the general Treasury of the United States.

(c) Duties and liabilities of United States upon discharge of Secretary's duties; restriction on conveyance of settlement lands; affect on easements for public or private purposes

Upon the discharge of the Secretary's duties under sections 1704, 1705, 1706, and 1707 of this title, the United States shall have no further duties or liabilities under this subchapter with respect to the Indian Corporation or its successor, the State Corporation, or the settlement lands: *Provided, however*, That if the Secretary subsequently acknowledges the existence of the Narragansett Tribe of Indians, then the settlement lands may not be sold, granted, or otherwise conveyed or leased to anyone other than the Indian Corporation, and no such disposition of the settlement lands shall be of any validity in law or equity, unless the same is approved by the Secretary pursuant to regulations adopted by him for that purpose: *Provided, however*, That nothing in this subchapter shall affect or otherwise impair the ability of the State Corporation to grant or otherwise convey (including any involuntary conveyance by means of eminent domain or condemnation proceedings) any easement for public or private purposes pursuant to the laws of the State of Rhode Island.

(Pub. L. 95–395, § 8, Sept. 30, 1978, 92 Stat. 816.)

§ 1708. Applicability of State law; treatment of settlement lands under Indian Gaming Regulatory Act

(a) In general

Except as otherwise provided in this subchapter, the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island.

(b) Treatment of settlement lands under Indian Gaming Regulatory Act

For purposes of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), settlement lands shall not be treated as Indian lands.

(Pub. L. 95–395, § 9, Sept. 30, 1978, 92 Stat. 817; Pub. L. 104–208, div. A, title I, § 101(d) [title III, § 330], Sept. 30, 1996, 110 Stat. 3009–181, 3009–227.)

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (b), is Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (§ 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104–208 substituted "Applicability of State law; treatment of settlement lands under Indian Gaming Regulatory Act" for "Applicability of State law" in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

§ 1709. Preservation of Federal benefits

Nothing contained in this subchapter or in any legislation enacted by the State of Rhode Island as described in section 1706 of this title shall affect or otherwise impair in any adverse manner any benefits received by the State of Rhode Island under the Federal Aid in Wildlife Restoration Act of September 2, 1937 (16 U.S.C. 669–669(i)), or the Federal Aid in Fish Restoration Act of August 9, 1950 (16 U.S.C. 777–777(k)).

(Pub. L. 95–395, § 10, Sept. 30, 1978, 92 Stat. 817.)

REFERENCES IN TEXT

The Federal Aid in Wildlife Restoration Act of September 2, 1937, referred to in text, is act Sept. 2, 1937, ch. 899, 50 Stat. 917, as amended, also known as the Pittman-Robertson Wildlife Restoration Act, which is classified generally to chapter 5B (§ 669 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 669 of Title 16 and Tables.

The Federal Aid in Fish Restoration Act of August 9, 1950, referred to in text, is act Aug. 9, 1950, ch. 658, 64 Stat. 430, as amended, also known as the Dingell-Johnson Sport Fish Restoration Act and the Fish Restoration and Management Projects Act, which is classified generally to chapter 10B (§ 777 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 777 of Title 16 and Tables.

§ 1710. Authorization of appropriations

There is hereby authorized to be appropriated $3,500,000 to carry out the purposes of this subchapter.

(Pub. L. 95–395, § 11, Sept. 30, 1978, 92 Stat. 817.)

§ 1711. Limitation of actions; jurisdiction

Notwithstanding any other provision of law, any action to contest the constitutionality of

this subchapter shall be barred unless the complaint is filed within one hundred and eighty days of September 30, 1978. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the District of Rhode Island.

(Pub. L. 95–395, § 12, Sept. 30, 1978, 92 Stat. 817.)

§ 1712. Approval of prior transfers and extinguishment of claims and aboriginal title outside town of Charlestown, Rhode Island and involving other Indians in Rhode Island

(a) Scope of applicability

Except as provided in subsection (b) of this section—

(1) any transfer of land or natural resources located anywhere within the State of Rhode Island outside the town of Charlestown from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (other than transfers included in and approved by section 1705 of this title), including but not limited to a transfer pursuant to any statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, 1 Stat. 137), and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve any such transfer effective as of the date of said transfer;

(2) to the extent that any transfer of land or natural resources described in paragraph (1) may involve land or natural resources to which such Indian, Indian nation, or tribe of Indians had aboriginal title, paragraph (1) shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer; and

(3) by virtue of the approval of such transfers of land or natural resources effected by this subsection or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by any such Indian, Indian nation, or tribe of Indians, arising subsequent to the transfer and based upon any interest in or rights involving such land or natural resources (including but not limited to claims for trespass damages or claims for use and occupancy), shall be regarded as extinguished as of the date of the transfer.

(b) Exceptions

This section shall not apply to any claim, right, or title of any Indian, Indian nation, or tribe of Indians that is asserted in an action commenced in a court of competent jurisdiction within one hundred and eighty days of September 30, 1978: *Provided*, That the plaintiff in any such action shall cause notice of the action to be served upon the Secretary and the Governor of the State of Rhode Island.

(Pub. L. 95–395, § 13, Sept. 30, 1978, 92 Stat. 817.)

REFERENCES IN TEXT

The Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, 1 Stat. 137), referred to in subsec. (a)(1), was not classified to the Code. See sections 177, 179, 180, 193, 194, 201, 229, 230, 251, 263, and 264 of this title.

PART B—TAX TREATMENT

§ 1715. Exemption from taxation

(a) General exemption

Except as otherwise provided in subsections (b) and (c) of this section, the settlement lands received by the State Corporation shall not be subject to any form of Federal, State, or local taxation while held by the State Corporation.

(b) Income-producing activities

The exemption provided in subsection (a) of this section shall not apply to any income-producing activities occurring on the settlement lands.

(c) Payments in lieu of taxes

Nothing in this subchapter shall prevent the making of payments in lieu of taxes by the State Corporation for services provided in connection with the settlement lands.

(Pub. L. 95–395, title II, § 201, as added Pub. L. 96–601, § 5(a), Dec. 24, 1980, 94 Stat. 3498.)

EFFECTIVE DATE

Section 5(b) of Pub. L. 96–601 provided that: ''The amendment made by subsection (a) [enacting this part] shall take effect on September 30, 1978.''

§ 1716. Deferral of capital gains

For purposes of title 26, any sale or disposition of private settlement lands pursuant to the terms and conditions of the settlement agreement shall be treated as an involuntary conversion within the meaning of section 1033 of title 26.

(Pub. L. 95–395, title II, § 202, as added Pub. L. 96–601, § 5(a), Dec. 24, 1980, 94 Stat. 3499; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

SUBCHAPTER II—MAINE INDIAN CLAIMS SETTLEMENT

§ 1721. Congressional findings and declaration of policy

(a) Findings and declarations

Congress hereby finds and declares that:

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the ground that the lands in question were originally transferred in violation of law, including, but without limitation, the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof.

(2) The Indians, Indian nations, and tribes and bands of Indians, other than the Passama-

quoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, that once may have held aboriginal title to lands within the State of Maine long ago abandoned their aboriginal holdings.

(3) The Penobscot Nation, as represented as of the time of passage of this subchapter by the Penobscot Nation's Governor and Council, is the sole successor in interest to the aboriginal entity generally known as the Penobscot Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

(4) The Passamaquoddy Tribe, as represented as of the time of passage of this subchapter by the Joint Tribal Council of the Passamaquoddy Tribe, is the sole successor in interest to the aboriginal entity generally known as the Passamaquoddy Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(5) The Houlton Band of Maliseet Indians, as represented as of the time of passage of this subchapter by the Houlton Band Council, is the sole successor in interest, as to lands within the United States, to the aboriginal entity generally known as the Maliseet Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(6) Substantial economic and social hardship to a large number of landowners, citizens, and communities in the State of Maine, and therefore to the economy of the State of Maine as a whole, will result if the aforementioned claims are not resolved promptly.

(7) This subchapter represents a good faith effort on the part of Congress to provide the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians with a fair and just settlement of their land claims. In the absence of congressional action, these land claims would be pursued through the courts, a process which in all likelihood would consume many years and thereby promote hostility and uncertainty in the State of Maine to the ultimate detriment of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, their members, and all other citizens of the State of Maine.

(8) The State of Maine, with the agreement of the Passamaquoddy Tribe and the Penobscot Nation, has enacted legislation defining the relationship between the Passamaquoddy Tribe, the Penobscot Nation, and their members, and the State of Maine.

(9) Since 1820, the State of Maine has provided special services to the Indians residing within its borders, including the members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians. During this same period, the United States provided few special services to the respective tribe, nation, or band, and repeatedly denied that it had jurisdiction over or responsibility for the said tribe, nation, and band. In view of this provision of special services by the State of Maine, requiring substantial expenditures by the State of Maine and made by the State of Maine without being required to do so by Federal law, it is the intent of Congress that the State of Maine not be required further to contribute directly to this claims settlement.

(b) Purposes

It is the purpose of this subchapter—

(1) to remove the cloud on the titles to land in the State of Maine resulting from Indian claims;

(2) to clarify the status of other land and natural resources in the State of Maine;

(3) to ratify the Maine Implementing Act, which defines the relationship between the State of Maine and the Passamaquoddy Tribe, and the Penobscot Nation, and

(4) to confirm that all other Indians, Indian nations and tribes and bands of Indians now or hereafter existing or recognized in the State of Maine are and shall be subject to all laws of the State of Maine, as provided herein.

(Pub. L. 96–420, § 2, Oct. 10, 1980, 94 Stat. 1785.)

REFERENCES IN TEXT

The Trade and Intercourse Act of 1790 (1 Stat. 137), referred to in subsec. (a)(1), is act July 22, 1790, ch. 33, 1 Stat. 137, which was not classified to the Code. See sections 177, 179, 180, 193, 194, 201, 229, 230, 251, 263, and 264 of this title.

SHORT TITLE

Section 1 of Pub. L. 96–420 provided: ''That this Act [enacting this subchapter] may be cited as the 'Maine Indian Claims Settlement Act of 1980'.''

AROOSTOOK BAND OF MICMACS SETTLEMENT

Pub. L. 102–171, Nov. 26, 1991, 105 Stat. 1143, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Aroostook Band of Micmacs Settlement Act'.

''SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY.

''(a) FINDINGS AND POLICY.—Congress hereby finds and declares that:

''(1) The Aroostook Band of Micmacs, as represented as of the time of passage of this Act by the Aroostook Micmac Council, is the sole successor in interest, as to lands within the United States, to the aboriginal entity generally known as the Micmac Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

''(2) The Band was not referred to in the Maine Indian Claims Settlement Act of 1980 [25 U.S.C. 1721 et seq.] because historical documentation of the Micmac presence in Maine was not available at that time.

''(3) This documentation does establish the historical presence of Micmacs in Maine and the existence of aboriginal lands in Maine jointly used by the Micmacs and other tribes to which the Micmacs could have asserted aboriginal title but for the extinguishment of all such claims by the Maine Indian Claims Settlement Act of 1980.

''(4) The Aroostook Band of Micmacs, in both its history and its presence in Maine, is similar to the Houlton Band of Maliseet Indians and would have received similar treatment under the Maine Indian Claims Settlement Act of 1980 if the information available today had been available to Congress and the parties at that time.

''(5) It is now fair and just to afford the Aroostook Band of Micmacs the same settlement provided to the Houlton Band of Maliseet Indians for the settlement of that Band's claims, to the extent they would have benefited from inclusion in the Maine Indian Claims Settlement Act of 1980.

''(6) Since 1820, the State of Maine has provided special services to the Indians residing within its bor-

ders, including the members of the Aroostook Band of Micmacs. During this same period, the United States provided few special services to the Band and repeatedly denied that it had jurisdiction over or responsibility for the Indian groups in Maine. In view of this provision of special services by the State of Maine, requiring substantial expenditures by the State of Maine and made by the State of Maine without being required to do so by Federal law, it is the intent of Congress that the State of Maine not be required further to contribute directly to this settlement.

''(b) PURPOSE.—It is the purpose of this Act to—

''(1) provide Federal recognition of the Band;

''(2) provide to the members of the Band the services which the United States provides to Indians because of their status as Indians; and

''(3) place $900,000 in a land acquisition fund and property tax fund for the future use of the Aroostook Band of Micmacs; and

''(4) ratify the Micmac Settlement Act, which defines the relationship between the State of Maine and the Aroostook Band of Micmacs.

''SEC. 3. DEFINITIONS.

''For the purposes of this Act:

''(1) The term 'Band' means the Aroostook Band of Micmacs, the sole successor to the Micmac Nation as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest. The Aroostook Band of Micmacs is represented, as of the date of enactment of this Act [Nov. 26, 1991], as to lands within the United States, by the Aroostook Micmac Council.

''(2) The term 'Band Tax Fund' means the fund established under section 4(b) of this Act.

''(3) The term 'Band Trust Land' means land or natural resources acquired by the Secretary of the Interior and held in trust by the United States for the benefit of the Band.

''(4) The term 'land or natural resources' means any real property or natural resources, or any interest in or right involving any real property or natural resources, including (but not limited to) minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights.

''(5) The term 'Land Acquisition Fund' means the fund established under section 4(a) of this Act.

''(6) The term 'laws of the State' means the constitution, and all statutes, regulations, and common laws of the State of Maine and its political subdivisions and all subsequent amendments thereto or judicial interpretations thereof.

''(7) The term 'Maine Implementing Act' means the Act entitled 'Act to Implement the Maine Indian Claims Settlement' that was enacted by the State of Maine in chapter 732 of the Maine Public Laws of 1979, as amended by chapter 675 of the Maine Public Laws of 1981 and chapter 672 of the Maine Public Laws of 1985, and all subsequent amendments thereto.

''(8) The term 'Micmac Settlement Act' means the Act entitled 'Act to implement the Aroostook Band of Micmacs Settlement Act' that was enacted by the State of Maine in chapter 148 of the Maine Public Laws of 1989, and all subsequent amendments thereto.

''(9) The term 'Secretary' means the Secretary of the Interior.

''SEC. 4. AROOSTOOK BAND OF MICMACS LAND ACQUISITION AND PROPERTY TAX FUNDS.

''(a) LAND ACQUISITION FUND.—There is hereby established in the Treasury of the United States a fund to be known as the Aroostook Band of Micmacs Land Acquisition Fund, into which $900,000 shall be deposited by the Secretary following the appropriation of sums authorized by section 10.

''(b) BAND TAX FUND.—(1) There is hereby established in the Treasury of the United States a fund to be known as the Aroostook Band of Micmacs Tax Fund, into which shall be deposited $50,000 in accordance with the provisions of this Act.

''(2) Income accrued on the Land Acquisition Fund shall be transferred to the Band Tax Fund until a total of $50,000 has been transferred to the Band Tax Fund under this paragraph. No transfer shall be made under this subsection if such transfer would diminish the Land Acquisition Fund to a balance of less than $900,000.

''(3) Whenever funds are transferred to the Band Tax Fund under paragraph (2), the Secretary shall publish notice of such transfer in the Federal Register. Such notice shall specify when the total amount of $50,000 has been transferred to the Band Tax Fund.

''(4) The Secretary shall manage the Band Tax Fund in accordance with section 1 of the Act of June 24, 1938 (52 Stat. 1037; 25 U.S.C. 162a), and shall utilize the principal and interest of the Band Tax Fund only as provided in paragraph (5) and section 5(d) and for no other purpose.

''(5) Notwithstanding the provisions of title 31, United States Code, the Secretary shall pay out of the Band Tax Fund, all valid claims for taxes, payments in lieu of property taxes, and fees, together with any interest and penalties thereon—

''(A) for which the Band is determined to be liable;

''(B) which are final and not subject to further administrative or judicial review; and

''(C) which have been certified by the Commissioner of Finance in the State of Maine as valid claims that meet the requirements of this paragraph.

''(c) SOURCE FOR CERTAIN PAYMENTS.—Notwithstanding any other provision of law, if—

''(1) the Band is liable to the State of Maine or any county, district, municipality, city, town, village, plantation, or any other political subdivision thereof for any tax, payment in lieu of property tax, or fees, together with any interest and penalties thereon, and

''(2) there are insufficient funds in the Band Tax Fund to pay such tax, payment, or fee (together with any interest or penalties thereon) in full,

the deficiency shall be paid by the Band only from income-producing property owned by the Band which is not held in trust for the Band by the United States and the Band shall not be required to pay such tax, payment, or fee (or any interest or penalty thereon) from any other source.

''(d) PROCEDURE FOR FILING AND PAYMENT OF CLAIMS.—The Secretary shall, after consultation with the Commissioner of Finance of the State of Maine, and the Band, prescribe written procedures governing the filing and payment of claims under this section.

''SEC. 5. AROOSTOOK BAND TRUST LANDS.

''(a) IN GENERAL.—Subject to the provisions of section 4, the Secretary is authorized and directed to expend, at the request of the Band, the principal of, and income accruing on, the Land Acquisition Fund for the purposes of acquiring land or natural resources for the Band and for no other purposes. Land or natural resources acquired within the State of Maine with funds expended under the authority of this subsection shall be held in trust by the United States for the benefit of the Band.

''(b) ALIENATION.—(1) Land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of the Band may be alienated only by—

''(A) takings for public use pursuant to the laws of the State of Maine as provided in subsection (c);

''(B) takings for public use pursuant to the laws of the United States; or

''(C) transfers made pursuant to an Act or joint resolution of Congress.

All other transfers of land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of such Band shall be void ab initio and without any validity in law or equity.

''(2) The provisions of paragraph (1) shall not prohibit or limit transfers of individual use assignments of land or natural resources from one member of the Band to another member of such Band.

''(3) Land or natural resources held in trust for the benefit of the Band may, at the request of the Band, be—

''(A) leased in accordance with the Act of August 9, 1955 (25 U.S.C. 415 et seq.);

''(B) leased in accordance with the Act of May 11, 1938 (25 U.S.C. 396a et seq.);

''(C) sold in accordance with section 7 of the Act of June 25, 1910 (25 U.S.C. 407);

''(D) subjected to rights-of-way in accordance with the Act of February 5, 1948 (25 U.S.C. 323 et seq.);

''(E) exchanged for other land or natural resources of equal value, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary for deposit in the land acquisition fund for the benefit of the Band, as the circumstances require, so long as payment does not exceed 25 percent of the total value of the interests in land to be transferred by the Band; and

''(F) sold, only if at the time of sale the Secretary has entered into an option agreement or contract of sale to purchase other lands of approximate equal value.

''(c) CONDEMNATION BY STATE OF MAINE AND POLITICAL SUBDIVISIONS THEREOF.—(1) Land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of the Band may be condemned for public purposes by the State of Maine, or any political subdivision thereof, only upon such terms and conditions as shall be agreed upon in writing between the State and such Band after the date of enactment of this Act [Nov. 26, 1991].

''(2) The consent of the United States is hereby given to the State of Maine to further amend the Micmac Settlement Act for the purpose of embodying the agreement described in paragraph (1).

''(d) ACQUISITION.—(1) Lands and natural resources may be acquired by the Secretary for the Band only if the Secretary has, at any time prior to such acquisition—

''(A) transmitted a letter to the Secretary of State of the State of Maine stating that the Band Tax Fund contains $50,000; and

''(B) provided the Secretary of State of the State of Maine with a copy of the procedures for filing and payment of claims prescribed under section 4(d).

''(2)(A) No land or natural resources may be acquired by the Secretary for the Band until the Secretary files with the Secretary of State of the State of Maine a certified copy of the deed, contract, or other conveyance setting forth the location and boundaries of the land or natural resources to be acquired.

''(B) For purposes of subparagraph (A), a filing with the Secretary of State of the State of Maine may be made by mail and, if such method of filing is used, shall be considered to be completed on the date on which the document is properly mailed to the Secretary of State of the State of Maine.

''(3) Notwithstanding the provisions of the first section of the Act of August 1, 1888 (40 U.S.C. 257) [now 40 U.S.C. 3113] and the first section of the Act of February 26, 1931 (40 U.S.C. 258a) [now 40 U.S.C. 3114(a)–(d)], the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General of the United States, in the United States and condemn interests adverse to the ostensible owner.

''(4)(A) When trust or restricted land or natural resources of the Band are condemned pursuant to any law of the United States other than this Act, the proceeds paid in compensation for such condemnation shall be deposited into the Land Acquisition Fund and shall be reinvested in acreage within unorganized or unincorporated areas of the State of Maine. When the proceeds are reinvested in land whose acreage does not exceed that of the land taken, all the land shall be acquired in trust. When the proceeds are invested in land whose acreage exceeds the acreage of the land taken, the Band shall designate, with the approval of the United States, and within 30 days of such reinvestment, that portion of the land acquired by the reinvestment, not to exceed the area taken, which shall be acquired in trust. The land acquired from the proceeds that is not acquired in trust shall be held in fee by the Band. The Secretary shall certify, in writing, to the Secretary of State of the State of Maine the location, boundaries, and status of the land acquired from the proceeds.

''(B) The State of Maine shall have initial jurisdiction over condemnation proceedings brought under this section. The United States shall be a necessary party to any such condemnation proceedings. After exhaustion of all State administrative remedies, the United States is authorized to seek judicial review of all relevant matters involved in such condemnation proceedings in the courts of the United States and shall have an absolute right of removal, at its discretion, over any action commenced in the courts of the State.

''(5) Land or natural resources acquired by the Secretary in trust for the Band shall be managed and administered in accordance with terms established by the Band and agreed to by the Secretary in accordance with section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f) or other applicable law.

''SEC. 6. LAWS APPLICABLE.

''(a) FEDERAL RECOGNITION.—Federal recognition is hereby extended to the Aroostook Band of Micmacs. The Band shall be eligible to receive all of the financial benefits which the United States provides to Indians and Indian tribes to the same extent, and subject to the same eligibility criteria, generally applicable to other federally recognized Indians and Indian tribes.

''(b) APPLICATION OF FEDERAL LAW.—For the purposes of application of Federal law, the Band and its lands shall have the same status as other tribes and their lands accorded Federal recognition under the terms of the Maine Indian Claims Settlement Act of 1980 [25 U.S.C. 1721 et seq.].

''(c) ELIGIBILITY FOR SPECIAL SERVICES.—Notwithstanding any other provision of law authorizing the provision of special programs and services by the United States to Indians because of their status as Indians, any member of the Band in Aroostook County, Maine, shall be eligible for such services without regard to the existence of a reservation or the residence of members of the Band on or near a reservation.

''(d) AGREEMENTS WITH STATE REGARDING JURISDICTION.—The State of Maine and the Band are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by, or held in trust for the benefit of, the Band or any member of the Band. The consent of the United States is hereby given to the State of Maine to amend the Micmac Settlement Act for this purpose: *Provided*, That such amendment is made with the agreement of the Aroostook Band of Micmacs.

''SEC. 7. TRIBAL ORGANIZATION.

''(a) IN GENERAL.—The Band may organize for its common welfare and adopt an appropriate instrument in writing to govern the affairs of the Band when acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this Act. The Band shall file with the Secretary a copy of its organic governing document and any amendments thereto.

''(b) MEMBERS.—For purposes of benefits provided by reason of this Act, only persons who are citizens of the United States may be considered members of the Band except persons who, as of the date of enactment of this Act [Nov. 26, 1991], are enrolled members on the Band's existing membership roll, and direct lineal descendants of such members. Membership in the Band shall be subject to such further qualifications as may be provided by the Band in its organic governing document, or amendments thereto, subject to approval by the Secretary.

''SEC. 8. IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT.

''For the purposes of this section, the Band is an 'Indian tribe' within the meaning of section 4(8) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(8)), except that nothing in this section shall alter or affect the jurisdiction of the State of Maine over child welfare matters as provided by the Maine Indian Claims Settlement Act of 1980 [25 U.S.C. 1721 et seq.].

''SEC. 9. FEDERAL FINANCIAL AID PROGRAMS UNAFFECTED BY PAYMENTS UNDER THIS ACT.

''(a) STATE OF MAINE.—No payments to be made for the benefit of the Band pursuant to this Act shall be considered by any agency or department of the United States in determining or computing the eligibility of the State of Maine for participation in any financial aid program of the United States.

''(b) BAND AND MEMBERS OF THE BAND.—(1) The eligibility for, or receipt of, payments from the State of Maine by the Band or any of its members shall not be considered by any department or agency of the United States in determining the eligibility of, or computing payments to, the Band or any of the members of the Band under any Federal financial aid program.

''(2) To the extent that eligibility for the benefits of any Federal financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this subsection from considering the actual financial situation of the applicant.

''SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated $900,000 for the fiscal year 1992 for transfer to the Aroostook Band of Micmacs Land Acquisition Fund.

''SEC. 11. INTERPRETATION.

''In the event of a conflict of interpretation between the provisions of the Maine Implementing Act, the Micmac Settlement Act, or the Maine Indian Claims Settlement Act of 1980 [25 U.S.C. 1721 et seq.] and this Act, the provisions of this Act shall govern.

''SEC. 12. LIMITATION OF ACTIONS.

''No provision of this Act may be construed to confer jurisdiction to sue, or to grant implied consent to the Band to sue, the United States or any of its officers with respect to the claims extinguished by the Maine Indian Claims Settlement Act of 1980 [25 U.S.C. 1721 et seq.].''

§ 1722. Definitions

For purposes of this subchapter, the term—

(a) ''Houlton Band of Maliseet Indians'' means the sole successor to the Maliseet Tribe of Indians as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest. The Houlton Band of Maliseet Indians is represented, as of October 10, 1980, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians;

(b) ''land or natural resources'' means any real property or natural resources, or any interest in or right involving any real property or natural resources, including but without limitation minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights;

(c) ''Land Acquisition Fund'' means the Maine Indian Claims Land Acquisition Fund established under section 1724(c) of this title;

(d) ''laws of the State'' means the constitution, and all statutes, regulations, and common laws of the State of Maine and its political subdivisions and all subsequent amendments thereto or judicial interpretations thereof;

(e) ''Maine Implementing Act'' means section 1, section 30, and section 31, of the ''Act to Implement the Maine Indian Claims Settlement'' enacted by the State of Maine in chapter 732 of the public laws of 1979;

(f) ''Passamaquoddy Indian Reservation'' means those lands as defined in the Maine Implementing Act;

(g) ''Passamaquoddy Indian Territory'' means those lands as defined in the Maine Implementing Act;

(h) ''Passamaquoddy Tribe'' means the Passamaquoddy Indian Tribe, as constituted in aboriginal times and all its predecessors and successors in interest. The Passamaquoddy Tribe is represented, as of October 10, 1980, by the Joint Tribal Council of the Passamaquoddy Tribe, with separate councils at the Indian Township and Pleasant Point Reservations;

(i) ''Penobscot Indian Reservation'' means those lands as defined in the Maine Implementing Act;

(j) ''Penobscot Indian Territory'' means those lands as defined in the Maine Implementing Act;

(k) ''Penobscot Nation'' means the Penobscot Indian Nation as constituted in aboriginal times, and all its predecessors and successors in interest. The Penobscot Nation is represented, as of October 10, 1980, by the Penobscot Nation Governor and Council;

(*l*) ''Secretary'' means the Secretary of the Interior;

(m) ''Settlement Fund'' means the Maine Indian Claims Settlement Fund established under section 1724(a) of this title; and

(n) ''transfer'' includes but is not limited to any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event, or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources.

(Pub. L. 96–420, § 3, Oct. 10, 1980, 94 Stat. 1786.)

§ 1723. Approval of prior transfers and extinguishment of Indian title and claims of Indians within State of Maine

(a) Ratification by Congress; personal claims unaffected; United States barred from asserting claims on ground of noncompliance of transfers with State laws or occurring prior to December 1, 1873

(1) Any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, and any transfer of land or natural resources located anywhere within the State of Maine, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, shall be deemed to have been made in accordance with

the Constitution and all laws of the United States, including but without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, Sec. 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer: *Provided however*, That nothing in this section shall be construed to affect or eliminate the personal claim of any individual Indian (except for any Federal common law fraud claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(2) The United States is barred from asserting on behalf of any Indian, Indian nation, or tribe or band of Indians any claim under the laws of the State of Maine arising before October 10, 1980, and arising from any transfer of land or natural resources by any Indian, Indian nation, or tribe or band of Indians, located anywhere within the State of Maine, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, on the grounds that such transfer was not made in accordance with the laws of the State of Maine.

(3) The United States is barred from asserting by or on behalf of any individual Indian any claim under the laws of the State of Maine arising from any transfer of land or natural resources located anywhere within the State of Maine from, by, or on behalf of any individual Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State.

(b) Aboriginal title extinguished as of date of transfer

To the extent that any transfer of land or natural resources described in subsection (a)(1) of this section may involve land or natural resources to which the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, or any other Indian, Indian nation, or tribe or band of Indians had aboriginal title, such subsection (a)(1) of this section shall be regarded as an extinguishment of said aboriginal title as of the date of such transfer.

(c) Claims extinguished as of date of transfer

By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or any of their members or by any other Indian, Indian nation, tribe or band of Indians, or any predecessors or successors in interest thereof, arising at the time of or subsequent to the transfer and based on any interest in or right involving such land or natural resources, including but without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished as of the date of the transfer.

(d) Effective date; authorization of appropriations; publication in Federal Register

The provisions of this section shall take effect immediately upon appropriation of the funds authorized to be appropriated to implement the provisions of section 1724 of this title. The Secretary shall publish notice of such appropriation in the Federal Register when such funds are appropriated.

(Pub. L. 96–420, § 4, Oct. 10, 1980, 94 Stat. 1787.)

REFERENCES IN TEXT

The Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, Sec. 4, 1 Stat. 137, 138), referred to in subsec. (a)(1), was not classified to the Code. See sections 177, 179, 180, 193, 194, 201, 229, 230, 251, 263, and 264 of this title.

§ 1724. Maine Indian Claims Settlement and Land Acquisition Funds in the United States Treasury

(a) Establishment of Maine Indian Claims Settlement Fund; amount

There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Settlement Fund in which $27,000,000 shall be deposited following the appropriation of sums authorized by section 1733 of this title.

(b) Apportionment of settlement fund; administration; investments; limitation on distributions; quarterly investment income payments; expenditures for aged members; cessation of trust responsibility following Federal payments

(1) One-half of the principal of the settlement fund shall be held in trust by the Secretary for the benefit of the Passamaquoddy Tribe, and the other half of the settlement fund shall be held in trust for the benefit of the Penobscot Nation. Each portion of the settlement fund shall be administered by the Secretary in accordance with reasonable terms established by the Passamaquoddy Tribe or the Penobscot Nation, respectively, and agreed to by the Secretary: *Provided*, That the Secretary may not agree to terms which provide for investment of the settlement fund in a manner not in accordance with section 162a of this title, unless the respective tribe or nation first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment: *Provided, further*, That until such terms have been agreed upon, the Secretary shall fix the terms for the administration of the portion of the settlement fund as to which there is no agreement.

(2) Under no circumstances shall any part of the principal of the settlement fund be distributed to either the Passamaquoddy Tribe or the Penobscot Nation, or to any member of either tribe or nation: *Provided, however*, That nothing herein shall prevent the Secretary from investing the principal of said fund in accordance with paragraph (1) of this subsection.

(3) The Secretary shall make available to the Passamaquoddy Tribe and the Penobscot Nation in quarterly payments, without any deductions except as expressly provided in section 1725(d)(2) of this title and without liability to or on the

part of the United States, any income received from the investment of that portion of the settlement fund allocated to the respective tribe or nation, the use of which shall be free of regulation by the Secretary. The Passamaquoddy Tribe and the Penobscot Nation annually shall each expend the income from $1,000,000 of their portion of the settlement fund for the benefit of their respective members who are over the age of sixty. Once payments under this paragraph have been made to the tribe or nation, the United States shall have no further trust responsibility to the tribe or nation or their members with respect to the sums paid, any subsequent distribution of these sums, or any property or services purchased therewith.

(c) Establishment of Maine Indian Claims Land Acquisition Fund; amount

There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Land Acquisition Fund in which $54,500,000 shall be deposited following the appropriation of sums authorized by section 1733 of this title.

(d) Apportionment of land acquisition fund; expenditures for acquisition of land or natural resources; trust acreage; fee holdings; interests in corpus of trust for Houlton Band following termination of Band's interest in trust; agreement for acquisitions for benefit of Houlton Band: scope, report to Congress

The principal of the land acquisition fund shall be apportioned as follows:

(1) $900,000 to be held in trust for the Houlton Band of Maliseet Indians;

(2) $26,800,000 to be held in trust for the Passamaquoddy Tribe; and

(3) $26,800,000 to be held in trust for the Penobscot Nation.

The Secretary is authorized and directed to expend, at the request of the affected tribe, nation or band, the principal and any income accruing to the respective portions of the land acquisition fund for the purpose of acquiring land or natural resources for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians and for no other purpose. The first 150,000 acres of land or natural resources acquired for the Passamaquoddy Tribe and the first 150,000 acres acquired for the Penobscot Nation within the area described in the Maine Implementing Act as eligible to be included within the Passamaquoddy Indian Territory and the Penobscot Indian Territory shall be held in trust by the United States for the benefit of the respective tribe or nation. The Secretary is also authorized to take in trust for the Passamaquoddy Tribe or the Penobscot Nation any land or natural resources acquired within the aforesaid area by purchase, gift, or exchange by such tribe or nation. Land or natural resources acquired outside the boundaries of the aforesaid areas shall be held in fee by the respective tribe or nation, and the United States shall have no further trust responsibility with respect thereto. Land or natural resources acquired within the State of Maine for the Houlton Band of Maliseet Indians shall be held in trust by the United States for the benefit of the band: *Provided*, That no land or natural resources shall be so acquired for or on behalf of the Houlton Band of Maliseet Indians without the prior enactment of appropriate legislation by the State of Maine approving such acquisition: *Provided further*, That the Passamaquoddy Tribe and the Penobscot Nation shall each have a one-half undivided interest in the corpus of the trust, which shall consist of any such property or subsequently acquired exchange property, in the event the Houlton Band of Maliseet Indians should terminate its interest in the trust.

(4) The Secretary is authorized to, and at the request of either party shall, participate in negotiations between the State of Maine and the Houlton Band of Maliseet Indians for the purpose of assisting in securing agreement as to the land or natural resources to be acquired by the United States to be held in trust for the benefit of the Houlton Band. Such agreement shall be embodied in the legislation enacted by the State of Maine approving the acquisition of such lands as required by paragraph (3). The agreement and the legislation shall be limited to:

(A) provisions providing restrictions against alienation or taxation of land or natural resources held in trust for the Houlton Band no less restrictive than those provided by this subchapter and the Maine Implementing Act for land or natural resources to be held in trust for the Passamaquoddy Tribe or Penobscot Nation;

(B) provisions limiting the power of the State of Maine to condemn such lands that are no less restrictive than the provisions of this subchapter and the Maine Implementing Act that apply to the Passamaquoddy Indian Territory and the Penobscot Indian Territory but not within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation;

(C) consistent with the trust and restricted character of the lands, provisions satisfactory to the State and the Houlton Band concerning:

(i) payments by the Houlton Band in lieu of payment of property taxes on land or natural resources held in trust for the band, except that the band shall not be deemed to own or use any property for governmental purposes under the Maine Implementing Act;

(ii) payments of other fees and taxes to the extent imposed on the Passamaquoddy Tribe and the Penobscot Nation under the Maine Implementing Act, except that the band shall not be deemed to be a governmental entity under the Maine Implementing Act or to have the powers of a municipality under the Maine Implementing Act;

(iii) securing performance of obligations of the Houlton Band arising after the effective date of agreement between the State and the band.

(D) provisions on the location of these lands.

Except as set forth in this subsection, such agreement shall not include any other provisions regarding the enforcement or application

of the laws of the State of Maine. Within one year of October 10, 1980, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian affairs a report on the status of these negotiations.

(e) Acquisitions contingent upon agreement as to identity of land or natural resources to be sold, purchase price and other terms of sale; condemnation proceedings by Secretary; other acquisition authority barred for benefit of Indians in State of Maine

Notwithstanding the provisions of sections 3113 and 3114(a) to (d) of title 40, the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General, in the United States and condemn interests adverse to the ostensible owner. Except for the provisions of this subchapter, the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians or Indian nations, or tribes, or bands of Indians in the State of Maine.

(f) Expenditures for Tribe, Nation, or Band contingent upon documentary relinquishment of claims

The Secretary may not expend on behalf of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians any sums deposited in the funds established pursuant to the subsections (a) and (c) of this section unless and until he finds that authorized officials of the respective tribe, nation, or band have executed appropriate documents relinquishing all claims to the extent provided by sections 1723, 1730, and 1731 of this title and by section 6213 of the Maine Implementing Act, including stipulations to the final judicial dismissal with prejudice of their claims.

(g) Transfer limitations of section 177 of this title inapplicable to Indians in State of Maine; restraints on alienation as provided in section; transfers invalid ab initio except for: State and Federal condemnations, assignments, leases, sales, rights-of-way, and exchanges

(1) The provisions of section 177 of this title shall not be applicable to (A) the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation, or tribe or band of Indians in the State of Maine, or (B) any land or natural resources owned by or held in trust for the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation or tribe or band of Indians in the State of Maine. Except as provided in subsections (d)(4) and (g)(2) of this section, such land or natural resources shall not otherwise be subject to any restraint on alienation by virtue of being held in trust by the United States or the Secretary.

(2) Except as provided in paragraph (3) of this subsection, any transfer of land or natural resources within Passamaquoddy Indian Territory or Penobscot Indian Territory, except (A) takings for public uses consistent with the Maine Implementing Act, (B) takings for public uses pursuant to the laws of the United States, or (C) transfers of individual Indian use assignments from one member of the Passamaquoddy Tribe or Penobscot Nation to another member of the same tribe or nation, shall be void ab initio and without any validity in law or equity.

(3) Land or natural resources within the Passamaquoddy Indian Territory or the Penobscot Indian Territory or held in trust for the benefit of the Houlton Band of Maliseet Indians may, at the request of the respective tribe, nation, or band, be—

(A) leased in accordance with sections 415 to 415d of this title;

(B) leased in accordance with sections 396a to 396g of this title;

(C) sold in accordance with section 407 of this title;

(D) subjected to rights-of-way in accordance with sections 323 to 328 of this title;

(E) exchanged for other land or natural resources of equal value, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary for deposit in the land acquisition fund for the benefit of the affected tribe, nation, or band, as the circumstances require, so long as payment does not exceed 25 per centum of the total value of the interests in land to be transferred by the tribe, nation, or band, and

(F) sold, only if at the time of sale the Secretary has entered into an option agreement or contract of sale to purchase other lands of approximate equal value.

(h) Agreement on terms for management and administration of land or natural resources

Land or natural resources acquired by the Secretary in trust for the Passamaquoddy Tribe and the Penobscot Nation shall be managed and administered in accordance with terms established by the respective tribe or nation and agreed to by the Secretary in accordance with section 450f of this title, or other existing law.

(i) Condemnation of trust or restricted land or natural resources within Reservations: substitute land or monetary proceeds as medium of compensation; condemnation of trust land without Reservations: use of compensation for reinvestment in trust or fee held acreage, certification of acquisitions; State condemnation proceedings: United States as necessary party, exhaustion of State administrative remedies, judicial review in Federal courts, removal of action

(1) Trust or restricted land or natural resources within the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation may be condemned for public purposes pursuant to the Maine Implementing Act. In the event that the compensation for the taking is in the form of substitute land to be added to the reservation, such land shall become a part of the reservation in accordance with the Maine Implementing Act and upon notification to the Sec-

retary of the location and boundaries of the substitute land. Such substitute land shall have the same trust or restricted status as the land taken. To the extent that the compensation is in the form of monetary proceeds, it shall be deposited and reinvested as provided in paragraph (2) of this subsection.

(2) Trust land of the Passamaquoddy Tribe or the Penobscot Nation not within the Passamaquoddy Reservation or Penobscot Reservation may be condemned for public purposes pursuant to the Maine Implementing Act. The proceeds from any such condemnation shall be deposited in the land acquisition fund established by subsection (c) of this section and shall be reinvested in acreage within unorganized or unincorporated areas of the State of Maine. When the proceeds are reinvested in land whose acreage does not exceed that of the land taken, all the land shall be acquired in trust. When the proceeds are invested in land whose acreage exceeds the acreage of the land taken, the respective tribe or nation shall designate, with the approval of the United States, and within thirty days of such reinvestment, that portion of the land acquired by the reinvestment, not to exceed the area taken, which shall be acquired in trust. The land not acquired in trust shall be held in fee by the respective tribe or nation. The Secretary shall certify, in writing, to the Secretary of State of the State of Maine the location, boundaries, and status of the land acquired.

(3) The State of Maine shall have initial jurisdiction over condemnation proceedings brought under this section. The United States shall be a necessary party to any such condemnation proceedings. After exhaustion of all State administrative remedies, the United States is authorized to seek judicial review of all relevant matters in the courts of the United States and shall have an absolute right of removal, at its discretion, over any action commenced in the courts of the State.

(j) Federal condemnation under other laws; deposit and reinvestment of compensatory proceeds

When trust or restricted land or natural resources of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians are condemned pursuant to any law of the United States other than this subchapter, the proceeds paid in compensation for such condemnation shall be deposited and reinvested in accordance with subsection (i)(2) of this section.

(Pub. L. 96–420, § 5, Oct. 10, 1980, 94 Stat. 1788.)

CODIFICATION

''Sections 3113 and 3114(a) to (d) of title 40'' substituted in subsec. (e) for ''section 1 of the Act of August 1, 1888 (25 Stat. 357), as amended, and section 1 of the Act of February 26, 1931 (46 Stat. 1421)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

HOULTON BAND OF MALISEET INDIANS SUPPLEMENTARY CLAIMS SETTLEMENT

Pub. L. 99–566, Oct. 27, 1986, 100 Stat. 3184, provided: ''That this Act may be cited as the 'Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986'.

''DEFINITIONS

''SEC. 2. For purposes of this Act—

''(1) The term 'Houlton Band Tax Fund' means the fund established under section 3.

''(2) The term 'Houlton Band trust land' means land or natural resources acquired by the Secretary of the Interior and held in trust by the United States for the benefit of the Houlton Band of Maliseet Indians in accordance with section 5(d) of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1724(d); 94 Stat. 1789).

''(3) The term 'amended Maine Implementing Act' means the Maine Implementing Act (defined in section 3(e) of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1722(e); 94 Stat. 1787)) as amended by—

''(A) the 'Act to amend the Maine Implementing Act with respect to the Houlton Band of Maliseet Indians', enacted by the State of Maine in chapter 675 of the Public Laws of 1981, and

''(B) the State of Maine in chapter 672 of the Public Laws of 1985.

''(4) The term 'Secretary' means the Secretary of the Interior.

''(5) The term 'Houlton Band of Maliseet Indians' has the meaning given to such term by section 3(a) of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1722(a)).

''HOULTON BAND TAX FUND

''SEC. 3. (a) There is hereby established in the United States Treasury a fund to be known as the Houlton Band Tax Fund in which shall be deposited $200,000 in accordance with the provisions of this Act.

''(b)(1) Income accrued on the land acquisition fund established for the Houlton Band of Maliseet Indians pursuant to subsections (c) and (d)(1) of section 5 of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1724; 94 Stat. 1789) shall be transferred to the Houlton Band Tax Fund. No transfer shall be made under this subsection if such transfer would diminish such land acquisition fund to a balance of less than $900,000.

''(2) Whenever funds are transferred to the Houlton Band Tax Fund pursuant to paragraph (1), the Secretary shall publish notice of such transfer in the Federal Register. Such notice shall specify when the full amount of $200,000 has been transferred to the Houlton Band Tax Fund.

''(c) The Secretary shall manage the Houlton Band Tax Fund in accordance with the first section of the Act of June 24, 1938 (25 U.S.C. 162a), and shall utilize the principal and interest of such Fund only as provided in subsection (d) and for no other purpose.

''(d) Notwithstanding the provisions of section 3727 of title 31, United States Code, the Secretary shall pay out of the Houlton Band Tax Fund all valid claims for taxes, payments in lieu of property taxes, and fees, together with any interest and penalties thereon—

''(1) for which the Houlton Band of Maliseet Indians are determined to be liable under the terms of section 6208–A(2) of the amended Maine Implementing Act,

''(2) which are final and not subject to further administrative or judicial review, and

''(3) which have been certified by the Commissioner of Finance and Administration of the State of Maine as valid claims (within the meaning of section 6208–A(2) of the amended Maine Implementing Act) that meet the requirements of this subsection.

''(e) Notwithstanding any other provision of law, if—

''(1) the Houlton Band of Maliseet Indians is liable to the State of Maine or any county, district, municipality, city, town, village, plantation, or any other political subdivision thereof for any tax, payment in lieu of property tax, or fees, together with any interest or penalties thereon, and

''(2) there are insufficient funds in the Houlton Band Tax Fund to pay such tax, payment, or fee (together with any interest or penalties thereon) in full, the deficiency shall be paid by the Houlton Band of Maliseet Indians only from income-producing property

owned by such Band which is not held in trust for such Band by the United States, and such Band shall not be required to pay such tax, payment, or fee (or any interest or penalty thereon) from any other source.

''(f) The Secretary shall, after consultation with the Commissioner of Finance and Administration of the State of Maine and the Houlton Band of Maliseet Indians, prescribe written procedures governing the filing and payment of claims under this section and section 6208–A of the amended Maine Implementing Act.

''HOULTON BAND TRUST LAND

''SEC. 4. (a) Subject to the provisions of section 3 of this Act, the Secretary is authorized and directed to expend, at the request of the Houlton Band of Maliseet Indians, the principal of, and income accruing on, the land acquisition fund established for such Band under subsections (c) and (d)(1) of section 5 of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1724; 94 Stat. 1789) for the purposes of acquiring land or natural resources for such Band and for no other purpose. Land or natural resources so acquired within the State of Maine for such Band shall be held in trust by the United States for the benefit of such Band.

''(b)(1) Land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of the Houlton Band of Maliseet Indians may be alienated only by—

''(A) takings for public use pursuant to the laws of the State of Maine as provided in subsection (c),

''(B) takings for public use pursuant to the laws of the United States,

''(C) transfers authorized by section 5(g)(3) of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1724(g)(3); 94 Stat. 1791), or

''(D) transfers made pursuant to an Act or joint resolution of Congress.

All other transfers of land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of such Band shall be void ab initio and without any validity in law or equity.

''(2) The provisions of paragraph (1) shall not prohibit or limit transfers of individual use assignments of land or natural resources from one member of the Houlton Band of Maliseet Indians to another member of such Band.

''(c)(1) Land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of the Houlton Band of Maliseet Indians may be condemned for public purposes by the State of Maine, or any political subdivision thereof, only upon such terms and conditions as shall be agreed upon in writing between the State and such Band after the date of enactment of this Act [Oct. 27, 1986].

''(2) The consent of the United States is hereby given to the State of Maine to further amend the amended Maine Implementing Act for the purpose of embodying the agreement described in paragraph (1).

''(d)(1) Lands and natural resources may be acquired by the Secretary for the Houlton Band of Maliseet Indians only if the Secretary has, at any time prior to such acquisition—

''(A) transmitted a letter to the Secretary of State of the State of Maine stating that the Houlton Band Tax Fund contains $200,000, and

''(B) provided the Secretary of State of the State of Maine with a copy of the procedures for filing and payment of claims prescribed under section 3(f).

''(2)(A) No land or natural resources may be acquired by the Secretary for the Houlton Band of Maliseet Indians until the Secretary—

''(i) files with the Secretary of State of the State of Maine a certified copy of the deed, contract, or other conveyance setting forth the location and boundaries of the land or natural resources to be acquired by the Secretary, or

''(ii) files with the Secretary of State of the State of Maine a certified copy of any instrument setting forth the location and boundaries of the land or natural resources to be acquired.

''(B) For purposes of subparagraph (A), filing with the Secretary of State of the State of Maine may be made by mail and, if such method of filing is used, shall be considered to be completed on the date on which the document is properly mailed to the Secretary of State of the State of Maine.''

§ 1725. State laws applicable

(a) Civil and criminal jurisdiction of the State and the courts of the State; laws of the State

Except as provided in section 1727(e) and section 1724(d)(4) of this title, all Indians, Indian nations, or tribes or bands of Indians in the State of Maine, other than the Passamaquoddy Tribe, the Penobscot Nation, and their members, and any lands or natural resources owned by any such Indian, Indian nation, tribe or band of Indians and any lands or natural resources held in trust by the United States, or by any other person or entity, for any such Indian, Indian nation, tribe, or band of Indians shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein.

(b) Jurisdiction of State of Maine and utilization of local share of funds pursuant to the Maine Implementing Act; Federal laws or regulations governing services or benefits unaffected unless expressly so provided; report to Congress of comparative Federal and State funding for Maine and other States

(1) The Passamaquoddy Tribe, the Penobscot Nation, and their members, and the land and natural resources owned by, or held in trust for the benefit of the tribe, nation, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act and that Act is hereby approved, ratified, and confirmed.

(2) Funds appropriated for the benefit of Indian people or for the administration of Indian affairs may be utilized, consistent with the purposes for which they are appropriated, by the Passamaquoddy Tribe and the Penobscot Nation to provide part or all of the local share as provided by the Maine Implementing Act.

(3) Nothing in this section shall be construed to supersede any Federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine unless expressly provided by this subchapter.

(4) Not later than October 30, 1982, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian affairs a report on the Federal and State funding provided the Passamaquoddy Tribe and Penobscot Nation compared with the respective Federal and State funding in other States.

(c) Federal criminal jurisdiction inapplicable in State of Maine under certain sections of title 18; effective date: publication in Federal Register

The United States shall not have any criminal jurisdiction in the State of Maine under the provisions of sections 1152, 1153, 1154, 1155, 1156, 1160,

1161, and 1165 of title 18. This provision shall not be effective until sixty days after the publication of notice in the Federal Register as required by section 1723(d) of this title.

(d) Capacity to sue and be sued in State of Maine and Federal courts; section 1362 of title 28 applicable to civil actions; immunity from suits provided in Maine Implementing Act; assignment of quarterly income payments from settlement fund to judgment creditors for satisfaction of judgments

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations, or tribes or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts; and section 1362 of title 28 shall be applicable to civil actions brought by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians: *Provided, however*, That the Passamaquoddy Tribe, the Penobscot Nation, and their officers and employees shall be immune from suit to the extent provided in the Maine Implementing Act.

(2) Notwithstanding the provisions of section 3727 of title 31, the Secretary shall honor valid final orders of a Federal, State, or territorial court which enters money judgments for causes of action which arise after October 10, 1980, against either the Passamaquoddy Tribe or the Penobscot Nation by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment from the settlement fund established pursuant to section 1724(a) of this title and out of such future quarterly payments as may be necessary until the judgment is satisfied.

(e) Federal consent for amendment of Maine Implementing Act; nature and scope of amendments; agreement respecting State jurisdiction over Houlton Band lands

(1) The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation: *Provided*, That such amendment is made with the agreement of the affected tribe or nation, and that such amendment relates to (A) the enforcement or application of civil, criminal, or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation, and the State within their respective jurisdictions; (B) the allocation or determination of governmental responsibility of the State and the tribe or nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the tribe or nation; or (C) the allocation of jurisdiction between tribal courts and State courts.

(2) Notwithstanding the provisions of subsection (a) of this section, the State of Maine and the Houlton Band of Maliseet Indians are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by or held in trust for the benefit of the band or its members.

(f) Indian jurisdiction separate and distinct from State civil and criminal jurisdiction

The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto.

(g) Full faith and credit

The Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other.

(h) General laws and regulations affecting Indians applicable, but special laws and regulations inapplicable, in State of Maine

Except as other wise[1] provided in this subchapter, the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine, except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.

(i) Eligibility for Federal special programs and services regardless of reservation status

As federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be treated in the same manner as other federally recognized tribes for the purposes of Federal taxation and any lands which are held by the respective tribe, nation, or band subject to a restriction against alienation or which are held in trust for the benefit of the respective tribe, nation, or band shall be considered Federal Indian reservations for purposes of Federal taxation. Notwithstanding any other provision of law authorizing the provision of special programs and services by the United States to Indians because of their status as Indians, any member of the Houlton Band of Maliseet Indians in or near the town of Houlton, Maine, shall be eligible for such programs and services without regard to the existence of a reservation or of the residence of such member on or near a reservation.

(Pub. L. 96–420, § 6, Oct. 10, 1980, 94 Stat. 1793; Pub. L. 97–428, § 3, Jan. 8, 1983, 96 Stat. 2268.)

[1] So in original. Probably should be ''otherwise''.

CODIFICATION

In subsec. (d)(2), ''section 3727 of title 31'' substituted for ''section 3477 of the Revised Statutes, as amended'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1983—Subsec. (i). Pub. L. 97–428 inserted provision that notwithstanding any other provision of law authorizing provision of special programs and services by United States to Indians because of their status as Indians, any member of Houlton Band of Maliseet Indians in or near town of Houlton, Maine, be eligible for such programs and services without regard to existence of a reservation or of residence of such member on or near a reservation.

§ 1726. Tribal organization

(a) Appropriate instrument in writing; filing of organic governing document

The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians may each organize for its common welfare and adopt an appropriate instrument in writing to govern the affairs of the tribe, nation, or band when each is acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this subchapter and the Maine Implementing Act. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall each file with the Secretary a copy of its organic governing document and any amendments thereto.

(b) Membership

For purposes of benefits under this subchapter and the recognition extended the Houlton Band of Maliseet Indians, no person who is not a citizen of the United States may be considered a member of the Houlton Band of Maliseets, except persons who, as of October 10, 1980, are enrolled members on the band's existing membership roll, and direct lineal descendants of such members. Membership in the band shall be subject to such further qualifications as may be provided by the band in its organic governing document or amendments thereto subject to the approval of the Secretary.

(Pub. L. 96–420, § 7, Oct. 10, 1980, 94 Stat. 1795.)

§ 1727. Implementation of Indian Child Welfare Act

(a) Petition for assumption of exclusive jurisdiction; approval by Secretary

The Passamaquoddy Tribe or the Penobscot Nation may assume exclusive jurisdiction over Indian child custody proceedings pursuant to the Indian Child Welfare Act of 1978 (92 Stat. 3069) [25 U.S.C. 1901 et seq.]. Before the respective tribe or nation may assume such jurisdiction over Indian child custody proceedings, the respective tribe or nation shall present to the Secretary for approval a petition to assume such jurisdiction and the Secretary shall approve that petition in the manner prescribed by sections 108(a)–(c) of said Act [25 U.S.C. 1918(a)–(c)].

(b) Consideration and determination of petition by Secretary

Any petition to assume jurisdiction over Indian child custody proceedings by the Passamaquoddy Tribe or the Penobscot Nation shall be considered and determined by the Secretary in accordance with sections 108(b) and (c) of the Act [25 U.S.C. 1918(b) and (c)].

(c) Actions or proceedings within existing jurisdiction unaffected

Assumption or jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction.

(d) Reservations within section 1903(10) of this title

For the purposes of this section, the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation are ''reservations'' within section 4(10) of the Act [25 U.S.C. 1903(10)].

(e) Indian tribe within section 1903(8) of this title; State jurisdiction over child welfare unaffected

For the purposes of this section, the Houlton Band of Maliseet Indians is an ''Indian tribe'' within section 4(8) of the Act [25 U.S.C. 1903(8)], provided, that nothing in this subsection shall alter or effect the jurisdiction of the State of Maine over child welfare matters as provided in section 1725(e)(2) of this title.

(f) Assumption determinative of exclusive jurisdiction

Until the Passamaquoddy Tribe or the Penobscot Nation has assumed exclusive jurisdiction over the Indian child custody proceedings pursuant to this section, the State of Maine shall have exclusive jurisdiction over Indian child custody proceedings of that tribe or nation.

(Pub. L. 96–420, § 8, Oct. 10, 1980, 94 Stat. 1795.)

REFERENCES IN TEXT

The Indian Child Welfare Act of 1978 (92 Stat. 3069), referred to in subsec. (a), is Pub. L. 95–608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§ 1901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of this title and Tables.

§ 1728. Federal financial aid programs unaffected by payments under subchapter

(a) Eligibility of State of Maine for participation without regard to payments to designated Tribe, Nation, or Band under subchapter

No payments to be made for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians pursuant to the terms of this subchapter shall be considered by any agency or department of the United States in determining or computing the eligibility of the State of Maine for participation in any financial aid program of the United States.

(b) Eligibility of designated Tribe, Nation, or Band for benefits without regard to payments from State of Maine except in considering actual financial situation in determining need of applicant

The eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation or any of their members pursuant to the Maine Implementing Act shall not be considered by any department or agency of the United States in determining the

eligibility of or computing payments to the Passamaquoddy Tribe or the Penobscot Nation or any of their members under any financial aid program of the United States: *Provided*, That to the extent that eligibility for the benefits of such a financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this subsection from considering the actual financial situation of the applicant.

(c) Availability of settlement or land acquisition funds not income or resources or otherwise used to affect federally assisted housing programs or Federal financial assistance or other Federal benefits

The availability of funds or distribution of funds pursuant to section 1724 of this title may not be considered as income or resources or otherwise utilized as the basis (1) for denying any Indian household or member thereof participation in any federally assisted housing program, (2) for denying or reducing the Federal financial assistance or other Federal benefits to which such household or member would otherwise be entitled, or (3) for denying or reducing the Federal financial assistance or other Federal benefits to which the Passamaquoddy Tribe or Penobscot Nation would otherwise be eligible or entitled.

(Pub. L. 96–420, § 9, Oct. 10, 1980, 94 Stat. 1795.)

§ 1729. Deferral of capital gains

For the purpose of subtitle A of title 26, any transfer by private owners of land purchased or otherwise acquired by the Secretary with moneys from the land acquisition fund whether in the name of the United States or of the respective tribe, nation or band shall be deemed to be an involuntary conversion within the meaning of section 1033 of title 26.

(Pub. L. 96–420, § 10, Oct. 10, 1980, 94 Stat. 1796; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

§ 1730. Transfer of tribal trust funds held by the State of Maine

All funds of either the Passamaquoddy Tribe or the Penobscot Nation held in trust by the State of Maine as of October 10, 1980, shall be transferred to the Secretary to be held in trust for the respective tribe or nation and shall be added to the principal of the settlement fund allocated to that tribe or nation. The receipt of said State funds by the Secretary shall constitute a full discharge of any claim of the respective tribe or nation, its predecessors and successors in interest, and its members, may have against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds. Upon receipt of said State funds, the Secretary, on behalf of the respective tribe and nation, shall execute general releases of all claims against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds.

(Pub. L. 96–420, § 11, Oct. 10, 1980, 94 Stat. 1796.)

CODIFICATION

''October 10, 1980,'' substituted in text for ''the effective date of this Act''.

§ 1731. Other claims discharged by this subchapter

Except as expressly provided herein, this subchapter shall constitute a general discharge and release of all obligations of the State of Maine and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of any Indian nation, or tribe or band of Indians or the United States as trustee therefor, including those actions now pending in the United States District Court for the District of Maine captioned United States of America against State of Maine (Civil Action Nos. 1966–ND and 1969–ND).

(Pub. L. 96–420, § 12, Oct. 10, 1980, 94 Stat. 1796.)

§ 1732. Limitation of actions

Except as provided in this subchapter, no provision of this subchapter shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, or to grant implied consent to any Indian, Indian nation, or tribe or band of Indians to sue the United States or any of its officers with respect to the claims extinguished by the operation of this subchapter.

(Pub. L. 96–420, § 13, Oct. 10, 1980, 94 Stat. 1797.)

§ 1733. Authorization of appropriations

There is hereby authorized to be appropriated $81,500,000 for the fiscal year beginning October 1, 1980, for transfer to the funds established by section 1724 of this title.

(Pub. L. 96–420, § 14, Oct. 10, 1980, 94 Stat. 1797.)

§ 1734. Inseparability of provisions

In the event that any provision of section 1723 of this title is held invalid, it is the intent of Congress that the entire subchapter be invalidated. In the event that any other section or provision of this subchapter is held invalid, it is the intent of Congress that the remaining sections of this subchapter shall continue in full force and effect.

(Pub. L. 96–420, § 15, Oct. 10, 1980, 94 Stat. 1797.)

§ 1735. Construction

(a) Law governing; special legislation

In the event a conflict of interpretation between the provisions of the Maine Implementing Act and this subchapter should emerge, the provisions of this subchapter shall govern.

(b) General legislation

The provisions of any Federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations, or tribes or bands of Indians,

which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.

(Pub. L. 96–420, § 16, Oct. 10, 1980, 94 Stat. 1797.)

SUBCHAPTER III—FLORIDA INDIAN (MICCOSUKEE) LAND CLAIMS SETTLEMENT

PART A—FLORIDA INDIAN LAND CLAIMS SETTLEMENT ACT OF 1982

§ 1741. Congressional findings and declaration of policy

Congress finds and declares that—

(1) there is pending before the United States District Court for the Southern District of Florida a lawsuit by the Miccosukee Indian Tribe which involves certain lands within the State of Florida;

(2) the pendency of such lawsuit may result in economic hardships for residents of the State of Florida by clouding the titles to lands in the State, including lands not now involved in the lawsuits;

(3) the pendency of such lawsuit also has clouded the easement rights of the South Florida Water Management District in lands necessary for use as a water flowage and storage area, which is part of a federally authorized project for flood control and water management in central and southern Florida, and which is being used to provide and regulate a water supply for the residents of South Florida;

(4) the State of Florida and the Miccosukee Indian Tribe have executed agreements for the purposes of resolving tribal land claims and settling such lawsuit, which agreements require implementing legislation by the Congress of the United States and the Legislature of the State of Florida; and

(5) Congress shares with the parties to such agreements a desire to settle such Indian claims in the State of Florida without additional cost to the United States.

(Pub. L. 97–399, § 2, Dec. 31, 1982, 96 Stat. 2012.)

SHORT TITLE

Section 1 of Pub. L. 97–399 provided: ''That this Act [enacting this part] may be cited as the 'Florida Indian Land Claims Settlement Act of 1982'.''

§ 1742. Definitions

For purposes of this part—

(1) The term ''Miccosukee Tribe'' means the Miccosukee Tribe of Indians of Florida, a tribe of American Indians recognized by the United States and organized under section 476 of this title and recognized by the State of Florida pursuant to chapter 285, Florida Statutes.

(2) The term ''State of Florida'' means the State of Florida, its agencies, political subdivisions, constitutional officers, officials of its agencies and subdivisions, and the South Florida Water Management District.

(3) The term ''Secretary'' means the Secretary of the Interior.

(4) The term ''lands or natural resources'' means any real property or natural resources, or any interest in or right involving any real property or natural resources including but not limited to minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish.

(5) The term ''lawsuit'' means the action in the United States District Court for the Southern District of Florida, entitled Miccosukee Tribe of Indians of Florida against State of Florida, et al., Case No. 79–253–CIV–JWK.

(6) The term ''Lease Agreement'' means that perpetual lease granted by the State of Florida to the Miccosukee Tribe, involving a specifically described area in South Florida, title to which is held by the State of Florida and in which the Miccosukee Tribe is granted certain express rights and interests.

(7) The term ''settlement funds'' means those amounts of money which the State of Florida has agreed to pay to the Miccosukee Tribe under the Settlement Agreement in partial consideration for the settlement of the lawsuit and the extinguishment of rights to all potential or unsettled claims which the Miccosukee Tribe may have to lands or natural resources in the State of Florida.

(8) The term ''Settlement Agreement'' means those documents entitled ''Settlement Agreement between the Miccosukee Tribe and the State of Florida'' executed on April 16, 1982, by representatives of the State of Florida and representatives of the Miccosukee Tribe and filed with the secretary of state of the State of Florida which incorporate the Lease Agreement described in paragraph (6) of this section.

(9) The term ''transfer'' includes but is not limited to any sale, grant, lease, allotment, partition, or conveyance, any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance, or any event or events that resulted in a change of possession or control of lands or natural resources.

(Pub. L. 97–399, § 3, Dec. 31, 1982, 96 Stat. 2012.)

§ 1743. Findings by the Secretary

Section 1744 of this title shall not take effect until the Secretary finds that the following events have occurred:

(1) the State of Florida has enacted legislation appropriating sufficient money to pay, and in fact has paid, the settlement funds to the Miccosukee Tribe;

(2) the State of Florida and the Miccosukee Tribe have executed the Lease Agreement; and

(3) the State of Florida has enacted appropriate legislation to carry out its commitments under paragraph 1b of the Settlement Agreement between the State of Florida and the Miccosukee Tribe and has given the waiver specified in paragraph 4d of such Agreement.

(Pub. L. 97–399, § 4, Dec. 31, 1982, 96 Stat. 2013.)

§ 1744. Approval of prior transfers and extinguishment of claims and aboriginal title involving Florida Indians

(a) Publication of findings; consequences

If the Secretary finds that the State of Florida has satisfied the conditions set forth in section 1743 of this title, he shall publish such findings and the Settlement Agreement in the Federal Register, and upon such publication—

(1) the transfers, waivers, releases, relinquishments, and other commitments made by the Miccosukee Tribe in paragraph 3 of the Settlement Agreement between the State of Florida and the Miccosukee Tribe shall be of full force and effect on the terms and conditions therein stated; and

(2) the transfers, waivers, releases, relinquishments, and other commitments validated by paragraph (1) of this subsection and the transfers and extinguishments approved and validated by paragraphs (1) and (2) of subsection (b) of this section shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of lands or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (including but not limited to the Act of July 22, 1790 (1 Stat. 137) and any amendments thereto and all subsequent versions thereof), and Congress does hereby approve any such transfers effective as of the date of such transfers.

(b) Scope of applicability to claims, transfers, etc.

(1) All claims to lands within the State of Florida based upon aboriginal title by the Miccosukee Tribe, or any predecessor or successor in interest, are hereby extinguished, and any transfer of lands or natural resources located anywhere within the State of Florida, including but not limited to transfers pursuant to the statute or treaty of or with any State or the United States, by, from, or on behalf of the Miccosukee Tribe, or any predecessor or successor in interest, shall be deemed to be in full force and effect: *Provided, however*, That nothing herein shall be construed as extinguishing any aboriginal right, title, interest, or claim to lands or natural resources solely to the extent of the rights or interests defined as ''excepted interests'' in paragraph 3c of the Settlement Agreement between the State of Florida and the Miccosukee Tribe.

(2) By virtue of the approval of a transfer of lands or natural resources effected by this section, or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Miccosukee Tribe, arising subsequent to the transfer and based upon any interest in or right involving such lands or natural resources, including but not limited to claims for trespass damages or claims for use and occupancy, shall be regarded as extinguished as of the date of the transfer.

(3) Notwithstanding any other provision of this subsection, nothing in this subchapter shall be construed as extinguishing any right, title, interest, or claim to lands or natural resources in the State of Florida by any individual Indian—

(A) which is based on use and occupancy, or

(B) which was acquired under Federal or State law,

and which is not derived from or through the Miccosukee Tribe, or its predecessor or predecessors in interest.

(Pub. L. 97–399, § 5, Dec. 31, 1982, 96 Stat. 2013.)

REFERENCES IN TEXT

Act of July 22, 1790, referred to in subsec. (a)(2), is act July 22, 1790, ch. 33, 1 Stat. 137, which was not classified to the Code.

§ 1745. Special provisions for Miccosukee Tribe

(a) Exemption of leasehold from State and local taxes

The leasehold interest granted the Miccosukee Tribe under the Lease Agreement shall be exempt from all State and local taxes.

(b) Treatment of leasehold as Indian reservation

The lands leased to the Miccosukee Tribe pursuant to the Lease Agreement shall be treated as if such lands constituted a federally recognized Indian reservation solely for purposes of determining the eligibility of the Miccosukee Tribe and its members for any Federal health, education, employment, economic assistance, revenue sharing, law enforcement over Indians, or social welfare programs, or any other similar Federal program for which Indians are eligible because of their status as Indians and of their residence on an Indian reservation.

(c) Power of State of Florida to diminish leasehold interests for public purposes

The State of Florida, through exercise of the power of eminent domain, may take or diminish any interest granted to the Miccosukee Tribe under the Lease Agreement only for a public purpose and upon payment of just compensation, but such taking or diminution shall not require the approval of Congress or any executive officer of the United States.

(d) Impairment of benefits received by State of Florida under other provisions

Nothing in this part or in any grant of leasehold rights by the State of Florida under the Lease Agreement shall affect or otherwise impair in any adverse manner any benefits received by the State of Florida under the Act of September 2, 1937 (16 U.S.C. 669 et seq.), or the Act of August 9, 1950 (16 U.S.C. 777 et seq.).

(Pub. L. 97–399, § 6, Dec. 31, 1982, 96 Stat. 2014.)

REFERENCES IN TEXT

Act of September 2, 1937, referred to in subsec. (d), is act Sept. 2, 1937, ch. 899, 50 Stat. 917, as amended, known as the Pittman-Robertson Wildlife Restoration Act, and also as the Federal Aid in Wildlife Restoration Act, which is classified generally to chapter 5B (§ 669 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 669 of Title 16 and Tables.

Act of August 9, 1950, referred to in subsec. (d), is act Aug. 9, 1950, ch. 658, 64 Stat. 430, as amended, known as the Dingell-Johnson Sport Fish Restoration Act, and also as the Federal Aid in Fish Restoration Act and the

Fish Restoration and Management Projects Act, which is classified generally to chapter 10B (§ 777 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 777 of Title 16 and Tables.

§ 1746. Scope of rights or interests granted to Miccosukee Tribe; scope of civil and criminal jurisdiction of State of Florida

Nothing in this part shall grant to the Miccosukee Tribe any greater rights or interests in the leased area other than those expressly set forth in the Lease Agreement, and, notwithstanding any other provision of this part, nothing in this part shall diminish, modify, or otherwise affect the extent of the civil and criminal jurisdiction of the State of Florida in the leased area.

(Pub. L. 97–399, § 7, Dec. 31, 1982, 96 Stat. 2015.)

§ 1747. Transfer of lands to United States

(a) Acceptance by Secretary

The Secretary is authorized and directed to accept the transfer to the United States, to be held in trust for the use and benefit of the Miccosukee Tribe of Indians of Florida, of the lands authorized to be conveyed to the Miccosukee Tribe by section 285.061, Florida Statutes, and the lands described in Dedication Deed No. 23228 from the Trustees of the Internal Improvement Trust Fund subject to the provisions of section 285.061, Florida Statutes, and of this section.

(b) Jurisdiction of State of Florida

(1) Notwithstanding the conveyance of any lands by the State of Florida to the United States in trust for the Miccosukee Tribe of Indians of Florida, the assumption of jurisdiction in favor of the State of Florida contained in section 285.16, Florida Statutes, pursuant to section 7 of the Act of August 15, 1953 (67 Stat. 588), as in effect prior to its repeal, shall continue in full force and effect on such lands unless the State shall retrocede such civil or criminal jurisdiction in whole or in part.

(2)(A) The laws of Florida relating to alcoholic beverages (chapters 561, 562, 563, 564, and 565, Florida Statutes), gambling (chapter 849, Florida Statutes), sale of cigarettes (chapter 210, Florida Statutes), and their successor laws, shall have the same force and effect within said transferred lands as they have elsewhere within the State and the State shall have jurisdiction over offenses committed by or against Indians under said laws to the same extent the State has jurisdiction over said offenses committed elsewhere within the State.

(B) Nothing in subparagraph (A) shall permit the exercise of jurisdiction by the State of Florida as to any matter to which section 1162(b) of title 18 or section 1360(b) of title 28 applies.

(c) Transfer of lands as subject to existing leases, etc.; additional water rights

(1) Any transfer of lands under this section shall be subject to all existing leases, easements, and rights-of-way, and all the rights, easements, and reservations in favor of the Central and Southern Florida Flood Control District (now the South Florida Water Management District) and shall not increase, diminish, modify, or otherwise affect the extent to which chapter 373, Florida Statutes, and its successor laws, have force and effect within such lands.

(2) Any transfer of lands under this section shall not confer upon the Miccosukee Tribe, or upon the lands within the reservation, any additional water rights.

(Pub. L. 97–399, § 8, Dec. 31, 1982, 96 Stat. 2015.)

REFERENCES IN TEXT

Section 7 of Act August 15, 1953 (67 Stat. 588), as in effect prior to its repeal, referred to in subsec. (b)(1), is section 7 of act Aug. 15, 1953, ch. 505, 67 Stat. 590, which was set out as a note under section 1360 of Title 28, Judiciary and Judicial Procedure, and was repealed by Pub. L. 90–284, title IV, § 403(b), Apr. 11, 1968, 82 Stat. 79.

§ 1748. Limitations of actions

Notwithstanding any other provision of law, any action to contest the constitutionality of this part shall be barred unless the complaint is filed within one hundred and eighty days after December 31, 1982. An action to contest the constitutionality of this part may only be brought in the United States District Court for the Southern District of Florida.

(Pub. L. 97–399, § 9, Dec. 31, 1982, 96 Stat. 2016.)

§ 1749. Revocation of settlement

In the event the Settlement Agreement between the Miccosukee Tribe and the State of Florida is ever invalidated—

(1) the transfers, waivers, releases, relinquishments, and other commitments made by the Miccosukee Tribe in paragraph 3 of the Settlement Agreement shall no longer be of any force or effect,

(2) section 1744 of this title shall be inapplicable to the lands, interests in lands, or natural resources of the Miccosukee Tribe and its members as if never enacted, and

(3) the approvals of prior transfers and the extinguishment of claims and aboriginal title of the Miccosukee Tribe otherwise effected by section 1744 of this title shall be void ab initio.

(Pub. L. 97–399, § 10, Dec. 31, 1982, 96 Stat. 2016.)

PART B—MICCOSUKEE SETTLEMENT

§ 1750. Congressional findings

Congress finds that:

(1) There is pending before the United States District Court for the Southern District of Florida a lawsuit by the Miccosukee Tribe that involves the taking of certain tribal lands in connection with the construction of highway Interstate 75 by the Florida Department of Transportation.

(2) The pendency of the lawsuit referred to in paragraph (1) clouds title of certain lands used in the maintenance and operation of the highway and hinders proper planning for future maintenance and operations.

(3) The Florida Department of Transportation, with the concurrence of the Board of Trustees of the Internal Improvements Trust Fund of the State of Florida, and the Miccosukee Tribe have executed an agreement for the purpose of resolving the dispute and settling the lawsuit.

(4) The agreement referred to in paragraph (3) requires the consent of Congress in connection with contemplated land transfers.

(5) The Settlement Agreement is in the interest of the Miccosukee Tribe, as the Tribe will receive certain monetary payments, new reservation lands to be held in trust by the United States, and other benefits.

(6) Land received by the United States pursuant to the Settlement Agreement is in consideration of Miccosukee Indian Reservation lands lost by the Miccosukee Tribe by virtue of transfer to the Florida Department of Transportation under the Settlement Agreement.

(7) The lands referred to in paragraph (6) as received by the United States will be held in trust by the United States for the use and benefit of the Miccosukee Tribe as Miccosukee Indian Reservation lands in compensation for the consideration given by the Tribe in the Settlement Agreement.

(8) Congress shares with the parties to the Settlement Agreement a desire to resolve the dispute and settle the lawsuit.

(Pub. L. 105–83, title VII, § 702, Nov. 14, 1997, 111 Stat. 1624.)

SHORT TITLE

Section 701 of title VII of Pub. L. 105–83 provided that: ''This title [enacting this part] may be cited as the 'Miccosukee Settlement Act of 1997'.''

§ 1750a. Definitions

In this part:

(1) Board of Trustees of the Internal Improvements Trust Fund

The term ''Board of Trustees of the Internal Improvements Trust Fund'' means the agency of the State of Florida holding legal title to and responsible for trust administration of certain lands of the State of Florida, consisting of the Governor, Attorney General, Commissioner of Agriculture, Commissioner of Education, Controller, Secretary of State, and Treasurer of the State of Florida, who are Trustees of the Board.

(2) Florida Department of Transportation

The term ''Florida Department of Transportation'' means the executive branch department and agency of the State of Florida that—

(A) is responsible for the construction and maintenance of surface vehicle roads, existing pursuant to section 20.23, Florida Statutes; and

(B) has the authority to execute the Settlement Agreement pursuant to section 334.044, Florida Statutes.

(3) Lawsuit

The term ''lawsuit'' means the action in the United States District Court for the Southern District of Florida, entitled Miccosukee Tribe of Indians of Florida v. State of Florida and Florida Department of Transportation, et al., docket No. 6285–Civ–Paine.

(4) Miccosukee lands

The term ''Miccosukee lands'' means lands that are—

(A) held in trust by the United States for the use and benefit of the Miccosukee Tribe as Miccosukee Indian Reservation lands; and

(B) identified pursuant to the Settlement Agreement for transfer to the Florida Department of Transportation.

(5) Miccosukee Tribe; Tribe

The terms ''Miccosukee Tribe'' and ''Tribe'' mean the Miccosukee Tribe of Indians of Florida, a tribe of American Indians recognized by the United States and organized under section 476 of this title and recognized by the State of Florida pursuant to chapter 285, Florida Statutes.

(6) Secretary

The term ''Secretary'' means the Secretary of the Interior.

(7) Settlement Agreement; Agreement

The terms ''Settlement Agreement'' and ''Agreement'' mean the assemblage of documents entitled ''Settlement Agreement'' (with incorporated exhibits) that—

(A) addresses the lawsuit; and

(B)(i) was signed on August 28, 1996, by Ben G. Watts (Secretary of the Florida Department of Transportation) and Billy Cypress (Chairman of the Miccosukee Tribe); and

(ii) after being signed, as described in clause (i), was concurred in by the Board of Trustees of the Internal Improvements Trust Fund of the State of Florida.

(8) State of Florida

The term ''State of Florida'' means—

(A) all agencies or departments of the State of Florida, including the Florida Department of Transportation and the Board of Trustees of the Internal Improvements Trust Fund; and

(B) the State of Florida as a governmental entity.

(Pub. L. 105–83, title VII, § 703, Nov. 14, 1997, 111 Stat. 1624.)

§ 1750b. Ratification

The United States approves, ratifies, and confirms the Settlement Agreement.

(Pub. L. 105–83, title VII, § 704, Nov. 14, 1997, 111 Stat. 1625.)

§ 1750c. Authority of Secretary

As Trustee for the Miccosukee Tribe, the Secretary shall—

(1)(A) aid and assist in the fulfillment of the Settlement Agreement at all times and in a reasonable manner; and

(B) to accomplish the fulfillment of the Settlement Agreement in accordance with subparagraph (A), cooperate with and assist the Miccosukee Tribe;

(2) upon finding that the Settlement Agreement is legally sufficient and that the State of Florida has the necessary authority to fulfill the Agreement—

(A) sign the Settlement Agreement on behalf of the United States; and

(B) ensure that an individual other than the Secretary who is a representative of the

Bureau of Indian Affairs also signs the Settlement Agreement;

(3) upon finding that all necessary conditions precedent to the transfer of Miccosukee land to the Florida Department of Transportation as provided in the Settlement Agreement have been or will be met so that the Agreement has been or will be fulfilled, but for the execution of that land transfer and related land transfers—

(A) transfer ownership of the Miccosukee land to the Florida Department of Transportation in accordance with the Settlement Agreement, including in the transfer solely and exclusively that Miccosukee land identified in the Settlement Agreement for transfer to the Florida Department of Transportation; and

(B) in conjunction with the land transfer referred to in subparagraph (A), transfer no land other than the land referred to in that subparagraph to the Florida Department of Transportation; and

(4) upon finding that all necessary conditions precedent to the transfer of Florida lands from the State of Florida to the United States have been or will be met so that the Agreement has been or will be fulfilled but for the execution of that land transfer and related land transfers, receive and accept in trust for the use and benefit of the Miccosukee Tribe ownership of all land identified in the Settlement Agreement for transfer to the United States.

(Pub. L. 105–83, title VII, § 705, Nov. 14, 1997, 111 Stat. 1625.)

§ 1750d. Miccosukee Indian Reservation lands

The lands transferred and held in trust for the Miccosukee Tribe under section 1750c(4) of this title shall be Miccosukee Indian Reservation lands.

(Pub. L. 105–83, title VII, § 706, Nov. 14, 1997, 111 Stat. 1626.)

§ 1750e. Miscellaneous

(a) Rule of construction

Nothing in this part or the Settlement Agreement shall—

(1) affect the eligibility of the Miccosukee Tribe or its members to receive any services or benefits under any program of the Federal Government; or

(2) diminish the trust responsibility of the United States to the Miccosukee Tribe and its members.

(b) No reductions in payments

No payment made pursuant to this part or the Settlement Agreement shall result in any reduction or denial of any benefits or services under any program of the Federal Government to the Miccosukee Tribe or its members, with respect to which the Tribe or the members of the Tribe are entitled or eligible because of the status of—

(1) the Miccosukee Tribe as a federally recognized Indian tribe; or

(2) any member of the Miccosukee Tribe as a member of the Tribe.

(c) Taxation

(1) In general

(A) Moneys

None of the moneys paid to the Miccosukee Tribe under this part or the Settlement Agreement shall be taxable under Federal or State law.

(B) Lands

None of the lands conveyed to the Miccosukee Tribe under this part or the Settlement Agreement shall be taxable under Federal or State law.

(2) Payments and conveyances not taxable events

No payment or conveyance referred to in paragraph (1) shall be considered to be a taxable event.

(Pub. L. 105–83, title VII, § 707, Nov. 14, 1997, 111 Stat. 1626.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this Act'' and was translated as reading ''this title'', meaning title VII of Pub. L. 105–83 to reflect the probable intent of Congress.

SUBCHAPTER IV—CONNECTICUT INDIAN LAND CLAIMS SETTLEMENT

§ 1751. Congressional findings

The Congress finds that—

(a) there is pending before the United States District Court for the District of Connecticut a civil action entitled ''Western Pequot Tribe of Indians against Holdridge Enterprises Incorporated, et al., Civil Action Numbered H76–193 (D. Conn.),'' which involves Indian claims to certain public and private lands within the town of Ledyard, Connecticut;

(b) the pendency of this lawsuit has placed a cloud on the titles to much of the land in the town of Ledyard, including lands not involved in the lawsuit, which has resulted in severe economic hardships for the residents of the town;

(c) the Congress shares with the State of Connecticut and the parties to the lawsuit a desire to remove all clouds on titles resulting from such Indian land claims;

(d) the parties to the lawsuit and others interested in the settlement of Indian land claims within the State of Connecticut have reached an agreement which requires implementing legislation by the Congress of the United States and the Legislature of the State of Connecticut;

(e) the Western Pequot Tribe, as represented as of October 18, 1983, by the Mashantucket Pequot Tribal Council, is the sole successor in interest to the aboriginal entity generally known as the Western Pequot Tribe which years ago claimed aboriginal title to certain lands in the State of Connecticut; and

(f) the State of Connecticut is contributing twenty acres of land owned by the State of Connecticut to fulfill this subchapter. The State of Connecticut will construct and repair three sections of paved or gravel roadways within the reservation of the Tribe. The State

of Connecticut has provided special services to the members of the Western Pequot Tribe residing within its borders. The United States has provided few, if any, special services to the Western Pequot Tribe and has denied that it had jurisdiction over or responsibility for said Tribe. In view of the provision of land by the State of Connecticut, the provision of paved roadways by the State of Connecticut, and the provision of special services by the State of Connecticut without being required to do so by Federal law, it is the intent of Congress that the State of Connecticut not be required to otherwise contribute directly to this claims settlement.

(Pub. L. 98–134, § 2, Oct. 18, 1983, 97 Stat. 851.)

CODIFICATION

In subsec. (e), ''October 18, 1983'' substituted for ''the time of the passage of this Act'', meaning the date of approval of Pub. L. 98–134.

SHORT TITLE

Section 1 of Pub. L. 98–134 provided: ''That this Act [enacting this subchapter] may be cited as the 'Mashantucket Pequot Indian Claims Settlement Act'.''

§ 1752. Definitions

For the purposes of this subchapter—

(1) The term ''Tribe'' means the Mashantucket Pequot Tribe (also known as the Western Pequot Tribe) as identified by chapter 832 of the Connecticut General Statutes and all its predecessors and successors in interest. The Mashantucket Pequot Tribe is represented, as of October 18, 1983, by the Mashantucket Pequot Tribal Council.

(2) The term ''land or natural resources'' means any real property or natural resources, or any interest in or right involving any real property or natural resources, including without limitation minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights.

(3) The term ''private settlement lands'' means—

(A) the eight hundred acres, more or less, of privately held land which are identified by a red outline on a map filed with the secretary of the State of Connecticut in accordance with the agreement referred to in section 1751(d) of this title, and

(B) the lands known as the Cedar Swamp which are adjacent to the Mashantucket Pequot Reservation as it exists on October 18, 1983. Within thirty days of October 18, 1983, the secretary of the State of Connecticut shall transmit to the Secretary a certified copy of said map.

(4) The term ''settlement lands'' means—

(A) the lands described in sections 2(a) and 3 of the Act To Implement the Settlement of the Mashantucket Pequot Indian Land Claims as enacted by the State of Connecticut and approved on June 9, 1982, and

(B) the private settlement lands.

(5) The term ''Secretary'' means the Secretary of the Interior.

(6) The term ''transfer'' means any transaction involving, or any transaction the purpose of which was to effect, a change in title to or control of any land or natural resources, and any act, event, or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources, including any sale, grant, lease, allotment, partition, or conveyance, whether pursuant to a treaty, compact, or statute of a State or otherwise.

(7) The term ''reservation'' means the existing reservation of the Tribe as defined by chapter 824 of the Connecticut General Statutes and any settlement lands taken in trust by the United States for the Tribe.

(Pub. L. 98–134, § 3, Oct. 18, 1983, 97 Stat. 852.)

CODIFICATION

In pars. (1) and (3)(B), ''October 18, 1983'' substituted for ''the date of the enactment of this Act'' and ''the enactment of this Act'', meaning the date of approval of Pub. L. 98–134.

§ 1753. Extinguishment of aboriginal titles and Indian claims

(a) Approval and ratification of prior transfers

Any transfer before October 18, 1983, from, by, or on behalf of the Tribe or any of its members of land or natural resources located anywhere within the United States, and any transfer before October 18, 1983, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians of land or natural resources located anywhere within the town of Ledyard, Connecticut, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer.

(b) Extinguishment of title

By virtue of the approval and ratification of a transfer of land or natural resources effected by subsection (a) of this section, any aboriginal title held by the Tribe or any member of the Tribe, or any other Indian, Indian nation, or tribe or band of Indians, to any land or natural resources the transfer of which was approved and ratified by subsection (a) of this section shall be regarded as extinguished as of the date of such transfer.

(c) Extinguishment of claims

By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, any claim (including any claim for damages for trespass or for use and occupancy) by, or on behalf of, the Tribe or any member of the Tribe or by any other Indian, Indian nation, or tribe or band of Indians, against the United States, any State or subdivision thereof or any other person which is based on—

(1) any interest in or right involving any land or natural resources the transfer of which was approved and ratified by subsection (a) of this section, or

(2) any aboriginal title to land or natural resources the extinguishment of which was effected by subsection (b) of this section,

shall be regarded as extinguished as of the date of any such transfer.

(d) Savings provision

Nothing in this section shall be construed to affect or eliminate the personal claim of any individual Indian (except for Federal common law fraud claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(e) Effective date; notice

(1) This section shall take effect upon the appropriation of $900,000 as authorized under section 1754(e) of this title.

(2) The Secretary shall publish notice of such appropriation in the Federal Register when the funds are deposited in the fund established under section 1754(a) of this title.

(Pub. L. 98–134, § 4, Oct. 18, 1983, 97 Stat. 852.)

REFERENCES IN TEXT

The Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137, 138), referred to in subsec. (a), is not classified to the Code. See sections 177, 179, 180, 193, 194, 201, 229, 230, 251, 263, and 264 of this title.

CODIFICATION

In subsec. (a), ''October 18, 1983'' substituted for ''the date of enactment of this Act'', meaning the date of approval of Pub. L. 98–134.

§ 1754. Mashantucket Pequot Settlement Fund

(a) Establishment and administration

There is hereby established in the United States Treasury an account to be known as the Mashantucket Pequot Settlement Fund (hereinafter referred to in this section as the ''Fund''). The Fund shall be held in trust by the Secretary for the benefit of the Tribe and administered in accordance with this subchapter.

(b) Expenditure of Fund; private settlement lands; economic development plan; acquisition of land and natural resources

(1) The Secretary is authorized and directed to expend, at the request of the Tribe, the Fund together with any and all income accruing to such Fund in accordance with this subsection.

(2) Not less than $600,000 of the Fund shall be available until January 1, 1985, for the acquisition by the Secretary of private settlement lands. Subsequent to January 1, 1985, the Secretary shall determine whether and to what extent an amount less than $600,000 has been expended to acquire private settlement lands and shall make that amount available to the Tribe to be used in accordance with the economic development plan approved pursuant to paragraph (3).

(3)(A) The Secretary shall disburse all or part of the Fund together with any and all income accruing to such Fund (excepting the amount reserved in paragraph (2)) according to a plan to promote the economic development of the Tribe.

(B) The Tribe shall submit an economic development plan to the Secretary and the Secretary shall approve such plan within sixty days of its submission if he finds that it is reasonably related to the economic development of the Tribe. If the Secretary does not approve such plan, he shall, at the time of his decision, set forth in writing and with particularity, the reasons for his disapproval.

(C) The Secretary may not agree to terms which provide for the investment of the Fund in a manner inconsistent with section 162a of this title, unless the Tribe first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment.

(D) The Tribe may, with the approval of the Secretary, alter the economic development plan subject to the conditions set forth in subparagraph (B).

(4) Under no circumstances shall any part of the Fund be distributed to any member of the Tribe unless pursuant to the economic development plan approved by the Secretary under paragraph (3).

(5) As the Fund or any portion thereof is disbursed by the Secretary in accordance with this section, the United States shall have no further trust responsibility to the Tribe or its members with respect to the sums paid, any subsequent expenditures of these sums, or any property other than private settlement lands or services purchased with these sums.

(6) Until the Tribe has submitted and the Secretary has approved the terms of the use of the Fund, the Secretary shall fix the terms for the administration of the portion of the Fund as to which there is no agreement.

(7) Lands or natural resources acquired under this subsection which are located within the settlement lands shall be held in trust by the United States for the benefit of the Tribe.

(8) Land or natural resources acquired under this subsection which are located outside of the settlement lands shall be held in fee by the Mashantucket Pequot Tribe, and the United States shall have no further trust responsibility with respect to such land and natural resources. Such land and natural resources shall not be subject to any restriction against alienation under the laws of the United States.

(9) Notwithstanding the provisions of sections 3113 and 3114(a) to (d) of title 40, the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General, in the United States and condemn interests adverse to the ostensible owner.

(c) Transfer of private settlement land as involuntary conversion

For the purpose of subtitle A of title 26, any transfer of private settlement lands to which subsection (b) of this section applies shall be deemed to be an involuntary conversion within the meaning of section 1033 of title 26.

(d) Documentation of relinquishment of tribal claims

The Secretary may not expend on behalf of the Tribe any sums deposited in the Fund estab-

lished pursuant to subsection (a) of this section unless and until he finds that authorized officials of the Tribe have executed appropriate documents relinquishing all claims to the extent provided by sections 1753 and 1759 of this title, including stipulations to the final judicial dismissal with prejudice of its claims.

(e) Authorization of appropriation

There is authorized to be appropriated $900,000 to be deposited in the Fund.

(Pub. L. 98–134, § 5, Oct. 18, 1983, 97 Stat. 853; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

CODIFICATION

''Sections 3113 and 3114(a) to (d) of title 40'' substituted in subsec. (b)(9) for ''the first section of the Act of August 1, 1888 (25 Stat. 357, chapter 728), as amended, and the first section of the Act of February 26, 1931 (46 Stat. 1421, chapter 307)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

§ 1755. State jurisdiction over reservation

Notwithstanding the provision relating to a special election in section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326), the reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in title IV of such Act [25 U.S.C. 1321 et seq.].

(Pub. L. 98–134, § 6, Oct. 18, 1983, 97 Stat. 855.)

REFERENCES IN TEXT

Act of April 11, 1968, referred to in text, is Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 73, as amended, known as the Civil Rights Act of 1968. Title IV of Pub. L. 90–284 is classified generally to subchapter III (§ 1321 et seq.) of chapter 15 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42, The Public Health and Welfare, and Tables.

§ 1756. Practice and procedure

(a) Constitutionality

Notwithstanding any other provision of law, the constitutionality of this subchapter may not be drawn into question in any action unless such question has been raised in—

(1) a pleading contained in a complaint filed before the end of the one-hundred-and-eighty-day period beginning on October 18, 1983, or

(2) an answer contained in a reply to a complaint before the end of such period.

(b) Jurisdiction

Notwithstanding any other provision of law, exclusive jurisdiction of any action in which the constitutionality of this subchapter is drawn into question is vested in the United States District Court for the District of Connecticut.

(c) Removal of actions

Any action to which subsection (a) of this section applies and which is brought in the court of any State may be removed by the defendant to the United States District Court for the District of Connecticut.

(d) Jurisdictional acts; implied consent to sue the United States

Except as provided in this subchapter, no provision of this subchapter shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, or to grant implied consent to any Indian, Indian nation, or tribe or band of Indians to sue the United States or any of its officers with respect to the claims extinguished by the operation of this subchapter.

(Pub. L. 98–134, § 7, Oct. 18, 1983, 97 Stat. 855.)

CODIFICATION

In subsec. (a)(1), ''October 18, 1983'' substituted for ''the date of the enactment of this Act'', meaning the date of approval of Pub. L. 98–134.

§ 1757. Restriction against alienation

(a) Subject to subsection (b) of this section, lands within the reservation which are held in trust by the Secretary for the benefit of the Tribe or which are subject to a Federal restraint against alienation at any time after October 18, 1983, shall be subject to the laws of the United States relating to Indian lands, including section 177 of this title.

(b) Notwithstanding subsection (a) of this section, the Tribe may lease lands for any term of years to the Mashantucket Pequot Housing Authority, or any successor in interest to such Authority.

(Pub. L. 98–134, § 8, Oct. 18, 1983, 97 Stat. 855.)

CODIFICATION

In subsec. (a), ''October 18, 1983'' substituted for ''the date of the enactment of this Act'', meaning the date of approval of Pub. L. 98–134.

§ 1757a. Extensions of leases of certain land by Mashantucket Pequot (Western) Tribe

(a) In general

Any lease of restricted land of the Mashantucket Pequot (Western) Tribe (referred to in this section as the ''Tribe'') entered into on behalf of the Tribe by the tribal corporation of the Tribe chartered pursuant to section 477 of this title may include an option to renew the lease for not more than 2 additional terms, each of which shall not exceed 25 years, subject only to the approval of the tribal council of the Tribe.

(b) Liability of United States

The United States shall not be liable to any party for any loss resulting from a renewal of a lease entered into pursuant to subsection (a).

(c) Prohibition on gaming activities

No entity may conduct any gaming activity (within the meaning of section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703)) pursuant to a claim of inherent authority or any Federal law (including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) and any regulations promulgated by the Secretary of the Interior or the National Indian Gaming Commission pursuant to that Act) on any land that is

leased with an option to renew the lease in accordance with this section.

(Pub. L. 110–228, § 1, May 8, 2008, 122 Stat. 753.)

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (c), is Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, which is classified principally to chapter 29 (§ 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Mashantucket Pequot Indian Claims Settlement Act which comprises this subchapter.

§ 1758. Extension of Federal recognition and privileges

(a) Applicability of United States laws and regulations

Notwithstanding any other provision of law, Federal recognition is extended to the Tribe. Except as otherwise provided in this subchapter, all laws and regulations of the United States of general application to Indians or Indian nations, tribes or bands of Indians which are not inconsistent with any specific provision of this subchapter shall be applicable to the Tribe.

(b) Filing of organic governing document and amendments

The Tribe shall file with the Secretary a copy of its organic governing document and any amendments thereto. Such instrument must be consistent with the terms of this subchapter and the Act to Implement the Settlement of the Mashantucket Pequot Indian Land Claim as enacted by the State of Connecticut and approved June 9, 1982.

(c) Eligibility for services and benefits

Notwithstanding any other provision of law, the Tribe and members of the Tribe shall be eligible for all Federal services and benefits furnished to federally recognized Indian tribes as of October 18, 1983.

(Pub. L. 98–134, § 9, Oct. 18, 1983, 97 Stat. 855.)

CODIFICATION

In subsec. (c), ''October 18, 1983'' substituted for ''the date of enactment of this Act'', meaning the date of approval of Pub. L. 98–134.

§ 1759. General discharge and release of State of Connecticut

Except as expressly provided herein, this subchapter shall constitute a general discharge and release of all obligations of the State of Connecticut and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of the Tribe or the United States as trustee therefor.

(Pub. L. 98–134, § 10, Oct. 18, 1983, 97 Stat. 856.)

§ 1760. Separability

In the event that any provision of section 1753 of this title is held invalid, it is the intent of Congress that the entire subchapter be invalidated. In the event that any other section or provision of this subchapter is held invalid, it is the intent of Congress that the remaining sections of this subchapter shall continue in full force and effect.

(Pub. L. 98–134, § 11, Oct. 18, 1983, 97 Stat. 856.)

SUBCHAPTER V—MASSACHUSETTS INDIAN LAND CLAIMS SETTLEMENT

§ 1771. Congressional findings and declaration of policy

The Congress hereby finds and declares that—

(1) there is pending before the United States District Court for the District of Massachusetts a lawsuit that involves Indian claims to certain public lands within the town of Gay Head, Massachusetts;

(2) the pendency of this lawsuit has resulted in severe economic hardships for the residents of the town of Gay Head by clouding the titles to much of the land in the town, including land not involved in the lawsuit;

(3) the Congress shares with the Commonwealth of Massachusetts and the parties to the lawsuit a desire to remove all clouds on titles resulting from such Indian land claim;[1]

(4) the parties to the lawsuit and others interested in settlement of Indian land claims within the Commonwealth of Massachusetts executed a Settlement Agreement which, to become effective, requires implementing legislation by the Congress of the United States and the General Court of the Commonwealth of Massachusetts;

(5) the town of Gay Head has agreed to contribute approximately 50 percent of the land involved in this settlement;

(6) the State of Massachusetts has agreed to provide up to $2,250,000 to be used for the purchase of land to be held in trust by the Secretary for the use and benefit of the Wampanoag Tribal Council of Gay Head, Inc.; and

(7) the Secretary has acknowledged the existence of the Wampanoag Tribal Council of Gay Head, Inc. as an Indian tribe and Congress hereby ratifies and confirms that existence as an Indian tribe with a government to government relationship with the United States.

(Pub. L. 100–95, § 2, Aug. 18, 1987, 101 Stat. 704.)

EFFECTIVE DATE

Section 11 of Pub. L. 100–95 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), this Act [enacting this subchapter] shall take effect upon the date of enactment [Aug. 18, 1987].

''(b) EXCEPTION.—Section 4 [25 U.S.C. 1771b] shall take effect upon the date on which the title of all of the private settlement lands provided for in this Act to the Wampanoag Tribal Council of Gay Head, Inc. is transferred. The fact of such transfer, and the date thereof, shall be certified and recorded by the Secretary of the Commonwealth of Massachusetts.''

SHORT TITLE

Section 1 of Pub. L. 100–95 provided that: ''This Act [enacting this subchapter] may be cited as the 'Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987'.''

[1] So in original. Probably should be ''claims;''.

§ 1771a. Gay Head Indian claims settlement fund

(a) Fund established

There is hereby established within the Treasury of the United States a fund to be known as the ''Wampanoag Tribal Council of Gay Head, Inc. Claims Settlement Fund''. Amounts in the fund shall be available to the Secretary to carry out the purposes of this subchapter.

(b) Authorization for appropriation

There is hereby authorized to be appropriated $2,250,000 for such fund to remain available until expended.

(c) State contribution required

Amounts may be expended from the fund only upon deposit by the State of Massachusetts into the fund of an amount equal to that amount to be expended by the United States so that both the United States and the State of Massachusetts bear one-half of the cost of the acquisition of lands under section 1771d of this title.

(Pub. L. 100–95, § 3, Aug. 18, 1987, 101 Stat. 704.)

§ 1771b. Approval of prior transfers and extinguishment of aboriginal title and claims of Gay Head Indians

(a) Approval of prior transfers

(1) Any transfer before August 18, 1987, of land or natural resources now located anywhere within the United States from, by, or on behalf of the Wampanoag Tribal Council of Gay Head, Inc., or (2) any transfer before August 18, 1987, by, from, or on behalf of any Indian, Indian nation, or tribe or band of Indians, of any land or natural resources located anywhere within the town of Gay Head, Massachusetts, including any transfer pursuant to any statute of the State, and the incorporation of the town of Gay Head, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians (including the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137), and all amendments thereto and all subsequent versions thereof). Any such transfer and any transfer in implementation of this subchapter, shall be deemed to have been made with the consent and approval of Congress as of the date of such transfer.

(b) Extinguishment of aboriginal title

Any aboriginal title held by the Wampanoag Tribal Council of Gay Head, Inc. or any other entity presently or at any time in the past known as the Gay Head Indians, to any land or natural resources the transfer of which is consented to and approved in subsection (a) of this section is considered extinguished as of the date of such transfer.

(c) Extinguishment of claims arising from prior transfers or extinguishment of aboriginal title

Any claim (including any claim for damages for use and occupancy) by the Wampanoag Tribal Council of Gay Head, Inc., the Gay Head Indians, or any other Indian, Indian nation, or tribe or band of Indians against the United States, any State or political subdivision of a State, or any other person which is based on—

(1) any transfer of land or natural resources which is consented to and approved in subsection (a) of this section, or

(2) any aboriginal title to land or natural resources the transfer of which is consented to and approved in subsection (b) of this section,

is extinguished as of the date of any such transfer.

(d) Personal claims not affected

No provision of this section shall be construed to offset or eliminate the personal claim of any individual Indian which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(Pub. L. 100–95, § 4, Aug. 18, 1987, 101 Stat. 705.)

REFERENCES IN TEXT

The Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137), referred to in subsec. (a), is not classified to the Code. See sections 177, 179, 180, 193, 194, 201, 229, 230, 251, 263, and 264 of this title.

EFFECTIVE DATE

Section effective upon the date on which title of all of private settlement lands provided for in this subchapter to the Wampanoag Tribal Council of Gay Head, Inc. is transferred, with fact of such transfer, and date thereof, to be certified and recorded by Secretary of the Commonwealth of Massachusetts, see section 11(b) of Pub. L. 100–95, set out as a note under section 1771 of this title.

§ 1771c. Conditions precedent to Federal purchase of settlement lands

(a) Initial determination of State and local action

No action shall be taken by the Secretary under section 1771d of this title before the Secretary publishes notice in the Federal Register of the determination by the Secretary that—

(1) the Commonwealth of Massachusetts has enacted legislation which provides that—

(A) the town of Gay Head, Massachusetts, is authorized to convey to the Secretary to be held in trust for the Wampanoag Tribal Council of Gay Head, Inc. the public settlement lands and the Cook lands subject to the conditions and limitations set forth in the Settlement Agreement; and

(B) the Wampanoag Tribal Council of Gay Head, Inc. shall have the authority, after consultation with appropriate State and local officials, to regulate any hunting by Indians on the settlement lands that is conducted by means other than firearms or crossbow to the extent provided in, and subject to the conditions and limitations set forth in, the Settlement Agreement;

(2) the Wampanoag Tribal Council of Gay Head, Inc., has submitted to the Secretary an executed waiver or waivers of the claims covered by the Settlement Agreement all claims extinguished by this subchapter, and all claims arising because of the approval of transfers and extinguishment of titles and claims under this subchapter; and

(3) the town of Gay Head, Massachusetts, has authorized the conveyance of the public settle-

ment lands and the Cook Lands[1] to the Secretary in trust for the Wampanoag Tribal Council of Gay Head, Inc.

(b) Reliance upon Attorney General of Massachusetts

In making the findings required in subsection (a) of this section, the Secretary may rely upon the opinion of the Attorney General of the Commonwealth of Massachusetts.

(Pub. L. 100–95, § 5, Aug. 18, 1987, 101 Stat. 705.)

§ 1771d. Purchase and transfer of settlement lands

(a) Purchase of private settlement lands

The Secretary is authorized and directed to expend, at the request of the Wampanoag Tribal Council of Gay Head, Inc., $2,125,000 to acquire the private settlement lands. At the request of the Wampanoag Tribal Council of Gay Head, Inc., the Secretary shall not purchase lots 705, 222, and 528 of the private settlement lands, but, at the request of the Wampanoag Tribal Council of Gay Head, Inc., the Secretary shall acquire in lieu thereof such other lands that are contiguous to the remaining private settlement lands. Upon the purchase of such contiguous lands, those lands shall be subject to the same restrictions and benefits as the private settlement lands.

(b) Payment for survey and appraisal

The Secretary is authorized and directed to cause a survey of the public settlement lands to be made within 60 days of acquiring title to the public settlement lands. The Secretary shall reimburse the Native American Rights Fund and the Gay Head Taxpayers Association for an appraisal of the private settlement lands done by Paul O'Leary dated May 1, 1987. Such funds as may be necessary may be withdrawn from the Fund[1] established in section 1771a(a) of this title and may be used for the purpose of conducting the survey and providing reimbursement for the appraisal.

(c) Acquisition of additional lands

The Secretary shall expend, at the request of the Wampanoag Tribal Council of Gay Head, Inc., any remaining funds not required by subsection (a) or (b) of this section to acquire any additional lands that are contiguous to the private settlement lands. Any lands acquired pursuant to this section, and any other lands which are on and after August 12, 1987, held in trust for the Wampanoag Tribal Council of Gay Head, Inc., any successor, or individual member, shall be subject to this subchapter, the Settlement Agreement and other applicable laws. Any after acquired land held in trust for the Wampanoag Tribal Council of Gay Head, Inc., any successor, or individual member, shall be subject to the same benefits and restrictions as apply to the most analogous land use described in the Settlement Agreement.

(d) Transfer and survey of land to Wampanoag Tribal Council

Any right, title, or interest to lands acquired by the Secretary under this section, and the title to public settlement lands conveyed by the town of Gay Head, shall be held in trust for the Wampanoag Tribal Council of Gay Head, Inc. and shall be subject to this subchapter, the Settlement Agreement, and other applicable laws.

(e) Proceedings authorized to acquire or to perfect title

The Secretary is authorized to commence such condemnation proceedings as the Secretary may determine to be necessary—

(1) to acquire or perfect any right, title, or interest in any private settlement land, and

(2) to condemn any interest adverse to any ostensible owner of such land.

(f) Public settlement lands held in trust

The Secretary is authorized to accept and hold in trust for the benefit of the Wampanoag Tribal Council of Gay Head, Inc. the public settlement lands as described in section 1771f(7) of this title immediately upon the effective date of this Act.

(g) Application

The terms of this section shall apply to land in the town of Gay Head. Any land acquired by the Wampanoag Tribal Council of Gay Head, Inc., that is located outside the town of Gay Head shall be subject to all the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts.

(h) Spending authority

Any spending authority (as defined in section 651(c)(2)[2] of title 2) provided in this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(Pub. L. 100–95, § 6, Aug. 18, 1987, 101 Stat. 706.)

REFERENCES IN TEXT

For the effective date of this Act, referred to in subsec. (f), see section 11 of Pub. L. 100–95, set out as a note under section 1771 of this title.

Section 651 of title 2, referred to in subsec. (h), was amended by Pub. L. 105–33, title X, § 10116(a)(3), (5), Aug. 5, 1997, 111 Stat. 691, by striking out subsec. (c) and redesignating former subsec. (d) as (c).

§ 1771e. Jurisdiction over settlement lands; restraint on alienation

(a) Limitation on Indian jurisdiction over settlement lands

The Wampanoag Tribal Council of Gay Head, Inc., shall not have any jurisdiction over nontribal members and shall not exercise any jurisdiction over any part of the settlement lands in contravention of this subchapter, the civil regulatory and criminal laws of the Commonwealth of Massachusetts, the town of Gay Head, Massachusetts, and applicable Federal laws.

(b) Subsequent holder bound to same terms and conditions

Any tribe or tribal organization which acquires any settlement land or any other land that may now or in the future be owned by or held in trust for any Indian entity in the town of Gay Head, Massachusetts, from the Wampanoag Tribal Council of Gay Head, Inc.

[1] So in original. Probably should not be capitalized.

[1] So in original. Probably should not be capitalized.

[2] See References in Text note below.

shall hold such beneficial interest to such land subject to the same terms and conditions as are applicable to such lands when held by such council.

(c) Reservations of right and authority relating to settlement lands

No provision of this subchapter shall affect or otherwise impair—

(1) any authority to impose a lien or temporary seizure on the settlement lands as provided in the State Implementing Act;

(2) the authority of the Secretary to approve leases in accordance with sections 415 to 415d of this title; or

(3) the legal capacity of the Wampanoag Tribal Council of Gay Head, Inc. to transfer the settlement lands to any tribal entity which may be organized as a successor in interest to Wampanoag Tribal Council of Gay Head, Inc. or to transfer—

(A) the right to use the settlement lands to its members,

(B) any easement for public or private purposes in accordance with the laws of the Commonwealth of Massachusetts or the ordinances of the town of Gay Head, Massachusetts, or

(C) title to the West Basin Strip to the town of Gay Head, Massachusetts, pursuant to the terms of the Settlement Agreement.

(d) Exemption from State assessment

Any land held in trust by the Secretary for the benefit of the Wampanoag Tribal Council of Gay Head, Inc. shall be exempt from taxation or lien or ''in lieu of payment'' or other assessment by the State or any political subdivision of the State to the extent provided by the Settlement Agreement: *Provided*, *however*, That such taxation or lien or ''in lieu of payment'' or other assessment will only apply to lands which are zoned and utilized as commercial: *Provided further*, That this section shall not be interpreted as restricting the Tribe from entering into an agreement with the town of Gay Head to reimburse such town for the delivery of specific public services on the tribal lands.

(Pub. L. 100–95, § 7, Aug. 18, 1987, 101 Stat. 707.)

REFERENCES IN TEXT

Sections 415 to 415d of this title, referred to in subsec. (c)(2), was in the original ''the Act entitled 'An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases', approved August 9, 1955 (25 U.S.C. 415 et seq.)'', which enacted sections 415 to 415d of this title and amended section 396 of this title.

§ 1771f. Definitions

For the purposes of this subchapter:

(1) Cook lands

The term ''Cook lands'' means the lands described in paragraph (5) of the Settlement Agreement.

(2) Wampanoag Tribal Council of Gay Head, Inc.

The term ''Wampanoag Tribal Council of Gay Head, Inc.'' means the tribal entity recognized by the Secretary of the Interior as having a government to government relationship with the United States. The Wampanoag Tribal Council of Gay Head, Inc. is the sole and legitimate tribal entity which has a claim under the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137), to land within the town of Gay Head. The membership of the Wampanoag Tribal Council of Gay Head, Inc., includes those 521 individuals who have been recognized by the Secretary of the Interior as being members of the Wampanoag Tribal Council of Gay Head, Inc., and such Indians of Gay Head ancestry as may be added from time to time by the governing body of the Wampanoag Tribal Council of Gay Head, Inc.: *Provided*, That nothing in this section shall prevent the voluntary withdrawal from membership in the Wampanoag Tribal Council of Gay Head, Inc., pursuant to procedures established by the Tribe. The governing body of the Wampanoag Tribal Council of Gay Head, Inc. is hereby authorized to act on behalf of and bind the Wampanoag Tribal Council of Gay Head, Inc., in all matters related to carrying out this subchapter.

(3) Fund

The term ''fund'' means the Wampanoag Tribal Council of Gay Head, Inc. Claims Settlement Fund established under section 1771a of this title.

(4) Land or natural resources

The term ''land or natural resources'' means any real property or natural resources or any interest in or right involving any real property or natural resource, including but not limited to, minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish.

(5) Lawsuit

The term ''lawsuit'' means the action entitled Wampanoag Tribal Council of Gay Head, and others versus Town of Gay Head, and others (C.A. No. 74–5826–McN (D. Mass.)).

(6) Private settlement lands

The term ''private settlement lands'' means approximately 177 acres of privately held land described in paragraph 6 of the Settlement Agreement.

(7) Public settlement lands

The term ''public settlement lands'' means the lands described in paragraph (4) of the Settlement Agreement.

(8) Settlement lands

The term ''settlement lands'' means the private settlement lands and the public settlement lands.

(9) Secretary

The term ''Secretary'' means the Secretary of the Interior.

(10) Settlement Agreement

The term ''Settlement Agreement'' means the document entitled ''Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts, Indian Land Claims,'' executed as of November 22, 1983, and

renewed thereafter by representatives of the parties to the lawsuit, and as filed with the Secretary of the Commonwealth of Massachusetts.

(11) State implementing act

The term ''State implementing act'' means legislation enacted by the Commonwealth of Massachusetts conforming to the requirements of this subchapter and the requirements of the Massachusetts Constitution.

(12) Transfer

The term ''transfer'' includes—

(A) any sale, grant, lease, allotment, partition, or conveyance,

(B) any transaction the purpose of which is to effect a sale, grant, lease, allotment, partition, or conveyance, or

(C) any event or events that resulted in a change of possession or control of land or natural resources.

(13) West Basin Strip

The term ''West Basin Strip'' means a strip of land along the West Basin which the Wampanoag Tribal Council is authorized to convey, under paragraph (11) of the Settlement Agreement, to the town of Gay Head.

(Pub. L. 100–95, § 8, Aug. 18, 1987, 101 Stat. 708.)

REFERENCES IN TEXT

The Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137), referred to in par. (2), is not classified to the Code. See sections 177, 179, 180, 193, 194, 201, 229, 230, 251, 263, and 264 of this title.

§ 1771g. Applicability of State law

Except as otherwise expressly provided in this subchapter or in the State Implementing Act, the settlement lands and any other land that may now or hereafter be owned by or held in trust for any Indian tribe or entity in the town of Gay Head, Massachusetts, shall be subject to the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts and the town of Gay Head, Massachusetts (including those laws and regulations which prohibit or regulate the conduct of bingo or any other game of chance).

(Pub. L. 100–95, § 9, Aug. 18, 1987, 101 Stat. 709.)

§ 1771h. Limitations of action; jurisdiction

Notwithstanding any other provision of law, any action to contest the constitutionality or validity under law of this subchapter shall be barred unless the complaint is filed within thirty days after August 18, 1987. Exclusive original jurisdiction over any such action and any proceedings under section 1771d(e) of this title is hereby vested in the United States District Court of[1] the District of Massachusetts.

(Pub. L. 100–95, § 10, Aug. 18, 1987, 101 Stat. 710.)

§ 1771i. Eligibility

For the purpose of eligibility for Federal services made available to members of federally recognized Indian tribes, because of their status as Indians, members of this tribe residing on Martha's Vineyard, Massachusetts, shall be deemed to be living on or near an Indian reservation.

(Pub. L. 100–95, § 12, Aug. 18, 1987, 101 Stat. 710.)

SUBCHAPTER VI—FLORIDA INDIAN (SEMINOLE) LAND CLAIMS SETTLEMENT

§ 1772. Findings and policy

Congress finds and declares that—

(1) there is pending before the United States District Court for the southern district of Florida a lawsuit by the Seminole Tribe which involves certain lands within the State and there are also claims by the tribe to other areas of Florida by virtue of an 1839 Executive order of the President and by right of non-extinguishment of aboriginal possession which has been asserted but not filed in court;

(2) the pendency of this lawsuit and these claims may result in economic hardships for residents of the State by clouding the titles to lands in the State, including lands not now involved in the lawsuit;

(3) the pendency of this lawsuit and these claims also have clouded the easement rights of the South Florida Water Management District in lands necessary for use as a water flowage and storage area, which is part of a federally authorized project for flood control and water management in central and southern Florida, and which is being used to provide and regulate a water supply for the residents of south Florida;

(4) the State, the district, and the tribe have executed agreements for the purposes of resolving tribal land claims and settling the lawsuit—

(A) which include conveyance of land and payment of consideration to the tribe; and

(B) which require implementing legislation by the Congress of the United States and the Legislature of the State of Florida;

(5) Congress shares with the parties to such agreements a desire to settle these Indian claims in the State of Florida without additional cost to the United States;

(6) there is considerable uncertainty as to the nature and extent of the water rights of the tribe, and that continued controversy over this should be settled by agreement; and

(7) the State, the district, and the tribe have entered into a compact which, if approved by Congress and the Florida Legislature, creates specifically defined water rights in lieu of the undefined water rights claimed by the tribe.

(Pub. L. 100–228, § 2, Dec. 31, 1987, 101 Stat. 1556.)

EFFECTIVE DATE

Section 10 of Pub. L. 100–228 provided that: ''This Act [enacting this subchapter] shall take effect upon the date of its enactment [Dec. 31, 1987].''

SHORT TITLE

Section 1 of Pub. L. 100–228 provided that: ''This Act [enacting this subchapter] may be cited as the 'Seminole Indian Land Claims Settlement Act of 1987'.''

§ 1772a. Definitions

For purposes of this subchapter—

[1] So in original. Probably should be ''for''.

(1) The term ''tribe'' means the Seminole Tribe of Indians of Florida or Seminole Tribe of Florida, a tribe of American Indians recognized by the United States and organized under section 476 of this title and recognized by the State of Florida pursuant to chapter 285, Florida Statutes, and its successors.

(2) The term ''State'' means the State of Florida and its agencies, political subdivisions, constitutional officers, officials of its agencies and subdivisions and their successors.

(3) The term ''district'' means the South Florida Water Management District, the agency of the State of Florida created by chapter 25270, laws of Florida (1949) to operate pursuant to chapter 373 Florida Statutes, and its successors.

(4) The term ''Secretary'' means the Secretary of the Interior.

(5) The term ''lands or natural resources'' means any real property or natural resources, or any interest in or right involving any real property or natural resources, including minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish.

(6) The term ''Settlement Agreement'' means the instrument—

(A) executed by the Seminole Tribe, the State of Florida, and the South Florida Water Management District; and

(B) which will be presented for approval by all three parties to the United States District Court for the southern district of Florida for the purpose of terminating the lawsuit entitled Seminole Tribe of Indians of Florida,[1] v. State of Florida, et al., (Docket No. 78–6116–CIV), and for the extinguishment of rights to all potential or unsettled claims which the tribe may have to lands or natural resources in the State and the purchase of certain tribal interests in real property.

(7) The term ''settlement funds'' means those funds which the State of Florida and the South Florida Water Management District have agreed to pay to the tribe under the Settlement Agreement.

(8) The term ''compact'' means the Compact incorporated in the Settlement Agreement between the tribe, the State, and the district, which specifically defines the nature and extent of Seminole water rights and the manner of their use within the confines of the area of the district.

(Pub. L. 100–228, § 3, Dec. 31, 1987, 101 Stat. 1557.)

§ 1772b. Findings by Secretary

(a) Section 1772c of this title shall not take effect until 180 days after December 31, 1987, or the date the last of the events described in subsection (b) of this section have occurred and the Secretary so finds, whichever date occurs later.

(b) The events referred to in subsection (a) of this section are—

(1) the State and district pay settlement funds pursuant to the terms of the Settlement Agreement for the case captioned Seminole Tribe of Indians of Florida v. State of Florida et al., or equivalent consideration by land exchange to the tribe; and

(2) the State enacts appropriate legislation to carry out the commitments under the Settlement Agreement including the compact between the State, the district and the tribe, and the State and the district have given the waiver specified in paragraph 5c of such agreement.

(Pub. L. 100–228, § 4, Dec. 31, 1987, 101 Stat. 1557.)

§ 1772c. Approval of prior transfers and extinguishment of claims and aboriginal title involving Florida Indians

(a) Approval of Settlement Agreement; effect of approval

(1) Effective on December 31, 1987, the Congress does hereby approve the Settlement Agreement, including the compact, and any exhibits attached thereto.

(2) Subject to the provisions of section 1772b of this title, the Secretary shall publish findings required by section 1772b of this title and the Settlement Agreement in the Federal Register, and upon such publication—

(A) the transfers, waivers, releases, relinquishments and other commitments made by the tribe in the Settlement Agreement with the State and the district, including the compact provided for in the Settlement Agreement, shall be in full force and effect on the terms and conditions stated in such settlement, and

(B) the transfers, waivers, releases, relinquishments and other commitments validated by subparagraph (A) and the transfers and extinguishments approved and validated by paragraphs (1) and (2) of subsection (b) of this section shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of lands or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians including but not limited to the Trade and Intercourse Act of 1790, Act of July 22, 1790 (25 U.S.C. 177, ch. 33, sec. 4, 1 Stat. 137).

(b) Extinguishment of claims based on aboriginal title

(1)(A) Subject to subparagraph (B), all claims to lands within the State based upon aboriginal title by the tribe or any predecessor or successor in interest, are hereby extinguished. Any transfer of lands or natural resources located anywhere within the State, including transfers pursuant to a statute or treaty with any State or the United States, by, from, or on behalf of the tribe or any predecessor or successor in interest, shall be deemed to be in full force and effect, as provided in subsection (a)(2) of this section.

(B) Nothing in this paragraph shall be construed as extinguishing any aboriginal right, title, interest, or claim to lands or natural resources solely to the extent of the rights or interests defined as ''excepted interests'' in paragraph 4a of the Settlement Agreement between the tribe, State and the district.

(2)(A) By virtue of the approval of a transfer of lands or natural resources effected by this section, or an extinguishment of aboriginal title ef-

[1] So in original. The comma probably should not appear.

fected thereby, all claims against the United States, the State or subdivision thereof, or any other person or entity, by the tribe or any predecessor or successor in interest, arising subsequent to the transfer and based upon any interest in or right involving such lands or natural resources, including claims for trespass damages or claims for use and occupancy, shall be extinguished as of the date of the transfer.

(B) The United States shall not be liable directly or indirectly for any claim or cause of action arising from the approval of the Settlement Agreement and compact or exhibits attached thereto.

(3) Nothing in this subchapter shall be construed as extinguishing any right, title, interest, or claim to lands or natural resources in the State based on use and occupancy or acquired under Federal or State law by any individual Indian which is not derived from or through the tribe, its predecessor or predecessors in interest, or some other American Indian tribe.

(4) Any Indian, Indian nation, or tribe of Indians, other than the Seminole Tribe as defined in section 1772a(1) of this title, or any predecessor or successor in interest, or any member thereof, whose transfer of lands or natural resources is approved or whose aboriginal title or claims is extinguished by paragraph (1) or (2) of this subsection may, within a period of one year after publication of the Secretary's finding pursuant to subsection (a) of this section, bring an action against the State and the United States in the United States District Court for the southern district of Florida. Such action shall be in lieu of a suit against any other person, agency, or political subdivision on a cause of action which may have existed in the absence of this subsection.

(c) Construction of subsection (a) and section 1772e

Neither subsection (a) of this section nor section 1772e of this title—

(1) enacts present or future laws of the State as Federal law,

(2) grants consent to any future changes in the Settlement Agreement or compact that could impose any obligation or liability on the United States, or

(3) commits the United States to finance any project or activity not otherwise authorized by Federal law.

(Pub. L. 100–228, § 5, Dec. 31, 1987, 101 Stat. 1558.)

REFERENCES IN TEXT

The Trade and Intercourse Act of 1790, Act of July 22, 1790 (25 U.S.C. 177, ch. 33, sec. 4, 1 Stat. 137), referred to in subsec. (a)(2)(B), is not classified to the Code. See sections 177, 179, 180, 193, 194, 201, 229, 230, 251, 263, and 264 of this title.

§ 1772d. Special provisions for Seminole Tribe

(a) Acceptance of land by Secretary in trust for Seminole Tribe

Notwithstanding any clouds on title, the Secretary is authorized and directed, as soon as practicable after December 31, 1987, to accept the transfer to the United States, to be held in trust and as a reservation for the use and benefit of the Seminole Tribe of Florida, the approximate 15 sections of land being described as follows:

Beginning at the southwest corner of section 31, township 48 south, Range 35 east; thence easterly along the south border of sections 31, 32 and 33, township 48 south, Range 35 east, to the westernmost boundary of the levee 28 works in section 33, township 48 south, Range 35 east; thence continuing north along the westernmost boundary of the levee 28 works to the point at which the westernmost boundary of the levee 28 works intersects the southernmost boundary of the levee 4 works in section 9, township 48 south, Range 35 east; thence continuing westerly along the southernmost boundary of the levee 4 works to the point at which the southernmost boundary of the levee 4 works intersects the dividing line between township 48 south, Range 35 east and township 48 south, Range 34 east at the Broward County and Hendry County line; and thence continuing south along said line to the point of beginning; said lands situate, lying and being in Broward County, Florida.

(b) Survey of Seminole Federal Reservations in Florida

Before the expiration of the 3-year period beginning on December 31, 1987, the Secretary shall—

(1) conduct a cadastral survey of those portions of the Seminole Federal Reservations in Florida not previously surveyed by the Department of the Interior, including all lands taken into trust as reservations under the authority of this subchapter;

(2) publish the correct legal descriptions of the Seminole Reservations in the Federal Register within 180 days after the survey is completed.

(c) Acceptance of land in future by Secretary in trust for Seminole Tribe

If, pursuant to paragraph 6 of the Settlement Agreement, there is a subsequent agreement between the tribe, the State, and the district providing that lands exchanged with the tribe or acquired by the tribe may be taken into Federal trust as a reservation for the tribe, the Secretary shall accept the transfer of such lands to the United States, to be held in trust for the use and benefit of the tribe pursuant to the terms and conditions of the subsequent agreement unless—

(1) the total amount of land previously taken in trust under this subsection exceeds the amount of land transferred to the State and Water District by the tribe under the Settlement Agreement;

(2) the Secretary determines in writing that either the size, location, or condition of the land, or the terms and conditions under which it is transferred would place an unreasonable burden on the United States as trustee;

(3) the land is not in Florida; or

(4) the land is not agricultural in nature.

(d) Civil and criminal jurisdiction over lands acquired by United States in trust for Seminole Tribe

(1) Notwithstanding the acquisition of any land under subsection (a) or (c) of this section

by the United States in trust for the tribe, the assumption of jurisdiction in favor of the State contained in section 285.16, Florida Statutes, pursuant to section 7 of the Act of August 15, 1953,[1] (67 Stat. 588; Public Law 280), shall continue in full force and effect on such lands unless the United States accepts a retrocession by the State of such civil or criminal jurisdiction in whole or in part under section 1323 of this title. The laws of Florida relating to alcoholic beverages, gambling, sale of cigarettes, and their successor laws, shall have the same force and effect within said transferred lands as they have elsewhere within the State. The State, with respect to the transferred lands, shall also have jurisdiction over offenses committed by or against Indians under said laws to the same extent the State has jurisdiction over said offenses committed elsewhere within the State.

(2) Nothing in this subsection shall be construed as permitting the exercise of the above jurisdiction by the State regarding matters to which section 1162(b) of title 18 and section 1360(b) of title 28 apply.

(3) The scope of tribal sovereignty over transferred lands, with the specific exceptions of law relating to cigarettes, gambling and alcohol described in this subsection, shall be as required by applicable law with regard to existing tribal lands held in reservation or Federal trust status. Such transfer shall not confer upon the tribe, or upon the lands within the reservation, any additional water rights. Tribal water rights shall be deemed to be defined in the compact.

(Pub. L. 100–228, § 6, Dec. 31, 1987, 101 Stat. 1559.)

REFERENCES IN TEXT

Section 7 of the Act of August 15, 1953, referred to in subsec. (d)(1), is section 7 of act Aug. 15, 1953, ch. 505, 67 Stat. 590, which was set out as a note under section 1360 of Title 28, Judiciary and Judicial Procedure, and was repealed by Pub. L. 90–284, title IV, § 403(b), Apr. 11, 1968, 82 Stat. 79.

§ 1772e. Water rights compact

The compact defining the scope of Seminole water rights and their utilization by the tribe shall have the force and effect of Federal law for the purposes of enforcement of the rights and obligations of the tribe.

(Pub. L. 100–228, § 7, Dec. 31, 1987, 101 Stat. 1560.)

§ 1772f. Judicial review

(a) Notwithstanding any other provision of law, any action to contest the constitutionality of this subchapter shall be barred unless the complaint is filed within 180 days after December 31, 1987. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the southern district of Florida.

(b) Notwithstanding any present immunity from suit enjoyed by any of the parties, jurisdiction regarding any controversy arising under the Settlement Agreement or compact or private agreement between the tribe and any third party entered into under authority of the compact is hereby vested in the United States District Court for the southern district of Florida. Such jurisdiction shall be exclusive except that the court shall not have jurisdiction to award money damages against the State, the district or the tribe. Proceedings in the district court under this section shall be expedited consistent with sound judicial discretion.

(Pub. L. 100–228, § 8, Dec. 31, 1987, 101 Stat. 1561.)

§ 1772g. Revocation of settlement

In the event the Settlement Agreement or any part thereof is ever invalidated—

(1) the transfers, waivers, releases, relinquishments and any other commitments made by the State, the tribe, or the district in the Settlement Agreement shall no longer be of any force or effect;

(2) section 1772c of this title shall be inapplicable as if such section was never enacted with respect to the lands, interests in lands, or natural resources of the tribe and its members; and

(3) the approvals of prior transfers and the extinguishment of claims and aboriginal title of the tribe otherwise effected by section 1772c of this title shall be void ab initio.

(Pub. L. 100–228, § 9, Dec. 31, 1987, 101 Stat. 1561.)

SUBCHAPTER VII—WASHINGTON INDIAN (PUYALLUP) LAND CLAIMS SETTLEMENT

§ 1773. Congressional findings and purpose

(a) Findings

The Congress finds and declares that:

(1) It is the policy of the United States to promote tribal self-determination and economic self-sufficiency and to support the resolution of disputes over historical claims through settlements mutually agreed to by Indian and non-Indian parties.

(2) Disputes over certain land claims of the Puyallup Tribe and other matters, including—

(A) ownership of the Commencement Bay tidelands and areas of former Puyallup Riverbed, lands within the Puyallup Tribe's Treaty Reservation, or intended reservation boundaries,

(B) railroad and other rights-of-way,

(C) control of fisheries resource and habitat,

(D) jurisdiction over law enforcement, environment, navigation, and authority and control in the areas of land use,

(E) business regulation and zoning,

have resulted in difficult community relations and negative economic impacts affecting both the Tribe and non-Indian parties.

(3) Some of the significant historical events that led to the present circumstances include—

(A) the negotiation of the Treaty of Medicine Creek in December 1854, by the Puyallup Indians and others, by which the tribes ceded most of their territories but reserved certain lands and rights, including fishing rights;

(B) the Executive Order of 1857 creating the Puyallup Indian Reservation;

(C) the Executive Order of 1873, clarifying and extending the Puyallup Reservation in the Washington Territory;

[1] So in original. The comma probably should not appear.

(D) the March 11, 1891, Report of the Puyallup Indian Commission on allotments and the 1896 report by a second Puyallup Indian Commission describing the problems with sales of allotted lands; and

(E) the 1909 District Court for Tacoma decision of the United States of America against J.M. Ashton and the 1910 Supreme Court decision of United States of America against J.M. Ashton.

(4) It is recognized that both Indian and non-Indian parties enter into this settlement to resolve certain problems and claims and to derive certain benefits.

(5) There is a recognition that any final resolution of pending disputes through a process of litigation would take many years and entail great expense to all parties; continue economically and socially damaging controversies; prolong uncertainty as to the access, ownership, and jurisdictional status of issues in question; and seriously impair long-term economic planning and development for all parties.

(6) To advance the goals of Federal policy of Indian self-determination and to carry out the trust responsibility of the United States, and to advance the Federal policy of international trade and economic development, and in recognition of the Federal policy of settling these conflicts through comprehensive settlement agreements, it is appropriate that the United States participate in the funding and implementation of the Settlement Agreement.

(b) Purpose

Therefore, it is the purpose of this subchapter—

(1) to approve, ratify, and confirm the agreement entered into by the non-Indian settlement parties and the Puyallup Tribe of Indians,

(2) to authorize and direct the Secretary to implement the terms of such agreement, and

(3) to authorize the actions and appropriations necessary to implement the provisions of the Settlement Agreement and this subchapter.

(Pub. L. 101–41, § 2, June 21, 1989, 103 Stat. 83.)

SHORT TITLE

Section 1 of Pub. L. 101–41 provided that: ''This Act [enacting this subchapter] may be cited as the 'Puyallup Tribe of Indians Settlement Act of 1989'.''

§ 1773a. Resolution of Puyallup tribal land claims

(a) Relinquishment

In accordance with the Settlement Agreement and in return for the land and other benefits derived from the Settlement Agreement and this subchapter, the Tribe, and the United States as trustee for the Tribe and its members, relinquish all claims to tidelands, submerged lands, and any other lands, and including any mineral claims and nonfisheries water rights connected with such relinquished land, known or unknown, within the State of Washington, subject to the exceptions referred to in subsection (b) of this section.

(b) Exception for certain lands

Subsection (a) of this section shall not apply to the following:

(1) 12.5 acres of former riverbed land confirmed to the Tribe in Puyallup Tribe of Indians against Port of Tacoma (717 F. 2d 1251 (1983)), which land shall be subject to the terms and conditions described in the Settlement Agreement and document 6 of the Technical Documents.

(2) All land to which record title in the Tribe or the United States in trust for the Tribe or its members derives from a patent issued by the United States or from a conveyance of tideland by the State of Washington. For the purposes of this paragraph, the term ''record title'' means title documented by identifiable conveyances reflected in those records imparting constructive notice of conveyances according to the laws of the State (RCW chapters 65.04 and 65.08) and the final judgments of State or Federal courts.

(3) Certain land recognized to be owned on August 27, 1988, by the Tribe or the United States in trust for the Tribe within the Indian Addition to the city of Tacoma, Washington, as recorded in book 7 of plats at pages 30 and 31, records of Pierce County, Washington, as follows:

(A) Land owned on August 27, 1988:

(i) Portions of tracts 2, 5, 6, 10, and 11.

(ii) Tract 7 (school site).

(iii) Tract 8 (church site).

(iv) Tract 9 (cemetery site).

(v) Approximately 38 lots in blocks 8150, 8249, 8350, and 8442, inclusive.

(B) Land, wherever located, added to the above list of parcels on or before December 1, 1988, in accordance with paragraph A.3. of section IX of the Settlement Agreement.

(4) The lands transferred to the Tribe pursuant to the Settlement Agreement.

(5) The rights to underlying lands or the reversionary interest of the Tribe, if any, in the Union Pacific or Burlington Northern rights-of-way across the 1873 Survey Area, where the property over which they were granted belonged, at the time of the grant, to the United States in trust for the Tribe or to the Tribe.

(6) The submerged lands as of August 27, 1988, in the Puyallup River within the 1873 Survey Area below the mean high water line.

(c) Personal claims

Nothing in this section or in the Settlement Agreement shall be construed to impair, eliminate, or in any way affect the title of any individual Indian to land held by such individual in fee or in trust, nor shall it affect the personal claim of any individual Indian as to claims regarding past sales of allotted lands or any claim which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(Pub. L. 101–41, § 3, June 21, 1989, 103 Stat. 84.)

EFFECTIVE DATE

Section 13 of Pub. L. 101–41 provided that: ''Sections 3 and 9 [this section and section 1773g of this title] shall take effect on the effective date of the Settlement Agreement and when all terms are met as stated under section X of the Settlement Agreement.''

§ 1773b. Settlement lands

(a) Acceptance by Secretary

The Secretary shall accept the conveyance of the lands described in subsection (c) of this section, and the Outer Hylebos tidelands property referred to in section VIII, A,1,c of the Settlement Agreement, subject to the terms and conditions of the Settlement Agreement and shall hold such lands in trust for the benefit of the Tribe.

(b) Contamination

(1) Contamination audits and cleanup of settlement lands shall be carried out in accordance with the Settlement Agreement and document 1 of the Technical Documents.

(2) The Tribe shall not be liable for the cleanup costs or in any other manner for contamination on properties described in subsection (c) of this section except any contamination caused by the Tribe's activities after conveyance of these properties to the Tribe under the terms of the Settlement Agreement and document 1 of the Technical Documents.

(c) Lands described

The lands referred to in subsection (a) of this section, and more particularly described in the Settlement Agreement, are as follows:

(1) The Blair Waterway property, comprised of approximately 43.4 acres.

(2) The Blair Backup property, comprised of approximately 85.2 acres.

(3) The Inner Hylebos property, comprised of approximately 72.9 acres.

(4) The Upper Hylebos property, comprised of approximately 5.9 acres.

(5) The Union Pacific property (Fife), comprised of a parcel of approximately 57 acres, and an adjoining 22-acre parcel if the option relating to the Union Pacific property (Fife) (as described in document 1 of the Technical Documents) is exercised.

(6) The Torre property (Fife), comprised of approximately 27.4 acres, unless the Port elects to provide the cash value of such property.

(7) The Taylor Way and East-West Road properties, two properties totaling approximately 7.4 acres.

(8) The submerged lands in the Puyallup River within the 1873 Survey Area below the mean high water line, as provided in section I. B. of the Settlement Agreement. To the extent that the United States has title to any of the lands described in this subpart,[1] then such lands shall be held by the United States in trust for the use and benefit of the Puyallup Tribe.

(9) The approximately 600 acres of open space, forest, and cultural lands to be acquired by the Tribe with cash received pursuant to section I of the Settlement Agreement or other tribal funds.

(d) Reservation status

Nothing in this subchapter is intended to affect the boundaries of the Puyallup Reservation, except that the lands described in subsection (c) of this section above in paragraphs (1) through (8), and the Outer Hylebos tidelands property referred to in section VIII of the Settlement Agreement, shall have on-reservation status.

(e) Authorization of appropriations

There is authorized to be appropriated $500,000 for the Federal share for the purchase of the lands referred to in subsection (c)(9) of this section.

(Pub. L. 101–41, § 4, June 21, 1989, 103 Stat. 85.)

§ 1773c. Future trust lands

In accepting lands in trust (other than those described in section 1773b of this title) for the Puyallup Tribe or its members, the Secretary shall exercise the authority provided him in section 465 of this title, and shall apply the standards set forth in part 151 of title 25, Code of Federal Regulations, as those standards now exist or as they may be amended in the future.

(Pub. L. 101–41, § 5, June 21, 1989, 103 Stat. 86.)

§ 1773d. Funds to members of Puyallup Tribe

(a) Payment to individual members

(1) To the extent provided in advance in appropriation Acts or to the extent funds are provided by other parties to the Settlement Agreement, the Secretary shall place with a financial institution the amount of $24,000,000 in an annuity fund or other investment program (hereafter in this subsection referred to as the ''fund''). The selection of the institution or institutions where the funds will be held and the administration of the funds shall be in accordance with section II of the Settlement Agreement and documents 2 and 3 of the Technical Documents. Amounts earned pursuant to any investment of the fund shall be added to, and become part of, the fund.

(2) Upon attaining the age of 21 years, each enrolled member of the Tribe (determined by the Tribe pursuant to its constitution to have been a member as of the date of ratification of the Settlement Agreement by the Tribe) shall receive a one-time payment from the fund. The amount of such payment shall be determined in accordance with section II of the Settlement Agreement and document 2 of the Technical Documents.

(3) A reasonable and customary fee for the administration of the fund may be paid out of the income earned by the fund to the financial institution with which the fund is established.

(4) Upon payment to all eligible members of the Tribe pursuant to paragraph (2), any amount remaining in the fund shall be utilized in the manner determined by a vote of the members of the Tribe.

(5) There is authorized to be appropriated $22,350,000 for the Federal share of the fund.

(b) Permanent trust fund for tribal members

(1) In order to provide a permanent resource to enhance the ability of the Tribe to provide services to its members, there is established the Puyallup Tribe of Indians Settlement Trust Fund (hereafter in this subsection referred to as the ''trust fund'').

(2) Upon appropriation by Congress or to the extent funds are provided by other parties to the

[1] So in original. Probably should be ''subsection,''.

Settlement Agreement, the Secretary shall deposit $22,000,000 into the trust fund. The trust fund shall be invested in accordance with section 162a of this title, so as to earn the maximum interest on principal and interest available under that section. No part of the $22,000,000 principal may be expended for any purpose. Income earned on the principal or interest of the trust fund shall be available for expenditure as provided in paragraph (3).

(3)(A) The trust fund shall be administered and the funds shall be expended in accordance with section III of the Settlement Agreement and document 3 of the Technical Documents. Income from the trust fund may be used only for the following purposes unless modified in accordance with subparagraph (B):

(i) Housing.
(ii) Elderly needs.
(iii) Burial and cemetery maintenance.
(iv) Education and cultural preservation.
(v) Supplemental health care.
(vi) Day care.
(vii) Other social services.

(B) The purposes of the trust fund may be modified only as provided in document 3 of the Technical Documents.

(4) The fund established under this subsection shall be in perpetuity and inviolate.

(5) There is authorized to be appropriated $18,800,000 for the Federal share of the trust fund.

(Pub. L. 101–41, § 6, June 21, 1989, 103 Stat. 86.)

USE OF FUNDS TO FULFILL BOARD OF TRUSTEES' FIDUCIARY AND ADMINISTRATIVE RESPONSIBILITIES

Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1005, provided: ''That income earned on funds appropriated by Public Law 101–121, October 23, 1989, 103 Stat. 701, 715[,] for the purposes of section 6(b) of the Puyallup Tribe of Indians Settlement Act of 1989, Public Law 101–41, June 21, 1989, 103 Stat. 83 [25 U.S.C. 1773d(b)], may be utilized by the Permanent Trust Fund Board of Trustees to secure necessary and appropriate financial, auditing, accounting, insurance and other administrative services to fulfill the Board of Trustees' fiduciary and administrative responsibilities: *Provided further*, That no more than 5 per centum of the income in any year may be utilized for such purposes''.

Similar provisions were contained in the following prior appropriation act:

Pub. L. 101–512, title I, Nov. 5, 1990, 104 Stat. 1931.

§ 1773e. Fisheries

In order to carry out the Federal part of the fisheries aspect of the Settlement Agreement, there is authorized to be appropriated $100,000 for navigation equipment at Commencement Bay to be used in accordance with section A of document 4 of the Technical Documents.

(Pub. L. 101–41, § 7, June 21, 1989, 103 Stat. 87.)

§ 1773f. Economic development and land acquisition

(a) Economic development and land acquisition fund

To the extent provided in advance in appropriation Acts, the Secretary shall disburse $10,000,000 to the Tribe of which—

(1) $9,500,000 shall be available for the Tribe to carry out economic development consistent with section VI of the Settlement Agreement or to acquire lands; and

(2) $500,000 shall be available only to support and assist the development of business enterprises by members of the Tribe in a manner consistent with the Settlement Agreement.

There is authorized to be appropriated $10,000,000 to carry out this subsection.

(b) Foreign trade

The Congress recognizes the right of the Tribe to engage in foreign trade consistent with Federal law and notwithstanding article XII of the treaty with the Nisqually and other bands of Indians entered into on December 26, 1854, and accepted, ratified, and confirmed on March 3, 1855 (11 Stat. 1132).

(c) Blair project

There is authorized to be appropriated to the Secretary the amount of $25,500,000 for the Federal share of the costs associated with the Blair project, which shall be carried out in accordance with document 6 of the Technical Documents. For the purpose of this subsection, the Secretary shall transfer such amount to the Department of Transportation of the State of Washington. Such amount may only be used by the Department of Transportation of the State of Washington to carry out the Blair project in accordance with document 6 of the Technical Documents. Operation and maintenance of the Blair Waterway channel shall remain the responsibility of the Secretary of the Army, acting through the Chief of Engineers.

(Pub. L. 101–41, § 8, June 21, 1989, 103 Stat. 87.)

§ 1773g. Jurisdiction

The Tribe shall retain and exercise jurisdiction, and the United States and the State and political subdivisions thereof shall retain and exercise jurisdiction, as provided in the Settlement Agreement and Technical Documents and, where not provided therein, as otherwise provided by Federal law.

(Pub. L. 101–41, § 9, June 21, 1989, 103 Stat. 88.)

EFFECTIVE DATE

Section effective on the effective date of the Settlement Agreement and when all terms are met as stated under section X of the Settlement Agreement, see section 13 of Pub. L. 101–41, set out as a note under section 1773a of this title.

§ 1773h. Miscellaneous provisions

(a) Liens and forfeitures, etc.

(1) None of the funds, assets, or income from the trust fund established in section 1773d(b) of this title which are received by the Tribe under the Settlement Agreement shall be subject to levy, execution, forfeiture, garnishment, lien, encumbrance, or seizure.

(2) The annuity fund, or other investment program, established in section 1773d(a) of this title shall not be subject to levy, execution, forfeiture, garnishment, lien, encumbrance, or seizure. Payments from the fund shall be in accordance with the Act of August 2, 1983 (25 U.S.C. 117a et seq.; commonly referred to as the ''Per Capita Act'').

(b) Eligibility for Federal programs; trust responsibility

Nothing in this subchapter or the Settlement Agreement shall affect the eligibility of the Tribe or any of its members for any Federal program or the trust responsibility of the United States and its agencies to the Tribe and members of the Tribe.

(c) Permanent trust fund not counted for certain purposes

None of the funds, assets, or income from the trust fund established in section 1773d(b) of this title shall at any time be used as a basis for denying or reducing funds to the Tribe or its members under any Federal, State, or local program.

(d) Tax treatment of funds and assets

None of the funds or assets transferred to the Tribe or its members by the Settlement Agreement of[1] this subchapter, and none of the interest earned or income received on amounts in the funds established under section 1773d(a) and (b) of this title, shall be deemed to be taxable, nor shall such transfers be taxable events.

(Pub. L. 101–41, § 10, June 21, 1989, 103 Stat. 88.)

REFERENCES IN TEXT

Act of August 2, 1983, referred to in subsec. (a)(2), is Pub. L. 98–64, Aug. 2, 1983, 97 Stat. 365, popularly known as the Per Capita Act, which enacted sections 117a to 117c of this title and repealed section 117 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 117a of this title and Tables.

§ 1773i. Actions by Secretary

The Secretary in administering this subchapter shall be aware of the trust responsibility of the United States to the Tribe and shall take such actions as may be necessary or appropriate to carry out this subchapter and the Settlement Agreement.

(Pub. L. 101–41, § 11, June 21, 1989, 103 Stat. 89.)

§ 1773j. Definitions

For the purposes of this subchapter—

(1) the term ''1873 Survey Area'' means the area which is within the area demarked by the high water line as meandered and the upland boundaries, as shown on the plat map of the 1873 Survey of the Puyallup Indian Reservation, conducted by the United States General Land Office, and filed in 1874;

(2) the term ''Secretary'' means the Secretary of the Interior;

(3) the term ''Settlement Agreement'' means the document entitled ''Agreement between the Puyallup Tribe of Indians, Local Governments in Pierce County, the State of Washington, the United States of America, and certain private property owners'', dated August 27, 1988;

(4) the term ''State'' means the State of Washington;

(5) the term ''Technical Documents'' means the 7 documents which comprise the technical appendix to the Settlement Agreement and are dated August 27, 1988;

(6) the term ''Tribe'' means the Puyallup Tribe of Indians, a tribe of Indians recognized by the United States;

(7) the term ''below the mean high water line'' in reference to the submerged lands of the Puyallup Riverbed means ''below the ordinary high water mark'' in that portion of the river not subject to tidal influence and ''below the mean high water line'' in that portion of the river which is subject to tidal influence; and

(8) the term ''on-reservation status'' means a status under which Federal laws and regulations, treaty rights, and rights of sovereignty, which define the rights and responsibilities on trust or restricted lands (including rights-of-way and easements running through such lands within a Federal Indian reservation) apply: *Provided*, That such application is not inconsistent with any provision of the Settlement Agreement.

(Pub. L. 101–41, § 12, June 21, 1989, 103 Stat. 89.)

SUBCHAPTER VIII—SENECA NATION (NEW YORK) LAND CLAIMS SETTLEMENT

§ 1774. Findings and purposes

(a) City of Salamanca and congressional villages

The Congress finds and declares that:

(1) Disputes concerning leases of tribal lands within the city of Salamanca and the congressional villages, New York, have strained relations between the Indian and non-Indian communities and have resulted in adverse economic impacts affecting both communities.

(2) Some of the significant historical events which have led to the present situation include—

(A) beginning in the mid-nineteenth century, several railroads obtained grants or leases of rights of way through the Allegany Reservation without Federal authorization or approval and on terms which did not adequately protect the interests of the Seneca Nation;

(B) after construction of these railroads, Allegany Reservation lands were leased to railroad employees, persons associated with the railroads, residents of the city and farmers without Federal authorization or approval and on terms which did not adequately protect the interests of the Seneca Nation;

(C) none of these leases had Federal authorization or approval and, after the courts ruled these leases invalid, Congress enacted the Act of February 19, 1875 (18 Stat. 330), confirming existing leases of Allegany Reservation lands, authorizing further leasing by the Seneca Nation, and making the confirmed leases renewable for a twelve year period;

(D) the Act of September 30, 1890 (26 Stat. 558), amended the 1875 Act by substituting a renewal term of ''not exceeding ninety-nine years'' for the original renewal term of twelve years; and

(E) in 1952 the Seneca Nation filed a claim with the Indian Claims Commission against the United States for use of improper lease

[1] So in original. Probably should be ''or''.

fees, and in 1977 a settlement was reached regarding such claim, providing for the payment of $600,000 to the Seneca Nation covering the period beginning in 1870 to the end of 1946.

(3) An analysis of historic land values indicates that the payments made under the original lease agreement and under the settlement described in paragraph (2)(E) were well below the actual lease value of the property.

(4) The approaching expiration of the Salamanca and congressional village leases on February 19, 1991, has created significant uncertainty and concern on the part of the city of Salamanca and Salamanca residents, and among the residents of the congressional villages, many of whose families have resided on leased lands for generations.

(5) The future economic success of the Seneca Nation, city, and congressional villages is tied to the securing of a future lease agreement.

(6) The Federal and State governments have agreed that there is a moral responsibility on the part of both governments to help secure a fair and equitable settlement for past inequities.

(b) Purpose

It is the purpose of this subchapter—

(1) to effectuate and support the Agreement between the city and the Seneca Nation, and facilitate the negotiation of new leases with lessees in the congressional villages;

(2) to assist in resolving the past inequities involving the 1890 leases and to secure fair and equitable compensation for the Seneca Nation based on the impact of these leases on the economy and culture of the Seneca Nation;

(3) to provide a productive environment between the Seneca Nation and lessees for negotiating the leases provided for under the Agreement;

(4) to provide stability and security to the city and the congressional villages, their residents, and businesses;

(5) to promote the economic growth of the city and the congressional villages;

(6) to promote economic self-sufficiency for the Seneca Nation and its members;

(7) to promote cooperative economic and community development efforts on the part of the Seneca Nation and the city; and

(8) to avoid the potential legal liability on the part of the United States that could be a direct consequence of not reaching a settlement.

(Pub. L. 101–503, § 2, Nov. 3, 1990, 104 Stat. 1292.)

REFERENCES IN TEXT

Act of February 19, 1875 (18 Stat. 330), referred to in subsec. (a)(2)(C), is act Feb. 19, 1875, ch. 90, 18 Stat. 330, as amended, which is not classified to the Code.

Act of September 30, 1890 (26 Stat. 558), referred to in subsec. (a)(2)(D), is act Sept. 30, 1890, ch. 1132, 26 Stat. 558, which is not classified to the Code.

SHORT TITLE

Section 1 of Pub. L. 101–503 provided that: ''This Act [enacting this subchapter] may be cited as the 'Seneca Nation Settlement Act of 1990'.''

§ 1774a. Definitions

For the purposes of this subchapter—

(1) the term ''1890 lease'' means a lease made by the Seneca Nation which is subject to—

(A) the Act entitled ''An Act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases'' approved February 19, 1875 (chap. 90, 18 Stat. 330); and

(B) the Act entitled ''An Act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases'' approved September 30, 1890 (chap. 1132, 26 Stat. 558);

(2) the term ''Agreement'' means the document executed by the Seneca Nation and the city entitled ''Agreement between the Seneca Nation of Indians and the City of Salamanca'', including the appendix to the Agreement;

(3) the term ''city'' means the city of Salamanca, New York;

(4) the term ''lessee'' means the holder of an 1890 lease which either expires in 1991 or is one of the leases listed in document 1 of the Technical Documents, including any lessee who holds an 1890 lease by reason of assignment, inheritance, or other manner as provided by the Act referred to in paragraph (1)(A);

(5) the term ''memorandum of understanding'' means an agreement between the State and the Seneca Nation pertaining to the payment of the funds to be provided pursuant to this subchapter, which memorandum of understanding reflects an agreement between the Seneca Nation and the State concerning a mechanism and schedule of payments for the funds described in section 1774d(c) of this title;

(6) the term ''Secretary'' means the Secretary of the Interior;

(7) the term ''Seneca Nation'' means the Seneca Nation of Indians of the Allegany, Cattaraugus, and Oil Spring Reservations;

(8) the term ''State'' means the State of New York;

(9) the term ''Technical Documents'' means the documents which comprise the appendix to the Agreement; and

(10) the term ''congressional villages'' means the villages of Carrollton, Great Valley, and Vandalia in the State of New York.

(Pub. L. 101–503, § 3, Nov. 3, 1990, 104 Stat. 1293.)

REFERENCES IN TEXT

Act entitled ''An Act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases'' approved February 19, 1875 (chap. 90, 18 Stat. 330), referred to in pars. (1)(A) and (4), is not classified to the Code.

Act entitled ''An Act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases'' approved September 30, 1890 (chap. 1132, 26 Stat. 558), referred to in par. (1)(B), is not classified to the Code.

§ 1774b. New leases and extinguishment of claims

(a) New leases

If the Seneca Nation offers new leases in accordance with the Agreement, this subchapter

shall apply with respect to the Seneca Nation. The Seneca Nation shall supply copies of such leases to the Secretary and shall certify in writing that it has supplied the Secretary with copies of written offers to all lessees entitled to an offer.

(b) Extinguishment of claims

The Seneca Nation shall execute appropriate documents relinquishing all claims against the United States, the State, the city, the congressional villages, and all prior lessees for payment of annual rents prior to February 20, 1991, with respect to all prior and existing leases.

(c) Effective date of leases and relinquishments

(1) The relinquishment of claims against the United States shall be effective upon payment by the United States to the Seneca Nation of the funds provided in section 1774d of this title.

(2) The offers, and any acceptances thereof, referred to in subsection (a) of this section, and the relinquishment of claims against the State, the city, the congressional villages, and all prior lessees for payment of annual rents referred to in subsection (b) of this section shall not be binding on the Seneca Nation until after the later of the dates on which (1) Congress, or (2) the legislature of the State appropriates the amount of funds set forth in section 1774d of this title or the Seneca Nation and the State agree upon a schedule and mechanism for payments for funds pursuant to section 1774d(c) of this title. Such agreement shall render the offers, acceptances and the relinquishment effective so long as the payments are made as agreed upon by the Seneca Nation and the State.

(Pub. L. 101–503, § 4, Nov. 3, 1990, 104 Stat. 1294.)

§ 1774c. Responsibilities and restrictions

(a) Seneca Nation

The Congress finds that the Seneca Nation is solely responsible for negotiation of the leases under the Agreement in its own interest and approval of any such lease by the United States is not required.

(b) Lessees

The Congress finds that—

(1) the lessees of leases with the Seneca Nation are responsible for representing their own interest in lease negotiations with the Seneca Nation; and

(2) nothing in this subchapter shall be construed to prevent the lessees from collectively negotiating with the Seneca Nation regarding such leases, whether through informal groups or as delegations formally sanctioned by either the State or local governments.

(c) United States

(1) The United States shall not serve in a capacity to approve leases of the Seneca Nation.

(2) Federal funds may not be obligated or expended, directly or indirectly, for annual payments under any such lease, except for funds that may be available under a conventional, nationwide program.

(d) State

(1) The State shall not serve in a capacity to approve leases of the Seneca Nation.

(2) State funds may not be obligated or expended, directly or indirectly, for annual payments under any such lease.

(Pub. L. 101–503, § 5, Nov. 3, 1990, 104 Stat. 1295.)

§ 1774d. Settlement funds

(a) In general

In recognition of the findings and purposes specified in section 1774 of this title, the settlement funds provided pursuant to this subchapter shall be provided by the United States and the State. The Secretary may not obligate or expend funds provided under subsection (b) of this section until the Secretary determines that there is an agreed upon and signed memorandum of understanding.

(b) Funds provided by United States

(1) Cash payment

The Secretary shall pay to the Seneca Nation the amount of $30,000,000, which is the Federal share of the cash payment to be managed, invested, and used by the Nation to further specific objectives of the Nation and its members, all as determined by the Nation in accordance with the Constitution and laws of the Nation.

(2) Economic development

(A) In addition to the amount provided under paragraph (1), the Secretary shall pay to the Seneca Nation the amount of $5,000,000 to be used for the economic and community development of the Seneca Nation, including the city of Salamanca, which is an integral part of the Seneca Nation's Allegany Reservation. Such amount shall be deposited by the Secretary, administered, and disbursed in accordance with subparagraph (B).

(B)(i) The sum of $2,000,000 shall be deposited in a separate interest bearing account of the Seneca Nation. The account shall be administered, and the principal and interest thereon disbursed, by the Seneca Nation in accordance with a plan approved by the Council of the Seneca Nation to promote the economic and community development of the Seneca Nation. Until the principal is expended pursuant to such plan, the income accruing from such sum shall be disbursed to the treasurer of the Seneca Nation on a quarterly basis to fund tribal government operations and to provide for the general welfare of the Seneca Nation and its members. The Seneca Nation may in its discretion add the accrued income to the principal.

(ii) The sum of $3,000,000 shall be deposited in an escrow account which shall be owned by the Seneca Nation. The escrow agent shall be selected by agreement of the Seneca Nation and the city. The escrow account shall remain in existence for a period of ten years from the date on which the principal is deposited or until all payments provided for under section V.D. of the Agreement have been made. The escrow account shall be held and disbursed for economic and community development as set forth in section V.D. of the Agreement. Upon the expiration of the ten-year period, the $3,000,000 principal shall be disbursed in ac-

cordance with a plan approved by the Council of the Seneca Nation to promote the economic and community development of the Seneca Nation.

(c) Funds to be provided by State

The State, in accordance with its laws and regulations, shall provide the sum of $16,000,000 in cash payments and $9,000,000 for economic or community development subject to the provisions of the memorandum of understanding.

(d) Time of payments

The payments required by this section on the part of the United States shall be made within 30 days of the Secretary's determination that the Seneca Nation has complied with section 1774b of this title, or upon the availability of the amounts necessary to carry out this subchapter, if such determination has previously been made. If the Secretary determines that the Seneca Nation has not complied with section 1774b of this title, he shall advise the Seneca Nation in writing of all steps it must take to comply.

(e) Limitation

The only amounts available to carry out this subchapter shall be those amounts specifically appropriated by the Congress or the legislature of the State to carry out this subchapter.

(Pub. L. 101–503, § 6, Nov. 3, 1990, 104 Stat. 1295.)

§ 1774e. Conditions precedent to payment of United States and State funds

Amounts may not be expended from—

(1) the $30,000,000 and the $5,000,000 provided by the United States under section 1774d(b) of this title, and

(2) the $16,000,000 and $9,000,000 provided by the State under section 1774d(c) of this title,

until after the authorized officials of the Seneca Nation execute new leases with all lessees who accept the Seneca Nation's offer of a new lease, as filed with the Secretary under section 1774b(a) of this title, and execute appropriate documents relinquishing all claims for payment of annual rents prior to February 20, 1991, with respect to such leases.

(Pub. L. 101–503, § 7, Nov. 3, 1990, 104 Stat. 1296.)

§ 1774f. Miscellaneous provisions

(a) Liens and forfeitures, etc.

Subject to subsection (b) of this section, the provisions of section 1407 of this title shall apply to any payment of funds authorized to be appropriated under this subchapter and made to individual members of the Seneca Nation. None of the payments, funds, or distributions authorized, established, or directed by this subchapter, and none of the income derived therefrom, which may be received under this subchapter by the Seneca Nation or individual members of the Seneca Nation, shall be subject to levy, execution, forfeiture, garnishment, lien, encumbrance, seizure, or State or local taxation.

(b) Eligibility for Government programs

None of the payments, funds or distributions authorized, established, or directed by this subchapter, and none of the income derived therefrom, shall affect the eligibility of the Seneca Nation or its members for, or be used as a basis for denying or reducing funds under, any Federal program.

(c) Land acquisition

Land within its aboriginal area in the State or situated within or near proximity to former reservation land may be acquired by the Seneca Nation with funds appropriated pursuant to this subchapter. State and local governments shall have a period of 30 days after notification by the Secretary or the Seneca Nation of acquisition of, or intent to acquire such lands to comment on the impact of the removal of such lands from real property tax rolls of State political subdivisions. Unless the Secretary determines within 30 days after the comment period that such lands should not be subject to the provisions of section 2116 of the Revised Statutes (25 U.S.C. 177), such lands shall be subject to the provisions of that Act[1] and shall be held in restricted fee status by the Seneca Nation. Based on the proximity of the land acquired to the Seneca Nation's reservations, land acquired may become a part of and expand the boundaries of the Allegany Reservation, the Cattaraugus Reservation, or the Oil Spring Reservation in accordance with the procedures established by the Secretary for this purpose.

(Pub. L. 101–503, § 8, Nov. 3, 1990, 104 Stat. 1296.)

§ 1774g. Limitation of action

Notwithstanding any other provision of law, any action to contest the constitutionality or validity under law of this subchapter shall be barred unless the action is filed on or before the date which is 180 days after November 3, 1990. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the Western District of New York.

(Pub. L. 101–503, § 9, Nov. 3, 1990, 104 Stat. 1297.)

§ 1774h. Authorization of appropriations

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

(Pub. L. 101–503, § 10, Nov. 3, 1990, 104 Stat. 1297.)

SUBCHAPTER IX—MOHEGAN NATION (CONNECTICUT) LAND CLAIMS SETTLEMENT

§ 1775. Findings and purposes

(a) Findings

Congress finds the following:

(1) The Mohegan Tribe of Indians of Connecticut received recognition by the United States pursuant to the administrative process under part 83 of title 25 of the Code of Federal Regulations.

(2) The Mohegan Tribe of Indians of Connecticut is the successor in interest to the aboriginal entity known as the Mohegan Indian Tribe.

(3) The Mohegan Tribe has existed in the geographic area that is currently the State of Connecticut for a long period preceding the co-

[1] So in original. Probably should be "section".

lonial period of the history of the United States.

(4) Certain lands were sequestered as tribal lands by the Colony of Connecticut and subsequently by the State of Connecticut.

(5) The Mohegan Tribe of Indians of Connecticut v. State of Connecticut, et al. (Civil Action No. H–77–434, pending before the United States District Court for the Southern District of Connecticut) relates to the ownership of certain lands within the State of Connecticut.

(6) Such action will likely result in economic hardships for residents of the State of Connecticut, including residents of the town of Montville, Connecticut, by encumbering the title to lands in the State, including lands that are not currently the subject of the action.

(7) The State of Connecticut and the Mohegan Tribe have executed agreements for the purposes of resolving all disputes between the State of Connecticut and the Mohegan Tribe and providing a settlement for the action referred to in paragraph (5).

(8) In order to implement the agreements referred to in paragraphs (5) and (6) of section 1775a of this title that address matters of jurisdiction with respect to certain offenses committed by and against members of the Mohegan Tribe and other Indians in Indian country and matters of gaming-related development, it is necessary for the Congress to enact legislation.

(9) The town of Montville, Connecticut, will—

(A) be affected by the loss of a tax base from, and jurisdiction over, lands that will be held in trust by the United States on behalf of the Mohegan Tribe; and

(B) serve as the host community for the gaming operations of the Mohegan Tribe.

(10) The town of Montville and the Mohegan Tribe have entered into an agreement to resolve issues extant between them and to establish the basis for a cooperative government-to-government relationship.

(b) Purposes

The purposes of this subchapter are as follows:

(1) To facilitate the settlement of claims against the State of Connecticut by the Mohegan Tribe.

(2) To facilitate the removal of any encumbrance to any title to land in the State of Connecticut that would have resulted from the action referred to in subsection (a) of this section.

(Pub. L. 103–377, § 2, Oct. 19, 1994, 108 Stat. 3501.)

SHORT TITLE

Section 1 of Pub. L. 103–377 provided that: ''This Act [enacting this subchapter] may be cited as the 'Mohegan Nation of Connecticut Land Claims Settlement Act of 1994'.''

§ 1775a. Definitions

As used in this subchapter:

(1) Lands or natural resources

The term ''lands or natural resources'' means any real property or natural resources, or any interest in or right involving any real property or natural resources, including any right or interest in minerals, timber, or water, and any hunting or fishing rights.

(2) Mohegan Tribe

The term ''Mohegan Tribe'' means the Mohegan Tribe of Indians of Connecticut, a tribe of American Indians recognized by the United States pursuant to part 83 of title 25, Code of Federal Regulations, and the State of Connecticut pursuant to section 47–59a(b) of the Connecticut General Statutes.

(3) Secretary

The term ''Secretary'' means the Secretary of the Interior.

(4) State

The term ''State'' means the State of Connecticut.

(5) State Agreement

The term ''State Agreement'' means the Agreement between the Mohegan Tribe and the State of Connecticut, executed on May 17, 1994, by the Governor of the State of Connecticut and the Chief of the Mohegan Tribe, that was filed with the Secretary of State of the State of Connecticut.

(6) Town Agreement

The term ''Town Agreement'' means the agreement executed on June 16, 1994, by the Mayor of the town of Montville and the Chief of the Mohegan Tribe.

(7) Transfer

The term ''transfer'' includes any sale, grant, lease, allotment, partition, or conveyance, any transaction the purpose of which is to effect a sale, grant, lease, allotment, partition, or conveyance, or any event that results in a change of possession or control of land or natural resources.

(Pub. L. 103–377, § 3, Oct. 19, 1994, 108 Stat. 3502.)

§ 1775b. Action by Secretary

(a) In general

The Secretary is authorized to carry out the duties specified in subsection (b) of this section at such time as the Secretary makes a determination that—

(1) in accordance with the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), the State of Connecticut has entered into a binding compact with the Mohegan Tribe providing for class III tribal gaming operations (as defined in section 4(8) of such Act (25 U.S.C. 2703(8)));

(2) the compact has been approved by the Secretary pursuant to section 11(d)(8) of such Act (25 U.S.C. 2710(d)(8)); and

(3) pursuant to transfers carried out pursuant to the State Agreement, the United States holds title to lands described in exhibit B of the State Agreement in trust for the Mohegan Tribe to be used as the initial Indian reservation of the Mohegan Tribe.

(b) Publication by Secretary

If the Secretary makes a determination under subsection (a) of this section that the conditions

specified in paragraphs (1) through (3) of that subsection have been met, the Secretary shall publish the determination, together with the State Agreement, in the Federal Register.

(c) Effect of publication

(1) In general

Upon the publication of the determination and the State Agreement in the Federal Register pursuant to subsection (b) of this section, a transfer, waiver, release, relinquishment, or other commitment made by the Mohegan Tribe in accordance with the terms and conditions of the State Agreement shall be in full force and effect.

(2) Approval by the United States

(A) The United States hereby approves any transfer, waiver, release, relinquishment, or other commitment carried out pursuant to paragraph (1).

(B) A transfer made pursuant to paragraph (1) shall be deemed to have been made in accordance with all provisions of Federal law that specifically apply to transfers of lands or natural resources from, by, or on behalf of an Indian, Indian nation, or tribe of Indians (including the Act popularly known as the ''Trade and Intercourse Act of 1790''; section 4 of the Act of July 22, 1790 (1 Stat. 137, chapter 33)). The approval of the United States made pursuant to subparagraph (A) shall apply to the transfer beginning on the date of the transfer.

(d) Extinguishment of claims

(1) In general

Subject to subsections (f)(2) and (g) of this section, the following claims are hereby extinguished:

(A) Any claim to land within the State of Connecticut based upon aboriginal title by the Mohegan Tribe.

(B) Any other claim that the Mohegan Tribe may have with respect to any public or private lands or natural resources in Connecticut, including any claim or right based on recognized title, including—

(i) any claim that the Mohegan Tribe may have to the tribal sequestered lands bounded out to the Tribe in 1684, consisting of some 20,480 acres lying between the Thames River, New London bounds, Norwich bounds, and Colchester bounds;

(ii) any claim that the Mohegan Tribe may have based on a survey conducted under the authority of the Connecticut General Assembly in 1736 of lands reserved and sequestered by the General Assembly for the sole use and improvement of the Mohegan Indian Tribe; and

(iii) any claim that the Mohegan Tribe may have based on any action by the State carried out in 1860 or 1861 or otherwise made by the State to allot, reallot, or confirm any lands of the Mohegan Tribe to individual Indians or other persons.

(2) Approval by the United States

An extinguishment made pursuant to this subsection shall be deemed to have been made in accordance with all provisions of Federal law that specifically apply to transfers of lands or natural resources from, by, or on behalf of an Indian, Indian nation, or tribe of Indians (including the Act popularly known as the ''Trade and Intercourse Act of 1790''; section 4 of the Act of July 22, 1790 (1 Stat. 137, chapter 33)).

(e) Transfers

Subject to subsection (g) of this section, any transfer of lands or natural resources located within the State of Connecticut, including any such transfer made pursuant to any applicable Federal or State law (including any applicable treaty), made by, from, or on behalf of the Mohegan Tribe or any predecessor or successor in interest of the Mohegan Tribe shall be deemed to be in full force and effect, as provided in subsection (c)(1) of this section.

(f) Limitation

(1) In general

Except as provided in paragraph (2) and subject to subsection (g) of this section, by virtue of the approval by the United States under this section of a transfer of land or the extinguishment of aboriginal title, any claim by the Mohegan Tribe against the United States, any State or political subdivision of a State, or any other person or entity, by the Mohegan Tribe, that—

(A) arises after the transfer or extinguishment is carried out; and

(B) is based on any interest in or right involving any claim to lands or natural resources described in this section, including claims for trespass damages or claims for use and occupancy,

shall, beginning on the date of the transfer of land or the extinguishment of aboriginal title, be considered an extinguished claim.

(2) Exception

The limitation under paragraph (1) shall not apply to any interest in lands or natural resources that is lawfully acquired by the Mohegan Tribe or a member of the Mohegan Tribe after the applicable date specified in paragraph (1).

(g) Statutory construction

(1) Aboriginal interests

Nothing in this section may be construed to extinguish any aboriginal right, title, interest, or claim to lands or natural resources, to the extent that such right, title, interest, or claim is an excepted interest, as defined under section 1(a) of the State Agreement.

(2) Personal claims

Nothing in this section may be construed to offset or eliminate the personal claim of any individual Indian if the individual Indian pursues such claim under any law of general applicability.

(Pub. L. 103–377, § 4, Oct. 19, 1994, 108 Stat. 3502.)

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (a)(1), is Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to

chapter 29 (§ 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Trade and Intercourse Act of 1790, referred to in subsecs. (c)(2)(B) and (d)(2), is act July 22, 1790, ch. 33, 1 Stat. 137, which is not classified to the Code.

§ 1775c. Conveyance of lands to United States to be held in trust for Mohegan Tribe

(a) In general

Subject to the environmental requirements that apply to land acquisitions covered under part 151 of title 25, Code of Federal Regulations (or any subsequent similar regulation), the Secretary shall take such action as may be necessary to facilitate the conveyance to the United States of title to lands described in exhibits A and B of the State Agreement. Such lands shall be held by the United States in trust for the use and benefit of the Mohegan Tribe as the initial Indian reservation of the Mohegan Tribe.

(b) Consultation

(1) In general

The Secretary shall consult with the appropriate official of the town of Montville concerning any tract of land subject to exhibit B of the State Agreement but not specifically identified in such exhibit with respect to the impact on the town resulting from—

(A) the removal of the land from taxation by the town;

(B) problems concerning the determination of jurisdiction; and

(C) potential land use conflicts.

(2) Statutory construction

Nothing in this subchapter may affect the right of the town of Montville to participate, under any applicable law, in decisionmaking processes concerning the acquisition of any lands by the Federal Government to be held in trust for the Mohegan Tribe.

(Pub. L. 103–377, § 5, Oct. 19, 1994, 108 Stat. 3504.)

§ 1775d. Consent of United States to State assumption of criminal jurisdiction

(a) In general

Subject to subsection (b) of this section, the consent of the United States is hereby given to the assumption of jurisdiction by the State of Connecticut over criminal offenses committed by or against Indians on the reservation of the Mohegan Tribe. The State shall have such jurisdiction to the same extent as the State has jurisdiction over such offenses committed elsewhere within the State. The criminal laws of the State shall have the same force within such reservation and Indian country as such laws have elsewhere within the State.

(b) Statutory construction

(1) Effect on concurrent jurisdiction of the Mohegan Tribe

The assumption of criminal jurisdiction by the State pursuant to subsection (a) of this section shall not affect the concurrent jurisdiction of the Mohegan Tribe over matters concerning such criminal offenses.

(2) Statutory construction

The assumption of criminal jurisdiction by the State pursuant to subsection (a) of this section shall not be construed as a waiver of the jurisdiction of the United States under section 1153 of title 18.

(Pub. L. 103–377, § 6, Oct. 19, 1994, 108 Stat. 3505.)

§ 1775e. Ratification of Town Agreement

(a) In general

Notwithstanding any other provision of law, the consent of the United States is hereby given to the Town Agreement and the Town Agreement shall be in full force and effect.

(b) Approval of Town Agreement

The Secretary shall approve any subsequent amendments made to the Town Agreement after October 19, 1994, that are—

(1) mutually agreed on by the parties to the Town Agreement; and

(2) consistent with applicable law.

(Pub. L. 103–377, § 7, Oct. 19, 1994, 108 Stat. 3505.)

§ 1775f. General discharge and release of obligations of State of Connecticut

Except as expressly provided in this subchapter, the State Agreement, or the Town Agreement, this subchapter shall constitute a general discharge and release of all obligations of the State of Connecticut and the political subdivisions, agencies, departments, officers, or employees of the State of Connecticut arising from any treaty or agreement with, or on behalf of, the Mohegan Tribe or the United States as trustee for the Mohegan Tribe.

(Pub. L. 103–377, § 8, Oct. 19, 1994, 108 Stat. 3505.)

§ 1775g. Effect of revocation of State Agreement

(a) In general

If, during the 15-year period beginning on the date on which the Secretary publishes a determination pursuant to section 1775b(b) of this title, the State Agreement is invalidated by a court of competent jurisdiction, or if the gaming compact described in section 1775b(a)(1) of this title or any agreement between the State of Connecticut and the Mohegan Tribe to implement the compact is invalidated by a court of competent jurisdiction—

(1) the transfers, waivers, releases, relinquishments, and other commitments made by the Mohegan Tribe under section 1(a) of the State Agreement shall cease to be of any force or effect;

(2) section 1775b of this title shall not apply to the lands or interests in lands or natural resources of the Mohegan Tribe or any of its members, and the title to the lands or interests in lands or natural resources shall be determined as if such section were never enacted; and

(3) the approval by the United States of prior transfers and the extinguishment of claims and aboriginal title of the Mohegan Tribe otherwise made under section 1775b of this title shall be void.

(b) Right of Mohegan Tribe to reinstate claim

(1) In general

If a State Agreement or compact or agreement described in subsection (a) of this section is invalidated by a court of competent jurisdiction, the Mohegan Tribe or its members shall have the right to reinstate a claim to lands or interests in lands or natural resources to which the Tribe or members are entitled as a result of the invalidation, within a reasonable time, but not later than the later of—

(A) 180 days after the Mohegan Tribe receives written notice of such determination of an invalidation described in subsection (a) of this section; or

(B) if the determination of the invalidation is subject to an appeal, 180 days after the court of last resort enters a judgment.

(2) Defenses

Notwithstanding any other provision of law, if a party to an action described in paragraph (1) reinstates the action during the period described in paragraph (1)(B)—

(A) no defense, such as laches, statute of limitations, law of the case, res judicata, or prior disposition may be asserted based on the withdrawal of the action and reinstatement of the action; and

(B) the substance of any discussions leading to the State Agreement may not be admissible in any subsequent litigation, except that, if any such action is reinstated, any defense that would have been available to the State of Connecticut at the time the action was withdrawn—

(i) may be asserted; and

(ii) is not waived by anything in the State Agreement or by subsequent events occurring between the withdrawal action and commencement of the reinstated action.

(Pub. L. 103–377, § 9, Oct. 19, 1994, 108 Stat. 3506.)

§ 1775h. Judicial review

(a) Jurisdiction

Notwithstanding any other provision of law, during the period beginning on October 19, 1994, and ending on the date that is 180 days after October 19, 1994, the United States District Court for the Southern District of Connecticut shall have exclusive jurisdiction over any action to contest the constitutionality of this subchapter or the validity of any agreement entered into under the authority of this subchapter or approved by this subchapter.

(b) Deadline for filing

Effective with the termination of the period specified in subsection (a) of this section, no court shall have jurisdiction over any action to contest the constitutionality of this subchapter or the validity of any agreement entered into under the authority of this subchapter or approved by this subchapter, unless such action was filed prior to the date of termination of the period specified in subsection (a) of this section.

(Pub. L. 103–377, § 10, Oct. 19, 1994, 108 Stat. 3507.)

SUBCHAPTER X—CROW LAND CLAIMS SETTLEMENT

§ 1776. Findings and purpose

(a) Findings

Congress finds the following:

(1) Under the treaty between the United States of America and the Crow Tribe of Indians concluded May 7, 1868 (commonly known as the ''Fort Laramie Treaty of 1868''; 15 Stat. 649), the eastern boundary of the Crow Indian Reservation was established as the 107th meridian for approximately 90 miles from the Yellowstone River to the boundary between Montana and Wyoming.

(2) Under Executive orders issued in 1884 and 1900, the western boundary of the Northern Cheyenne Reservation was established as the 107th meridian. The 107th meridian was intended to be the common boundary between the Crow Reservation and Northern Cheyenne Reservation for approximately 25 miles.

(3) From 1889 through 1891, a survey was conducted of the eastern boundary of the Crow Reservation. The 1891 survey line strayed to the west, and resulted in the exclusion from the Crow Indian Reservation of a strip of land of approximately 36,164 acres. Approximately 12,964 acres of such strip of land were included in the Northern Cheyenne Reservation. Deposits of low sulphur coal underlie the land excluded from the Crow Indian Reservation, including the land included in the Northern Cheyenne Indian Reservation.

(4)(A) The erroneous nature of the survey was not discovered for several decades. Meanwhile, the areas along the 107th meridian to the north and south of the Northern Cheyenne Indian Reservation were opened to settlement in the late nineteenth century and early part of the twentieth century. Patents were issued to non-Indian persons and to the State of Montana for most of the surface land and a significant portion of the minerals in these areas between the 107th meridian and the 1891 survey line.

(B) The 12,964 acres included in the Northern Cheyenne Reservation have been treated as part of the Northern Cheyenne Reservation and occupied by the Northern Cheyenne Tribe and the Northern Cheyenne allottees, and their successors in interest.

(5) Legislation to resolve the 107th meridian boundary dispute was introduced in Congress in the 1960's and 1970's, and again in 1992, but no such legislation was enacted into law.

(b) Purpose

The purpose of this subchapter is to settle the 107th meridian boundary dispute created by the erroneous survey of the eastern boundary of the Crow Indian Reservation made by the Federal Government described in subsection (a)(3) of this section.

(Pub. L. 103–444, § 2, Nov. 2, 1994, 108 Stat. 4632.)

SHORT TITLE

Section 1 of Pub. L. 103–444 provided that: ''This Act [enacting this subchapter] may be cited as the 'Crow Boundary Settlement Act of 1994'.''

§ 1776a. Definitions

As used in this subchapter:

(1) Crow Tribe

The term ''Crow Tribe'' means the Crow Tribe of Indians, the duly recognized governing body of the Crow Indian Reservation.

(2) Disputed area

The term ''disputed area'' means the approximately 36,164 acres of land, including the minerals, located between the 107th meridian on the east and the 1891 survey line on the west from the Yellowstone River on the north to the boundary between the State of Wyoming and the State of Montana on the south.

(3) 1891 survey

The term ''1891 survey'' means the survey of the eastern boundary of the Crow Reservation conducted by the United States Government from 1889 through 1891.

(4) 1891 survey line

The term ''1891 survey line'' means the erroneous boundary line resulting from the survey of the 107th meridian which was completed in 1891.

(5) Northern Cheyenne Tribe

The term ''Northern Cheyenne Tribe'' means the Northern Cheyenne Tribe of Indians, with the Northern Cheyenne Tribal Council as the duly recognized governing body of the Northern Cheyenne Indian Reservation.

(6) 107th meridian boundary dispute

The term ''107th meridian boundary dispute'' means the dispute resulting from the disparity between the location of the 107th meridian and the location of the 1891 survey line.

(7) 107th meridian escrow fund

The term ''107th meridian escrow fund'' means the revenues that arise from, or are derived from, parcel number 2, including all accrued interest on such revenues, which are held by the Bureau of Indian Affairs in an escrow account as of November 2, 1994.

(8) Parcel number 1

The term ''parcel number 1'' means the area, encompassing approximately 11,317 acres, bounded on the south by the Montana-Wyoming border, on the east by the 107th meridian, on the north by the extension to the west of the southern boundary of the Northern Cheyenne Indian Reservation, and on the west by the 1891 survey line.

(9) Parcel number 2

The term ''parcel number 2'' means the area, encompassing approximately 12,964 acres, bounded on the south by the extension to the west of the southern boundary of the Northern Cheyenne Indian Reservation, on the east by the 107th meridian, on the north by the extension to the west of the northern boundary of the Northern Cheyenne Indian Reservation, and on the west by the 1891 survey line.

(10) Parcel number 3

The term ''parcel number 3'' means the area, encompassing approximately 2,469 acres, bounded on the south by the extension to the west of the northern boundary of the Northern Cheyenne Indian Reservation, on the east by the 107th meridian, on the north by the northern boundary of the Crow Indian Reservation, and on the west by the 1891 survey line.

(11) Parcel number 4

The term ''parcel number 4'' means the area, encompassing approximately 9,415 acres, bounded on the south by the northern boundary of the Crow Indian Reservation, on the east by the 107th meridian, on the north by the midpoint of the Yellowstone River, and on the west by the 1891 survey line.

(12) Public lands

The term ''public lands'' means any land or interest in land owned by the United States (without regard to the means by which the United States acquired ownership of the land or interest in land) and administered by the Secretary through the Bureau of Land Management.

(13) Royalties received and retained by the United States

The term ''royalties received and retained by the United States'' means the royalties derived from minerals owned by the United States that the United States retains after all payments from the royalties have been made to the State of Montana or any unit of local government of the State of Montana.

(14) Secretary

The term ''Secretary'' means the Secretary of the Interior.

(15) Settlement Agreement

The term ''Settlement Agreement'' means the agreement between the Secretary, on behalf of the United States and the Crow Tribe, that provides for the resolution of all claims held by the Crow Tribe arising from the 107th meridian boundary dispute.

(16) Undisposed of coal

The term ''undisposed of coal'' means coal that has not been conveyed to private parties or to the State of Montana by the United States.

(17) Undisposed of surface lands

The term ''undisposed of surface lands'' means surface land that has not been conveyed to private parties or to the State of Montana by the United States.

(18) Undisposed of oil, gas, coal methane, or other minerals

The term ''undisposed of oil, gas, coal methane, or other minerals'' means oil, gas, coal methane, or other minerals (excluding coal) that have not been conveyed to private parties or to the State of Montana by the United States.

(Pub. L. 103–444, § 3, Nov. 2, 1994, 108 Stat. 4633.)

§ 1776b. Settlement Agreement

(a) Execution

Subject to the terms and conditions of this subchapter, the Secretary shall enter into the Settlement Agreement with the Crow Tribe.

(b) Ratification

Subject to the conditions set forth in section 1776g(a) of this title, the United States hereby approves, ratifies, and confirms the Settlement Agreement, to the extent that such Settlement Agreement does not conflict with this subchapter.

(c) Modification

The terms and conditions of the Settlement Agreement may be modified by mutual agreement of the Crow Tribe and the Secretary if such modification—

(1) is not inconsistent with this subchapter; and

(2) does not diminish or impair any right or benefit secured to the Northern Cheyenne Tribe, the Northern Cheyenne allottees, or their successors in interest by or pursuant to any provision of this subchapter.

(d) Enforcement

(1) In general

Except as provided in paragraph (2), the Settlement Agreement shall be subject to the enforcement provisions under chapter 7 of title 5.

(2) Additional enforcement

If, with respect to the enforcement of the Settlement Agreement, the remedies available under the provisions referred to in paragraph (1) do not provide adequate or complete relief, the Settlement Agreement shall be subject to the enforcement provisions under section 1505 of title 28.

(Pub. L. 103–444, § 4, Nov. 2, 1994, 108 Stat. 4634.)

§ 1776c. Settlement terms and conditions and extinguishment of claims

(a) Property within parcel number 1

(1) In general

With respect to the property within parcel number 1, the following provisions shall apply:

(A) The boundary of the Crow Indian Reservation shall be the 107th meridian.

(B) Title to the undisposed of coal of such parcel shall be vested in the United States in trust for the sole use and benefit of the Crow Tribe and shall be recognized as part of the Crow Indian Reservation.

(C) Title to the undisposed of surface lands of such parcel shall be vested in the United States in trust for the sole use and benefit of the Crow Tribe and shall be recognized as part of the Crow Indian Reservation.

(D) Title to the undisposed of oil, gas, coal methane, or other minerals of such parcel shall be vested in the United States in trust for the sole use and benefit of the Crow Tribe and shall be recognized as part of the Crow Indian Reservation.

(2) Prohibition

Nothing in this subchapter or the Settlement Agreement may alter, diminish, disturb, or cause to be divested any right, title, or interest of any person or entity in any land, coal, oil, gas, coal methane, or mineral within parcel number 1 that is based on the 1891 survey line, except for the specific rights that are vested in the United States for the sole use and benefit of the Crow Tribe pursuant to subparagraphs (B) through (D) of paragraph (1).

(3) Waivers and releases

The following waivers and releases shall be included in the Settlement Agreement:

(A) A disclaimer and relinquishment by the Crow Tribe of all right, title, claim, or interest in all the land and minerals within parcel number 1, except for the rights, titles, and interests recognized as beneficially owned by the Crow Tribe and as part of the Crow Indian Reservation in subparagraphs (B) through (D) of paragraph (1).

(B) A release by the Crow Tribe of all persons and entities, including the United States, from any liability arising from, or related to, the 1891 survey and the subsequent occupancy and use of parcel number 1.

(b) Property within parcel number 2

(1) In general

With respect to the property within parcel number 2, the following provisions shall apply:

(A) The boundary between the Crow and Northern Cheyenne Indian Reservations shall be the 1891 survey line.

(B) All surface lands and minerals of such parcel shall constitute part of the Northern Cheyenne Reservation.

(C) All surface lands, including all rights appurtenant to the surface lands, of such parcel shall be vested in the United States in trust for the sole use and benefit of the Northern Cheyenne Tribe, except that surface lands that have been allotted shall be recognized as held in trust for, or owned in fee by (as the case may be), the Northern Cheyenne allottees or their successors in interest.

(D) The oil, gas, coal, coal methane, and other minerals, including all rights appurtenant to such minerals, of such parcel shall be vested in the United States in trust for the sole use and benefit of the Northern Cheyenne Tribe.

(2) Waivers and releases

The following waivers and releases shall be included in the Settlement Agreement:

(A) A disclaimer and relinquishment by the Crow Tribe of all right, jurisdiction, title, claim, or interest in the lands and minerals within parcel number 2, including all rights appurtenant to such land and minerals.

(B) A release by the Crow Tribe of all persons and entities, including the United States, the Northern Cheyenne Tribe, the Northern Cheyenne allottees and their successors in interest, from any liability arising from, or related to, the 1891 survey and the subsequent occupancy and use of parcel number 2.

(3) Enforcement

The provisions of this subsection may be enforced, in law or in equity, by the Northern Cheyenne Tribe, Northern Cheyenne allottees, and their successors in interest, in accordance with their respective interests.

(c) Property within parcel number 3 and parcel number 4

(1) In general

With respect to the property within parcel number 3 and parcel number 4, the boundary of the Crow Indian Reservation shall be the 1891 survey line.

(2) Prohibition

Nothing in this subchapter or the Settlement Agreement may alter, diminish, disturb, or cause to be divested any right, title, or interest of any person or entity in any land, coal, or mineral within parcel number 3 or parcel number 4 that is based on the 1891 survey line.

(3) Waivers and releases

The following waivers and releases shall be included in the Settlement Agreement:

(A) A disclaimer and relinquishment by the Crow Tribe of all right, jurisdiction, title, claim, or interest in the lands and minerals situated within parcel number 3 and parcel number 4.

(B) A release by the Crow Tribe of all persons and entities, including the United States, from any liability arising from, or related to, the 1891 survey and the subsequent occupancy and use of parcel number 3 and parcel number 4.

(d) Exchange of public lands

With respect to the land exchanges with the State of Montana and private landowners made under this subchapter the following provisions shall apply:

(1) In general

(A) The Secretary shall negotiate with the State of Montana for the purpose of exchanging public lands within the State of Montana for State trust lands within the Crow Reservation having a total value substantially equal to the value of the surface estate of the approximately 46,625 acres of State trust lands obtained by the State of Montana pursuant to the Act of February 22, 1889 (commonly known as the ''Montana Enabling Act''; 25 Stat. 676, chapter 180), and the Act entitled ''An Act to provide for the allotment of lands of the Crow Tribe for the distribution of tribal funds and for other purposes'' approved June 4, 1920 (commonly known as the ''Crow Allotment Act''; 41 Stat. 751, chapter 224) within the Crow Indian Reservation and the disputed area.

(B) The exchange described in subparagraph (A) shall be in accordance with the exchange procedures set forth in section 1716 of title 43.

(C) In determining the fair market value of the lands described in subparagraph (A), the parties to the exchange shall give due consideration to the value of improvements on the lands.

(D) The Secretary shall ensure that lands exchanged pursuant to this paragraph as part of the settlement of the 107th Meridian boundary dispute made pursuant to this subchapter shall be selected in such manner that the financial impact on local governments, if any, will be minimized.

(E) The Secretary shall provide such financial or other assistance to the State of Montana and to the Crow Tribe as may be necessary to obtain the appraisals, and to satisfy administrative requirements, necessary to accomplish the exchanges made pursuant to subparagraph (A).

(F) Upon approving an exchange made pursuant to this paragraph, the Secretary shall—

(i) receive title to the State trust lands involved in the exchange on behalf of the United States; and

(ii) transfer title to the public lands disposed of pursuant to the exchanges with the State of Montana by such means of conveyance as the Secretary considers appropriate.

(G) Title to the State trust lands acquired pursuant to the exchanges made with the State of Montana pursuant to this paragraph shall be vested in the United States in trust for the sole use and benefit of the Crow Tribe and shall be recognized as part of the Crow Indian Reservation.

(2) Requirement for exchanges

(A) In carrying out the exchanges with the State of Montana pursuant to paragraph (1), the Secretary shall, during a period of at least 5 years beginning on the date on which the Settlement Agreement becomes effective, give first priority to the exchange of public lands within the State of Montana for State trust lands owned by the State of Montana as of November 2, 1994.

(B) Subject to subparagraph (C), if, for any reason, after the expiration of the period specified in subparagraph (A), the exchanges of the State trust lands identified in paragraph (1) have not provided the Crow Tribe with a total of 46,625 acres of surface lands within the boundaries of the existing Crow Indian Reservation (including parcel number 1), the Secretary shall, at the request of, and in cooperation with, the Crow Tribe, develop and implement a program to provide the Crow Tribe with additional land within the Crow Indian Reservation (including parcel number 1) through land exchanges with private landowners.

(C) The total value of—

(i) the value of the lands exchanged and acquired for the Crow Tribe pursuant to paragraph (1), and

(ii) the value of the lands exchanged and acquired for the Crow Tribe pursuant to this paragraph,

shall not exceed the value of the surface estate of the 46,625 acres of land identified in paragraph (1)(A).

(D) In carrying out a program developed pursuant to this paragraph, the Secretary may exchange public lands within the State of Montana for private lands of substantially equal value within the boundaries of the existing Crow Indian Reservation in accordance with section 1716 of title 43.

(E) In determining the fair market value of the lands described in subparagraph (D), the parties to an exchange made pursuant to subparagraph (D) shall give due consideration to the value of improvements on the lands.

(F) If the Secretary obtains private lands pursuant to subparagraph (D), the Secretary

shall transfer title to such lands to the Crow Tribe.

(G) Title to any private or public lands transferred to the Crow Tribe pursuant to this paragraph shall—

(i) be vested in the United States in trust for the sole use and benefit of the Crow Tribe; and

(ii) be recognized as part of the Crow Indian Reservation, if such lands are located within the boundaries of the Crow Indian Reservation.

(H) The Crow Tribe shall assist in obtaining prospective willing parties to exchange private lands within the Crow Indian Reservation for public lands within the State of Montana pursuant to this paragraph.

(e) Crow Tribal Trust Fund

The Settlement Agreement shall include provisions governing the distribution of interest income to the Crow Tribe from the Crow Tribal Trust Fund pursuant to the terms and conditions described in section 1776d of this title.

(Pub. L. 103–444, § 5, Nov. 2, 1994, 108 Stat. 4635; Pub. L. 104–109, § 9(a), Feb. 12, 1996, 110 Stat. 765.)

REFERENCES IN TEXT

Act of February 22, 1889, referred to in subsec. (d)(1)(A), is act Feb. 22, 1889, ch. 180, 25 Stat. 676, popularly known as the Montana Enabling Act. For complete classification of this Act to the Code, see Tables.

Act June 4, 1920, referred to in subsec. (d)(1)(A), is act June 4, 1920, ch. 224, 41 Stat. 751, as amended, popularly known as the Crow Allotment Act. For further details, see Crow Indian Reservation note set out under section 331 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104–109 made technical amendment to reference to ''this subsection'' to correct underlying provisions of original act.

§ 1776d. Establishment and administration of Crow Tribal Trust Fund

(a) Establishment

(1) In general

There is established in the Treasury of the United States a trust fund to be known as the ''Crow Tribal Trust Fund''.

(2) Availability of amounts in the Crow Tribal Trust Fund

Amounts in the Crow Tribal Trust Fund shall be available, without fiscal year limitation, to the Secretary for distribution to the Crow Tribe in accordance with subsection (d) of this section.

(b) Contributions

(1) In general

Subject to paragraph (2) and the requirements of section 1776h of this title—

(A) on or before November 30, 1994, the Secretary of the Treasury shall deposit into the Crow Tribal Trust Fund an amount equal to the amounts of royalties received and retained by the United States during fiscal year 1994 from the East Decker, West Decker, and Spring Creek coal mines; and

(B) commencing with fiscal year 1995 and for such period thereafter as may be necessary, the Secretary and the Secretary of the Treasury shall make necessary and proper arrangements for the monthly payment, transfer, or deposit (or any combination thereof) into the Crow Tribal Trust Fund of the royalties received and retained by the United States for the immediately preceding month from the East Decker, West Decker, and Spring Creek coal mines in the State of Montana for the life of such mines, including any extensions of the existing leases for such mines and any expansions of such mines to nearby and adjacent federally owned coal deposits, as specified in the Settlement Agreement.

(2) Amount of royalties

The total amount of royalties described in paragraph (1) that are paid, transferred, or deposited into the Crow Tribal Trust Fund shall not exceed, in the aggregate, $85,000,000, excluding—

(A) any interest earned on moneys in the Crow Tribal Trust Fund; and

(B) the funds transferred to the Suspension Accounts pursuant to section 1776h of this title.

(3) Payments of royalties received and retained by the United States

Subject to paragraph (2) and the requirements of section 1776h of this title, the royalties received and retained by the United States from the East Decker, West Decker, and Spring Creek coal mines shall be paid, transferred or deposited into the Crow Tribal Trust Fund not later than 30 days after the date on which the royalties are due and paid.

(4) Additional payments

The Federal Government shall make payments, in addition to the payments referred to in paragraph (3), from the royalties received and retained by the United States from other coal mines within the State of Montana into the Crow Tribal Trust Fund in an amount equal to any lost interest income (as determined by the Secretary), if any portion of the sums described in paragraph (3) are not paid, transferred or deposited into the Crow Tribal Trust Fund within the 30-day period prescribed in paragraph (3).

(c) Investment

At the request of the Secretary, the Secretary of the Treasury shall invest all sums deposited into, accruing to, and remaining in, the Crow Tribal Trust Fund in accordance with section 161a of this title.

(d) Distribution of interest

(1) In general

Only the interest received on funds in the Crow Tribal Trust Fund shall be available for distribution by the Secretary to the Crow Tribe for use for education, land acquisition, economic development, youth and elderly programs or other tribal purposes in accordance with plans and budgets developed and approved by the Crow Tribe and approved by the Secretary.

(2) Requirements for distribution of interest

Commencing with fiscal year 1996 and for each fiscal year thereafter, without fiscal year limitation, the interest received on monies in the Crow Tribal Trust Fund shall be available for distribution under this subsection only if—

(A) the United States and the Crow Tribe enter into the Settlement Agreement; and

(B) the requirements of section 1776g of this title relating to the approval and execution of the Settlement Agreement are satisfied.

(3) Prohibition

No portion of the Crow Tribal Trust Fund or the interest earned on the Crow Tribal Trust Fund may be distributed to members of the Crow Tribe on a per capita basis.

(e) Use of interest for economic development

Notwithstanding any other provision of law, the Crow Tribe may, subject to approval by the Secretary, assign the right of the Crow Tribe to the interest earned on monies in the Crow Tribal Trust Fund to a third party in connection with loans made for economic development projects on or near the Crow Indian Reservation.

(f) Limitation

Notwithstanding any other provision of law, no portion of the principal of the Crow Tribal Trust Fund shall be available for withdrawal or disbursement or used for any purpose other than the purposes specified in this section and section 1776h of this title.

(Pub. L. 103–444, § 6, Nov. 2, 1994, 108 Stat. 4638; amended Pub. L. 103–435, § 23, Nov. 2, 1994, 108 Stat. 4575.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–435 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''At the request of the Secretary, the Secretary of the Treasury shall invest all sums deposited into, accruing to, and remaining in, the Crow Tribal Trust Fund in accordance with sections 161a to 161d of this title.''

§ 1776e. Eligibility for other Federal services

No payments made or benefits conferred pursuant to this subchapter shall result in the reduction or denial of any Federal services or programs to any tribe or to any member of a tribe to which the tribe or member of the tribe is entitled or eligible because of the status of the tribe as a federally recognized Indian tribe or the status of a member of such tribe as a member.

(Pub. L. 103–444, § 7, Nov. 2, 1994, 108 Stat. 4640.)

§ 1776f. Exchanges of land or minerals

(a) In general

(1) Subject to approval by the Secretary, the Crow Tribe may exchange any land or minerals to which its title is recognized in or obtained pursuant to this subchapter for other land or minerals of substantially equivalent value within the Crow Indian Reservation (including parcel number 1).

(2) Lands or minerals received by the Crow Tribe in any exchange made pursuant to paragraph (1) shall be—

(A) vested in the United States in trust for the sole use and benefit of the Crow Tribe; and

(B) recognized as part of the Crow Indian Reservation.

(b) Ownership by non-Indians

Any land or minerals received by a person who is not an Indian in an exchange referred to in subsection (a) of this section shall be owned in fee.

(Pub. L. 103–444, § 8, Nov. 2, 1994, 108 Stat. 4640.)

§ 1776g. Applicability

(a) In general

This subchapter shall take effect upon the occurrence of the following conditions:

(1) The Settlement Agreement is approved and executed by the Secretary.

(2) The Settlement Agreement is approved and executed by the Crow Tribe.

(3) The Settlement Agreement and the releases and waivers required by section 1776c of this title are approved and duly executed by the Crow Tribe in accordance with the requirements and procedures set forth in the constitution of the Crow Tribe.

(4) The Settlement Agreement becomes effective in accordance with the terms and conditions specified in the Settlement Agreement.

(b) Approval of releases and waivers

The United States hereby approves and confirms the releases and waivers required by section 1776c of this title.

(Pub. L. 103–444, § 9, Nov. 2, 1994, 108 Stat. 4640; Pub. L. 104–109, § 9(b), Feb. 12, 1996, 110 Stat. 765.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–109 substituted ''This subchapter'' for ''The subchapter'' in introductory provisions.

§ 1776h. Escrow funds

(a) In general

As soon as practicable after November 2, 1994, the Secretary shall make distributions from the 107th meridian escrow fund as follows:

(1) One-half of the fund shall be distributed to the Crow Tribe.

(2) One-half of the fund shall be distributed to the Northern Cheyenne Tribe.

(3) The receipt and acceptance by a tribe of funds distributed under this section shall be deemed to be—

(A) a disclaimer, relinquishment and waiver by such tribe of all right, claim or interest in the 107th meridian escrow fund; and

(B) a release by such tribe of all persons and entities, including the United States, from any liability arising from, or related to, the establishment and administration of the 107th meridian escrow fund.

(b) Establishment of Suspension Accounts

As soon as practicable after the Settlement Agreement is executed and approved pursuant to this subchapter, the Secretary of the Treasury shall establish in the Treasury of the United States two interest bearing accounts to be known respectively as the ''Crow Tribal Suspen-

sion Account'' and the ''Northern Cheyenne Tribal Suspension Account'' (collectively referred to in this section as the ''Suspension Accounts''), consisting of—

(1) such amounts as are transferred to the Suspension Accounts under subsection (c) of this section; and

(2) any interest earned on investments of amounts in the Suspension Accounts under subsection (e) of this section.

(c) Contributions to Suspension Accounts

(1) In general

Beginning with fiscal year 1995, and ending on the date on which the total amount deposited pursuant to this subsection into the Suspension Accounts is equal to $200,000 for each such account (as specified in subsection (d) of this section), the Secretary and the Secretary of the Treasury shall make necessary and proper arrangements for the monthly payment, transfer, or deposit (or any combination thereof) into each of the Suspension Accounts of an amount equal to one-half of the royalties received and retained by the United States for the immediately preceding month, as determined in accordance with section 1776d(b)(1) of this title, by the date specified under section 1776d(b)(3) of this title.

(2) Subsequent deposits

At such time as the amount deposited pursuant to this subsection into the Suspension Accounts is equal to $200,000 for each such account (as specified in subsection (d) of this section), in accordance with section 1776d(b)(1) of this title, the Secretary and the Secretary of the Treasury shall thereafter deposit any remaining amounts determined under section 1776d(b)(1) of this title in the Crow Tribal Trust Fund established under section 1776d(a) of this title.

(d) Limitation

The Secretary and the Secretary of the Treasury shall not transfer more than a total amount equal to $200,000 to each of the Suspension Accounts from the amounts determined under section 1776d(b)(1) of this title.

(e) Investment

All sums deposited in, accruing to and remaining in the Suspension Accounts shall be invested by the Secretary and the Secretary of the Treasury in interest bearing deposits and securities in accordance with the Act of June 24, 1938 (52 Stat. 1037, chapter 648; 25 U.S.C. 162a).

(f) Withdrawals and termination

(1) In general

(A) Beginning on the date that is 5 years after November 2, 1994, the Crow Tribe and the Northern Cheyenne Tribe may each submit a duly authorized request to the Secretary for the withdrawal of all of the funds from the Suspension Account of the tribe established under subsection (b) of this section.

(B) Not later than 60 days after receiving a request for the distribution of funds from a Suspension Account made by a tribe under subparagraph (A)—

(i) the Secretary shall, in cooperation with the Secretary of the Treasury, withdraw and distribute such funds in accordance with such request; and

(ii) the Secretary of the Treasury shall terminate the Suspension Account.

(2) Other means of termination

With respect to a Suspension Account established under subsection (b) of this section that is not terminated pursuant to paragraph (1), at such time as the corpus and the accrued interest of the Suspension Account of the Crow Tribe or the Northern Cheyenne Tribe is approximately equal to the amount specified in paragraph (1) or (2) of subsection (a) of this section, the Secretary of the Treasury shall terminate the Suspension Account and the Secretary of the Interior shall distribute the funds from the Suspension Account to the tribe.

(Pub. L. 103–444, § 10, Nov. 2, 1994, 108 Stat. 4641; Pub. L. 104–109, § 9(c), Feb. 12, 1996, 110 Stat. 765.)

REFERENCES IN TEXT

Act of June 24, 1938, referred to in subsec. (e), is act June 24, 1938, ch. 648, 52 Stat. 1037, which enacted section 162a of this title, repealed section 162 of this title, and enacted provisions set out as a note under section 162a of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–109 substituted ''referred to in this section'' for ''referred to in this subsection''.

§ 1776i. Fort Laramie Treaty of 1868

Except for the adjustment to the eastern boundary of the Crow Indian Reservation, nothing in this subchapter or in the Settlement Agreement shall affect or modify the terms and conditions of the treaty between the United States of America and the Crow Tribe of Indians concluded May 7, 1868 (commonly known as the ''Fort Laramie Treaty of 1868''; 15 Stat. 649).

(Pub. L. 103–444, § 11, Nov. 2, 1994, 108 Stat. 4642.)

§ 1776j. Satisfaction of claims

The benefits available to the Crow Tribe under the terms and conditions of this subchapter and the Settlement Agreement shall constitute full and complete satisfaction of all claims by the Crow Tribe and the members of the Crow Tribe arising from or related to the erroneous survey of the 107th meridian described in section 1776(a)(3) of this title.

(Pub. L. 103–444, § 12, Nov. 2, 1994, 108 Stat. 4642.)

§ 1776k. Authorization of appropriations

There are authorized to be appropriated to the Department of the Interior such sums as are necessary to carry out this subchapter.

(Pub. L. 103–444, § 13, Nov. 2, 1994, 108 Stat. 4643.)

SUBCHAPTER XI—SANTO DOMINGO PUEBLO LAND CLAIMS SETTLEMENT

§ 1777. Findings and purposes

(a) Findings

Congress makes the following findings:

(1) For many years the Pueblo of Santo Domingo has been asserting claims to lands with-

in its aboriginal use area in north central New Mexico. These claims have been the subject of many lawsuits, and a number of these claims remain unresolved.

(2) In December 1927, the Pueblo Lands Board, acting pursuant to the Pueblo Lands Act of 1924 (43 Stat. 636) confirmed a survey of the boundaries of the Pueblo of Santo Domingo Grant. However, at the same time the Board purported to extinguish Indian title to approximately 27,000 acres of lands within those grant boundaries which lay within 3 other overlapping Spanish land grants. The United States Court of Appeals in United States v. Thompson (941 F.2d 1074 (10th Cir. 1991), cert. denied 503 U.S. 984 (1992)), held that the Board ''ignored an express congressional directive'' in section 14 of the Pueblo Lands Act, which ''contemplated that the Pueblo would retain title to and possession of all overlap land''.

(3) The Pueblo of Santo Domingo has asserted a claim to another 25,000 acres of land based on the Pueblo's purchase in 1748 of the Diego Gallegos Grant. The Pueblo possesses the original deed reflecting the purchase under Spanish law but, after the United States assumed sovereignty over New Mexico, no action was taken to confirm the Pueblo's title to these lands. Later, many of these lands were treated as public domain, and are held today by Federal agencies, the State Land Commission, other Indian tribes, and private parties. The Pueblo's lawsuit asserting this claim, Pueblo of Santo Domingo v. Rael (Civil No. 83–1888 (D.N.M.)), is still pending.

(4) The Pueblo of Santo Domingo's claims against the United States in docket No. 355 under the Act of August 13, 1946 (60 Stat. 1049; commonly referred to as the Indian Claims Commission Act) have been pending since 1951. These claims include allegations of the Federal misappropriation and mismanagement of the Pueblo's aboriginal and Spanish grant lands.

(5) Litigation to resolve the land and trespass claims of the Pueblo of Santo Domingo would take many years, and the outcome of such litigation is unclear. The pendency of these claims has clouded private land titles and has created difficulties in the management of public lands within the claim area.

(6) The United States and the Pueblo of Santo Domingo have negotiated a settlement to resolve all existing land claims, including the claims described in paragraphs (2) through (4).

(b) Purpose

It is the purpose of this subchapter—

(1) to remove the cloud on titles to land in the State of New Mexico resulting from the claims of the Pueblo of Santo Domingo, and to settle all of the Pueblo's claims against the United States and third parties, and the land, boundary, and trespass claims of the Pueblo in a fair, equitable, and final manner;

(2) to provide for the restoration of certain lands to the Pueblo of Santo Domingo and to confirm the Pueblo's boundaries;

(3) to clarify governmental jurisdiction over the lands within the Pueblo's land claim area; and

(4) to ratify a Settlement Agreement between the United States and the Pueblo which includes—

(A) the Pueblo's agreement to relinquish and compromise its land and trespass claims;

(B) the provision of $8,000,000 to compensate the Pueblo for the claims it has pursued pursuant to the Act of August 13, 1946 (60 Stat. 1049; commonly referred to as the Indian Claims Commission Act);

(C) the transfer of approximately 4,577 acres of public land to the Pueblo;

(D) the sale of approximately 7,355 acres of national forest lands to the Pueblo; and

(E) the authorization of the appropriation of $15,000,000 over 3 consecutive years which would be deposited in a Santo Domingo Lands Claims Settlement Fund for expenditure by the Pueblo for land acquisition and other enumerated tribal purposes.

(c) Rule of construction

Nothing in this subchapter shall be construed to effectuate an extinguishment of, or to otherwise impair, the Pueblo's title to or interest in lands or water rights as described in section 1777c(a)(2) of this title.

(Pub. L. 106–425, § 2, Nov. 1, 2000, 114 Stat. 1890.)

REFERENCES IN TEXT

The Pueblo Lands Act of 1924, referred to in subsec. (a)(2), is act June 7, 1924, ch. 331, 43 Stat. 636, as amended, which is set out as a note under section 331 of this title.

Act of August 13, 1946, referred to in subsecs. (a)(4) and (b)(4)(B), is act Aug. 13, 1946, ch. 959, 60 Stat. 1049, as amended, known as the Indian Claims Commission Act of 1946, which was classified generally to chapter 2A (§ 70 et seq.) of this title and was omitted from the Code in view of the termination of the Indian Claims Commission on Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

SHORT TITLE

Pub. L. 106–425, § 1, Nov. 1, 2000, 114 Stat. 1890, provided that: ''This Act [enacting this subchapter] may be cited as the 'Santo Domingo Pueblo Claims Settlement Act of 2000'.''

§ 1777a. Definitions

In this subchapter:

(1) Federally administered lands

The term ''federally administered lands'' means lands, waters, or interests therein, administered by Federal agencies, except for the lands, waters, or interests therein that are owned by, or for the benefit of, Indian tribes or individual Indians.

(2) Fund

The term ''Fund'' means the Pueblo of Santo Domingo Land Claims Settlement Fund established under section 1777c(b)(1) of this title.

(3) Pueblo

The term ''Pueblo'' means the Pueblo of Santo Domingo.

(4) Santo Domingo Pueblo Grant

The term ''Santo Domingo Pueblo Grant'' means all of the lands within the 1907 Hall-Joy Survey, as confirmed by the Pueblo Lands Board in 1927.

(5) Secretary

The term ''Secretary'' means the Secretary of the Interior unless expressly stated otherwise.

(6) Settlement Agreement

The term ''Settlement Agreement'' means the Settlement Agreement dated May 26, 2000, between the Departments of the Interior, Agriculture, and Justice and the Pueblo of Santo Domingo to Resolve All of the Pueblo's Land Title and Trespass Claims.

(Pub. L. 106–425, § 3, Nov. 1, 2000, 114 Stat. 1891.)

§ 1777b. Ratification of Settlement Agreement

The Settlement Agreement is hereby approved and ratified.

(Pub. L. 106–425, § 4, Nov. 1, 2000, 114 Stat. 1892.)

§ 1777c. Resolution of disputes and claims

(a) Relinquishment, extinguishment, and compromise of Santo Domingo claims

(1) Extinguishment

(A) In general

Subject to paragraph (2), in consideration of the benefits provided under this subchapter, and in accordance with the Settlement Agreement pursuant to which the Pueblo has agreed to relinquish and compromise certain claims, the Pueblo's land and trespass claims described in subparagraph (B) are hereby extinguished, effective as of the date specified in paragraph (5).

(B) Claims

The claims described in this subparagraph are the following:

(i) With respect to the Pueblo's claims against the United States, its agencies, officers, and instrumentalities, all claims to land, whether based on aboriginal or recognized title, and all claims for damages or other judicial relief or for administrative remedies pertaining in any way to the Pueblo's land, such as boundary, trespass, and mismanagement claims, including any claim related to—

(I) any federally administered lands, including National Forest System lands designated in the Settlement Agreement for possible sale or exchange to the Pueblo;

(II) any lands owned or held for the benefit of any Indian tribe other than the Pueblo; and

(III) all claims which were, or could have been brought against the United States in docket No. 355, pending in the United States Court of Federal Claims.

(ii) With respect to the Pueblo's claims against persons, the State of New Mexico and its subdivisions, and Indian tribes other than the Pueblo, all claims to land, whether based on aboriginal or recognized title, and all claims for damages or other judicial relief or for administrative remedies pertaining in any way to the Pueblo's land, such as boundary and trespass claims.

(iii) All claims listed on pages 13894–13895 of volume 48 of the Federal Register, published on March 31, 1983, except for claims numbered 002 and 004.

(2) Rule of construction

Nothing in this subchapter (including paragraph (1)) shall be construed—

(A) to in any way effectuate an extinguishment of or otherwise impair—

(i) the Pueblo's title to lands acquired by or for the benefit of the Pueblo since December 28, 1927, or in a tract of land of approximately 150.14 acres known as the ''sliver area'' and described on a plat which is appendix H to the Settlement Agreement;

(ii) the Pueblo's title to land within the Santo Domingo Pueblo Grant which the Pueblo Lands Board found not to have been extinguished; or

(iii) the Pueblo's water rights appurtenant to the lands described in clauses (i) and (ii); and

(B) to expand, reduce, or otherwise impair any rights which the Pueblo or its members may have under existing Federal statutes concerning religious and cultural access to and uses of the public lands.

(3) Confirmation of determination

The Pueblo Lands Board's determination on page 1 of its Report of December 28, 1927, that Santo Domingo Pueblo title, derived from the Santo Domingo Pueblo Grant to the lands overlapped by the La Majada, Sitio de Juana Lopez and Mesita de Juana Lopez Grants has been extinguished is hereby confirmed as of the date of that Report.

(4) Transfers prior to November 1, 2000

(A) In general

In accordance with the Settlement Agreement, any transfer of land or natural resources, prior to November 1, 2000, located anywhere within the United States from, by, or on behalf of the Pueblo, or any of the Pueblo's members, shall be deemed to have been made in accordance with the Act of June 30, 1834 (4 Stat. 729; commonly referred to as the Trade and Intercourse Act), section 17 of the Act of June 7, 1924 (43 Stat. 641; commonly referred to as the Pueblo Lands Act), and any other provision of Federal law that specifically applies to transfers of land or natural resources from, by, or on behalf of an Indian tribe, and such transfers shall be deemed to be ratified effective as of the date of the transfer.

(B) Rule of construction

Nothing in subparagraph (A) shall be construed to affect or eliminate the personal claim of any individual Indian which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(5) Effective date

The provisions of paragraphs (1), (3), and (4) shall take effect upon the entry of a compromise final judgment, in a form and manner acceptable to the Attorney General, in the

amount of $8,000,000 in the case of Pueblo of Santo Domingo v. United States (Indian Claims Commission docket No. 355). The judgment so entered shall be paid from funds appropriated pursuant to section 1304 of title 31.

(b) Trust funds; authorization of appropriations

(1) Establishment

There is hereby established in the Treasury a trust fund to be known as the ''Pueblo of Santo Domingo Land Claims Settlement Fund''. Funds deposited in the Fund shall be subject to the following conditions:

(A) The Fund shall be maintained and invested by the Secretary of the Interior pursuant to the Act of June 24, 1938 (25 U.S.C. 162a).

(B) Subject to the provisions of paragraph (3), monies deposited into the Fund may be expended by the Pueblo to acquire lands within the exterior boundaries of the exclusive aboriginal occupancy area of the Pueblo, as described in the Findings of Fact of the Indian Claims Commission, dated May 9, 1973, and for use for education, economic development, youth and elderly programs, or for other tribal purposes in accordance with plans and budgets developed and approved by the Tribal Council of the Pueblo and approved by the Secretary.

(C) If the Pueblo withdraws monies from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any oversight over or liability for the accounting, disbursement, or investment of such withdrawn monies.

(D) No portion of the monies described in subparagraph (C) may be paid to Pueblo members on a per capita basis.

(E) The acquisition of lands with monies from the Fund shall be on a willing-seller, willing-buyer basis, and no eminent domain authority may be exercised for purposes of acquiring lands for the benefit of the Pueblo pursuant to this subchapter.

(F) The provisions of Public Law 93–134 [25 U.S.C. 1401 et seq.], governing the distribution of Indian claims judgment funds, and the plan approval requirements of section 4023 of this title shall not be applicable to the Fund.

(2) Authorization of appropriations

There are authorized to be appropriated $15,000,000 for deposit into the Fund, in accordance with the following schedule:

(A) $5,000,000 to be deposited in the fiscal year which commences on October 1, 2001.

(B) $5,000,000 to be deposited in the next fiscal year.

(C) The balance of the funds to be deposited in the third consecutive fiscal year.

(3) Limitation on disbursal

Amounts authorized to be appropriated to the Fund under paragraph (2) shall not be disbursed until the following conditions are met:

(A) The case of Pueblo of Santo Domingo v. Rael (No. CIV–83–1888) in the United States District Court for the District of New Mexico, has been dismissed with prejudice.

(B) A compromise final judgment in the amount of $8,000,000 in the case of Pueblo of Santo Domingo v. United States (Indian Claims Commission docket No. 355) in a form and manner acceptable to the Attorney General, has been entered in the United States Court of Federal Claims in accordance with subsection (a)(5) of this section.

(4) Deposits

Funds awarded to the Pueblo consistent with subsection (c)(2) of this section in docket No. 355 of the Indian Claims Commission shall be deposited into the Fund.

(c) Activities upon compromise

On the date of the entry of the final compromise judgment in the case of Pueblo of Santo Domingo v. United States (Indian Claims Commission docket No. 355) in the United States Court of Federal Claims, and the dismissal with prejudice of the case of Pueblo of Santo Domingo v. Rael (No. CIV–83–1888) in the United States District Court for the District of New Mexico, whichever occurs later—

(1) the public lands administered by the Bureau of Land Management and described in section 6 of the Settlement Agreement, and consisting of approximately 4,577.10 acres of land, shall thereafter be held by the United States in trust for the benefit of the Pueblo, subject to valid existing rights and rights of public and private access, as provided for in the Settlement Agreement;

(2) the Secretary of Agriculture is authorized to sell and convey National Forest System lands and the Pueblo shall have the exclusive right to acquire these lands as provided for in section 7 of the Settlement Agreement, and the funds received by the Secretary of Agriculture for such sales shall be deposited in the fund established under section 484a of title 16 and shall be available to purchase non-Federal lands within or adjacent to the National Forests in the State of New Mexico;

(3) lands conveyed by the Secretary of Agriculture pursuant to this section shall no longer be considered part of the National Forest System and upon any conveyance of National Forest lands, the boundaries of the Santa Fe National Forest shall be deemed modified to exclude such lands;

(4) until the National Forest lands are conveyed to the Pueblo pursuant to this section, or until the Pueblo's right to purchase such lands expires pursuant to section 7 of the Settlement Agreement, such lands are withdrawn, subject to valid existing rights, from any new public use or entry under any Federal land law, except for permits not to exceed 1 year, and shall not be identified for any disposition by or for any agency, and no mineral production or harvest of forest products shall be permitted, except that nothing in this subsection shall preclude forest management practices on such lands, including the harvest of timber in the event of fire, disease, or insect infestation; and

(5) once the Pueblo has acquired title to the former National Forest System lands, these lands may be conveyed by the Pueblo to the Secretary of the Interior who shall accept and hold such lands in the name of the United States in trust for the benefit of the Pueblo.

(Pub. L. 106–425, § 5, Nov. 1, 2000, 114 Stat. 1892.)

REFERENCES IN TEXT

Act of June 30, 1834, referred to in subsec. (a)(4)(A), is act June 30, 1834, ch. 161, 4 Stat. 729, as amended. That act was incorporated into the Revised Statutes as R.S. §§ 533, 2111 to 2113, 2116 to 2118, 2124 to 2126, 2129 to 2135, 2137, 2141, 2145, 2147, 2150 to 2152, and 2154 to 2157. For complete classification of those sections of the Revised Statutes to the Code, see Tables.

Act of June 7, 1924, referred to in subsec. (a)(4)(A), is act June 7, 1924, ch. 331, 43 Stat. 636, as amended, known as the Pueblo Lands Act of 1924, which is set out as a note under section 331 of this title.

Act of June 24, 1938, referred to in subsec. (b)(1)(A), is act June 24, 1938, ch. 648, 52 Stat. 1037, as amended, which enacted section 162a of this title, repealed section 162 of this title, and enacted provisions set out as a note under section 162a of this title. For complete classification of this Act to the Code, see Tables.

Public Law 93–134, referred to in subsec. (b)(1)(F), is Pub. L. 93–134, Oct. 19, 1973, 87 Stat. 466, as amended, known as the Indian Tribal Judgment Funds Use or Distribution Act, which is classified generally to chapter 16 (§ 1401 et seq.) of this title. For complete classification of this Act to the Code, see section 1401(c) of this title and Tables.

§ 1777d. Affirmation of accurate boundaries of Santo Domingo Pueblo Grant

(a) In general

The boundaries of the Santo Domingo Pueblo Grant, as determined by the 1907 Hall-Joy Survey, confirmed in the Report of the Pueblo Lands Board, dated December 28, 1927, are hereby declared to be the current boundaries of the Grant and any lands currently owned by or on behalf of the Pueblo within such boundaries, or any lands hereinafter acquired by the Pueblo within the Grant in fee simple absolute, shall be considered to be Indian country within the meaning of section 1151 of title 18.

(b) Limitation

Any lands or interests in lands within the Santo Domingo Pueblo Grant, that are not owned or acquired by the Pueblo, shall not be treated as Indian country within the meaning of section 1151 of title 18.

(c) Acquisition of Federal lands

Any Federal lands acquired by the Pueblo pursuant to section 1777c(c)(1) of this title shall be held in trust by the Secretary for the benefit of the Pueblo, and shall be treated as Indian country within the meaning of section 1151 of title 18.

(d) Land subject to provisions

Any lands acquired by the Pueblo pursuant to section 1777c(c) of this title, or with funds subject to section 1777c(b) of this title, shall be subject to the provisions of section 17 of the Act of June 7, 1924 (43 Stat. 641; commonly referred to as the Pueblo Lands Act).

(e) Rule of construction

Nothing in this subchapter or in the Settlement Agreement shall be construed to—

(1) cloud title to federally administered lands or non-Indian or other Indian lands, with regard to claims of title which are extinguished pursuant to section 1777c of this title; or

(2) affect actions taken prior to November 1, 2000, to manage federally administered lands within the boundaries of the Santo Domingo Pueblo Grant.

(Pub. L. 106–425, § 6, Nov. 1, 2000, 114 Stat. 1895.)

REFERENCES IN TEXT

Act of June 7, 1924, referred to in subsec. (d), is act June 7, 1924, ch. 331, 43 Stat. 636, as amended, known as the Pueblo Lands Act of 1924, which is set out as a note under section 331 of this title.

§ 1777e. Miscellaneous provisions

(a) Exchange of certain lands with New Mexico

(1) In general

Not later than 2 years after November 1, 2000, the Secretary shall acquire by exchange the State of New Mexico trust lands located in township 16 north, range 4 east, section 2, and all interests therein, including improvements, mineral rights and water rights.

(2) Use of other lands

In acquiring lands by exchange under paragraph (1), the Secretary may utilize unappropriated public lands within the State of New Mexico.

(3) Value of lands

The lands exchanged under this subsection shall be of approximately equal value, and the Secretary may credit or debit the ledger account established in the Memorandum of Understanding between the Bureau of Land Management, the New Mexico State Land Office, and the New Mexico Commissioner of Public Lands, in order to equalize the values of the lands exchanged.

(4) Conveyance

(A) By Secretary

Upon the acquisition of lands under paragraph (1), the Secretary shall convey all title and interest to such lands to the Pueblo by sale, exchange or otherwise, and the Pueblo shall have the exclusive right to acquire such lands.

(B) By Pueblo

Upon the acquisition of lands under subparagraph (A), the Pueblo may convey such land to the Secretary who shall accept and hold such lands in trust for the benefit of the Pueblo.

(b) Other exchanges of land

(1) In general

In order to further the purposes of this subchapter—

(A) the Pueblo may enter into agreements to exchange restricted lands for lands described in paragraph (2); and

(B) any land exchange agreements between the Pueblo and any of the parties to the action referred to in paragraph (2) that are executed not later than December 31, 2001, shall be deemed to be approved.

(2) Lands

The land described in this paragraph is the land, title to which was at issue in Pueblo of Santo Domingo v. Rael (Civil No. 83–1888 (D.N.M.)).

(3) Land to be held in trust

Upon the acquisition of lands under paragraph (1), the Pueblo may convey such land to the Secretary who shall accept and hold such lands in trust for the benefit of the Pueblo.

(4) Rule of construction

Nothing in this subsection shall be construed to limit the provisions of section 1777c(a) of this title relating to the extinguishment of the land claims of the Pueblo.

(c) Approval of certain resolutions

All agreements, transactions, and conveyances authorized by Resolutions 97–010 and C22–99 as enacted by the Tribal Council of the Pueblo de Cochiti, and Resolution S.D. 12–99–36 as enacted by the Tribal Council of the Pueblo of Santo Domingo, pertaining to boundary disputes between the Pueblo de Cochiti and the Pueblo of Santo Domingo, are hereby approved, including the Pueblo de Cochiti's agreement to relinquish its claim to the southwest corner of its Spanish Land Grant, to the extent that such land overlaps with the Santo Domingo Pueblo Grant, and to disclaim any right to receive compensation from the United States or any other party with respect to such overlapping lands.

(Pub. L. 106–425, § 7, as added Pub. L. 106–434, § 3, Nov. 6, 2000, 114 Stat. 1913.)

SUBCHAPTER XII—TORRES-MARTINEZ DESERT CAHUILLA INDIANS CLAIMS SETTLEMENT

§ 1778. Congressional findings and purpose

(a) Findings

The Congress finds the following:

(1) In 1876, the Torres-Martinez Indian Reservation was created, reserving a single, 640-acre section of land in the Coachella Valley, California, north of the Salton Sink. The Reservation was expanded in 1891 by Executive order, pursuant to the Mission Indian Relief Act of 1891, adding about 12,000 acres to the original 640-acre reservation.

(2) Between 1905 and 1907, flood waters of the Colorado River filled the Salton Sink, creating the Salton Sea, inundating approximately 2,000 acres of the 1891 reservation lands.

(3) In 1909, an additional 12,000 acres of land, 9,000 of which were then submerged under the Salton Sea, were added to the reservation under a Secretarial Order issued pursuant to a 1907 amendment of the Mission Indian Relief Act. Due to receding water levels in the Salton Sea through the process of evaporation, at the time of the 1909 enlargement of the reservation, there were some expectations that the Salton Sea would recede within a period of 25 years.

(4) Through the present day, the majority of the lands added to the reservation in 1909 remain inundated due in part to the flowage of natural runoff and drainage water from the irrigation systems of the Imperial, Coachella, and Mexicali Valleys into the Salton Sea.

(5) In addition to those lands that are inundated, there are also tribal and individual Indian lands located on the perimeter of the Salton Sea that are not currently irrigable due to lack of proper drainage.

(6) In 1982, the United States brought an action in trespass entitled ''United States of America, in its own right and on behalf of Torres-Martinez Band of Mission Indians and the Allottees therein v. the Imperial Irrigation District and Coachella Valley Water District'', Case No. 82–1790 K (M) (hereafter in this section referred to as the ''U.S. Suit'') on behalf of the Torres-Martinez Indian Tribe and affected Indian allottees against the two water districts seeking damages related to the inundation of tribal- and allottee-owned lands and injunctive relief to prevent future discharge of water on such lands.

(7) On August 20, 1992, the Federal District Court for the Southern District of California entered a judgment in the U.S. Suit requiring the Coachella Valley Water District to pay $212,908.41 in past and future damages and the Imperial Irrigation District to pay $2,795,694.33 in past and future damages in lieu of the United States request for a permanent injunction against continued flooding of the submerged lands.

(8) The United States, the Coachella Valley Water District, and the Imperial Irrigation District have filed notices of appeal with the United States Court of Appeals for the Ninth Circuit from the district court's judgment in the U.S. Suit (Nos. 93–55389, 93–55398, and 93–55402), and the Tribe has filed a notice of appeal from the district court's denial of its motion to intervene as a matter of right (No. 92–55129).

(9) The Court of Appeals for the Ninth Circuit has stayed further action on the appeals pending the outcome of settlement negotiations.

(10) In 1991, the Tribe brought its own lawsuit, Torres-Martinez Desert Cahuilla Indians, et al., v. Imperial Irrigation District, et al., Case No. 91–1670 J (LSP) (hereafter in this section referred to as the ''Indian Suit'') in the United States District Court, Southern District of California, against the two water districts, and amended the complaint to include as a plaintiff, Mary Resvaloso, in her own right, and as class representative of all other affected Indian allotment owners.

(11) The Indian Suit has been stayed by the district court to facilitate settlement negotiations.

(b) Purpose

The purpose of this subchapter is to facilitate and implement the settlement agreement negotiated and executed by the parties to the U.S. Suit and Indian Suit for the purpose of resolving their conflicting claims to their mutual satisfaction and in the public interest.

(Pub. L. 106–568, title VI, § 602, Dec. 27, 2000, 114 Stat. 2906.)

REFERENCES IN TEXT

The Mission Indian Relief Act of 1891 and the Mission Indian Relief Act, referred to in subsec. (a)(1) and (3), means act Jan. 12, 1891, ch. 65, 26 Stat. 712, as amended, which is not classified to the Code.

EFFECTIVE DATE

Pub. L. 106–568, title VI, § 611, Dec. 27, 2000, 114 Stat. 2912, provided that:

''(a) IN GENERAL.—Except as provided by subsection (b), this title [see Short Title note below] shall take effect on the date of the enactment of this Act [Dec. 27, 2000].

''(b) EXCEPTION.—Sections 4, 5, 6, 7, and 8 [probably means sections 604 to 608 of title VI of Pub. L. 106–568, which are classified to sections 1778b to 1778f of this title] shall take effect on the date on which the Secretary determines the following conditions have been met:

''(1) The Tribe agrees to the Settlement Agreement and the provisions of this title and executes the releases and waivers required by the Settlement Agreement and this title.

''(2) The Coachella Valley Water District agrees to the Settlement Agreement and to the provisions of this title.

''(3) The Imperial Irrigation District agrees to the Settlement Agreement and to the provisions of this title.''

SHORT TITLE

Pub. L. 106–568, title VI, § 601, Dec. 27, 2000, 114 Stat. 2906, provided that: ''This title [enacting this subchapter and provisions set out as a note above] may be cited as the 'Torres-Martinez Desert Cahuilla Indians Claims Settlement Act'.''

§ 1778a. Definitions

For the purposes of this subchapter:

(1) Tribe

The term ''Tribe'' means the Torres-Martinez Desert Cahuilla Indians, a federally recognized Indian tribe with a reservation located in Riverside and Imperial Counties, California.

(2) Allottees

The term ''allottees'' means those individual Tribe members, their successors, heirs, and assigns, who have individual ownership of allotted Indian trust lands within the Torres-Martinez Indian Reservation.

(3) Salton Sea

The term ''Salton Sea'' means the inland body of water located in Riverside and Imperial Counties which serves as a drainage reservoir for water from precipitation, natural runoff, irrigation return flows, wastewater, floods, and other inflow from within its watershed area.

(4) Settlement agreement

The term ''Settlement Agreement'' means the Agreement of Compromise and Settlement Concerning Claims to the Lands of the United States Within and on the Perimeter of the Salton Sea Drainage Reservoir Held in Trust for the Torres-Martinez Indians executed on June 18, 1996, as modified by the first, second, third, and fourth modifications thereto.

(5) Secretary

The term ''Secretary'' means the Secretary of the Interior.

(6) Permanent flowage easement

The term ''permanent flowage easement'' means the perpetual right by the water districts to use the described lands in the Salton Sink within and below the minus 220-foot contour as a drainage reservoir to receive and store water from their respective water and drainage systems, including flood water, return flows from irrigation, tail water, leach water, operational spills, and any other water which overflows and floods such lands, originating from lands within such water districts.

(Pub. L. 106–568, title VI, § 603, Dec. 27, 2000, 114 Stat. 2908.)

§ 1778b. Ratification of Settlement Agreement

The United States hereby approves, ratifies, and confirms the Settlement Agreement.

(Pub. L. 106–568, title VI, § 604, Dec. 27, 2000, 114 Stat. 2908.)

EFFECTIVE DATE

Section effective on date on which the Secretary determines that certain conditions with respect to the Settlement Agreement and provisions of title VI of Pub. L. 106–568 have been met, see section 611(b) of Pub. L. 106–568, set out as a note under section 1778 of this title.

§ 1778c. Settlement funds

(a) Establishment of tribal and allottees settlement trust funds accounts

(1) In general

There are established in the Treasury of the United States three settlement trust fund accounts to be known as the ''Torres-Martinez Settlement Trust Funds Account'', the ''Torres-Martinez Allottees Settlement Account I'', and the ''Torres-Martinez Allottees Settlement Account II'', respectively.

(2) Availability

Amounts held in the Torres-Martinez Settlement Trust Funds Account, the Torres-Martinez Allottees Settlement Account I, and the Torres-Martinez Allottees Settlement Account II shall be available to the Secretary for distribution to the Tribe and affected allottees in accordance with subsection (c) of this section.

(b) Contributions to the settlement trust funds

(1) In general

Amounts paid to the Secretary for deposit into the trust fund accounts established by subsection (a) of this section shall be allocated among and deposited in the trust accounts in the amounts determined by the tribal-allottee allocation provisions of the Settlement Agreement.

(2) Cash payments by Coachella Valley Water District

Within the time, in the manner, and upon the conditions specified in the Settlement Agreement, the Coachella Valley Water District shall pay the sum of $337,908.41 to the United States for the benefit of the Tribe and any affected allottees.

(3) Cash payments by Imperial Irrigation District

Within the time, in the manner, and upon the conditions specified in the Settlement Agreement, the Imperial Irrigation District shall pay the sum of $3,670,694.33 to the United

States for the benefit of the Tribe and any affected allottees.

(4) Cash payments by the United States

Within the time and upon the conditions specified in the Settlement Agreement, the United States shall pay into the three separate tribal and allottee trust fund accounts the total sum of $10,200,000, of which sum—

(A) $4,200,000 shall be provided from moneys appropriated by Congress under section 1304 of title 31, the conditions of which are deemed to have been met, including those of section 2414 of title 28; and

(B) $6,000,000 shall be provided from moneys appropriated by Congress for this specific purpose to the Secretary.

(5) Additional payments

In the event that any of the sums described in paragraph (2) or (3) are not timely paid by the Coachella Valley Water District or the Imperial Irrigation District, as the case may be, the delinquent payor shall pay an additional sum equal to 10 percent interest annually on the amount outstanding daily, compounded yearly on December 31 of each respective year, until all outstanding amounts due have been paid in full.

(6) Severally liable for payments

The Coachella Valley Water District, the Imperial Irrigation District, and the United States shall each be severally liable, but not jointly liable, for its respective obligation to make the payments specified by this subsection.

(c) Administration of settlement trust funds

The Secretary shall administer and distribute funds held in the Torres-Martinez Settlement Trust Funds Account, the Torres-Martinez Allottees Settlement Account I, and the Torres-Martinez Allottees Settlement Account II in accordance with the terms and conditions of the Settlement Agreement.

(Pub. L. 106–568, title VI, § 605, Dec. 27, 2000, 114 Stat. 2908.)

EFFECTIVE DATE

Section effective on date on which the Secretary determines that certain conditions with respect to the Settlement Agreement and provisions of title VI of Pub. L. 106–568 have been met, see section 611(b) of Pub. L. 106–568, set out as a note under section 1778 of this title.

§ 1778d. Trust land acquisition and status

(a) Acquisition and placement of lands into trust

(1) In general

The Secretary shall convey into trust status lands purchased or otherwise acquired by the Tribe within the areas described in paragraphs (2) and (3) in an amount not to exceed 11,800 acres in accordance with the terms, conditions, criteria, and procedures set forth in the Settlement Agreement and this subchapter. Subject to such terms, conditions, criteria, and procedures, all lands purchased or otherwise acquired by the Tribe and conveyed into trust status for the benefit of the Tribe pursuant to the Settlement Agreement and this subchapter shall be considered as if such lands were so acquired in trust status in 1909 except as: (i) to water rights as provided in subsection (c) of this section; and (ii) to valid rights existing at the time of acquisition pursuant to this subchapter.

(2) Primary Acquisition Area

(A) In general

The primary area within which lands may be acquired pursuant to paragraph (1) consists of the lands located in the Primary Acquisition Area, as defined in the Settlement Agreement. The amount of acreage that may be acquired from such area is 11,800 acres less the number of acres acquired and conveyed into trust under paragraph (3).

(B) Effect of objection

Lands referred to in subparagraph (A) may not be acquired pursuant to paragraph (1) if by majority vote the governing body of the city within whose incorporated boundaries (as such boundaries exist on the date of the Settlement Agreement) the subject lands are situated within formally objects to the Tribe's request to convey the subject lands into trust and notifies the Secretary of such objection in writing within 60 days of receiving a copy of the Tribe's request in accordance with the Settlement Agreement. Upon receipt of such a notification, the Secretary shall deny the acquisition request.

(3) Secondary Acquisition Area

(A) In general

Not more than 640 acres of land may be acquired pursuant to paragraph (1) from those certain lands located in the Secondary Acquisition Area, as defined in the Settlement Agreement.

(B) Effect of objection

Lands referred to in subparagraph (A) may not be acquired pursuant to paragraph (1) if by majority vote—

(i) the governing body of the city within whose incorporated boundaries (as such boundaries exist on the date of the Settlement Agreement) the subject lands are situated within; or

(ii) the governing body of Riverside County, California, in the event that such lands are located within an unincorporated area,

formally objects to the Tribe's request to convey the subject lands into trust and notifies the Secretary of such objection in writing within 60 days of receiving a copy of the Tribe's request in accordance with the Settlement Agreement. Upon receipt of such a notification, the Secretary shall deny the acquisition request.

(4) Contiguous lands

The Secretary shall not take any lands into trust for the Tribe under generally applicable Federal statutes or regulations where such lands are both—

(A) contiguous to any lands within the Secondary Acquisition Area that are taken into trust pursuant to the terms of the Settlement Agreement and this subchapter; and

(B) situated outside the Secondary Acquisition Area.

(b) Restrictions on gaming

The Tribe may conduct gaming on only one site within the lands acquired pursuant to subsection 6(a)(1)[1] as more particularly provided in the Settlement Agreement.

(c) Water rights

All lands acquired by the Tribe under subsection (a) of this section shall—

(1) be subject to all valid water rights existing at the time of tribal acquisition, including (but not limited to) all rights under any permit or license issued under the laws of the State of California to commence an appropriation of water, to appropriate water, or to increase the amount of water appropriated;

(2) be subject to the paramount rights of any person who at any time recharges or stores water in a ground water basin to recapture or recover the recharged or stored water or to authorize others to recapture or recover the recharged or stored water; and

(3) continue to enjoy all valid water rights appurtenant to the land existing immediately prior to the time of tribal acquisition.

(Pub. L. 106–568, title VI, § 606, Dec. 27, 2000, 114 Stat. 2909.)

EFFECTIVE DATE

Section effective on date on which the Secretary determines that certain conditions with respect to the Settlement Agreement and provisions of title VI of Pub. L. 106–568 have been met, see section 611(b) of Pub. L. 106–568, set out as a note under section 1778 of this title.

§ 1778e. Permanent flowage easements

(a) Conveyance of easement to Coachella Valley Water District

(1) Tribal interest

The United States, in its capacity as trustee for the Tribe, as well as for any affected Indian allotment owners, and their successors and assigns, and the Tribe in its own right and that of its successors and assigns, shall convey to the Coachella Valley Water District a permanent flowage easement as to all Indian trust lands (approximately 11,800 acres) located within and below the minus 220-foot contour of the Salton Sink, in accordance with the terms and conditions of the Settlement Agreement.

(2) United States interest

The United States, in its own right shall, notwithstanding any prior or present reservation or withdrawal of land of any kind, convey to the Coachella Valley Water District a permanent flowage easement as to all Federal lands (approximately 110,000 acres) located within and below the minus 220-foot contour of the Salton Sink, in accordance with the terms and conditions of the Settlement Agreement.

(b) Conveyance of easement to Imperial Irrigation District

(1) Tribal interest

The United States, in its capacity as trustee for the Tribe, as well as for any affected Indian allotment owners, and their successors and assigns, and the Tribe in its own right and that of its successors and assigns, shall grant and convey to the Imperial Irrigation District a permanent flowage easement as to all Indian trust lands (approximately 11,800 acres) located within and below the minus 220-foot contour of the Salton Sink, in accordance with the terms and conditions of the Settlement Agreement.

(2) United States

The United States, in its own right shall, notwithstanding any prior or present reservation or withdrawal of land of any kind, grant and convey to the Imperial Irrigation District a permanent flowage easement as to all Federal lands (approximately 110,000 acres) located within and below the minus 220-foot contour of the Salton Sink, in accordance with the terms and conditions of the Settlement Agreement.

(Pub. L. 106–568, title VI, § 607, Dec. 27, 2000, 114 Stat. 2911.)

EFFECTIVE DATE

Section effective on date on which the Secretary determines that certain conditions with respect to the Settlement Agreement and provisions of title VI of Pub. L. 106–568 have been met, see section 611(b) of Pub. L. 106–568, set out as a note under section 1778 of this title.

§ 1778f. Satisfaction of claims, waivers, and releases

(a) Satisfaction of claims

The benefits available to the Tribe and the allottees under the terms and conditions of the Settlement Agreement and the provisions of this subchapter shall constitute full and complete satisfaction of the claims by the Tribe and the allottees arising from or related to the inundation and lack of drainage of tribal and allottee lands described in section 1778 of this title and further defined in the Settlement Agreement.

(b) Approval of waivers and releases

The United States hereby approves and confirms the releases and waivers required by the Settlement Agreement and this subchapter.

(Pub. L. 106–568, title VI, § 608, Dec. 27, 2000, 114 Stat. 2912.)

EFFECTIVE DATE

Section effective on date on which the Secretary determines that certain conditions with respect to the Settlement Agreement and provisions of title VI of Pub. L. 106–568 have been met, see section 611(b) of Pub. L. 106–568, set out as a note under section 1778 of this title.

§ 1778g. Miscellaneous provisions

(a) Eligibility for benefits

Nothing in this subchapter or the Settlement Agreement shall affect the eligibility of the Tribe or its members for any Federal program or diminish the trust responsibility of the United States to the Tribe and its members.

(b) Eligibility for other services not affected

No payment pursuant to this subchapter shall result in the reduction or denial of any Federal

[1] So in original. Probably should be subsection ''(a)(1)''.

services or programs to the Tribe or to members of the Tribe, to which they are entitled or eligible because of their status as a federally recognized Indian tribe or member of the Tribe.

(c) Preservation of existing rights

Except as provided in this subchapter or the Settlement Agreement, any right to which the Tribe is entitled under existing law shall not be affected or diminished.

(d) Amendment of Settlement Agreement

The Settlement Agreement may be amended from time to time in accordance with its terms and conditions to the extent that such amendments are not inconsistent with the trust land acquisition provisions of the Settlement Agreement, as such provisions existed on—

(1) December 27, 2000, in the case of Modifications One and Three; and

(2) September 14, 2000, in the case of Modification Four.

(Pub. L. 106–568, title VI, § 609, Dec. 27, 2000, 114 Stat. 2912.)

§ 1778h. Authorization of appropriations

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

(Pub. L. 106–568, title VI, § 610, Dec. 27, 2000, 114 Stat. 2912.)

SUBCHAPTER XIII—CHEROKEE, CHOCTAW, AND CHICKASAW NATIONS CLAIMS SETTLEMENT

§ 1779. Findings

The Congress finds the following:

(1) It is the policy of the United States to promote tribal self-determination and economic self-sufficiency and to encourage the resolution of disputes over historical claims through mutually agreed-to settlements between Indian Nations and the United States.

(2) There are pending before the United States Court of Federal Claims certain lawsuits against the United States brought by the Cherokee, Choctaw, and Chickasaw Nations seeking monetary damages for the alleged use and mismanagement of tribal resources along the Arkansas River in eastern Oklahoma.

(3) The Cherokee Nation, a federally recognized Indian tribe with its present tribal headquarters south of Tahlequah, Oklahoma, having adopted its most recent constitution on June 26, 1976, and having entered into various treaties with the United States, including but not limited to the Treaty at Hopewell, executed on November 28, 1785 (7 Stat. 18), and the Treaty at Washington, D.C., executed on July 19, 1866 (14 Stat. 799), has maintained a continuous government-to-government relationship with the United States since the earliest years of the Union.

(4) The Choctaw Nation, a federally recognized Indian tribe with its present tribal headquarters in Durant, Oklahoma, having adopted its most recent constitution on July 9, 1983, and having entered into various treaties with the United States of America, including but not limited to the Treaty at Hopewell, executed on January 3, 1786 (7 Stat. 21), and the Treaty at Washington, D.C., executed on April 28, 1866 (7 Stat. 21),[1] has maintained a continuous government-to-government relationship with the United States since the earliest years of the Union.

(5) The Chickasaw Nation, a federally recognized Indian tribe with its present tribal headquarters in Ada, Oklahoma, having adopted its most recent constitution on August 27, 1983, and having entered into various treaties with the United States of America, including but not limited to the Treaty at Hopewell, executed on January 10, 1786 (7 Stat. 24), and the Treaty at Washington, D.C., executed on April 28, 1866 (7 Stat. 21),[1] has maintained a continuous government-to-government relationship with the United States since the earliest years of the Union.

(6) In the first half of the 19th century, the Cherokee, Choctaw, and Chickasaw Nations were forcibly removed from their homelands in the southeastern United States to lands west of the Mississippi in the Indian Territory that were ceded to them by the United States. From the ''Three Forks'' area near present day Muskogee, Oklahoma, downstream to the point of confluence with the Canadian River, the Arkansas River flowed entirely within the territory of the Cherokee Nation. From that point of confluence downstream to the Arkansas territorial line, the Arkansas River formed the boundary between the Cherokee Nation on the left side of the thread of the river and the Choctaw and Chickasaw Nations on the right.

(7) Pursuant to the Act of April 30, 1906 (34 Stat. 137),[2] tribal property not allotted to individuals or otherwise disposed of, including the bed and banks of the Arkansas River, passed to the United States in trust for the use and benefit of the respective Indian Nations in accordance with their respective interests therein.

(8) For more than 60 years after Oklahoma statehood, the Bureau of Indian Affairs believed that Oklahoma owned the Riverbed from the Arkansas State line to Three Forks, and therefore took no action to protect the Indian Nations' Riverbed resources such as oil, gas, and Drybed Lands suitable for grazing and agriculture.

(9) Third parties with property near the Arkansas River began to occupy the Indian Nations' Drybed Lands—lands that were under water at the time of statehood but that are now dry due to changes in the course of the river.

(10) In 1966, the Indian Nations sued the State of Oklahoma to recover their lands. In 1970, the Supreme Court of the United States decided in the case of Choctaw Nation vs. Oklahoma (396 U.S. 620),[3] that the Indian Nations retained title to their respective portions of the Riverbed along the navigable reach of the river.

(11) In 1987, the Supreme Court of the United States in the case of United States vs. Chero-

[1] So in original. Probably should be ''(14 Stat. 769),''.

[2] See References in Text note below.

[3] So in original. Probably should be ''(397 U.S. 620),''.

kee Nation (480 U.S. 700) decided that the riverbed lands did not gain an exemption from the Federal Government's navigational servitude and that the Cherokee Nation had no right to compensation for damage to its interest by exercise of the Government's servitude.

(12) In 1989, the Indian Nations filed lawsuits against the United States in the United States Court of Federal Claims (Case Nos. 218–89L and 630–89L), seeking damages for the United States' use and mismanagement of tribal trust resources along the Arkansas River. Those actions are still pending.

(13) In 1997, the United States filed quiet title litigation against individuals occupying some of the Indian Nations' Drybed Lands. That action, filed in the United States District Court for the Eastern District of Oklahoma, was dismissed without prejudice on technical grounds.

(14) Much of the Indian Nations' Drybed Lands have been occupied by a large number of adjacent landowners in Oklahoma. Without Federal legislation, further litigation against thousands of such landowners would be likely and any final resolution of disputes would take many years and entail great expense to the United States, the Indian Nations, and the individuals and entities occupying the Drybed Lands and would seriously impair long-term economic planning and development for all parties.

(15) The Councils of the Cherokee and Choctaw Nations and the Legislature of the Chickasaw Nation have each enacted tribal resolutions which would, contingent upon the passage of this subchapter and the satisfaction of its terms and in exchange for the moneys appropriated hereunder—

(A) settle and forever release their respective claims against the United States asserted by them in United States Court of Federal Claims Case Nos. 218–89L and 630–89L; and

(B) forever disclaim any and all right, title, and interest in and to the Disclaimed Drybed Lands, as set forth in those enactments of the respective councils of the Indian Nations.

(16) The resolutions adopted by the respective Councils of the Cherokee, Choctaw, and Chickasaw Nations each provide that, contingent upon the passage of the settlement legislation and satisfaction of its terms, each Indian Nation agrees to dismiss, release, and forever discharge its claims asserted against the United States in the United States Court of Federal Claims, Case Nos. 218–89L and 630–89L, and to forever disclaim any right, title, or interest of the Indian Nation in the Disclaimed Drybed Lands, in exchange for the funds appropriated and allocated to the Indian Nation under the provisions of the settlement legislation, which funds the Indian Nation agrees to accept in full satisfaction and settlement of all claims against the United States for the damages sought in the aforementioned claims asserted in the United States Court of Federal Claims, and as full and fair compensation for disclaiming its right, title, and interest in the Disclaimed Drybed Lands.

(17) In those resolutions, each Indian Nation expressly reserved all of its beneficial interest and title to all other Riverbed lands, including minerals, as determined by the Supreme Court in Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970), and further reserved any and all right, title, or interest that each Nation may have in and to the water flowing in the Arkansas River and its tributaries.

(Pub. L. 107–331, title VI, § 602, Dec. 13, 2002, 116 Stat. 2845.)

REFERENCES IN TEXT

The Act of April 30, 1906 (34 Stat. 137), referred to in par. (7), probably means the Act of April 26, 1906, ch. 1876, 34 Stat. 137, which was classified in part as a note under section 355 of this title.

SHORT TITLE

Pub. L. 107–331, title VI, § 601, Dec. 13, 2002, 116 Stat. 2845, provided that: ''This title [enacting this subchapter] may be cited as the 'Cherokee, Choctaw, and Chickasaw Nations Claims Settlement Act'.''

§ 1779a. Purposes

The purposes of this subchapter are to resolve all claims that have been or could have been brought by the Cherokee, Choctaw, and Chickasaw Nations against the United States, and to confirm that the Indian Nations are forever disclaiming any right, title, or interest in the Disclaimed Drybed Lands, which are contiguous to the channel of the Arkansas River as of December 13, 2002, in certain townships in eastern Oklahoma.

(Pub. L. 107–331, title VI, § 603, Dec. 13, 2002, 116 Stat. 2847.)

§ 1779b. Definitions

For the purposes of this subchapter, the following definitions apply:

(1) Disclaimed Drybed Lands

The term ''Disclaimed Drybed Lands'' means all Drybed Lands along the Arkansas River that are located in Township 10 North in Range 24 East, Townships 9 and 10 North in Range 25 East, Township 10 North in Range 26 East, and Townships 10 and 11 North in Range 27 East, in the State of Oklahoma.

(2) Drybed Lands

The term ''Drybed Lands'' means those lands which, on December 13, 2002, lie above and contiguous to the mean high water mark of the Arkansas River in the State of Oklahoma. The term ''Drybed Lands'' is intended to have the same meaning as the term ''Upland Claim Area'' as used by the Bureau of Land Management Cadastral Survey Geographic Team in its preliminary survey of the Arkansas River. The term ''Drybed Lands'' includes any lands so identified in the ''Holway study.''

(3) Indian Nation; Indian Nations

The term ''Indian Nation'' means the Cherokee Nation, Choctaw Nation, or Chickasaw Nation, and the term ''Indian Nations'' means all 3 tribes collectively.

(4) Riverbed

The term ''Riverbed'' means the Drybed Lands and the Wetbed Lands and includes all minerals therein.

(5) Secretary

The term ''Secretary'' means the Secretary of the Interior.

(6) Wetbed Lands

The term ''Wetbed Lands'' means those Riverbed lands which lie below the mean high water mark of the Arkansas River in the State of Oklahoma as of December 13, 2002, exclusive of the Drybed Lands. The term ''Wetbed Lands'' is intended to have the same meaning as the term ''Present Channel Claim Areas'' as utilized by the Bureau of Land Management Cadastral Survey Geographic Team in its preliminary survey of the Arkansas River.

(Pub. L. 107–331, title VI, § 604, Dec. 13, 2002, 116 Stat. 2847.)

§ 1779c. Settlement and claims; appropriations; allocation of funds

(a) Extinguishment of claims

Pursuant to their respective tribal resolutions, and in exchange for the benefits conferred under this subchapter, the Indian Nations shall, on December 13, 2002, enter into a consent decree with the United States that waives, releases, and dismisses all the claims they have asserted or could have asserted in their cases numbered 218–89L and 630–89L pending in the United States Court of Federal Claims against the United States, including but not limited to claims arising out of any and all of the Indian Nations' interests in the Disclaimed Drybed Lands and arising out of construction, maintenance and operation of the McClellan-Kerr Navigation Way. The Indian Nations and the United States shall lodge the consent decree with the Court of Federal Claims within 30 days of December 13, 2002, and shall move for entry of the consent decree at such time as all appropriations by Congress pursuant to the authority of this subchapter have been made and deposited into the appropriate tribal trust fund account of the Indian Nations as described in section 1779d of this title. Upon entry of the consent decree, all the Indian Nations' claims and all their past, present, and future right, title, and interest to the Disclaimed Drybed Lands, shall be deemed extinguished. No claims may be asserted in the future against the United States pursuant to sections 1491, 1346(a)(2), or 1505 of title 28 for actions taken or failed to have been taken by the United States for events occurring prior to the date of the extinguishment of claims with respect to the Riverbed.

(b) Release of tribal claims to certain Drybed Lands

(1) In general

Upon the deposit of all funds authorized for appropriation under subsection (c) of this section for an Indian Nation into the appropriate trust fund account described in section 1779d of this title—

(A) all claims now existing or which may arise in the future with respect to the Disclaimed Drybed Lands and all right, title, and interest that the Indian Nations and the United States as trustee on behalf of the Indian Nation may have to the Disclaimed Drybed Lands, shall be deemed extinguished;

(B) any interest of the Indian Nations or the United States as trustee on their behalf in the Disclaimed Drybed Lands shall further be extinguished pursuant to the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, 1 Stat. 137), and all subsequent amendments thereto (as codified at 25 U.S.C. 177);

(C) to the extent parties other than the Indian Nations have transferred interests in the Disclaimed Drybed Lands in violation of the Trade and Intercourse Act, Congress does hereby approve and ratify such transfers of interests in the Disclaimed Drybed Lands to the extent that such transfers otherwise are valid under law; and

(D) the Secretary is authorized to execute an appropriate document citing this subchapter, suitable for filing with the county clerks, or such other county official as appropriate, of those counties wherein the foregoing described lands are located, disclaiming any tribal or Federal interest on behalf of the Indian Nations in such Disclaimed Drybed Lands. The Secretary is authorized to file with the counties a plat or map of the disclaimed lands should the Secretary determine that such filing will clarify the extent of lands disclaimed. Such a plat or map may be filed regardless of whether the map or plat has been previously approved for filing, whether or not the map or plat has been filed, and regardless of whether the map or plat constitutes a final determination by the Secretary of the extent of the Indian Nations' original claim to the Disclaimed Drybed Lands. The disclaimer filed by the United States shall constitute a disclaimer of the Disclaimed Drybed Lands for purposes of the Trade and Intercourse Act (25 U.S.C. 177).

(2) Special provisions

Notwithstanding any provision of this subchapter—

(A) the Indian Nations do not relinquish any right, title, or interest in any lands which constitute the Wetbed Lands subject to the navigational servitude exercised by the United States on the Wetbed Lands. By virtue of the exercise of the navigational servitude, the United States shall not be liable to the Indian Nations for any loss they may have related to the minerals in the Wetbed Lands;

(B) no provision of this subchapter shall be construed to extinguish or convey any water rights of the Indian Nations in the Arkansas River or any other stream or the beneficial interests or title of any of the Indian Nations in and to lands held in trust by the United States on December 13, 2002, which lie above or below the mean high water mark of the Arkansas River, except for the Disclaimed Drybed Lands; and

(C) the Indian Nations do not relinquish any right, title, or interest in any lands or minerals of certain unallotted tracts which are identified in the official records of the Eastern Oklahoma Regional Office, Bureau of Indian Affairs. The disclaimer to be filed

by the Secretary of the Interior under subsection (b)(1) of this section shall reflect the legal description of the unallotted tracts retained by the Nations.

(3) Setoff

In the event the Court of Federal Claims does not enter the consent decree as set forth in subsection (a) of this section, the United States shall be entitled to setoff against any claims of the Indian Nations as set forth in subsection (a) of this section, any funds transferred to the Indian Nations pursuant to section 1779d of this title, and any interest accrued thereon up to the date of setoff.

(4) Quiet title actions

Notwithstanding any other provision of law, neither the United States nor any department of the United States nor the Indian Nations shall be made parties to any quiet title lawsuit or other lawsuit to determine ownership of or an interest in the Disclaimed Drybed Lands initiated by any private person or private entity after execution of the disclaimer set out in subsection (b)(1) of this section. The United States will have no obligation to undertake any future quiet title actions or actions for the recovery of lands or funds relating to any Drybed Lands retained by the Indian Nation or Indian Nations under this subchapter, including any lands which are Wetbed Lands on December 13, 2002, but which subsequently lie above the mean high water mark of the Arkansas River and the failure or declination to initiate any quiet title action or to manage any such Drybed Lands shall not constitute a breach of trust by the United States or be compensable to the Indian Nation or Indian Nations in any manner.

(5) Land to be conveyed in fee

To the extent that the United States determines that it is able to effectively maintain the McClellan-Kerr Navigation Way without retaining title to lands above the high water mark of the Arkansas River as of December 13, 2002, said lands, after being declared surplus, shall be conveyed in fee to the Indian Nation within whose boundary the land is located. The United States shall not be obligated to accept such property in trust.

(c) Authorization for settlement appropriations

There is authorized to be appropriated an aggregate sum of $40,000,000 as follows:

(1) $10,000,000 for fiscal year 2004.

(2) $10,000,000 for fiscal year 2005.

(3) $10,000,000 for fiscal year 2006.

(4) $10,000,000 for fiscal year 2007.

(d) Allocation and deposit of funds

After payment pursuant to section 1779e of this title, the remaining funds authorized for appropriation under subsection (c) of this section shall be allocated among the Indian Nations as follows:

(1) 50 percent to be deposited into the trust fund account established under section 1779d of this title for the Cherokee Nation.

(2) 37.5 percent to be deposited into the trust fund account established under section 1779d of this title for the Choctaw Nation.

(3) 12.5 percent to be deposited into the trust fund account established under section 1779d of this title for the Chickasaw Nation.

(Pub. L. 107–331, title VI, § 605, Dec. 13, 2002, 116 Stat. 2848.)

REFERENCES IN TEXT

The Trade and Intercourse Act, referred to in subsec. (b)(1)(B) to (D), is not classified to the Code. See sections 177, 179, 180, 193, 194, 201, 229, 230, 251, 263, and 264 of this title.

§ 1779d. Tribal trust funds

(a) Establishment, purpose, and management of trust funds

(1) Establishment

There are hereby established in the United States Treasury 3 separate tribal trust fund accounts for the benefit of each of the Indian Nations, respectively, for the purpose of receiving all appropriations made pursuant to section 1779c(c) of this title, and allocated pursuant to section 1779c(d) of this title.

(2) Availability of amounts in trust fund accounts

Amounts in the tribal trust fund accounts established by this section shall be available to the Secretary for management and investment on behalf of the Indian Nations and distribution to the Indian Nations in accordance with this subchapter. Funds made available from the tribal trust funds under this section shall be available without fiscal year limitation.

(b) Management of funds

(1) Land acquisition

(A) Trust land status pursuant to regulations

The funds appropriated and allocated to the Indian Nations pursuant to section 1779c(c) and (d)[1] of this title, and deposited into trust fund accounts pursuant to subsection (a) of this section, together with any interest earned thereon, may be used for the acquisition of land by the Indian Nations. The Secretary may accept such lands into trust for the beneficiary Indian Nation pursuant to the authority provided in section 465 of this title and in accordance with the Secretary's trust land acquisition regulations at part 151 of title 25, Code of Federal Regulations, in effect at the time of the acquisition, except for those acquisitions covered by paragraph (1)(B).

(B) Required trust land status

Any such trust land acquisitions on behalf of the Cherokee Nation shall be mandatory if the land proposed to be acquired is located within Township 12 North, Range 21 East, in Sequoyah County, Township 11 North, Range 18 East, in McIntosh County, Townships 11 and 12 North, Range 19 East, or Township 12 North, Range 20 East, in Muskogee County, Oklahoma, and not within the limits of any incorporated municipality as of January 1, 2002, if—

[1] See References in Text note below.

(i) the land proposed to be acquired meets the Department of the Interior's minimum environmental standards and requirements for real estate acquisitions set forth in 602 DM 2.6, or any similar successor standards or requirements for real estate acquisitions in effect on the date of acquisition; and

(ii) the title to such land meets applicable Federal title standards in effect on the date of the acquisition.

(C) Other expenditure of funds

The Indian Nations may elect to expend all or a portion of the funds deposited into its trust account for any other purposes authorized under paragraph (2).

(2) Investment of trust funds; no per capita payment

(A) No per capita payments

No money received by the Indian Nations hereunder may be used for any per capita payment.

(B) Investment by Secretary

Except as provided in this section and section 1779e of this title, the principal of such funds deposited into the accounts established hereunder and any interest earned thereon shall be invested by the Secretary in accordance with current laws and regulations for the investing of tribal trust funds.

(C) Use of principal funds

The principal amounts of said funds and any amounts earned thereon shall be made available to the Indian Nation for which the account was established for expenditure for purposes which may include construction or repair of health care facilities, law enforcement, cultural or other educational activities, economic development, social services, and land acquisition. Land acquisition using such funds shall be subject to the provisions of subsections (b) and (d).[2]

(3) Disbursement of funds

The Secretary shall disburse the funds from a trust account established under this section pursuant to a budget adopted by the Council or Legislature of the Indian Nation setting forth the amount and an intended use of such funds.

(4) Additional restriction on use of funds

None of the funds made available under this subchapter may be allocated or otherwise assigned to authorized purposes of the Arkansas River Multipurpose Project as authorized by the River and Harbor Act of 1946,[1] as amended by the Flood Control Act of 1948 and the Flood Control Act of 1950.

(Pub. L. 107–331, title VI, § 606, Dec. 13, 2002, 116 Stat. 2851.)

REFERENCES IN TEXT

Section 1779c(c) and (d) of this title, referred to in subsec. (b)(1)(A), was in the original ''sections 205(c) and (d)'' and was translated as reading ''section 605(c) and (d)'', meaning section 605(c) and (d) of Pub. L. 107–331, to reflect the probable intent of Congress.

The River and Harbor Act of 1946, as amended by the Flood Control Act of 1948 and the Flood Control Act of 1950, referred to in subsec. (b)(4), probably means the act July 24, 1946, ch. 596, 60 Stat. 641, known as the Flood Control Act of 1946, as amended by act June 30, 1948, ch. 771, title II, 62 Stat. 1175, and act May 17, 1950, ch. 188, title II, 64 Stat. 170. For complete classification of these acts to the Code, see Tables.

[2] So in original. This section does not contain a subsection (d).

§ 1779e. Attorney fees

(a) Payment

At the time the funds are paid to the Indian Nations, from funds authorized to be appropriated pursuant to section 1779c(c) of this title, the Secretary shall pay to the Indian Nations' attorneys those fees provided for in the individual tribal attorney fee contracts as approved by the respective Indian Nations.

(b) Limitations

Notwithstanding subsection (a) of this section, the total fees payable to attorneys under such contracts with an Indian Nation shall not exceed 10 percent of that Indian Nation's allocation of funds appropriated under section 1779c(c) of this title.

(Pub. L. 107–331, title VI, § 607, Dec. 13, 2002, 116 Stat. 2852.)

§ 1779f. Release of other tribal claims and filing of claims

(a) Extinguishment of other tribal claims

(1) In general

As of December 13, 2002—

(A) all right, title, and interest of any Indian nation or tribe other than any Indian Nation defined in section 1779b of this title (referred to in this section and section 1779g of this title as a ''claimant tribe'') in or to the Disclaimed Drybed Lands, and any such right, title, or interest held by the United States on behalf of such a claimant tribe, shall be considered to be extinguished in accordance with section 177 of title 25;

(B) if any party other than a claimant tribe holds transferred interests in or to the Disclaimed Drybed Lands in violation of section 177 of title 25, Congress approves and ratifies those transfers of interests to the extent that the transfers are in accordance with other applicable law; and

(C) the documents described in section 1779c(b)(1)(D) of this title shall serve to identify the geographic scope of the interests extinguished by subparagraph (A).

(2) Quiet title actions

(A) In general

Notwithstanding any other provision of law, after December 13, 2002, neither the United States (or any department or agency of the United States) nor any Indian Nation shall be included as a party to any civil action brought by any private person or private entity to quiet title to, or determine ownership of an interest in or to, the Disclaimed Drybed Lands.

(B) Future actions

As of December 13, 2002, the United States shall have no obligation to bring any civil

action to quiet title to, or to recover any land or funds relating to, the Drybed Lands (including any lands that are Wetbed Lands as of December 13, 2002, but that are located at any time after that date above the mean high water mark of the Arkansas River).

(C) No breach of trust

The failure or declination by the United States to initiate any civil action to quiet title to or manage any Drybed Lands under this paragraph shall not—

(i) constitute a breach of trust by the United States; or

(ii) be compensable to a claimant tribe in any manner.

(b) Claims of other Indian tribes

(1) Limited period for filing claims

(A) In general

Not later than 180 days after December 13, 2002, any claimant tribe that claims that any title, interest, or entitlement held by the claimant tribe has been extinguished by operation of section 1779c(a) of this title or subsection (a) of this section may file a claim against the United States relating to the extinguishment in the United States Court of Federal Claims.

(B) Failure to file

After the date described in subparagraph (A), a claimant tribe described in that subparagraph shall be barred from filing any claim described in that subparagraph.

(2) Special holding account

(A) Establishment

There is established in the Treasury, in addition to the accounts established by section 1779d(a) of this title, an interest-bearing special holding account for the benefit of the Indian Nations.

(B) Deposits

Notwithstanding any other provision of this subchapter or any other law, of any funds that would otherwise be deposited in a tribal trust account established by section 1779d(a) of this title, 10 percent shall—

(i) be deposited in the special holding account established by subparagraph (A); and

(ii) be held in that account for distribution under paragraph (3).

(3) Distribution of funds

(A) In general

Funds deposited in the special holding account established by paragraph (2)(A) shall be distributed in accordance with subparagraphs (B) through (D).

(B) Claim filed

If a claim under paragraph (1)(A) is filed by the deadline specified in that paragraph, on final adjudication of that claim—

(i) if the final judgment awards to a claimant an amount that does not exceed the amount of funds in the special holding account under paragraph (2) attributable to the Indian Nation from the allocation of which under section 1779c(d) of this title the funds in the special holding account are derived—

(I) that amount shall be distributed from the special holding account to the claimant tribe that filed the claim; and

(II) any remaining amount in the special holding account attributable to the claim shall be transferred to the appropriate tribal trust account for the Indian Nation established by section 1779d(a) of this title; and

(ii) if the final judgment awards to a claimant an amount that exceeds the amount of funds in the special holding account attributable to the Indian Nation from the allocation of which under section 1779c(d) of this title the funds in the special holding account are derived—

(I) the balance of funds in the special holding account attributable to the Indian Nation shall be distributed to the claimant tribe that filed the claim; and

(II) payment of the remainder of the judgment amount awarded to the claimant tribe shall be made from the permanent judgment appropriation established pursuant to section 1304 of title 31.

(C) No claims filed

If no claims under paragraph (1)(A) are filed by the deadline specified in that paragraph—

(i) any funds held in the special holding account under paragraph (2) and attributed to that Indian Nation shall be deposited in the appropriate tribal trust account established by section 1779d(a)[1] of this title; and

(ii) after the date that is 180 days after December 13, 2002, paragraph (2)(B) shall not apply to appropriations attributed to that Indian Nation.

(c) Declaration with respect to scope of rights, title, and interests

Congress declares that—

(1) subsection (b) of this section is intended only to establish a process by which alleged claims may be resolved; and

(2) nothing in this section acknowledges, enhances, or establishes any prior right, title, or interest of any claimant tribe in or to the Arkansas Riverbed.

(Pub. L. 107–331, title VI, § 608, Dec. 13, 2002, 116 Stat. 2852.)

REFERENCES IN TEXT

Section 1779d(a) of this title, referred to in subsec. (b)(3)(C)(i), was in the original ''section 6(a)'' and was translated as reading ''section 606(a)'', meaning section 606(a) of Pub. L. 107–331, to reflect the probable intent of Congress, because Pub. L. 107–331 does not contain a section 6, and section 1779d(a) establishes three tribal trust fund accounts.

§ 1779g. Effect on claims

This subchapter shall not be construed to resolve any right, title, or interest of any Indian nation or of any claimant tribe, except their past, present, or future claims relating to right,

[1] See References in Text note below.

title, or interest in or to the Riverbed and the obligations and liabilities of the United States thereto.

(Pub. L. 107–331, title VI, § 609, Dec. 13, 2002, 116 Stat. 2855.)

SUBCHAPTER XIV—PUEBLO DE SAN ILDEFONSO CLAIMS SETTLEMENT

§ 1780. Definitions and purposes

(a) Definitions

In this subchapter:

(1) Administrative access

The term ''administrative access'' means the unrestricted use of land and interests in land for ingress and egress by an agency of the United States (including a permittee, contractor, agent, or assignee of the United States) in order to carry out an activity authorized by law or regulation, or otherwise in furtherance of the management of federally-owned land and resources.

(2) County

The term ''County'' means the incorporated county of Los Alamos, New Mexico.

(3) Los Alamos Agreement

The term ''Los Alamos Agreement'' means the agreement among the County, the Pueblo, the Department of Agriculture Forest Service, and the Bureau of Indian Affairs dated January 22, 2004.

(4) Los Alamos Townsite Land

''Los Alamos Townsite Land'' means the land identified as Attachment B (dated December 12, 2003) to the Los Alamos Agreement.

(5) Northern Tier Land

''Northern Tier Land'' means the land comprising approximately 739.71 acres and identified as ''Northern Tier Lands'' in Appendix B (dated August 3, 2004) to the Settlement Agreement.

(6) Pending Litigation

The term ''Pending Litigation'' means the case styled Pueblo of San Ildefonso v. United States, Docket Number 354, originally filed with the Indian Claims Commission and pending in the United States Court of Federal Claims on September 27, 2006.

(7) Pueblo

The term ''Pueblo'' means the Pueblo de San Ildefonso, a federally recognized Indian tribe (also known as the ''Pueblo of San Ildefonso'').

(8) Settlement Agreement

The term ''Settlement Agreement'' means the agreement entitled ''Settlement Agreement between the United States and the Pueblo de San Ildefonso to Resolve All of the Pueblo's Land Title and Trespass Claims'' and dated June 7, 2005.

(9) Settlement Area Land

The term ''Settlement Area Land'' means the National Forest System land located within the Santa Fe National Forest, as described in Appendix B to the Settlement Agreement, that is available for purchase by the Pueblo under section 9(a) of the Settlement Agreement.

(10) Settlement Fund

The term ''Settlement Fund'' means the Pueblo de San Ildefonso Land Claims Settlement Fund established by section 1780d of this title.

(11) Sisk Act

The term ''Sisk Act'' means Public Law 90–171 (commonly known as the ''Sisk Act'') (16 U.S.C. 484a).

(12) Water System Land

The term ''Water System Land'' means the federally-owned land located within the Santa Fe National Forest to be conveyed to the County under the Los Alamos Agreement.

(b) Purposes

The purposes of this subchapter are—

(1) to finally dispose, as set forth in sections 1780b and 1780c of this title, of all rights, claims, or demands that the Pueblo has asserted or could have asserted against the United States with respect to any and all claims in the Pending Litigation;

(2) to extinguish claims based on aboriginal title, Indian title, or recognized title, or any other title claims under section 1780c of this title;

(3) to authorize the Pueblo to acquire the Settlement Area Land, and to authorize the Secretary of Agriculture to convey the Water System Land, the Northern Tier Land, and the Los Alamos Townsite Land for market value consideration, and for such consideration to be paid to the Secretary of Agriculture for the acquisition of replacement National Forest land elsewhere in New Mexico;

(4) to provide that the Settlement Area Land acquired by the Pueblo shall be held by the Secretary of the Interior in trust for the benefit of the Pueblo;

(5) to facilitate government-to-government relations between the United States and the Pueblo regarding cooperation in the management of certain land administered by the National Park Service and the Bureau of Land Management as described in sections 7 and 8 of the Settlement Agreement;

(6) to ratify the Settlement Agreement; and,

(7) to ratify the Los Alamos Agreement.

(Pub. L. 109–286, § 2, Sept. 27, 2006, 120 Stat. 1218.)

REFERENCES IN TEXT

The Sisk Act, referred to in subsec. (a)(11), is Pub. L. 90–171, Dec. 4, 1967, 81 Stat. 531, which is classified to section 484a of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 484a of Title 16 and Tables.

SHORT TITLE

Pub. L. 109–286, § 1, Sept. 27, 2006, 120 Stat. 1218, provided that: ''This Act [enacting this subchapter] may be cited as the 'Pueblo de San Ildefonso Claims Settlement Act of 2005'.''

§ 1780a. Ratification of agreements

(a) Ratification

The Settlement Agreement and Los Alamos Agreement are ratified under Federal law, and

the parties to those agreements are authorized to carry out the provisions of the agreements.

(b) Corrections and modifications

The respective parties to the Settlement Agreement and the Los Alamos Agreement are authorized, by mutual agreement, to correct errors in any legal description or maps, and to make minor modifications to those agreements.

(Pub. L. 109–286, § 3, Sept. 27, 2006, 120 Stat. 1219.)

§ 1780b. Judgment and dismissal of litigation

(a) Dismissal

Not later than 90 days after September 27, 2006, the United States and the Pueblo shall execute and file with the United States Court of Federal Claims in the Pending Litigation a motion for entry of final judgment in accordance with section 5 of the Settlement Agreement.

(b) Compensation

Upon entry of the final judgment under subsection (a), $6,900,000 shall be paid into the Settlement Fund as compensation to the Pueblo in accordance with section 1304 of title 31.

(Pub. L. 109–286, § 4, Sept. 27, 2006, 120 Stat. 1219.)

§ 1780c. Resolution of claims

(a) Extinguishments

Except as provided in subsection (b), in consideration of the benefits of the Settlement Agreement, and in recognition of the agreement of the Pueblo to the Settlement Agreement, all claims of the Pueblo against the United States (including any claim against an agency, officer, or instrumentality of the United States) are relinquished and extinguished, including—

(1) any claim to land based on aboriginal title, Indian title, or recognized title;

(2) any claim for damages or other judicial relief or for administrative remedies that were brought, or that were knowable and could have been brought, on or before the date of the Settlement Agreement;

(3) any claim relating to—

(A) any federally-administered land, including National Park System land, National Forest System land, Public land administered by the Bureau of Land Management, the Settlement Area Land, the Water System Land, the Northern Tier Land, and the Los Alamos Townsite Land; and

(B) any land owned by, or held for the benefit of, any Indian tribe other than the Pueblo; and

(4) any claim that was, or that could have been, asserted in the Pending Litigation.

(b) Exceptions

Nothing in this subchapter or the Settlement Agreement shall in any way extinguish or otherwise impair—

(1) the title of record of the Pueblo to land held by or for the benefit of the Pueblo, as identified in Appendix D to the Settlement Agreement, on or before September 27, 2006; and,

(2) the title of the Pueblo to the Pueblo de San Ildefonso Grant, including, as identified in Appendix D to the Settlement Agreement—

(A) the title found by the United States District Court for the District of New Mexico in the case styled United States v. Apodoca (Number 2031, equity: December 5, 1930) not to have been extinguished; and

(B) title to any land that has been reacquired by the Pueblo pursuant to the Act entitled ''An Act to quiet the title to lands within Pueblo Indian land grants, and for other purposes'', approved June 7, 1924 (43 Stat. 636, chapter 331);

(3) the water rights of the Pueblo appurtenant to the land described in paragraphs (1) and (2); and

(4) any rights of the Pueblo or a member of the Pueblo under Federal law relating to religious or cultural access to, and use of, Federal land.

(c) Previous extinguishments unimpaired

Nothing in this subchapter affects any prior extinguishments of rights or claims of the Pueblo which may have occurred by operation of law.

(d) Boundaries and title unaffected

(1) Boundaries

Nothing in this subchapter affects the location of the boundaries of the Pueblo de San Ildefonso Grant.

(2) Rights, title, and interest

Nothing in this subchapter affects, ratifies, or confirms the right, title, or interest of the Pueblo in the land held by, or for the benefit of, the Pueblo, including the land described in Appendix D of the Settlement Agreement.

(Pub. L. 109–286, § 5, Sept. 27, 2006, 120 Stat. 1220.)

REFERENCES IN TEXT

An Act to quiet the title to lands within Pueblo Indian land grants, and for other purposes, referred to in subsec. (b)(2)(B), is act June 7, 1924, ch. 331, 43 Stat. 636, known as the Pueblo Lands Act of 1924, which is set out as a note under section 331 of this title.

§ 1780d. Settlement Fund

(a) Establishment

There is established in the Treasury a fund to be known as the ''Pueblo de San Ildefonso Land Claims Settlement Fund''.

(b) Conditions

Monies deposited in the Settlement Fund shall be subject to the following conditions:

(1) Maintenance and investment

The Settlement Fund shall be maintained and invested by the Secretary of the Interior pursuant to the Act of June 24, 1938 (25 U.S.C. 162a).

(2) Use of funds

Subject to paragraph (3), monies deposited into the Settlement Fund shall be expended by the Pueblo—

(A) to acquire the federally administered Settlement Area Land;

(B) to pay for the acquisition of the Water System Land, as provided in the Los Alamos Agreement; and

(C) at the option of the Pueblo, to acquire other land.

(3) Effect of withdrawal

If the Pueblo withdraws monies from the Settlement Fund, neither the Secretary of the Interior nor the Secretary of the Treasury shall retain any oversight over, or liability for, the accounting, disbursement, or investment of the withdrawn funds.

(4) Per capita distribution

No portion of the funds in the Settlement Fund may be paid to Pueblo members on a per capita basis.

(5) Acquisition of land

The acquisition of land with funds from the Settlement Fund shall be on a willing-seller, willing-buyer basis, and no eminent domain authority may be exercised for purposes of acquiring land for the benefit of the Pueblo under this subchapter.

(6) Effect of other laws

The Act of October 19, 1973 (Public Law 93–134; 87 Stat. 466) and section 4023 of this title shall not apply to the Settlement Fund.

(Pub. L. 109–286, § 6, Sept. 27, 2006, 120 Stat. 1221.)

REFERENCES IN TEXT

Act of June 24, 1938, referred to in subsec (b)(1), is act June 24, 1938, ch. 648, 52 Stat. 1037, which enacted section 162a of this title, repealed section 162 of this title, and enacted provisions set out as a note under section 162a of this title. For complete classification of this Act to the Code, see Tables.

Act of October 19, 1973, referred to in subsec. (b)(6), is Pub. L. 93–134, Oct. 19, 1973, 87 Stat. 466, known as the Indian Tribal Judgment Funds Use or Distribution Act, which is classified generally to chapter 16 (§ 1401 et seq.) of this title. For complete classification of this Act to the Code, see section 1401(c) of this title and Tables.

§ 1780e. Land ownership adjustments

(a) Authorization

(1) In general

The Secretary of Agriculture may sell the Settlement Area Land, Water System Land, and Los Alamos Townsite Land, on such terms and conditions as are agreed upon and described in the Settlement Agreement and the Los Alamos Agreement, including reservations for administrative access and other access as shown on Appendix B of the Settlement Agreement.

(2) Effect of claims and cause of action

Consideration for any land authorized for sale by the Secretary of Agriculture shall not be offset or reduced by any claim or cause of action by any party to whom the land is conveyed.

(b) Consideration

The consideration to be paid for the Federal land authorized for sale in subsection (a) shall be—

(1) for the Settlement Area Land and Water System Land, the consideration agreed upon in the Settlement Agreement; and

(2) for the Los Alamos Townsite Land, the current market value based on an appraisal approved by the Forest Service as being in conformity with the latest edition of the Uniform Appraisal Standards for Federal Land Acquisitions.

(c) Disposition of receipts

(1) In general

All monies received by the Secretary of Agriculture from the sale of National Forest System land as authorized by this subchapter, including receipts from the Northern Tier Land, shall be deposited into the fund established in the Treasury of the United States pursuant to the Sisk Act and shall be available, without further appropriation, authorization, or administrative apportionment for the purchase of land by the Secretary of Agriculture for National Forest System purposes in the State of New Mexico, and for associated administrative costs.

(2) Use of funds

Funds deposited in a Sisk Act fund pursuant to this subchapter shall not be subject to transfer or reprogramming for wildlands fire management or any other emergency purposes, or used to reimburse any other account.

(3) Acquisitions of land

In expending funds to exercise its rights under the Settlement Agreement and the Los Alamos Agreement with respect to the acquisition of the Settlement Area Land, the County's acquisitions of the Water System Land, and the Northern Tier Land (if the Pueblo exercises an option to purchase the Northern Tier Land as provided in section 1708j(b)(2)(A) of this title,[1] the Pueblo shall use only funds in the Settlement Fund and shall not augment those funds from any other source.

(d) Valid existing rights and reservations

(1) In general

The Settlement Area Land acquired by the Pueblo shall be subject to all valid existing rights on September 27, 2006, including rights of administrative access.

(2) Water rights

No water rights shall be conveyed by the United States.

(3) Special use authorization

(A) In general

Nothing in this subchapter shall affect the validity of any special use authorization issued by the Forest Service within the Settlement Area Land, except that such authorizations shall not be renewed upon expiration.

(B) Reasonable access

For access to valid occupancies within the Settlement Area Land, the Pueblo and the Secretary of the Interior shall afford rights of reasonable access commensurate with that provided by the Secretary of Agriculture on or before September 27, 2006.

(4) Water System Land and Los Alamos Townsite Land

The Water System Land and Los Alamos Townsite Land acquired by the County shall be subject to—

[1] So in original. Probably should be "title),".

(A) all valid existing rights; and

(B) the rights reserved by the United States under the Los Alamos Agreement.

(5) Private landowners

(A) In general

Upon acquisition by the Pueblo of the Settlement Area Land, the Secretary of the Interior, acting on behalf of the Pueblo and the United States, shall execute easements in accordance with any right reserved by the United States for the benefit of private landowners owning property that requires the use of Forest Development Road 416 (as in existence on September 27, 2006) and other roads that may be necessary to provide legal access into the property of the landowners, as the property is used on September 27, 2006.

(B) Maintenance of roads

Neither the Pueblo nor the United States shall be required to maintain roads for the benefit of private landowners.

(C) Easements

Easements shall be granted, without consideration, to private landowners only upon application of such landowners to the Secretary.

(e) Forest development roads

(1) United States right to use

Subject to any right-of-way to use, cross, and recross a road, the United States shall reserve and have free and unrestricted rights to use, operate, maintain, and reconstruct (at the same level of development, as in existence on the date of the Settlement Agreement), those sections of Forest Development Roads 57, 442, 416, 416v, 445 and 445ca referenced in Appendix B of the Settlement Agreement for any and all public and administrative access and other Federal governmental purposes, including access by Federal employees, their agents, contractors, and assigns (including those holding Forest Service permits).

(2) Certain roads

Notwithstanding paragraph (1), the United States—

(A) may improve Forest Development Road 416v beyond the existing condition of that road to a high clearance standard road (level 2); and

(B) shall have unrestricted administrative access and non-motorized public trail access to the portion of Forest Development Road 442 depicted in Appendix B to the Settlement Agreement.

(f) Private mining operations

(1) COPAR Pumice Mine

The United States and the Pueblo shall allow the COPAR Pumice Mine to continue to operate as provided in the Contract For The Sale Of Mineral Materials dated May 4, 1994, and for COPAR to use portions of Forest Development Roads 57, 442, 416, and other designated roads within the area described in the contract, for the period of the contract and thereafter for a period necessary to reclaim the site.

(2) Continuing jurisdiction

(A) Administration

Continuing jurisdiction of the United States over the contract for the sale of mineral materials shall be administered by the Secretary of the Interior.

(B) Expiration of contract

Upon expiration of the contract described in subparagraph (A), jurisdiction over reclamation shall be assumed by the Secretary of the Interior.

(3) Effect on existing rights

Nothing in this subchapter limits or enhances the rights of COPAR under the Contract For The Sale Of Mineral Materials dated May 4, 1994.

(Pub. L. 109–286, § 7, Sept. 27, 2006, 120 Stat. 1221.)

§ 1780f. Conveyances

(a) Authorization

(1) Consideration from Pueblo

Upon receipt of the consideration from the Pueblo for the Settlement Area Land and the Water System Land, the Secretary of Agriculture shall execute and deliver—

(A) to the Pueblo, a quitclaim deed to the Settlement Area Land; and

(B) to the County, a quitclaim deed to the Water System Land, reserving—

(i) a contingent remainder in the United States in trust for the benefit of the Pueblo in accordance with the Los Alamos Agreement; and

(ii) a right of access for the United States for the Pueblo for ceremonial and other cultural purposes.

(2) Consideration from County

Upon receipt of the consideration from the County for all or a portion of the Los Alamos Townsite Land, the Secretary of Agriculture shall execute and deliver to the County a quitclaim deed to all or portions of such land, as appropriate.

(3) Execution

An easement or deed of conveyance by the Secretary of Agriculture under this subchapter shall be executed by the Director of Lands and Minerals, Forest Service, Southwestern Region, Department of Agriculture.

(b) Authorization for Pueblo to convey in trust

Upon receipt by the Pueblo of the quitclaim deed to the Settlement Land under subsection (a)(1), the Pueblo may quitclaim the Settlement Land to the United States, in trust for the Pueblo.

(c) Adequacy of conveyance instruments

Notwithstanding the status of the Federal land as public domain or acquired land, no instrument of conveyance other than a quitclaim deed shall be required to convey the Settlement Area Land, the Water System Land, the Northern Tier Land, or the Los Alamos Townsite Land under this subchapter.

(d) Surveys

The Secretary of Agriculture is authorized to perform and approve any required cadastral survey.

(e) Contributions

Notwithstanding section 3302 of title 31 or any other provision of law, the Secretary of Agriculture may accept and use contributions of cash or services from the Pueblo, other governmental entities, or other persons—

(1) to perform and complete required cadastral surveys for the Settlement Area Land, the Water System Land, the Northern Tier Land, or the Los Alamos Townsite Land, as described in the Settlement Agreement or the Los Alamos Agreement; and

(2) to carry out any other project or activity under—

(A) this subchapter;

(B) the Settlement Agreement; or

(C) the Los Alamos Agreement.

(Pub. L. 109–286, § 8, Sept. 27, 2006, 120 Stat. 1224.)

§ 1780g. Trust status and National Forest boundaries

(a) Operation of law

Without any additional administrative action by the Secretary of Agriculture or the Secretary of the Interior—

(1) on recording the quitclaim deed or deeds from the Pueblo to the United States in trust for the Pueblo under section 1780f(b) of this title in the Land Titles and Records Office, Southwest Region, Bureau of Indian Affairs—

(A) the Settlement Area Land shall be held in trust by the United States for the benefit of the Pueblo; and

(B) the boundaries of the Santa Fe National Forest shall be deemed to be modified to exclude from the National Forest System the Settlement Area Land; and

(2) on recording the quitclaim deed or deeds from the Secretary of Agriculture to the County of the Water System Land in the county land records, the boundaries of the Santa Fe National Forest shall be deemed to be modified to exclude from the National Forest System the Water System Land.

(b) Future interests

If fee title to the Water System Land vests in the Pueblo by conveyance or operation of law, the Water System Land shall be deemed to be held in trust by the United States for the benefit of the Pueblo, without further administrative procedures or environmental or other analyses.

(c) Nonintercourse Act

Any land conveyed to the Secretary of the Interior in trust for the Pueblo or any other tribe in accordance with this subchapter shall be—

(1) subject to the Act of June 30, 1834 (25 U.S.C. 177); and

(2) treated as reservation land.

(Pub. L. 109–286, § 9, Sept. 27, 2006, 120 Stat. 1224.)

REFERENCES IN TEXT

Act of June 30, 1834, referred to in subsec. (c)(1), is act June 30, 1834, ch. 161, 4 Stat. 729. The act was incorporated into the Revised Statutes as R.S. §§ 533, 2111 to 2113, 2116 to 2118, 2124 to 2126, 2129 to 2135, 2137, 2141, 2145, 2147, 2150 to 2152, and 2154 to 2157. For complete classification of those sections of the Revised Statutes to the Code, see Tables.

§ 1780h. Interim management

Subject to valid existing rights, prior to the conveyance under section 1780g of this title, the Secretary of Agriculture, with respect to the Settlement Area Land, the Water System Land, the Northern Tier Land, and the Los Alamos Townsite Land—

(1) shall not encumber or dispose of the land by sale, exchange, or special use authorization, in such a manner as to substantially reduce the market value of the land;

(2) shall take any action that the Secretary determines to be necessary or desirable—

(A) to protect the land from fire, disease, or insect infestation; or

(B) to protect lives or property; and

(3) may, in consultation with the Pueblo or the County, as appropriate, authorize a special use of the Settlement Area Land, not to exceed 1 year in duration.

(Pub. L. 109–286, § 10, Sept. 27, 2006, 120 Stat. 1225.)

§ 1780i. Withdrawal

Subject to valid existing rights, the land referenced in the notices of withdrawal of land in New Mexico (67 Fed. Reg. 7193; 68 Fed. Reg. 75628) is withdrawn from all location, entry, and patent under the public land laws and mining and mineral leasing laws of the United States, including geothermal leasing laws.

(Pub. L. 109–286, § 11, Sept. 27, 2006, 120 Stat. 1225.)

§ 1780j. Conveyance of the Northern Tier Land

(a) Conveyance authorization

(1) In general

Subject to valid existing rights, including reservations in the United States and any right under this section, the Secretary of Agriculture shall sell the Northern Tier Land on such terms and conditions as the Secretary may prescribe as being in the public interest and in accordance with this section.

(2) Effect of paragraph

The authorization under paragraph (1) is solely for the purpose of consolidating Federal and non-Federal land to increase management efficiency and is not in settlement or compromise of any claim of title by any Pueblo, Indian tribe, or other entity.

(b) Rights of refusal

(1) Pueblo of Santa Clara

(A) In general

In consideration for an easement under subsection (e)(2), the Pueblo of Santa Clara shall have an exclusive option to purchase the Northern Tier Land for the period beginning on September 27, 2006, and ending 90 days thereafter.

(B) Resolution

Within the period prescribed in subparagraph (A), the Pueblo of Santa Clara may exercise its option to acquire the Northern Tier Land by delivering to the Regional Di-

rector of Lands and Minerals, Forest Service, Southwestern Region, Department of Agriculture, a resolution of the Santa Clara Tribal Council expressing the unqualified intent of the Pueblo of Santa Clara to purchase the land at the offered price.

(C) Failure to act

If the Pueblo of Santa Clara does not exercise its option to purchase the Northern Tier Land within the 90-day period under subparagraph (A), or fails to close on the purchase of such land within 1 year of the date on which the option to purchase was exercised, the Secretary of Agriculture shall offer the Northern Tier Land for sale to the Pueblo.

(2) Offer to Pueblo

(A) In general

Not later than 90 days after receiving a written offer from the Secretary of Agriculture under paragraph (1)(C), the Pueblo may exercise its option to acquire the Northern Tier Land by delivering to the Regional Director of Lands and Minerals, Forest Service, Southwestern Region, a resolution of the Pueblo Tribal Council expressing the unqualified intent of the Pueblo to purchase the land at the offered price.

(B) Failure of Pueblo to act

If the Pueblo fails to exercise its option to purchase the Northern Tier Land within 90 days after receiving an offer from the Secretary of Agriculture, or fails to close on the purchase of such land within 1 year of the date on which the option to purchase was exercised under subparagraph (A), the Secretary of Agriculture may sell or exchange the land to any third party in such manner and on such terms and conditions as the Secretary determines to be in the public interest, including by a competitive process.

(3) Extension of time period

The Secretary of Agriculture may extend the time period for closing beyond the 1 year prescribed in subsection (b), if the Secretary determines that additional time is required to meet the administrative processing requirements of the Federal Government, or for other reasons beyond the control of either party.

(c) Terms and conditions of sale

(1) Purchase price

Subject to valid existing rights and reservations, the purchase price for the Northern Tier Land sold to the Pueblo of Santa Clara or the Pueblo under subsection (b) shall be the consideration agreed to by the Pueblo of Santa Clara pursuant to that certain Pueblo of Santa Clara Tribal Council Resolution No. 05–01 ''Approving Proposed San Ildefonso Claims Settlement Act of 2005, and Terms for Purchase of Northern Tier Lands'' that was signed by Governor J. Bruce Tafoya in January 2005.

(2) Reserved rights

On the Northern Tier Land, the United States shall reserve the right to operate, maintain, reconstruct (at standards in existence on the date of the Settlement Agreement), replace, and use the stream gauge, and to have unrestricted administrative access over the associated roads to the gauge (as depicted in Appendix B of the Settlement Agreement).

(3) Conveyance by quitclaim deed

The conveyance of the Northern Tier Land shall be by quitclaim deed executed on behalf of the United States by the Director of Lands and Minerals, Forest Service, Southwestern Region, Department of Agriculture.

(d) Trust status and forest boundaries

(1) Acquisition of land by Indian tribe

If the Northern Tier Land is acquired by an Indian tribe (including a Pueblo tribe), the land may be reconveyed by quitclaim deed or deeds back to the United States to be held in trust by the Secretary of the Interior for the benefit of the tribe, and the Secretary of the Interior shall accept the conveyance without any additional administrative action by the Secretary of Agriculture or the Secretary of the Interior.

(2) Land held in trust

On recording a quitclaim deed described in paragraph (1) in the Land Titles and Records Office, Southwest Region, Bureau of Indian Affairs, the Northern Tier Land shall be deemed to be held in trust by the United States for the benefit of the Indian tribe.

(3) Boundaries of Santa Fe National Forest

Effective on the date of a deed described in paragraph (1), the boundaries of the Santa Fe National Forest shall be deemed modified to exclude from the National Forest System the land conveyed by the deed.

(e) Inholder and administrative access

(1) Failure of Pueblo of Santa Clara to act

(A) In general

If the Pueblo of Santa Clara does not exercise its option to acquire the Northern Tier Land, the Secretary of Agriculture or the Secretary of the Interior, as appropriate, shall by deed reservations or grants on land under their respective jurisdiction provide for inholder and public access across the Northern Tier Land in order to provide reasonable ingress and egress to private and Federal land as shown in Appendix B of the Settlement Agreement.

(B) Administration of reservations

The Secretary of the Interior shall administer any such reservations on land acquired by any Indian tribe.

(2) Effect of acceptance

If the Pueblo of Santa Clara exercises its option to acquire all of the Northern Tier Land, the following shall apply:

(A) Easements to United States

(i) Definition of administrative access

In this subparagraph, the term ''administrative access'' means access to Federal land by Federal employees acting in the

course of their official capacities in carrying out activities on Federal land authorized by law or regulation, and by agents and contractors of Federal agencies who have been engaged to perform services necessary or desirable for fire management and the health of forest resources, including the cutting and removal of vegetation, and for the health and safety of persons on the Federal land.

(ii) Easements

(I) In general

The Pueblo of Santa Clara shall grant and convey at closing perpetual easements over the existing roads to the United States that are acceptable to the Secretary of Agriculture for administrative access over the Santa Clara Reservation Highway 601 (the Puye Road), from its intersection with New Mexico State Highway 30, westerly to its intersection with the Sawyer Canyon Road (also known as Forest Development Road 445), thence southwesterly on the Sawyer Canyon Road to the point at which it exits the Santa Clara Reservation.

(II) Maintenance of roadway

An easement under this subparagraph shall provide that the United States shall be obligated to contribute to maintenance of the roadway commensurate with actual use.

(B) Easements to private landowners

Not later than 180 days after September 27, 2006, the Pueblo of Santa Clara, in consultation with private landowners, shall grant and convey a perpetual easement to the private owners of land within the Northern Tier Land for private access over Santa Clara Reservation Highway 601 (Puye Road) across the Santa Clara Indian Reservation from its intersection with New Mexico State Highway 30, or other designated public road, on Forest Development Roads 416, 445 and other roads that may be necessary to provide access to each individually owned private tract.

(3) Approval

The Secretary of the Interior shall approve the conveyance of an easement under paragraph (2) upon receipt of written approval of the terms of the easement by the Secretary of Agriculture.

(4) Adequate access provided by Pueblo of Santa Clara

If adequate administrative and inholder access is provided over the Santa Clara Indian Reservation under paragraph (2), the Secretary of the Interior—

(A) shall vacate the inholder access over that portion of Forest Development Road 416 referenced in section 1780e(e)(5) of this title; but

(B) shall not vacate the reservations over the Northern Tier Land for administrative access under subsection (c)(2).

(Pub. L. 109–286, § 12, Sept. 27, 2006, 120 Stat. 1225.)

§ 1780k. Inter-Pueblo cooperation

(a) Demarcation of boundary

The Pueblo of Santa Clara and the Pueblo may, by agreement, demarcate a boundary between their respective tribal land within Township 20 North, Range 7 East, in Rio Arriba County, New Mexico, and may exchange or otherwise convey land between them in that township.

(b) Action by Secretary of the Interior

In accordance with any agreement under subsection (a), the Secretary of the Interior shall, without further administrative procedures or environmental or other analyses—

(1) recognize a boundary between the Pueblo of Santa Clara and the Pueblo;

(2) provide for a boundary survey;

(3) approve land exchanges and conveyances as agreed upon by the Pueblo of Santa Clara and the Pueblo; and

(4) accept conveyances of exchanged lands into trust for the benefit of the grantee tribe.

(Pub. L. 109–286, § 13, Sept. 27, 2006, 120 Stat. 1228.)

§ 1780*l*. Distribution of funds plan

Not later than 2 years after September 27, 2006, the Secretary of the Interior shall act in accordance with the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.) with respect to the award entered in the compromise and settlement of claims under the case styled Pueblo of San Ildefonso v. United States, No. 660–87L, United States Court of Federal Claims.

(Pub. L. 109–286, § 14, Sept. 27, 2006, 120 Stat. 1229.)

REFERENCES IN TEXT

The Indian Tribal Judgment Funds Use or Distribution Act, referred to in text, is Pub. L. 93–134, Oct. 19, 1973, 87 Stat. 466, which is classified generally to chapter 16 (§ 1401 et seq.) of this title. For complete classification of this Act to the Code, see section 1401(c) of this title and Tables.

§ 1780m. Rule of construction and judicial review

Notwithstanding any provision of State law, the Settlement Agreement and the Los Alamos Agreement (including any real property conveyance under the agreements) shall be interpreted and implemented as matters of Federal law.

(Pub. L. 109–286, § 15, Sept. 27, 2006, 120 Stat. 1229.)

§ 1780n. Effective date

This subchapter shall take effect on September 27, 2006.

(Pub. L. 109–286, § 16, Sept. 27, 2006, 120 Stat. 1229.)

§ 1780*o*. Timing of actions

It is the intent of Congress that the land conveyances and adjustments contemplated in this subchapter (except the conveyances and adjustments relating to Los Alamos Townsite Land) shall be completed not later than 180 days after September 27, 2006.

(Pub. L. 109–286, § 17, Sept. 27, 2006, 120 Stat. 1229.)

§ 1780p. Authorization of appropriations

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

(Pub. L. 109–286, § 18, Sept. 27, 2006, 120 Stat. 1230.)

CHAPTER 20—TRIBALLY CONTROLLED COLLEGES AND UNIVERSITIES ASSISTANCE

Sec.
1801. Definitions.

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§ 1801. Definitions

(a) For purposes of this chapter, the term—

(1) ''Indian'' means a person who is a member of an Indian tribe;

(2) ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) ''Secretary'', unless otherwise designated, means the Secretary of the Interior;

(4) ''tribally controlled college or university'' means an institution of higher education which is formally controlled, or has been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution shall be recognized with respect to any such tribe;

(5) ''institution of higher education'' means an institution of higher education as defined by section 1001[1] of title 20, except that clause (2) of such section shall not be applicable and the reference to Secretary in clause (5)(A)[2] of such section shall be deemed to refer to the Secretary of the Interior;

(6) ''national Indian organization'' means an organization which the Secretary finds is nationally based, represents a substantial Indian constituency, and has expertise in the fields of tribally controlled colleges and universities and Indian higher education;

(7) ''Indian student'' means a student who is—

(A) a member of an Indian tribe; or

(B) a biological child of a member of an Indian tribe, living or deceased;

(8) ''Indian student count'' means a number equal to the total number of Indian students enrolled in each tribally controlled college or university, determined in a manner consistent with subsection (b) of this section on the basis of the quotient of the sum of the credit hours of all Indian students so enrolled, divided by twelve; and

(9) ''satisfactory progress toward a degree or certificate'' has the meaning given to such term by the institution at which the student is enrolled.

(b) The following conditions shall apply for the purpose of determining the Indian student count pursuant to subsection (a)(8) of this section:

(1) Such number shall be calculated on the basis of the registrations of Indian students as in effect at the conclusion of the third week of each academic term.

(2) Credits earned in classes offered during a summer term shall be counted toward the computation of the Indian student count in the succeeding fall term.

(3) Credits earned by any student who has not obtained a high school degree or its equivalent shall be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of such student on the basis of the student's ability to benefit from the education or training offered. The institution shall be presumed to have established such criteria if the admission procedures for such studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. No credits earned by such student for purposes of obtaining a high school degree or its equivalent shall be counted toward the computation of the Indian student count.

[1] So in original. Probably should be section ''1001(a)''.

[2] So in original. Probably should be ''(5)''.

(4) Indian students earning credits in any continuing education program of a tribally controlled college or university shall be included in determining the sum of all credit hours.

(5) Eligible credits earned in a continuing education program—

(A) shall be determined as one credit for every ten contact hours in the case of an institution on a quarter system, or 15 contact hours in the case of an institution on a semester system, of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as described in the criteria established by the International Association for Continuing Education and Training; and

(B) shall be limited to ten percent of the Indian student count of a tribally controlled college or university.

(Pub. L. 95–471, §2, formerly §1, Oct. 17, 1978, 92 Stat. 1325; renumbered §2 and amended Pub. L. 98–192, §1, Dec. 1, 1983, 97 Stat. 1335; Pub. L. 99–428, §3, Sept. 30, 1986, 100 Stat. 982; Pub. L. 105–244, title I, §102(a)(8)(B), title IX, §901(b)(5), (9), Oct. 7, 1998, 112 Stat. 1619, 1828; Pub. L. 110–315, title IX, §941(a)–(c), Aug. 14, 2008, 122 Stat. 3460, 3461.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 95–471, Oct. 17, 1978, 92 Stat. 1325, known as the Tribally Controlled Colleges and Universities Assistance Act of 1978, which enacted this chapter and section 640c–1 of this title, amended section 640c of this title, and enacted provisions set out as notes under sections 640a, 640c–1, and 1801 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Alaskan Native Claims Settlement Act, referred to in subsec. (a)(2), probably means the Alaska Native Claims Settlement Act, Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

2008—Subsec. (a)(6). Pub. L. 110–315, §941(a), substituted ''in the fields of tribally controlled colleges and universities and Indian higher education'' for ''in the field of Indian education''.

Subsec. (a)(7) to (9). Pub. L. 110–315, §941(b), added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively.

Subsec. (b). Pub. L. 110–315, §941(c)(1), substituted ''subsection (a)(8)'' for ''paragraph (7) of subsection (a)'' in introductory provisions.

Subsec. (b)(5). Pub. L. 110–315, §941(c)(2), added par. (5) and struck out former par. (5) which read as follows: ''Credits earned in a continuing education program shall be converted to a credit-hour basis in accordance with the tribally controlled college or university's system for providing credit for participation in such program.''

Subsec. (b)(6). Pub. L. 110–315, §941(c)(3), struck out par. (6) which read as follows: ''No credit hours earned by an Indian student who is not making satisfactory progress toward a degree or certificate shall be taken into account.''

1998—Subsec. (a)(4). Pub. L. 105–244, §901(b)(5), substituted ''college or university'' for ''community college''.

Subsec. (a)(5). Pub. L. 105–244, §102(a)(8)(B), substituted ''section 1001'' for ''section 1141(a)''.

Subsec. (a)(7). Pub. L. 105–244, §901(b)(5), substituted ''college or university'' for ''community college''.

Subsec. (b)(4). Pub. L. 105–244, §901(b)(5), substituted ''college or university'' for ''community college''.

Subsec. (b)(5). Pub. L. 105–244, §901(b)(9), substituted ''college or university's'' for ''community college's''.

1986—Subsec. (a)(8). Pub. L. 99–428, §3(a), added par. (8).

Subsec. (b)(3) to (6). Pub. L. 99–428, §3(b), added par. (3), redesignated former pars. (3) to (5) as (4) to (6), respectively, and in par. (6) struck out '', in accordance with the standards and practices of the appropriate accrediting agency or the institution at which the student is in attendance,'' after ''certificate''.

1983—Subsec. (a). Pub. L. 98–192, §1(1), designated existing provisions as subsec. (a) and inserted introductory provision preceding par. (1).

Subsec. (a)(1). Pub. L. 98–192, §1(2), struck out ''and is eligible to receive services from the Secretary of the Interior'' after ''Indian tribe''.

Subsec. (a)(5). Pub. L. 98–192, §1(3), inserted ''and the reference to Secretary in clause (5)(A) of such section shall be deemed to refer to the Secretary of the Interior''.

Subsec. (a)(7). Pub. L. 98–192, §1(4), substituted provision defining ''Indian student count'' to mean a number equal to the total number of Indian students enrolled in each tribally controlled community college, determined as consistent with subsec. (b) of this section on the basis of the quotient of the sum of the credit hours of all Indians so enrolled, divided by twelve for provision defining ''full-time equivalent Indian student'' to mean the number of Indians enrolled full-time and the full-time equivalent of the number of Indians enrolled part-time, determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by twelve, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term.

Subsec. (b). Pub. L. 98–192, §1(4), added subsec. (b).

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.

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99–428 provided that: ''This Act [amending this section and sections 640c–1, 1808 to 1810, 1812, 1813, and 1836 of this title] may be cited as the 'Tribally Controlled Community College Assistance Amendments of 1986'.''

SHORT TITLE

Pub. L. 95–471, §1, Oct. 17, 1978, 92 Stat. 1325, as amended by Pub. L. 105–244, title IX, §901(b)(1), Oct. 7, 1998, 112 Stat. 1827; Pub. L. 110–315, title IX, §941(k)(1), Aug. 14, 2008, 122 Stat. 3465, provided that: ''This Act [enacting this chapter and section 640c–1 of this title, amending section 640c of this title, and enacting provisions set out as notes under sections 640a and 640c–1 of this title] may be cited as the 'Tribally Controlled Colleges and Universities Assistance Act of 1978'.''

Pub. L. 95–471, title IV, §401, as added by Pub. L. 101–392, title III, §312, Sept. 25, 1990, 104 Stat. 804, provided that: ''This title [enacting subchapter III of this chapter] may be cited as the 'Tribal Economic Development and Technology Related Education Assistance Act of 1990'.''

ADDITIONAL CONFORMING AMENDMENTS

Pub. L. 105–244, title IX, §901(c), Oct. 7, 1998, 112 Stat. 1828, provided that:

''(1) RECOMMENDED LEGISLATION.—The Secretary of Education shall prepare and submit to Congress recommended legislation containing technical and con-

forming amendments to reflect the changes made by subsection (b) [see Tables for classification].

''(2) SUBMISSION TO CONGRESS.—Not later than 6 months after the effective date of this title [see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of Title 20, Education], the Secretary of Education shall submit the recommended legislation referred to under paragraph (1).''

REFERENCES TO TRIBALLY CONTROLLED COMMUNITY COLLEGE ASSISTANCE ACT OF 1978

Pub. L. 105–244, title IX, §901(d), Oct. 7, 1998, 112 Stat. 1828, provided that: ''Any reference to a section or other provision of the Tribally Controlled Community College Assistance Act of 1978 shall be deemed to be a reference to the Tribally Controlled College or University Assistance Act of 1978 [now Tribally Controlled Colleges and Universities Assistance Act of 1978].''

EXECUTIVE ORDER NO. 13021

Ex. Ord. No. 13021, Oct. 19, 1996, 61 F.R. 54929, as amended by Ex. Ord. No. 13104, Oct. 19, 1998, 63 F.R. 56535, which established the President's Board of Advisors on Tribal Colleges and Universities and the White House Initiative on Tribal Colleges and Universities in the Department of Education and required a Five-Year Federal Plan regarding tribal colleges and universities, was revoked by Ex. Ord. No. 13270, §10, July 3, 2002, 67 F.R. 45291, set out below.

EX. ORD. NO. 13270. TRIBAL COLLEGES AND UNIVERSITIES

Ex. Ord. No. 13270, July 3, 2002, 67 F.R. 45288, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy*. There is a unique relationship between the United States and Indian tribes, and a special relationship between the United States and Alaska Native entities. It is the policy of the Federal Government that this Nation's commitment to educational excellence and opportunity must extend as well to the tribal colleges and universities (tribal colleges) that serve Indian tribes and Alaska Native entities. The President's Board of Advisors on Tribal Colleges and Universities (the ''Board'') and the White House Initiative on Tribal Colleges and Universities (WHITCU) established by this order shall ensure that this national policy regarding tribal colleges is carried out with direct accountability at the highest levels of the Federal Government.

Tribal colleges are both integral and essential to their communities. Often they are the only postsecondary institutions within some of our Nation's poorest rural areas. They fulfill a vital role: in maintaining and preserving irreplaceable languages and cultural traditions; in offering a high-quality college education to younger students; and in providing job training and other career-building programs to adults and senior citizens. Tribal colleges provide crucial services in communities that continue to suffer high rates of unemployment and the resulting social and economic distress.

The Federal Government's commitment to tribal colleges is reaffirmed and the private sector can and should contribute to the colleges' educational and cultural missions.

Finally, postsecondary institutions can play a vital role in promoting excellence in early childhood, elementary, and secondary education. The Federal Government will therefore work to implement the innovations and reforms of the No Child Left Behind Act of 2001 (Public Law 107–110) [see Short Title of 2002 Amendment note set out under 20 U.S.C. 6301] in partnership with tribal colleges and their American Indian and Alaska Native communities.

SEC. 2. *Definition of Tribal Colleges and Universities*. Tribal colleges are those institutions cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled Community College Assistance Act of 1978 [now Tribally Controlled College or University Assistance Act of 1978] (25 U.S.C. 1801 *et seq.*), and Diné College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95–471, title II (25 U.S.C. 640a note).

SEC. 3. *Board of Advisors*. (a) *Establishment*. There shall be established in the Department of Education a Presidential advisory committee entitled the President's Board of Advisors on Tribal Colleges and Universities (the ''Board'').

(b) *Membership*. The Board shall consist of not more than 15 members who shall be appointed by the President, one of whom shall be designated by the President as Chair. The Board shall include representatives of tribal colleges and may also include representatives of the higher, early childhood, elementary, and secondary education communities; tribal officials; health, business, and financial institutions; private foundations; and such other persons as the President deems appropriate.

(c) *Functions*. The Board shall provide advice regarding the progress made by Federal agencies toward fulfilling the purposes and objectives of this order. The Board also shall provide recommendations to the President, through the Secretary of Education (Secretary), on ways the Federal Government can help tribal colleges:

(1) use long-term development, endowment building, and planning to strengthen institutional viability;

(2) improve financial management and security, obtain private-sector funding support, and expand and complement Federal education initiatives;

(3) develop institutional capacity through the use of new and emerging technologies offered by both the Federal and private sectors;

(4) enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and

(5) help implement the No Child Left Behind Act of 2001 [see Short Title of 2002 Amendment note set out under 20 U.S.C. 6301] and meet other high standards of educational achievement.

(d) *Meetings*. The Board shall meet at least annually, at the request of the Secretary, to provide advice and consultation on tribal colleges and relevant Federal and private-sector activities, and to transmit reports and present recommendations.

SEC. 4. *White House Initiative on Tribal Colleges and Universities*. There shall be established in the Department of Education, Office of the Secretary, the White House Initiative on Tribal Colleges and Universities (WHITCU). The WHITCU shall:

(a) provide the staff support for the Board;

(b) assist the Secretary in the role of liaison between the executive branch and tribal colleges; and

(c) serve the Secretary in carrying out the Secretary's responsibilities under this order.

SEC. 5. *Department and Agency Participation*. Each participating executive department and agency (agency), as determined by the Secretary, shall appoint a senior official who is a full-time officer of the Federal Government and who is responsible for management or program administration. The official shall report directly to the agency head, or to the agency head's designee, on agency activity under this order and serve as liaison to the WHITCU. To the extent permitted by law and regulation, each agency shall provide appropriate information as requested by the WHITCU staff pursuant to this order.

SEC. 6. *Three-Year Federal Plan*. (a) *Content*. Each agency identified by the Secretary shall develop and implement a Three-Year Plan of the agency's efforts to fulfill the purposes of this order. These Three-Year Plans shall include annual performance indicators and appropriate measurable objectives for the agency. Among other relevant issues, the plans shall address how the agency intends to increase the capacity of trib-

al colleges to compete effectively for any available grants, contracts, cooperative agreements, and any other Federal resources, and to encourage tribal colleges to participate in Federal programs. The plans also may emphasize access to high-quality educational opportunities for economically disadvantaged Indian students, consistent with requirements of the No Child Left Behind Act of 2001 [see Short Title of 2002 Amendment note set out under 20 U.S.C. 6301]; the preservation and revitalization of tribal languages and cultural traditions; and innovative approaches to better link tribal colleges with early childhood, elementary, and secondary education programs. The agency's performance indicators and objectives should be clearly reflected in the agency's annual budget submission to the Office of Management and Budget. To facilitate the attainment of these performance indicators and objectives, the head of each agency identified by the Secretary, shall provide, as appropriate, technical assistance and information to tribal colleges regarding the program activities of the agency and the preparation of applications or proposals for grants, contracts, or cooperative agreements.

(b) *Submission*. Each agency shall submit its Three-Year Plan to the WHITCU. In consultation with the Board, the WHITCU shall then review these Three-Year Plans and develop an integrated Three-Year Plan for Assistance to Tribal Colleges, which the Secretary shall review and submit to the President. Agencies may revise their Three-Year Plans within the three-year period.

(c) *Annual Performance Reports*. Each agency shall submit to the WHITCU an Annual Performance Report that measures the agency's performance against the objectives set forth in its Three-Year Plan. In consultation with the Board, the WHITCU shall review and combine Annual Performance Reports into one annual report, which shall be submitted to the Secretary for review, in consultation with the Office of Management and Budget.

SEC. 7. *Private Sector*. In cooperation with the Board, the WHITCU shall encourage the private sector to assist tribal colleges through increased use of such strategies as:

(a) matching funds to support increased endowments;

(b) developing expertise and more effective ways to manage finances, improve information systems, build facilities, and improve course offerings; and

(c) increasing resources for and training of faculty.

SEC. 8. *Termination*. The Board shall terminate 2 years after the date of this order unless the Board is renewed by the President prior to the end of that 2-year period.

SEC. 9. *Administration*. (a) *Compensation*. Members of the Board shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707).

(b) *Funding*. The Board and the WHITCU shall be funded by the Department of Education.

(c) *Administrative Support*. The Department of Education shall provide appropriate administrative services and staff support for the Board and the WHITCU. With the consent of the Department of Education, other agencies participating in the WHITCU shall provide administrative support (including detailees) to the WHITCU consistent with statutory authority. The Board and the WHITCU each shall have a staff and shall be supported at appropriate levels commensurate with that of similar White House Initiative Offices.

(d) *General Provisions*. Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the ''Act''), may apply to the administration of any portion of this order, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Secretary of Education in accordance with the guidelines issued by the Administrator of General Services.

SEC. 10. *Revocation*. Executive Order 13021 of October 19, 1996, as amended, is revoked.

GEORGE W. BUSH.

EXTENSION OF TERM OF PRESIDENT'S BOARD OF ADVISORS ON TRIBAL COLLEGES AND UNIVERSITIES

Term of President's Board of Advisors on Tribal Colleges and Universities extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of President's Board of Advisors on Tribal Colleges and Universities extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President's Board of Advisors on Tribal Colleges and Universities extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President's Board of Advisors on Tribal Colleges and Universities extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President's Board of Advisors on Tribal Colleges and Universities extended until Sept. 30, 2009, by Ex. Ord. No. 13446, Sept. 28, 2007, 72 F.R. 56175, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President's Board of Advisors on Tribal Colleges and Universities extended until Sept. 30, 2011, by Ex. Ord. No. 13511, Sept. 29, 2009, 74 F.R. 50909, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

SUBCHAPTER I—TRIBALLY CONTROLLED COLLEGES OR UNIVERSITIES GRANT PROGRAM

§ 1802. Purpose

It is the purpose of this subchapter to provide grants for the operation and improvement of tribally controlled colleges or universities to insure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of such institutions.

(Pub. L. 95–471, title I, § 101, Oct. 17, 1978, 92 Stat. 1325; Pub. L. 98–192, § 2, Dec. 1, 1983, 97 Stat. 1336; Pub. L. 105–244, title IX, § 901(b)(6), Oct. 7, 1998, 112 Stat. 1828.)

AMENDMENTS

1998—Pub. L. 105–244 substituted ''colleges or universities'' for ''community colleges''.

1983—Pub. L. 98–192 inserted '', and to allow for the improvement and expansion of the physical resources of such institutions''.

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.

§ 1803. Grants authorized

(a) Purposes

The Secretary shall, subject to appropriations, make grants pursuant to this subchapter to tribally controlled colleges or universities to aid in the post-secondary education of Indian students.

(b) Deposit of funds; limitations on uses

Grants made pursuant to this subchapter shall go into the general operating funds of the insti-

tution to defray, at the determination of the tribally controlled college or university, expenditures for academic, educational, and administrative purposes and for the operation and maintenance of the college or university. Funds provided pursuant to this subchapter shall not be used in connection with religious worship or sectarian instruction.

(Pub. L. 95–471, title I, § 102, Oct. 17, 1978, 92 Stat. 1326; Pub. L. 98–192, § 3(a), Dec. 1, 1983, 97 Stat. 1336; Pub. L. 105–244, title IX, § 901(b)(5), (6), (12), Oct. 7, 1998, 112 Stat. 1828.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–244, § 901(b)(6), substituted ''colleges or universities'' for ''community colleges''.

Subsec. (b). Pub. L. 105–244, § 901(b)(5), (12), substituted ''controlled college or university'' for ''controlled community college'' and ''the college or university'' for ''the college''.

1983—Subsec. (a). Pub. L. 98–192, § 3(a)(1), substituted ''shall, subject to appropriations,'' for ''is authorized to''.

Subsec. (b). Pub. L. 98–192, § 3(a)(2), substituted ''to defray, at the determination of the tribally controlled community college, expenditures for academic, educational, and administrative purposes and for the operation and maintenance of the college'' for ''to defray the expense of activities related to education programs for Indian students''.

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.

§ 1804. Eligible grant recipients

To be eligible for assistance under this subchapter, a tribally controlled college or university must be one which—

(1) is governed by a board of directors or board of trustees a majority of which are Indians;

(2) demonstrates adherence to stated goals, a philosophy, or a plan of operation which is directed to meet the needs of Indians;

(3) if in operation for more than one year, has students a majority of whom are Indians; and

(4)(A) is accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education to be a reliable authority with regard to the quality of training offered; or

(B) according to such an agency or association, is making reasonable progress toward accreditation.

(Pub. L. 95–471, title I, § 103, Oct. 17, 1978, 92 Stat. 1326; Pub. L. 105–244, title IX, § 901(b)(5), Oct. 7, 1998, 112 Stat. 1828; Pub. L. 110–315, title IX, § 941(d), Aug. 14, 2008, 122 Stat. 3461.)

AMENDMENTS

2008—Par. (4). Pub. L. 110–315 added par. (4).

1998—Pub. L. 105–244 substituted ''college or university'' for ''community college'' in introductory provisions.

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.

§ 1804a. Planning grants

(a) Establishment of program

The Secretary shall establish a program in accordance with this section to make grants to tribes and tribal entities (1) to conduct planning activities for the purpose of developing proposals for the establishment of tribally controlled colleges or universities, or (2) to determine the need and potential for the establishment of such colleges or universities.

(b) Procedures for submission and review of applications

The Secretary shall establish, by regulation, procedures for the submission and review of applications for grants under this section.

(c) Reservation of funds; number of grants

From the amount appropriated to carry out this subchapter for any fiscal year (exclusive of sums appropriated for section 1805 of this title), the Secretary shall reserve (and expend) an amount necessary to make grants to five applicants under this section of not more than $15,000 each, or an amount necessary to make grants in that amount to each of the approved applicants, if less than five apply and are approved.

(Pub. L. 95–471, title I, § 104, as added Pub. L. 98–192, § 4(a)(2), Dec. 1, 1983, 97 Stat. 1336; amended Pub. L. 105–244, title IX, § 901(b)(6), (8), Oct. 7, 1998, 112 Stat. 1828.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–244 substituted ''controlled colleges or universities'' for ''controlled community colleges'' in cl. (1) and ''such colleges or universities'' for ''such colleges'' in cl. (2).

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.

§ 1805. Technical assistance contracts

(a) Technical assistance

(1) In general

The Secretary shall provide, upon request from a tribally controlled college or university which is receiving funds under section 1808 of this title, technical assistance either directly or through contract.

(2) Designated organization

The Secretary shall require that a contract for technical assistance under paragraph (1) shall be awarded to an organization designated by the tribally controlled college or university to be assisted.

(b) Effect of section

No authority to enter into contracts provided by this section shall be effective except to the extent authorized in advance by appropriations Acts.

(Pub. L. 95–471, title I, § 105, formerly § 104, Oct. 17, 1978, 92 Stat. 1326; renumbered § 105 and amended Pub. L. 98–192, §§ 4(a)(1), 5, Dec. 1, 1983,

97 Stat. 1336; Pub. L. 105–244, title IX, § 901(b)(5), Oct. 7, 1998, 112 Stat. 1828; Pub. L. 110–315, title IX, § 941(e), Aug. 14, 2008, 122 Stat. 3461.)

AMENDMENTS

2008—Pub. L. 110–315 inserted subsec. and par. designations and headings, designated first sentence as par. (1) of subsec. (a), designated second sentence as par. (2) of subsec. (a) and substituted ''The Secretary shall require that a contract for technical assistance under paragraph (1) shall be awarded'' for ''In the awarding of contracts for technical assistance, preference shall be given'', and designated third sentence as subsec. (b).

1998—Pub. L. 105–244 substituted ''college or university'' for ''community college'' in two places.

1983—Pub. L. 98–192, § 5, inserted ''from a tribally controlled community college which is receiving funds under section 1808 of this title'' and struck out ''to tribally controlled community colleges'' before ''either directly''.

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.

§ 1806. Eligibility studies

(a) Development of plans, procedures, and criteria

The Secretary is authorized to enter into an agreement with the Secretary of Education to assist the Bureau of Indian Affairs in developing plans, procedures, and criteria for conducting the eligibility studies required by this section. Such agreement shall provide for continuing technical assistance in the conduct of such studies.

(b) Initiation by Secretary; grant applications and budgets

The Secretary, within thirty days after a request by any Indian tribe, shall initiate a[1] eligibility study to determine whether there is justification to encourage and maintain a tribally controlled college or university, and, upon a positive determination, shall aid in the preparation of grant applications and related budgets which will insure successful operation of such an institution. Such a positive determination shall be effective for the fiscal year succeeding the fiscal year in which such determination is made.

(c) Source of appropriations

Funds to carry out the purposes of this section for any fiscal year may be drawn from either—

(1) general administrative appropriations to the Secretary made after October 17, 1978 for such fiscal year; or

(2) not more than 5 per centum of the funds appropriated to carry out section 1807 of this title for such fiscal year.

(Pub. L. 95–471, title I, § 106, formerly § 105, Oct. 17, 1978, 92 Stat. 1326; renumbered § 106 and amended Pub. L. 98–192, §§ 4(a)(1), (b)(1), 6(a), Dec. 1, 1983, 97 Stat. 1336, 1337; Pub. L. 105–244, title IX, § 901(b)(5), Oct. 7, 1998, 112 Stat. 1828.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–244 substituted ''college or university'' for ''community college''.

1983—Subsec. (a). Pub. L. 98–192, § 6(a)(2), (3), substituted ''eligibility'' for ''feasibility'' and ''Secretary of Education'' for ''Assistant Secretary of Education of the Department of Health, Education, and Welfare''.

Subsec. (b). Pub. L. 98–192, § 6(a)(2), (4), inserted provision that such positive determination be effective for fiscal year succeeding fiscal year in which such determination is made, and substituted ''eligibility'' for ''feasibility''.

Subsec. (c)(2). Pub. L. 98–192, §§ 4(b)(1), 6(a)(5), substituted ''5 per centum'' for ''10 per centum'' and made a technical amendment to reference to section 1807 of this title to reflect renumbering of that section.

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.

§ 1807. Grants to tribally controlled colleges or universities

(a) Submission of applications; necessity of eligibility study

Grants shall be made under this subchapter only in response to applications by tribally controlled colleges or universities. Such applications shall be submitted at such time, in such manner, and will contain or be accompanied by such information as the Secretary may reasonably require pursuant to regulations. Such application shall include a description of recordkeeping procedures for the expenditure of funds received under this chapter which will allow the Secretary to audit and monitor programs conducted with such funds. The Secretary shall not consider any grant application unless a[1] eligibility study has been conducted under section 1806 of this title and it has been found that the applying college or university will service a reasonable student population.

(b) Determination of support; factors considered

The Secretary shall consult with the Secretary of Education to determine the reasonable number of students required to support a tribally controlled college or university. Consideration shall be given to such factors as tribal and cultural differences, isolation, the presence of alternate education sources, and proposed curriculum.

(c) Priority and number of grants

Priority in grants shall be given to institutions which are operating on October 17, 1978, and which have a history of service to the Indian people. In the first year for which funds are appropriated to carry out this section, the number of grants shall be limited to not less than eight nor more than fifteen.

(d) Consultation with national Indian organizations and tribal governments

In making grants pursuant to this section, the Secretary shall, to the extent practicable, consult with national Indian organizations and with tribal governments chartering the institutions being considered.

(Pub. L. 95–471, title I, § 107, formerly § 106, Oct. 17, 1978, 92 Stat. 1327; Pub. L. 97–375, title I, § 108(c), Dec. 21, 1982, 96 Stat. 1820; renumbered

[1] So in original. Probably should be ''an''.

[1] So in original. Probably should be ''an''.

§ 107 and amended Pub. L. 98–192, §§ 3(b), 4(a)(1), (b)(2), 6(b), Dec. 1, 1983, 97 Stat. 1336, 1337; Pub. L. 105–244, title IX, § 901(b)(4)–(6), Oct. 7, 1998, 112 Stat. 1828.)

AMENDMENTS

1998—Pub. L. 105–244, § 901(b)(4), substituted ''colleges or universities'' for ''community colleges'' in section catchline.

Subsec. (a). Pub. L. 105–244, § 901(b)(5), (6), substituted ''colleges or universities'' for ''community colleges'' and ''college or university'' for ''community college''.

Subsec. (b). Pub. L. 105–244, § 901(b)(5), substituted ''college or university'' for ''community college''.

1983—Subsec. (a). Pub. L. 98–192, § 6(b)(1), substituted ''eligibility'' for ''feasibility''.

Pub. L. 98–192, § 4(b)(2), made a technical amendment to reference to section 1806 of this title to reflect renumbering of that section.

Pub. L. 98–192, § 3(b), inserted provision that such application include a description of the recordkeeping procedures for expenditure of funds as will allow Secretary to audit and monitor programs conducted with such funds.

Subsec. (b). Pub. L. 98–192, § 6(b)(2), substituted ''Secretary of Education'' for ''Assistant Secretary of Education of the Department of Health, Education, and Welfare''.

1982—Subsec. (e). Pub. L. 97–375 struck out subsec. (e) which directed the Secretary to report to Congress on Jan. 15 of each year the current status of tribally controlled community colleges and his recommendations for needed action.

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.

§ 1808. Amount of grants

(a) Requirement

(1) In general

Except as provided in paragraph (2) and section 1811 of this title, the Secretary shall, subject to appropriations, grant for each academic year to each tribally controlled college or university having an application approved by the Secretary an amount equal to the product obtained by multiplying—

(A) the Indian student count at such college or university during the academic year preceding the academic year for which such funds are being made available, as determined by the Secretary in accordance with section 1801(a)(8) of this title; and

(B) $8,000, as adjusted annually for inflation.

(2) Exception

The amount of a grant under paragraph (1) shall not exceed an amount equal to the total cost of the education program provided by the applicable tribally controlled college or university.

(b) Advance installment payments; adjustments; methods of payment; interest or investment income; types of investments

(1) The Secretary shall make payments, pursuant to grants under this chapter, of not less than 95 percent of the funds available for allotment by October 15 or no later than 14 days after appropriations become available, with a payment equal to the remainder of any grant to which a grantee is entitled to be made no later than January 1 of each fiscal year.

(2) Notwithstanding any other provision of law, the Secretary shall not, in disbursing funds provided under this subchapter, use any method of payment which was not used during fiscal year 1987 in the disbursement of funds provided under this subchapter.

(3)(A) Notwithstanding any provision of law other than subparagraph (B), any interest or investment income that accrues on any funds provided under this subchapter after such funds are paid to the tribally controlled college or university and before such funds are expended for the purpose for which such funds were provided under this subchapter shall be the property of the tribally controlled college or university and shall not be taken into account by any officer or employee of the Federal Government in determining whether to provide assistance, or the amount of assistance, to the tribally controlled college or university under any provision of Federal law.

(B) All interest or investment income described in subparagraph (A) shall be expended by the tribally controlled college or university by no later than the close of the fiscal year succeeding the fiscal year in which such interest or investment income accrues.

(4) Funds provided under this subchapter may only be invested by the tribally controlled college or university in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States.

(c) Accounting by recipient institutions; data collection system

(1) Each institution receiving payments under this subchapter shall annually provide to the Secretary an accurate and detailed accounting of its operating and maintenance expenses and such other information concerning costs as the Secretary may request.

(2) The Secretary shall, in consultation with the National Center for Education Statistics, establish a data collection system for the purpose of obtaining accurate information with respect to the needs and costs of operation and maintenance of tribally controlled colleges or universities.

(d) Construction of section

Nothing in this section shall be construed as interfering with, or suspending the obligation of the Bureau for, the implementation of all legislative provisions enacted prior to April 28, 1988, specifically including those of Public Law 98–192.

(Pub. L. 95–471, title I, § 108, formerly § 107, Oct. 17, 1978, 92 Stat. 1327; Pub. L. 97–375, title I, § 108(c), Dec. 21, 1982, 96 Stat. 1820; renumbered § 108 and amended Pub. L. 98–192, §§ 4(a)(1), 7, Dec. 1, 1983, 97 Stat. 1336, 1337; Pub. L. 99–428, § 4, Sept. 30, 1986, 100 Stat. 983; Pub. L. 100–297, title V, § 5402(a), Apr. 28, 1988, 102 Stat. 415; Pub. L. 100–427, § 24, Sept. 9, 1988, 102 Stat. 1613; Pub. L. 101–477, § 1(a), Oct. 30, 1990, 104 Stat. 1152; Pub. L. 105–244, title IX, § 901(a)(1), (b)(5)–(7), Oct. 7, 1998, 112 Stat. 1827, 1828; Pub. L. 110–315, title IX, § 941(f), Aug. 14, 2008, 122 Stat. 3462.)

REFERENCES IN TEXT

Public Law 98–192, referred to in subsec. (d), is Pub. L. 98–192, Dec. 1, 1983, 97 Stat. 1335, which enacted sections 1804a and 1831 to 1836 of this title, amended sections 640c–1, 1801 to 1803, and 1805 to 1813 of this title, and enacted provisions set out as a note under section 1815 of this title. For complete classification of Pub. L. 98–192 to the Code, see Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–315 inserted subsec. (a) and par. (1) headings, designated introductory provisions and pars. (1) and (2) as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), in introductory provisions, substituted ''Except as provided in paragraph (2) and section 1811 of this title,'' for ''Except as provided in section 1811 of this title,'', ''approved by the Secretary'' for ''approved by him'', and ''product obtained by multiplying'' for ''product of'', in subpar. (A), substituted ''section 1801(a)(8) of this title'' for ''section 1801(a)(7) of this title'', in subpar. (B), substituted ''$8,000, as adjusted annually for inflation.'' for ''$6,000,'', added par. (2), and struck out former concluding provisions which read as follows: ''except that no grant shall exceed the total cost of the education program provided by such college or university.''

1998—Subsec. (a). Pub. L. 105–244, § 901(a)(1), (b)(5), (7), substituted ''controlled college or university'' for ''controlled community college'' in introductory provisions, ''such college or university'' for ''such college'' in par. (1) and concluding provisions, and ''$6,000'' for ''$5,820'' in par. (2).

Subsec. (b)(3), (4). Pub. L. 105–244, § 901(b)(5), substituted ''college or university'' for ''community college'' wherever appearing.

Subsec. (c)(2). Pub. L. 105–244, § 901(b)(6), substituted ''colleges or universities'' for ''community colleges''.

1990—Subsec. (a)(1). Pub. L. 101–477, § 1(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the Indian student count at such college during such academic year, as determined by the Secretary in accordance with section 1801(a)(7) of this title; and''.

Subsec. (b)(1). Pub. L. 101–477, § 1(a)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary shall make payments, pursuant to grants under this subchapter, in advance installments of not less than 40 per centum of the funds available for allotment, based on anticipated or actual numbers of full-time equivalent Indian students or such other factors as determined by the Secretary. Adjustments for overpayments and underpayments shall be applied to the remainder of such funds and such remainder shall be delivered no later than July 1 of each year.''

Subsecs. (c), (d). Pub. L. 101–477, § 1(a)(3), redesignated subsec. (c), relating to construction of section, as (d).

1988—Subsec. (b). Pub. L. 100–297 designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (c). Pub. L. 100–427 added subsec. (c) relating to construction of section.

1986—Subsec. (a)(2). Pub. L. 99–428 amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(A) $4,000 for fiscal year 1984,

''(B) $5,025 for fiscal year 1985,

''(C) $5,415 for fiscal year 1986, and

''(D) $5,820 for fiscal year 1987,''.

1983—Subsec. (a). Pub. L. 98–192 amended subsec. (a) generally, substituting provision establishing a formula premised on Indian student count at each tribally controlled community college on which funding is to be based for provision which directing the Secretary to grant an amount equal to $4,000 for each full-time equivalent Indian student in attendance during the academic year to each tribally controlled community college having an application approved by the Secretary.

1982—Subsec. (c)(2). Pub. L. 97–375 struck out provision directing Secretary to report annually to Congress on needs of tribally controlled community colleges.

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.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100–297, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of Title 20, Education.

§ 1809. Effect on other programs

(a) Eligibility for assistance

Except as specifically provided in this subchapter, eligibility for assistance under this subchapter shall not, by itself, preclude the eligibility of any tribally controlled college or university to receive Federal financial assistance under any program authorized under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.] or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

(b) Allocations from Bureau of Indian Affairs

(1) The amount of any grant for which tribally controlled colleges or universities are eligible under section 1808 of this title shall not be altered because of funds allocated to any such colleges or universities from funds appropriated under section 13 of this title.

(2) No tribally controlled college or university shall be denied funds appropriated under section 13 of this title because of the funds it receives under this chapter.

(3) No tribally controlled college or university for which a tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under section 13 of this title may be denied a contract for such portion under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) (except as provided in that Act), or denied appropriate contract support to administer such portion of the appropriated funds.

(c)[1] Assistance deemed to be basic educational opportunity grant

For the purposes of sections 312(2)(A)(i) and 322(a)(2)(A)(i) of the Higher Education Act of 1965 [20 U.S.C. 1058(2)(A)(i), 1061(a)(2)(A)(i)],[2] any Indian student who receives a student assistance grant from the Bureau of Indian Affairs for postsecondary education shall be deemed to have received such assistance under subpart 1 of part A of title IV of such Act [20 U.S.C. 1070a].

(c)[1] Treatment of funds under certain Federal laws

Notwithstanding any other provision of law, funds provided under this subchapter to the tribally controlled college or university may be treated as non-Federal, private funds of the college or university for purposes of any provision of Federal law which requires that non-Federal

[1] So in original. Two subsecs. (c) have been enacted.

[2] See References in Text note below.

or private funds of the college or university be used in a project or for a specific purpose.

(Pub. L. 95–471, title I, § 109, formerly § 108, Oct. 17, 1978, 92 Stat. 1328; renumbered § 109 and amended Pub. L. 98–192, §§ 4(a)(1), 8, Dec. 1, 1983, 97 Stat. 1336, 1337; Pub. L. 99–428, § 5, Sept. 30, 1986, 100 Stat. 983; Pub. L. 100–297, title V, § 5403(a), Apr. 28, 1988, 102 Stat. 416; Pub. L. 105–244, title IX, § 901(b)(5), (6), (8), (10), (12), (e), Oct. 7, 1998, 112 Stat. 1828, 1829.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsecs. (a) and (c), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. Sections 312 and 322 of the Higher Education Act of 1965, which were classified to sections 1058 and 1061, respectively, of Title 20, were omitted in the general revision of title III of the Higher Education Act of 1965 by Pub. L. 99–498, title III, § 301(a), Oct. 17, 1986, 100 Stat. 1290, which enacted new sections 312 and 322 which are classified to sections 1058 and 1061, respectively, of Title 20. Subpart 1 of part A of title IV of the Higher Education Act of 1965 is classified generally to subpart 1 (§ 1070a et seq.) of part A of subchapter IV of chapter 28 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (b)(3), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–244, § 901(b)(10), inserted ''or university'' after ''tribally controlled college''.

Subsec. (b)(1). Pub. L. 105–244, § 901(b)(6), (8), substituted ''controlled colleges or universities'' for ''controlled community colleges'' and ''such colleges or universities'' for ''such colleges''.

Subsec. (b)(2), (3). Pub. L. 105–244, § 901(b)(5), substituted ''college or university'' for ''community college''.

Subsec. (c). Pub. L. 105–244, § 901(e), redesignated subsec. (d), relating to treatment of funds under certain Federal laws, as (c).

Subsec. (d). Pub. L. 105–244, § 901(e), redesignated subsec. (d), relating to treatment of funds under certain Federal laws, as (c).

Pub. L. 105–244, § 901(b)(5), (12), substituted ''controlled college or university'' for ''controlled community college'' and substituted ''the college or university'' for ''the college'' in two places.

1988—Subsec. (d). Pub. L. 100–297 added subsec. (d).

1986—Subsec. (b)(3). Pub. L. 99–428 added par. (3).

1983—Pub. L. 98–192, § 8, designated existing provision as subsec. (a) and added subsecs. (b) and (c).

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.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100–297, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of Title 20, Education.

§ 1810. Authorization of appropriations

(a)(1) There is authorized to be appropriated, for the purpose of carrying out section 1805 of this title, $3,200,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years.

(2) There is authorized to be appropriated for the purpose of carrying out section 1807 of this title, such sums as may be necessary for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years.

(3) There is authorized to be appropriated for the purpose of carrying out sections 1812(b) and 1813 of this title, such sums as may be necessary for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years.

(4) Funds appropriated pursuant to the authorizations under this section for the fiscal year 2009 and for each of the five succeeding fiscal years shall be transferred by the Secretary of the Treasury through the most expeditious method available, with each of the tribally controlled colleges or universities being designated as its own certifying agency.

(b)(1) For the purpose of affording adequate notice of funding available under this chapter, amounts appropriated in an appropriation Act for any fiscal year to carry out this chapter shall become available for obligation on July 1 of that fiscal year and shall remain available until September 30 of the succeeding fiscal year.

(2) In order to effect a transition to the forward funding method of timing appropriation action described in paragraph (1), there are authorized to be appropriated, in an appropriation Act or Acts for the same fiscal year, two separate appropriations to carry out this chapter, the first of which shall not be subject to paragraph (1).

(Pub. L. 95–471, title I, § 110, formerly § 109, Oct. 17, 1978, 92 Stat. 1328; renumbered § 110 and amended Pub. L. 98–192, §§ 4(a)(1), 9, Dec. 1, 1983, 97 Stat. 1336, 1337; Pub. L. 99–428, § 2(a), Sept. 30, 1986, 100 Stat. 982; Pub. L. 101–477, § 1(b), Oct. 30, 1990, 104 Stat. 1152; Pub. L. 102–325, title XIII, § 1301(a), July 23, 1992, 106 Stat. 797; Pub. L. 105–244, title IX, § 901(a)(2)(A), (b)(11), Oct. 7, 1998, 112 Stat. 1827, 1828; Pub. L. 110–315, title IX, § 941(g), Aug. 14, 2008, 122 Stat. 3462.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–315, § 941(g)(1), (2), substituted ''2009'' for ''1999'' and ''five succeeding'' for ''4 succeeding''.

Subsec. (a)(2). Pub. L. 110–315, § 941(g)(1)–(3), substituted ''such sums as may be necessary'' for ''$40,000,000'', ''2009'' for ''1999'', and ''five succeeding'' for ''4 succeeding''.

Subsec. (a)(3). Pub. L. 110–315, § 941(g)(1), (2), (4), substituted ''such sums as may be necessary'' for ''$10,000,000'', ''2009'' for ''1999'', and ''five succeeding'' for ''4 succeeding''.

Subsec. (a)(4). Pub. L. 110–315, § 941(g)(1), (5), substituted ''2009'' for ''1999'' and ''five succeeding'' for ''succeeding 4''.

1998—Subsec. (a)(1). Pub. L. 105–244, § 901(a)(2)(A)(i), substituted ''1999'' for ''1993''.

Subsec. (a)(2). Pub. L. 105–244, § 901(a)(2)(A)(ii), substituted ''$40,000,000 for fiscal year 1999'' for ''$30,000,000 for fiscal year 1993''.

Subsec. (a)(3). Pub. L. 105–244, § 901(a)(2)(A)(iii), substituted ''1999'' for ''1993''.

Subsec. (a)(4). Pub. L. 105–244, § 901(a)(2)(A)(iv), (b)(11), substituted ''1999'' for ''1993'' and ''tribally controlled colleges or universities'' for ''Tribally Controlled Community Colleges''.

1992—Subsec. (a). Pub. L. 102–325 amended subsec. (a) generally, in pars. (1) to (3) substituting provisions authorizing appropriations for fiscal years 1993 to 1997 for provisions authorizing appropriations for fiscal years 1990 to 1992 and adding par. (4).

1990—Subsec. (a)(1). Pub. L. 101–477, §1(b)(1), substituted ''1990 and 1991, and for fiscal year 1992, such sums as may be necessary'' for ''1987, 1988, 1989, and 1990''.

Subsec. (a)(2). Pub. L. 101–477, §1(b)(2), substituted ''1990 and 1991, and for fiscal year 1992, such sums as may be necessary'' for ''1987, 1988, 1989, and 1990''.

Subsec. (a)(3). Pub. L. 101–477, §1(b)(3), substituted ''1990, 1991, and 1992'' for ''1987, 1988, 1989, and 1990''.

1986—Subsec. (a)(1). Pub. L. 99–428, §2(a)(1), substituted ''1987, 1988, 1989, and 1990'' for ''1985, 1986, and 1987''.

Subsec. (a)(2), (3). Pub. L. 99–428, §2(a)(2), substituted ''the fiscal years 1987, 1988, 1989, and 1990'' for ''such fiscal years''.

1983—Subsec. (a). Pub. L. 98–192, §9, amended subsec. (a) generally, substituting provision authorizing appropriations for fiscal years 1985, 1986, and 1987 of $3,200,000 for carrying out section 1805 of this title, $30,000,000 for carrying out section 1807 of this title, and appropriations as necessary for carrying out sections 1812(b) and 1813 of this title for provision authorizing appropriations for carrying out section 1807 of this title of $25,000,000 for each of the fiscal years beginning Oct. 1, 1979 and Oct. 1, 1980, and $30,000,000 for the fiscal year beginning Oct. 1, 1981, and $3,200,000 for each of such fiscal years for the provision of technical assistance pursuant to section 1805 of this title.

Subsec. (b). Pub. L. 98–192, §9, amended subsec. (b) generally, substituting provision relating to affording adequate notice of funding available under this chapter and directing two separate appropriations in order to effect a transition to the forward funding method of timing appropriation action for provision directing that, unless otherwise provided, funds appropriated under this section remain available until expended.

Subsec. (c). Pub. L. 98–192, §9, struck out subsec. (c) which provided that nothing in this chapter be deemed to authorize appropriations for fiscal year beginning Oct. 1, 1978.

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.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of Title 20, Education.

§ 1811. Grant adjustments

(a) Formula for allocation

(1) If the sums appropriated for any fiscal year pursuant to section 1810(a)(2) of this title for grants under section 1807 of this title are not sufficient to pay in full the total amount which approved applicants are eligible to receive under such section for such fiscal year—

(A) the Secretary shall first allocate to each such applicant which received funds under section 1807 of this title for the preceding fiscal year an amount equal to 95 percent of the payment received by such applicant under section 1808 of this title;

(B) the Secretary shall next allocate to applicants who did not receive funds under such section for the preceding fiscal year an amount equal to 100 per centum of the product of—

(i) the per capita payment for the preceding fiscal year; and

(ii) the applicant's projected Indian student count for the academic year for which payment is being made;

in the order in which such applicants have qualified for assistance in accordance with such section so that no amount shall be allocated to a later qualified applicant until each earlier qualified applicant is allocated an amount equal to such product; and

(C) if additional funds remain after making the allocations required by subparagraphs (A) and (B), the Secretary shall allocate such funds by—

(i) ratably increasing the amounts of the grants determined under subparagraph (A) until such grants are equal to 100 per centum of the product described in such subparagraph; and

(ii) then ratably increasing the amounts of both (I) the grants determined under subparagraph (A), as increased under clause (i) of this subparagraph, and (II) the grants determined under subparagraph (B).

(2) For purposes of paragraph (1) of this subsection, the term ''per capita payment'' for any fiscal year shall be determined by dividing the amount available for grants to tribally controlled colleges or universities under section 1807 of this title for such fiscal year by the sum of the Indian student counts of such colleges or universities for such fiscal year. The Secretary shall, on the basis of the most satisfactory data available, compute the Indian student count for any fiscal year for which such count was not used for the purpose of making allocations under this subchapter.

(b) Ratable reduction or increase in funds available for existing schools; excess funds; definition

(1) If the sums appropriated for any fiscal year for grants under section 1807 of this title are not sufficient to pay in full the total amount of the grants determined pursuant to subsection (a)(1)(A) of this section, the amount which applicants described in such subsection are eligible to receive under section 1807 of this title for such fiscal year shall be ratably reduced.

(2) If any additional funds become available for making payments under section 1807 of this title for any fiscal year to which subsection (a) of this section or paragraph (1) of this subsection applies, such additional amounts shall be allocated by first increasing grants reduced under paragraph (1) of this subsection on the same basis as they were reduced and by then allocating the remainder in accordance with subsection (a) of this section. Sums appropriated in excess of the amount necessary to pay in full the total amounts for which applicants are eligible under section 1807 of this title shall be allocated by ratably increasing such total amounts.

(3) References in this subsection and subsection (a) of this section to section 1807 of this title shall, with respect to fiscal year 1983, be deemed to refer to section 1806 of this title as in effect at the beginning of such fiscal year.

(c) Reallocation of funds

In any fiscal year in which the amounts for which grant recipients are eligible to receive have been reduced under the first sentence of subsection (a) of this section, and in which additional funds have not been made available to pay in full the total of such amounts under the second sentence of such subsection, each grantee shall report to the Secretary any unused portion of received funds ninety days prior to the grant expiration date. The amounts so reported by any grant recipient shall be made available for reallocation to eligible grantees on a basis proportionate to the amount which is unfunded as a result of the ratable reduction, but no grant recipient shall receive, as a result of such reallocation, more than the amount provided for under section 1807(a) of this title.

(Pub. L. 95–471, title I, § 111, formerly § 110, Oct. 17, 1978, 92 Stat. 1328; renumbered § 111 and amended Pub. L. 98–192, §§ 4(a)(1), (b)(3), 10, Dec. 1, 1983, 97 Stat. 1336, 1338; Pub. L. 101–477, § 1(c), Oct. 30, 1990, 104 Stat. 1152; Pub. L. 105–244, title IX, § 901(b)(6), (8), Oct. 7, 1998, 112 Stat. 1828.)

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–244 substituted ''controlled colleges or universities'' for ''controlled community colleges'' and ''such colleges or universities'' for ''such colleges''.

1990—Subsec. (a)(1)(A). Pub. L. 101–477, § 1(c)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the Secretary shall first allocate to each such applicant which received funds under section 1807 of this title for the preceding fiscal year an amount equal to 95 per centum of the product of—

''(i) the per capita payment for the preceding fiscal year; and

''(ii) such applicant's Indian student count for the current fiscal year;''.

Subsec. (a)(1)(B)(ii). Pub. L. 101–477, § 1(c)(2), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the applicant's Indian student count for the current fiscal year;''.

1983—Subsec. (a). Pub. L. 98–192, § 10, amended subsec. (a) generally, substituting provision establishing a formula to be used to determine funding between existing and newly eligible schools when funds appropriated are not sufficient to pay in full the total amount which approved applicants are eligible to receive under section 1807 of this title for provision that if funds were insufficient to pay in full the total amounts which approved grant applicants were eligible to receive, the available funds would be ratably decreased and if funds later became available or there were excess funds, such funds would be ratably increased.

Subsecs. (b), (c). Pub. L. 98–192, § 10, added subsec. (b) and redesignated former subsec. (b) as (c).

Pub. L. 98–192, § 4(b)(3), made a technical amendment to reference to section 1807 of this title to reflect renumbering of that section.

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.

§ 1812. Report on facilities

(a) Study on condition of currently existing facilities; submission of report; contents

The Secretary shall provide for the conduct of a study of facilities available for use by tribally controlled colleges or universities. Such study shall consider the condition of currently existing Bureau of Indian Affairs facilities which are vacant or underutilized and shall consider available alternatives for renovation, alteration, repair, and reconstruction of such facilities (including renovation, alteration, repair, and reconstruction necessary to bring such facilities into compliance with local building codes). Such study shall also identify the need for new construction. A report on the results of such study shall be submitted to the Congress not later than eighteen months after September 30, 1986. Such report shall also include an identification of property—

(1) on which structurally sound buildings suitable for use as educational facilities are located, and

(2) which is available for use by tribally controlled colleges or universities under section 523 of title 40 and section 443a of this title.

(b) Renovation program

The Secretary, in consultation with the Bureau of Indian Affairs, shall initiate a program to conduct necessary renovations, alterations, repairs, and reconstruction identified pursuant to subsection (a) of this section.

(c) Determination and prioritization of construction and renovation needs

(1) The Secretary shall enter into a contract with an organization described in paragraph (2) to establish and provide on an annual basis criteria for the determination and prioritization in a consistent and equitable manner of the facilities construction and renovation needs of colleges or universities that receive funding under this chapter or the Navajo Community College Act [25 U.S.C. 640a et seq.].

(2) An organization described in this section is any organization that—

(A) is eligible to receive a contract under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.]; and

(B) has demonstrated expertise in areas and issues dealing with tribally controlled colleges or universities.

(3) The Secretary shall include the priority list established pursuant to this subsection in the budget submitted annually to the Congress.

(d) "Reconstruction" defined

For the purposes of this section, the term ''reconstruction'' has the meaning provided in the first sentence of subparagraph (B) of section 1132e–1(2)[1] of title 20.

(Pub. L. 95–471, title I, § 112, formerly § 111, Oct. 17, 1978, 92 Stat. 1328; renumbered § 112 and amended Pub. L. 98–192, §§ 4(a)(1), 11, Dec. 1, 1983, 97 Stat. 1336, 1339; Pub. L. 99–428, § 6(a), Sept. 30, 1986, 100 Stat. 983; Pub. L. 101–392, title III, § 313, Sept. 25, 1990, 104 Stat. 805; Pub. L. 105–244, title IX, § 901(b)(6), (13), Oct. 7, 1998, 112 Stat. 1828.)

REFERENCES IN TEXT

The Navajo Community College Act, referred to in subsec. (c)(1), is Pub. L. 92–189, Dec. 15, 1971, 85 Stat. 646, as amended, which is classified to section 640a et seq.

[1] See References in Text note below.

of this title. For complete classification of this Act to the Code, see Short Title note set out under section 640a of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(2)(A), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

Section 1132e–1 of title 20, referred to in subsec. (d), was omitted in the general revision of subchapter VII (§ 1132a et seq.) of chapter 28 of Title 20, Education, by Pub. L. 99–498, title VII, § 701, Oct. 17, 1986, 100 Stat. 1520. See section 1132i–1 of Title 20.

CODIFICATION

''Section 523 of title 40'' substituted in subsec. (a)(2) for ''section 202(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(a)(2))'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–244, § 901(b)(6), substituted ''colleges or universities'' for ''community colleges'' in introductory provisions and par. (2).

Subsec. (c)(1). Pub. L. 105–244, § 901(b)(13), substituted ''colleges or universities'' for ''colleges''.

Subsec. (c)(2)(B). Pub. L. 105–244, § 901(b)(6), substituted ''colleges or universities'' for ''community colleges''.

1990—Subsecs. (c), (d). Pub. L. 101–392 added subsec. (c) and redesignated former subsec. (c) as (d).

1986—Subsec. (a). Pub. L. 99–428, § 6(a), substituted ''Secretary'' for ''Administrator of General Services'' and ''September 30, 1986'' for ''December 1, 1983''.

Subsec. (b). Pub. L. 99–428, § 6(a)(1), substituted ''Secretary'' for ''Administrator of General Services''.

1983—Pub. L. 98–192 amended section generally, substituting provision requiring a study on the condition of currently existing facilities, submission of a report on the study, contents of the report, establishment of a renovation program, and defining term ''reconstruction'' for provision which required the Secretary of the Interior, not later than ninety days after Oct. 17, 1978, to prepare and submit a report to the Congress containing a survey of existing and planned physical facilities of tribally controlled community colleges.

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.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–392 effective July 1, 1991, see section 702(a) of Pub. L. 101–392, set out as an Effective Date note under section 3423a of Title 20, Education.

§ 1813. Construction of new facilities

(a) Grants

With respect to any tribally controlled college or university for which the report of the Secretary under section 1812(a) of this title identifies a need for new construction, the Secretary shall, subject to appropriations and on the basis of an application submitted in accordance with such requirements as the Secretary may prescribe by regulation, provide grants for such construction in accordance with this section.

(b) Eligibility requirements

In order to be eligible for a grant under this section, a tribally controlled college or university—

(1) must be a current recipient of grants under section 1805 or 1807 of this title, and

(2) must be accredited by a nationally recognized accrediting agency listed by the Secretary of Education pursuant to the last sentence of section 1001 of title 20, except that such requirement may be waived if the Secretary determines that there is a reasonable expectation that such college or university will be fully accredited within eighteen months. In any case where such a waiver is granted, grants under this section shall be available only for planning and development of proposals for construction.

(c) Maximum amount of grant; waiver of restriction

(1) Except as provided in paragraph (2), grants for construction under this section shall not exceed 80 per centum of the cost of such construction, except that no tribally controlled college or university shall be required to expend more than $400,000 in fulfillment of the remaining 20 per centum. For the purpose of providing its required portion of the cost of such construction, a tribally controlled college or university may use funds provided under section 13 of this title.

(2) The Secretary may waive, in whole or in part, the requirements of paragraph (1) in the case of any tribally controlled college or university which demonstrates that neither such college or university nor the tribal government with which it is affiliated have sufficient resources to comply with such requirements. The Secretary shall base a decision on whether to grant such a waiver solely on the basis of the following factors: (A) tribal population; (B) potential student population; (C) the rate of unemployment among tribal members; (D) tribal financial resources; and (E) other factors alleged by the college or university to have a bearing on the availability of resources for compliance with the requirements of paragraph (1) and which may include the educational attainment of tribal members.

(d) Failure to use facility in approved manner; title to vest in United States; settlement

If, within twenty years after completion of construction of a facility which has been constructed in whole or in part with a grant made available under this section—

(1) the facility ceases to be used by the applicant in a public or nonprofit capacity as an academic facility, unless the Secretary determines that there is good cause for releasing the institution from this obligation, and

(2) the tribe with which the applicant is affiliated fails to use the facility for a public purpose approved by the tribal government in furtherance of the general welfare of the community served by the tribal government,

title to the facility shall vest in the United States and the applicant (or such tribe if such tribe is the successor in title to the facility) shall be entitled to recover from the United States an amount which bears the same ratio to the present value of the facility as the amount of the applicant's contribution (excluding any funds provided under section 13 of this title) bore to the original cost of the facility. Such

value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is located.

(e) Religious use

No construction assisted with funds under this section shall be used for religious worship or a sectarian activity or for a school or department of divinity.

(f) "Construction" and "academic facilities" defined

For the purposes of this section—

(1) the term ''construction'' includes reconstruction or renovation (as such terms are defined in the first sentence of subparagraph (B) of section 1132e–1(2)[1] of title 20); and

(2) the term ''academic facilities'' has the meaning provided such term under section 1132e–1(1)[1] of title 20.

(Pub. L. 95–471, title I, § 113, formerly § 112, Oct. 17, 1978, 92 Stat. 1329; renumbered § 113 and amended Pub. L. 98–192, §§ 4(a)(1), 12, Dec. 1, 1983, 97 Stat. 1336, 1340; Pub. L. 99–428, § 6(b), Sept. 30, 1986, 100 Stat. 983; Pub. L. 105–244, title I, § 102(a)(8)(C), title IX, § 901(b)(5), (7), (12), Oct. 7, 1998, 112 Stat. 1619, 1828.)

REFERENCES IN TEXT

Section 1132e–1 of title 20, referred to in subsec. (f), was omitted in the general revision of subchapter VII (§ 1132a et seq.) of chapter 28 of Title 20, Education, by Pub. L. 99–498, title VII, § 701, Oct. 17, 1986, 100 Stat. 1520.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–244, § 901(b)(5), substituted ''college or university'' for ''community college''.

Subsec. (b). Pub. L. 105–244, § 901(b)(5), substituted ''college or university'' for ''community college'' in introductory provisions.

Subsec. (b)(2). Pub. L. 105–244, §§ 102(a)(8)(C), 901(b)(7), substituted ''section 1001'' for ''section 1141(a)'' and ''such college or university'' for ''such college''.

Subsec. (c)(1). Pub. L. 105–244, § 901(b)(5), substituted ''college or university'' for ''community college'' in two places.

Subsec. (c)(2). Pub. L. 105–244, § 901(b)(5), (7), (12), in introductory provisions, substituted ''controlled college or university'' for ''controlled community college'' and ''such college or university'' for ''such college'' and, in subpar. (E), substituted ''the college or university'' for ''the college''.

1986—Subsec. (a). Pub. L. 99–428 substituted ''Secretary under'' for ''Administrator of General Services under''.

1983—Pub. L. 98–192 amended section generally, substituting provision authorizing grants for construction of new facilities, establishing eligibility requirements for grants, maximum amounts of grants, waiver of amount restriction, results of failure to use facilities in an approved manner, and prohibition of religious use of such facilities, and defining ''construction'' and ''academic facilities'' for provision requiring Secretary of the Interior to conduct a detailed survey and study of academic facilities needs of tribally controlled community colleges and report to Congress not later than Nov. 1, 1979, the results of such survey and study.

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.

[1] See References in Text note below.

§ 1814. Miscellaneous provisions

(a) Eligibility of Navajo Tribe

The Navajo Tribe shall not be eligible to participate under the provisions of this subchapter.

(b) Discriminatory practices prohibited

(1) The Secretary shall not provide any funds to any institution which denies admission to any Indian student because such individual is not a member of a specific Indian tribe, or which denies admission to any Indian student because such individual is a member of a specific tribe.

(2) The Secretary shall take steps to recover any unexpended and unobligated funds provided under this subchapter held by an institution determined to be in violation of paragraph (1).

(Pub. L. 95–471, title I, § 114, formerly § 113, Oct. 17, 1978, 92 Stat. 1329; renumbered § 114, Pub. L. 98–192, § 4(a)(1), Dec. 1, 1983, 97 Stat. 1336.)

§ 1815. Rules and regulations

(a) Consultation with national Indian organizations

Within four months from October 17, 1978, the Secretary shall, to the extent practicable, consult with national Indian organizations to consider and formulate appropriate rules and regulations for the conduct of the grant program established by this subchapter.

(b) Publication

Within six months from October 17, 1978, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(c) Promulgation

Within ten months from October 17, 1978, the Secretary shall promulgate rules and regulations for the conduct of the grant program established by this subchapter.

(d) Source of appropriations

Funds to carry out the purposes of this section may be drawn from general administrative appropriations to the Secretary made after October 17, 1978.

(Pub. L. 95–471, title I, § 115, formerly § 114, Oct. 17, 1978, 92 Stat. 1329; renumbered § 115, Pub. L. 98–192, § 4(a)(1), Dec. 1, 1983, 97 Stat. 1336.)

PROMULGATION OF REGULATIONS; CONSULTATION

Section 15 of Pub. L. 98–192 provided that: ''In promulgating any regulations to implement the amendments made by this Act [enacting sections 1804a and 1831 to 1836 of this title and amending sections 640c–1, 1801 to 1803, and 1805 to 1813 of this title], the Secretary of the Interior shall consult with tribally controlled community colleges.''

SUBCHAPTER II—TRIBALLY CONTROLLED COLLEGE OR UNIVERSITY ENDOWMENT PROGRAM

§ 1831. Purpose

It is the purpose of this subchapter to provide grants for the encouragement of endowment funds for the operation and improvement of tribally controlled colleges or universities.

(Pub. L. 95–471, title III, § 301, as added Pub. L. 98–192, § 13, Dec. 1, 1983, 97 Stat. 1341; amended Pub. L. 105–244, title IX, § 901(b)(6), Oct. 7, 1998, 112 Stat. 1828.)

AMENDMENTS

1998—Pub. L. 105–244 substituted ''colleges or universities'' for ''community colleges''.

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.

§ 1832. Establishment of program; program agreements

(a) From the amount appropriated pursuant to section 1836 of this title, the Secretary shall establish a program of making endowment grants to tribally controlled colleges or universities which are current recipients of assistance under section 1807 of this title or under section 640b of this title. No such college or university shall be ineligible for such a grant for a fiscal year by reason of the receipt of such a grant for a preceding fiscal year, but no such college or university shall be eligible for such a grant for a fiscal year if such college or university has been awarded a grant under section 1065 of title 20 for such fiscal year.

(b) No grant for the establishment of an endowment fund by a tribally controlled college or university shall be made unless such college or university enters into an agreement with the Secretary which—

(1) provides for the investment and maintenance of a trust fund, the corpus and earnings of which shall be invested in the same manner as funds are invested under paragraph (2) of section 1065(c) of title 20, except that for purposes of this paragraph, the term ''trust fund'' means a fund established by an institution of higher education or by a foundation that is exempt from taxation and is maintained for the purpose of generating income for the support of the institution, and may include real estate;

(2) provides for the deposit in such trust fund of—

(A) any Federal capital contributions made from funds appropriated under section 1836 of this title;

(B) a capital contribution by such college or university in an amount (or of a value) equal to half of the amount of each Federal capital contribution; and

(C) any earnings of the funds so deposited;

(3) provides that such funds will be deposited in such a manner as to insure the accumulation of interest thereon at a rate not less than that generally available for similar funds deposited at the banking or savings institution for the same period or periods of time;

(4) provides that, if at any time such college or university withdraws any capital contribution made by that college or university, an amount of Federal capital contribution equal to twice the amount of (or value of) such withdrawal shall be withdrawn and returned to the Secretary for reallocation to other colleges or universities;

(5) provides that no part of the net earnings of such trust fund will inure to the benefit of any private person; and

(6) includes such other provisions as may be necessary to protect the financial interest of the United States and promote the purpose of this subchapter and as are agreed to by the Secretary and the college or university, including a description of recordkeeping procedures for the expenditure of accumulated interest which will allow the Secretary to audit and monitor programs and activities conducted with such interest.

(Pub. L. 95–471, title III, § 302, as added Pub. L. 98–192, § 13, Dec. 1, 1983, 97 Stat. 1341; amended Pub. L. 101–477, § 1(d)(1)(A), (B), Oct. 30, 1990, 104 Stat. 1152, 1153; Pub. L. 103–382, title III, § 383, Oct. 20, 1994, 108 Stat. 4018; Pub. L. 105–244, title IX, § 901(b)(5)–(7), (12), (14), (15), Oct. 7, 1998, 112 Stat. 1828.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–244, § 901(b)(6), (7), substituted ''colleges or universities'' for ''community colleges'' and substituted ''such college or university'' for ''such college'' wherever appearing.

Subsec. (b). Pub. L. 105–244, § 901(b)(5), (7), in introductory provisions, substituted ''controlled college or university'' for ''controlled community college'' and ''such college or university'' for ''such college''.

Subsec. (b)(2)(B). Pub. L. 105–244, § 901(b)(7), substituted ''such college or university'' for ''such college''.

Subsec. (b)(4). Pub. L. 105–244, § 901(b)(7), (14), (15), substituted ''such college or university'' for ''such college'', ''that college or university'' for ''that college'', and ''other colleges or universities'' for ''other colleges''.

Subsec. (b)(6). Pub. L. 105–244, § 901(b)(12), substituted ''the college or university'' for ''the college''.

1994—Subsec. (a). Pub. L. 103–382, § 383(1), substituted ''section 1065 of title 20'' for ''section 1065a of title 20''.

Subsec. (b)(1). Pub. L. 103–382, § 383(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''provides for the establishment and maintenance of a trust fund at a federally insured banking or savings institution;''.

Subsec. (b)(3). Pub. L. 103–382, § 383(2)(B), struck out ''same'' before ''banking or savings institution''.

1990—Subsec. (b)(2)(B). Pub. L. 101–477, § 1(d)(1)(A), substituted ''(or of a value) equal to half of'' for ''equal to''.

Subsec. (b)(4). Pub. L. 101–477, § 1(d)(1)(B), substituted ''an amount of Federal capital contribution equal to twice the amount of (or value of) such withdrawal'' for ''an equal amount of Federal capital contribution''.

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.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1(d)(2) of Pub. L. 101–477 provided that: ''The amendments made by paragraphs (A) through (E) of subsection (a) [probably means subpars. (A) to (E) of subsec. (d)(1), amending this section and sections 1834 and 1835 of this title] shall take effect October 1, 1991.''

§ 1833. Use of funds

Interest deposited, pursuant to section 1832(b)(2)(C) of this title, in the trust fund of any tribally controlled college or university may be periodically withdrawn and used, at the discre-

tion of such college or university, to defray any expenses associated with the operation of such college or university, including expense of operations and maintenance, administration, academic and support personnel, community and student services programs, and technical assistance.

(Pub. L. 95–471, title III, § 303, as added Pub. L. 98–192, § 13, Dec. 1, 1983, 97 Stat. 1342; amended Pub. L. 105–244, title IX, § 901(b)(5), (7), Oct. 7, 1998, 112 Stat. 1828.)

AMENDMENTS

1998—Pub. L. 105–244 substituted ''controlled college or university'' for ''controlled community college'' and substituted ''such college or university'' for ''such college'' in two places.

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.

§ 1834. Compliance with matching requirement

For the purpose of complying with the contribution requirement of section 1832(b)(2)(B) of this title, a tribally controlled college or university may use funds which are available from any private or tribal source. Any real or personal property received by a tribally controlled college or university as a donation or gift on or after October 30, 1990, may, to the extent of its fair market value as determined by the Secretary, be used by such college or university as its contribution pursuant to section 1832(b)(2)(B) of this title, or as part of such contribution, as the case may be. In any case in which any such real or personal property so used is thereafter sold or otherwise disposed of by such college or university, the proceeds therefrom shall be deposited pursuant to section 1832(b)(2)(B) of this title but shall not again be considered for Federal capital contribution purposes.

(Pub. L. 95–471, title III, § 304, as added Pub. L. 98–192, § 13, Dec. 1, 1983, 97 Stat. 1342; amended Pub. L. 101–477, § 1(d)(1)(C), Oct. 30, 1990, 104 Stat. 1153; Pub. L. 105–244, title IX, § 901(b)(5), (7), Oct. 7, 1998, 112 Stat. 1828.)

AMENDMENTS

1998—Pub. L. 105–244 substituted ''controlled college or university'' for ''controlled community college'' in two places and ''such college or university'' for ''such college'' in two places.

1990—Pub. L. 101–477 inserted at end ''Any real or personal property received by a tribally controlled community college as a donation or gift on or after October 30, 1990, may, to the extent of its fair market value as determined by the Secretary, be used by such college as its contribution pursuant to section 1832(b)(2)(B) of this title, or as part of such contribution, as the case may be. In any case in which any such real or personal property so used is thereafter sold or otherwise disposed of by such college, the proceeds therefrom shall be deposited pursuant to section 1832(b)(2)(B) of this title but shall not again be considered for Federal capital contribution purposes.''

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.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–477 effective Oct. 1, 1991, see section 1(d)(2) of Pub. L. 101–477, set out as a note under section 1832 of this title.

§ 1835. Allocation of funds

(a) From the amount appropriated pursuant to section 1836 of this title, the Secretary shall allocate to each tribally controlled college or university which is eligible for an endowment grant under this subchapter an amount for a Federal capital contribution equal to twice the value of the property or the amount which such college or university demonstrates has been placed within the control of, or irrevocably committed to the use of, the college or university and is available for deposit as a capital contribution of that college or university in accordance with section 1832(b)(2)(B) of this title, except that the maximum amount which may be so allocated to any such college or university for any fiscal year shall not exceed $750,000.

(b) If for any fiscal year the amount appropriated pursuant to section 1836 of this title is not sufficient to allocate to each tribally controlled college or university an amount equal to twice the value of the property or the amount demonstrated by such college or university pursuant to subsection (a) of this section, then the amount of the allocation to each such college or university shall be ratably reduced.

(Pub. L. 95–471, title III, § 305, as added Pub. L. 98–192, § 13, Dec. 1, 1983, 97 Stat. 1342; amended Pub. L. 101–477, § 1(d)(1)(D), (E), Oct. 30, 1990, 104 Stat. 1153; Pub. L. 105–244, title IX, § 901(b)(5), (7), (12), (14), Oct. 7, 1998, 112 Stat. 1828.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–244 substituted ''controlled college or university'' for ''controlled community college'', ''such college or university'' for ''such college'' in two places, ''the college or university'' for ''the college'', and ''that college or university'' for ''that college''.

Subsec. (b). Pub. L. 105–244, § 901(b)(5), (7), substituted ''controlled college or university'' for ''controlled community college'' and substituted ''such college or university'' for ''such college'' in two places.

1990—Pub. L. 101–477 inserted ''twice the value of the property or'' after ''equal to'' in subsecs. (a) and (b) and substituted ''$750,000'' for ''$350,000'' in subsec. (a).

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.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–477 effective Oct. 1, 1991, see section 1(d)(2) of Pub. L. 101–477, set out as a note under section 1832 of this title.

§ 1836. Authorization of appropriations

(a) There are authorized to be appropriated to carry out the provisions of this subchapter, $10,000,000 for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years.

(b) Any funds appropriated pursuant to subsection (a) of this section are authorized to remain available until expended.

(Pub. L. 95–471, title III, § 306, as added Pub. L. 98–192, § 13, Dec. 1, 1983, 97 Stat. 1343; amended Pub. L. 99–428, § 2(b), Sept. 30, 1986, 100 Stat. 982; Pub. L. 101–477, § 1(d)(1)(F), Oct. 30, 1990, 104 Stat. 1153; Pub. L. 102–325, title XIII, § 1301(b), July 23, 1992, 106 Stat. 797; Pub. L. 105–244, title IX, § 901(a)(2)(B), Oct. 7, 1998, 112 Stat. 1827; Pub. L. 110–315, title IX, § 941(h), Aug. 14, 2008, 122 Stat. 3462.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–315 substituted ''2009'' for ''1999'' and ''five succeeding'' for ''4 succeeding''.

1998—Subsec. (a). Pub. L. 105–244 substituted ''1999'' for ''1993''.

1992—Subsec. (a). Pub. L. 102–325 amended subsec. (a) generally, substituting provisions authorizing appropriations for fiscal years 1993 to 1997 for provisions authorizing appropriations for fiscal years 1987 to 1992.

1990—Subsec. (a). Pub. L. 101–477 substituted ''1990 and 1991, and for fiscal year 1992, $10,000,000'' for ''and 1990''.

1986—Subsec. (a). Pub. L. 99–428 substituted ''1987, 1988, 1989, and 1990'' for ''1985, 1986, and 1987''.

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.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of Title 20, Education.

SUBCHAPTER III—TRIBAL ECONOMIC DEVELOPMENT

§ 1851. Grants authorized

(a) General authority

The Secretary is authorized, subject to the availability of appropriations, to make grants to tribally controlled colleges or universities which receive grants under either this chapter or the Navajo Community College Act [25 U.S.C. 640a et seq.] for the establishment and support of tribal economic development and education institutes. Each program conducted with assistance under a grant under this subsection shall include at least the following activities:

(1) Determination of the economic development needs and potential of the Indian tribes involved in the program, including agriculture and natural resources needs.

(2) Development of consistent courses of instruction to prepare postsecondary students, tribal officials and others to meet the needs defined under paragraph (1). The development of such courses may be coordinated with secondary institutions to the extent practicable.

(3) The conduct of vocational courses, including administrative expenses and student support services.

(4) Technical assistance and training to Federal, tribal and community officials and business managers and planners deemed necessary by the institution to enable full implementation of, and benefits to be derived from, the program developed under paragraph (1).

(5) Clearinghouse activities encouraging the coordination of, and providing a point for the coordination of, all vocational activities (and academically related training) serving all students of the Indian tribe involved in the grant.

(6) The evaluation of such grants and their effect on the needs developed under paragraph (1) and tribal economic self-sufficiency.

(b) Amount and duration

The grants shall be of such amount and duration as to afford the greatest opportunity for success and the generation of relevant data.

(c) Applications

Institutions which receive funds under other subchapters of this chapter or the Navajo Community College Act [25 U.S.C. 640a et seq.] may apply for grants under this subchapter either individually or as consortia. Each applicant shall act in cooperation with an Indian tribe or tribes in developing and implementing a grant under this subchapter.[1]

(Pub. L. 95–471, title IV, § 402, as added Pub. L. 101–392, title III, § 312, Sept. 25, 1990, 104 Stat. 804; amended Pub. L. 105–244, title IX, § 901(b)(6), Oct. 7, 1998, 112 Stat. 1828.)

REFERENCES IN TEXT

The Navajo Community College Act, referred to in subsecs. (a) and (c), is Pub. L. 92–189, Dec. 15, 1971, 85 Stat. 646, as amended, which is classified to section 640a et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 640a of this title and Tables.

This subchapter, referred to at the end of subsec. (c), was in the original ''this part'' and was translated as reading ''this title'' to reflect the probable intent of Congress because title IV of Pub. L. 95–471, which comprises this subchapter, does not contain parts.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–244 substituted ''colleges or universities'' for ''community colleges'' in introductory provisions.

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.

EFFECTIVE DATE

Subchapter effective July 1, 1991, see section 702(a) of Pub. L. 101–392, set out as a note under section 3423a of Title 20, Education.

SHORT TITLE

For short title of title IV of Pub. L. 95–471, which enacted this subchapter, as the ''Tribal Economic Development and Technology Related Education Assistance Act of 1990'', see section 401 of Pub. L. 95–471, set out as a Short Title note under section 1801 of this title.

§ 1852. Authorization of appropriations

There are authorized to be appropriated for grants under this subchapter, such sums as may be necessary for fiscal year 2009 and such sums as may be necessary for each of the five succeeding fiscal years.

(Pub. L. 95–471, title IV, § 403, as added Pub. L. 101–392, title III, § 312, Sept. 25, 1990, 104 Stat. 805; amended Pub. L. 102–325, title XIII, § 1301(c), July 23, 1992, 106 Stat. 797; Pub. L. 105–244, title IX,

[1] See References in Text note below.

§ 901(a)(2)(C), Oct. 7, 1998, 112 Stat. 1827; Pub. L. 110–315, title IX, § 941(i), Aug. 14, 2008, 122 Stat. 3463.)

AMENDMENTS

2008—Pub. L. 110–315 substituted ''such sums as may be necessary for fiscal year 2009'' for ''$2,000,000 for fiscal year 1999'' and ''five succeeding'' for ''4 succeeding''.

1998—Pub. L. 105–244 substituted ''1999'' for ''1993''.

1992—Pub. L. 102–325 amended section generally, substituting provisions authorizing appropriations for fiscal years 1993 to 1997 for provisions authorizing appropriations for fiscal years 1991 to 1996.

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.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of Title 20, Education.

SUBCHAPTER IV—TRIBALLY CONTROLLED POSTSECONDARY CAREER AND TECHNICAL INSTITUTIONS

§ 1861. Definition of tribally controlled postsecondary career and technical institution

In this subchapter, the term ''tribally controlled postsecondary career and technical institution'' has the meaning given the term in section 2302 of title 20.

(Pub. L. 95–471, title V, § 501, as added Pub. L. 110–315, title IX, § 941(j)(1), Aug. 14, 2008, 122 Stat. 3463.)

§ 1862. Tribally controlled postsecondary career and technical institutions program

(a) In general

Subject to the availability of appropriations, for fiscal year 2009 and each fiscal year thereafter, the Secretary shall—

(1) subject to subsection (b), select two tribally controlled postsecondary career and technical institutions to receive assistance under this subchapter; and

(2) provide funding to the selected tribally controlled postsecondary career and technical institutions to pay the costs (including institutional support costs) of operating postsecondary career and technical education programs for Indian students at the tribally controlled postsecondary career and technical institutions.

(b) Selection of certain institutions

(1) Requirement

For each fiscal year during which the Secretary determines that a tribally controlled postsecondary career and technical institution described in paragraph (2) meets the definition referred to in section 1861 of this title, the Secretary shall select that tribally controlled postsecondary career and technical institution under subsection (a)(1) to receive funding under this section.

(2) Institutions

The two tribally controlled postsecondary career and technical institutions referred to in paragraph (1) are—

(A) the United Tribes Technical College; and

(B) the Navajo Technical College.

(c) Method of payment

For each applicable fiscal year, the Secretary shall provide funding under this section to each tribally controlled postsecondary career and technical institution selected for the fiscal year under subsection (a)(1) in a lump sum payment for the fiscal year.

(d) Distribution

(1) In general

For fiscal year 2009 and each fiscal year thereafter, of amounts made available pursuant to section 1864 of this title, the Secretary shall distribute to each tribally controlled postsecondary career and technical institution selected for the fiscal year under subsection (a)(1) an amount equal to the greater of—

(A) the total amount appropriated for the tribally controlled postsecondary career and technical institution for fiscal year 2006; or

(B) the total amount appropriated for the tribally controlled postsecondary career and technical institution for fiscal year 2008.

(2) Excess amounts

If, for any fiscal year, the amount made available pursuant to section 1864 of this title exceeds the sum of the amounts required to be distributed under paragraph (1) to the tribally controlled postsecondary career and technical institutions selected for the fiscal year under subsection (a)(1), the Secretary shall distribute to each tribally controlled postsecondary career and technical institution selected for that fiscal year a portion of the excess amount, to be determined by—

(A) dividing the excess amount by the aggregate Indian student count (as defined in section 2327(h) of title 20) of such institutions for the prior academic year; and

(B) multiplying the quotient described in subparagraph (A) by the Indian student count of each such institution for the prior academic year.

(Pub. L. 95–471, title V, § 502, as added Pub. L. 110–315, title IX, § 941(j)(1), Aug. 14, 2008, 122 Stat. 3463.)

§ 1863. Applicability of other laws

(a) In general

Paragraphs (4) and (8) of subsection (a), and subsection (b), of section 1801 of this title, sections 1805, 1808, 1811, 1812 and 1813 of this title, subchapters II and III of this chapter, and title II[1] shall not apply to this subchapter.

(b) Indian self-determination and education assistance

Funds made available pursuant to this subchapter shall be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(c) Election to receive

A tribally controlled postsecondary career and technical institution selected for a fiscal year

[1] See References in Text note below.

under section 1862(b) of this title may elect to receive funds pursuant to section 1862 of this title in accordance with an agreement between the tribally controlled postsecondary career and technical institution and the Secretary under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) if the agreement is in existence on August 14, 2008.

(d) Other assistance

Eligibility for, or receipt of, assistance under this subchapter shall not preclude the eligibility of a tribally controlled postsecondary career and technical institution to receive Federal financial assistance under—

(1) any program under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.);

(2) any program under the Carl D. Perkins Career and Technical Education Act of 2006 [20 U.S.C. 2301 et seq.]; or

(3) any other applicable program under which a benefit is provided for—

(A) institutions of higher education;

(B) community colleges; or

(C) postsecondary educational institutions.

(Pub. L. 95–471, title V, § 503, as added Pub. L. 110–315, title IX, § 941(j)(1), Aug. 14, 2008, 122 Stat. 3464.)

REFERENCES IN TEXT

Title II, referred to in subsec. (a), is title II of Pub. L. 95–471, Oct. 17, 1978, 92 Stat. 1329, known as the Navajo Community College Assistance Act of 1978, which enacted section 640c–1 of this title, amended section 640c of this title, and enacted provisions set out as notes under sections 640a and 640c–1 of this title. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 640a of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsecs. (b) and (c), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (d)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Carl D. Perkins Career and Technical Education Act of 2006, referred to in subsec. (d)(2), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 109–270, § 1(b), Aug. 12, 2006, 120 Stat. 683, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

§ 1864. Authorization of appropriations

There are authorized to be appropriated such sums as are necessary for fiscal year 2009 and each fiscal year thereafter to carry out this subchapter.

(Pub. L. 95–471, title V, § 504, as added Pub. L. 110–315, title IX, § 941(j)(1), Aug. 14, 2008, 122 Stat. 3465.)

CHAPTER 21—INDIAN CHILD WELFARE

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§ 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that ''The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes[1]'' and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

[1] So in original. Probably should be capitalized.

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

(Pub. L. 95–608, § 2, Nov. 8, 1978, 92 Stat. 3069.)

SHORT TITLE

Section 1 of Pub. L. 95–608 provided: ''That this Act [enacting this chapter] may be cited as the 'Indian Child Welfare Act of 1978'.''

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

(Pub. L. 95–608, § 3, Nov. 8, 1978, 92 Stat. 3069.)

§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) ''child custody proceeding'' shall mean and include—

(i) ''foster care placement'' which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) ''termination of parental rights'' which shall mean any action resulting in the termination of the parent-child relationship;

(iii) ''preadoptive placement'' which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) ''adoptive placement'' which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) ''extended family member'' shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) ''Indian'' means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;

(4) ''Indian child'' means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) ''Indian child's tribe'' means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) ''Indian custodian'' means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) ''Indian organization'' means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;

(9) ''parent'' means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) ''reservation'' means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) ''Secretary'' means the Secretary of the Interior; and

(12) ''tribal court'' means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(Pub. L. 95–608, § 4, Nov. 8, 1978, 92 Stat. 3069.)

SUBCHAPTER I—CHILD CUSTODY PROCEEDINGS

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

(Pub. L. 95–608, title I, § 101, Nov. 8, 1978, 92 Stat. 3071.)

§ 1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(Pub. L. 95–608, title I, § 102, Nov. 8, 1978, 92 Stat. 3071.)

§ 1913. Parental rights; voluntary termination

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

(Pub. L. 95–608, title I, § 103, Nov. 8, 1978, 92 Stat. 3072.)

§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

(Pub. L. 95–608, title I, § 104, Nov. 8, 1978, 92 Stat. 3072.)

§ 1915. Placement of Indian children

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

(Pub. L. 95–608, title I, § 105, Nov. 8, 1978, 92 Stat. 3073.)

§ 1916. Return of custody

(a) Petition; best interests of child

Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

(Pub. L. 95–608, title I, § 106, Nov. 8, 1978, 92 Stat. 3073.)

§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

(Pub. L. 95–608, title I, § 107, Nov. 8, 1978, 92 Stat. 3073.)

§ 1918. Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

(Pub. L. 95–608, title I, § 108, Nov. 8, 1978, 92 Stat. 3074.)

REFERENCES IN TEXT

Act of August 15, 1953, referred to in subsec. (a), is act Aug. 15, 1953, ch. 505, 67 Stat. 588, as amended, which enacted section 1162 of Title 18, Crimes and Criminal Procedure, section 1360 of Title 28, Judiciary and Judicial Procedure, and provisions set out as notes under section 1360 of Title 28. For complete classification of this Act to the Code, see Tables.

§ 1919. Agreements between States and Indian tribes

(a) Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

(Pub. L. 95–608, title I, § 109, Nov. 8, 1978, 92 Stat. 3074.)

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

(Pub. L. 95–608, title I, § 110, Nov. 8, 1978, 92 Stat. 3075.)

§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

(Pub. L. 95–608, title I, § 111, Nov. 8, 1978, 92 Stat. 3075.)

§ 1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

(Pub. L. 95–608, title I, § 112, Nov. 8, 1978, 92 Stat. 3075.)

§ 1923. Effective date

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

(Pub. L. 95–608, title I, § 113, Nov. 8, 1978, 92 Stat. 3075.)

SUBCHAPTER II—INDIAN CHILD AND FAMILY PROGRAMS

§ 1931. Grants for on or near reservation programs and child welfare codes

(a) Statement of purpose; scope of programs

The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval for qualification for assistance under federally assisted program

Funds appropriated for use by the Secretary in accordance with this section may be utilized as

non-Federal matching share in connection with funds provided under titles IV–B and XX of the Social Security Act [42 U.S.C. 620 et seq., 1397 et seq.] or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV–B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

(Pub. L. 95–608, title II, § 201, Nov. 8, 1978, 92 Stat. 3075.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles IV–B and XX of the Social Security Act are classified generally to part B (§ 620 et seq.) of subchapter IV and subchapter XX (§ 1397 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

§ 1932. Grants for off-reservation programs for additional services

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

(Pub. L. 95–608, title II, § 202, Nov. 8, 1978, 92 Stat. 3076.)

§ 1933. Funds for on and off reservation programs

(a) Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments

In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health and Human Services, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health and Human Services: *Provided*, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Appropriation authorization under section 13 of this title

Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title.

(Pub. L. 95–608, title II, § 203, Nov. 8, 1978, 92 Stat. 3076; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

''Secretary of Health and Human Services'' and ''Department of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' and ''Department of Health, Education, and Welfare'', respectively, in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 1934. "Indian" defined for certain purposes

For the purposes of sections 1932 and 1933 of this title, the term ''Indian'' shall include persons defined in section 1603(c) of this title.

(Pub. L. 95–608, title II, § 204, Nov. 8, 1978, 92 Stat. 3077.)

SUBCHAPTER III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

§ 1951. Information availability to and disclosure by Secretary

(a) Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act

Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

(1) the name and tribal affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents; and

(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment

Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster

parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

(Pub. L. 95–608, title III, § 301, Nov. 8, 1978, 92 Stat. 3077.)

§ 1952. Rules and regulations

Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

(Pub. L. 95–608, title III, § 302, Nov. 8, 1978, 92 Stat. 3077.)

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 1961. Locally convenient day schools

(a) Sense of Congress

It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) Report to Congress; contents, etc.

The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

(Pub. L. 95–608, title IV, § 401, Nov. 8, 1978, 92 Stat. 3078; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in subsec. (b), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Select Committee on Indian Affairs of the Senate redesignated Committee on Indian Affairs of the Senate by section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress.

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

§ 1962. Copies to the States

Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

(Pub. L. 95–608, title IV, § 402, Nov. 8, 1978, 92 Stat. 3078.)

§ 1963. Severability

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.

(Pub. L. 95–608, title IV, § 403, Nov. 8, 1978, 92 Stat. 3078.)

CHAPTER 22—BUREAU OF INDIAN AFFAIRS PROGRAMS

Sec.
2000. Declaration of policy.
2001. Accreditation for the basic education of Indian children in Bureau of Indian Affairs schools.
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2014. Recruitment of Indian educators.
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2017. Regulations.
2018. Regional meetings and negotiated rulemaking.
2019. Early childhood development program.
2020. Tribal departments or divisions of education.
2021. Definitions.

CODIFICATION

Part B of title XI of the Education Amendments of 1978, comprising this chapter, was originally enacted as part B of title XI of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2316, and amended by 1978 Reorg. Plan No. 2, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 96–46, Aug. 6, 1979, 93 Stat. 338; Pub. L. 96–88, Oct. 17, 1979, 93 Stat. 668; Pub. L. 97–375, Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98–511, Oct. 19, 1984, 98 Stat. 2366; Pub. L. 99–89, Aug. 15, 1985, 99 Stat. 379; Pub. L. 99–228, Dec. 28, 1985, 99 Stat. 1747; Pub. L. 99–570, Oct. 27, 1986, 100 Stat. 3207; Pub. L. 100–297, Apr. 28, 1988, 102 Stat. 130; Pub. L. 100–427, Sept. 9, 1988, 102 Stat. 1603; Pub. L. 101–301, May 24, 1990, 104 Stat. 206; Pub. L. 102–531, Oct. 27, 1992, 106 Stat. 3469; Pub. L. 103–382, Oct. 20, 1994, 108 Stat. 3518; Pub. L. 104–134, Apr. 26, 1996, 110 Stat. 1321; Pub. L. 104–140, May 2, 1996, 110 Stat. 1327; Pub. L. 105–244, Oct. 7, 1998, 112 Stat. 1581; Pub. L. 105–362, Nov. 10, 1998, 112 Stat. 3280; Pub. L. 106–554, Dec. 21, 2000, 114 Stat. 2763. Part B of title XI of the Act is shown herein, however, as having been added by Pub. L. 107–110 without reference to such intervening amendments because of the extensive amendment of the part's provisions by Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2007.

§ 2000. Declaration of policy

Congress declares that the Federal Government has the sole responsibility for the operation and financial support of the Bureau of Indian Affairs funded school system that it has es-

tablished on or near Indian reservations and Indian trust lands throughout the Nation for Indian children. It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children and for the operation and financial support of the Bureau of Indian Affairs-funded school system to work in full cooperation with tribes toward the goal of ensuring that the programs of the Bureau of Indian Affairs-funded school system are of the highest quality and provide for the basic elementary and secondary educational needs of Indian children, including meeting the unique educational and cultural needs of those children.

(Pub. L. 95–561, title XI, § 1120, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2007.)

EFFECTIVE DATE

Chapter effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–110, title X, § 1041, Jan. 8, 2002, 115 Stat. 2007, provided that: ''This part [part D (§§ 1041–1045) of title X of Pub. L. 107–110, enacting this chapter and sections 2501 to 2511 of this title, amending section 13d–2 of this title, and repealing former sections 2501 to 2511 of this title] may be cited as the 'Native American Education Improvement Act of 2001'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–297, title V, § 5101, Apr. 28, 1988, 102 Stat. 363, provided that: ''This part [part A (§§ 5101–5120) of title V of Pub. L. 100–297, enacting sections 2008a, 2022a, and 2022b of this title, amending sections 2001 to 2005, 2008 to 2011, and 2019 of this title, repealing section 241bb–1 of Title 20, Education, enacting provisions set out as notes under section 2011 of this title and section 1411 of Title 20, and repealing provisions set out as a note under section 241aa of Title 20] may be cited as the 'Indian Education Amendments of 1988'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–89, § 1(a), Aug. 15, 1985, 99 Stat. 379, provided that: ''This Act [amending sections 2001, 2004, 2006, 2008, 2009, 2016, 2020, 2021, and 2022 of this title, repealing section 2023 of this title, and enacting provisions formerly set out as a note under section 2001 of this title] may be cited as the 'Indian Education Technical Amendments Act of 1985'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–511, title V, § 501(a), Oct. 19, 1984, 98 Stat. 2391, provided that: ''This title [enacting sections 2020 to 2023 of this title, amending sections 2001, 2004, 2006, 2008, 2009, 2011, 2012, 2016, 2018 of this title, and sections 241aa to 241ff, 1211a, 1221g, 3385, 3385a, and 3385b of Title 20, Education, and enacting provisions set out as a note under section 241ff of Title 20] may be cited as the 'Indian Education Amendments of 1984'.''

THERAPEUTIC MODEL DEMONSTRATION SCHOOLS

Pub. L. 103–382, title V, § 566, Oct. 20, 1994, 108 Stat. 4059, provided that:

''(a) AUTHORIZATION.—

''(1) IN GENERAL.—The Secretary of the Interior, acting through the Bureau of Indian Affairs, is authorized to establish demonstration schools, based on the therapeutic model described in this section, to provide services necessary to achieve positive changes in the attitudes, behavior, and academic performance of Indian youth attending off-reservation boarding schools.

''(2) PURPOSE.—The purpose of the therapeutic model demonstration schools is—

''(A) to provide a program, based on an annual written plan, linking clinicians, counselors, and mental health professionals with academic program personnel in a culturally sensitive residential program tailored to the particular needs of Indian students;

''(B) to provide for a continued evaluation of the planning and implementation of the therapeutic model in the designated schools; and

''(C) to determine what steps the Bureau of Indian Affairs must take and what resources are required to transform existing off-reservation boarding schools to meet the needs of chemically dependent, emotionally disturbed, socially troubled, or other at-risk Indian youth who attend such schools.

''(b) LOCATION.—The Secretary shall initiate the therapeutic model at two schools during school years 1994 through 1996, and shall give priority to—

''(1) one school that is the recipient of a grant under section 5204 of the August [Augustus] F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 [25 U.S.C. 2503] during the 1994–1995 school year; and

''(2) one school operated by the Bureau of Indian Affairs during the 1995–1996 school year.

''(c) SERVICES.—The demonstration schools shall provide an integrated residential environment that may include—

''(1) mental health services;

''(2) education;

''(3) recreation therapy;

''(4) social service programs;

''(5) substance abuse education and prevention; and

''(6) other support services for aftercare.

''(d) STAFFING.—The demonstration schools shall be staffed with health and social service professionals, and educators, and may include—

''(1) clinical psychologists;

''(2) child psychologists;

''(3) substance abuse counselors;

''(4) social workers; and

''(5) health educators.

''(e) ENROLLMENT.—Notwithstanding any other provision of law, the Secretary of the Interior may limit the enrollment at the demonstration schools.

''(f) ASSISTANCE.—The Secretary is authorized to enter into agreements with other organizations and agencies, including the Indian Health Service, to carry out this section.

''(g) REPORT.—Not later than July 31 of each year, the Secretary of the Interior shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Education and Labor of the House of Representatives on the progress of the Department of the Interior in the development of the demonstration schools.''

§ 2001. Accreditation for the basic education of Indian children in Bureau of Indian Affairs schools

(a) Purpose; declarations of purpose

(1) Purpose

The purpose of the accreditation required under this section shall be to ensure that Indian students being served by a school funded by the Bureau of Indian Affairs are provided with educational opportunities that equal or exceed those for all other students in the United States.

(2) Declarations of purpose

Local school boards for schools operated by the Bureau of Indian Affairs, in cooperation and consultation with the appropriate tribal governing bodies and their communities, are

encouraged to adopt declarations of purpose for education for their communities, taking into account the implications of such declarations on education in their communities and for their schools. In adopting such declarations of purpose, the school boards shall consider the effect the declarations may have on the motivation of students and faculties.

(b) Accreditation

(1) Deadline

(A) In general

Not later than 24 months after January 8, 2002, each Bureau-funded school shall, to the extent that necessary funds are provided, be a candidate for accreditation or be accredited—

(i) by a tribal accrediting body, if the accreditation standards of the tribal accrediting body have been accepted by formal action of the tribal governing body and such accreditation is acknowledged by a generally recognized State certification or regional accrediting agency;

(ii) by a regional accreditation agency;

(iii) by State accreditation standards for the State in which the Bureau-funded school is located; or

(iv) in the case of a Bureau-funded school that is located on a reservation that is located in more than one State, in accordance with the State accreditation standards of one State as selected by the tribal government.

(B) Feasibility study

Not later than 12 months after January 8, 2002, the Secretary of the Interior and the Secretary of Education shall, in consultation with Indian tribes, Indian education organizations, and accrediting agencies, develop and submit to the appropriate committees of Congress a report on the desirability and feasibility of establishing a tribal accreditation agency that would—

(i) review and acknowledge the accreditation standards for Bureau-funded schools; and

(ii) establish accreditation procedures to facilitate the application, review of the standards and review processes, and recognition of qualified and credible tribal departments of education as accrediting bodies serving tribal schools.

(2) Determination of accreditation to be applied

The accreditation type applied for each school shall be determined by the tribal governing body, or the school board, if authorized by the tribal governing body.

(3) Assistance to school boards

(A) In general

The Secretary, through contracts and grants, shall provide technical and financial assistance to Bureau-funded schools, to the extent that necessary amounts are made available, to enable such schools to obtain the accreditation required under this subsection, if the school boards request that such assistance, in part or in whole, be provided.

(B) Entities through which assistance may be provided

The Secretary may provide such assistance directly or through the Department of Education, an institution of higher education, a private not-for-profit organization or for-profit organization, an educational service agency, or another entity with demonstrated experience in assisting schools in obtaining accreditation.

(4) Application of current standards during accreditation

A Bureau-funded school that is seeking accreditation shall remain subject to the standards issued under this section[1] and in effect on the day before January 8, 2002, until such time as the school is accredited, except that if any of such standards are in conflict with the standards of the accrediting agency, the standards of such agency shall apply in such case.

(5) Annual report on unaccredited schools

Not later than 90 days after the end of each school year, the Secretary shall prepare and submit to the Committee on Appropriations, the Committee on Education and the Workforce, and the Committee on Resources of the House of Representatives and the Committee on Appropriations, the Committee on Indian Affairs, and the Committee on Health, Education, Labor, and Pensions of the Senate, a report concerning unaccredited Bureau-funded schools that—

(A) identifies those Bureau-funded schools that fail to be accredited or to be candidates for accreditation within the period provided for in paragraph (1);

(B) with respect to each Bureau-funded school identified under subparagraph (A), identifies the reasons that each such school is not accredited or a candidate for accreditation, as determined by the appropriate accreditation agency, and a description of any possible way in which to remedy such nonaccreditation; and

(C) with respect to each Bureau-funded school for which the reported reasons for the lack of accreditation under subparagraph (B) are a result of the school's inadequate basic resources, contains information and funding requests for the full funding needed to provide such schools with accreditation, such funds if provided shall be applied to such unaccredited school under this paragraph.

(6) Opportunity to review and present evidence

(A) In general

Prior to including a Bureau-funded school in an annual report required under paragraph (5), the Secretary shall—

(i) ensure that the school has exhausted all administrative remedies provided by the accreditation agency; and

(ii) provide the school with an opportunity to review the data on which such inclusion is based.

[1] See References in Text note below.

(B) Provision of additional information

If the school board of a school that the Secretary has proposed for inclusion in an annual report under paragraph (5) believes that such inclusion is in error, the school board may provide to the Secretary such information as the board believes is in conflict with the information and conclusions of the Secretary with respect to the determination to include the school in such annual report. The Secretary shall consider such information provided by the school board before making a final determination concerning the inclusion of the school in any such report.

(C) Publication of accreditation status

Not later than 30 days after making an initial determination to include a school in an annual report under paragraph (5), the Secretary shall make public the final determination on the accreditation status of the school.

(7) School plan

(A) In general

Not later than 120 days after the date on which a school is included in an annual report under paragraph (5), the school shall develop a school plan, in consultation with interested parties including parents, school staff, the school board, and other outside experts (if appropriate), that shall be submitted to the Secretary for approval. The school plan shall cover a 3-year period and shall—

(i) incorporate strategies that address the specific issues that caused the school to fail to be accredited or fail to be a candidate for accreditation;

(ii) incorporate policies and practices concerning the school that have the greatest likelihood of ensuring that the school will obtain accreditation during the 3-year period beginning on the date on which the plan is implemented;

(iii) contain an assurance that the school will reserve the necessary funds, from the funds described in paragraph (3), for each fiscal year for the purpose of obtaining accreditation;

(iv) specify how the funds described in clause (iii) will be used to obtain accreditation;

(v) establish specific annual, objective goals for measuring continuous and significant progress made by the school in a manner that will ensure the accreditation of the school within the 3-year period described in clause (ii);

(vi) identify how the school will provide written notification about the lack of accreditation to the parents of each student enrolled in such school, in a format and, to the extent practicable, in a language the parents can understand; and

(vii) specify the responsibilities of the school board and any assistance to be provided by the Secretary under paragraph (3).

(B) Implementation

A school shall implement the school plan under subparagraph (A) expeditiously, but in no event later than the beginning of the school year following the school year in which the school was included in the annual report under paragraph (5) so long as the necessary resources have been provided to the school.

(C) Review of plan

Not later than 45 days after receiving a school plan, the Secretary shall—

(i) establish a peer-review process to assist with the review of the plan; and

(ii) promptly review the school plan, work with the school as necessary, and approve the school plan if the plan meets the requirements of this paragraph.

(8) Corrective action

(A) Definition

In this subsection, the term ''corrective action'' means any action that—

(i) substantially and directly responds to—

(I) the failure of a school to achieve accreditation; and

(II) any underlying staffing, curriculum, or other programmatic problem in the school that contributed to the lack of accreditation; and

(ii) is designed to increase substantially the likelihood that the school will be accredited.

(B) Waiver

The Secretary shall grant a waiver which shall exempt a school from any or all of the requirements of this paragraph and paragraph (7) (though such school shall be required to comply with the standards contained in part 36 of title 25, Code of Federal Register,[2] as in effect on January 8, 2002) if the school—

(i) is identified in the report described in paragraph (5)(C); and

(ii) fails to be accredited for reasons that are beyond the control of the school board, as determined by the Secretary, including, but not limited to—

(I) a significant decline in financial resources;

(II) the poor condition of facilities, vehicles, or other property; and

(III) a natural disaster.

(C) Duties of Secretary

After providing assistance to a school under paragraph (3), the Secretary shall—

(i) annually review the progress of the school under the applicable school plan to determine whether the school is meeting, or making adequate progress toward achieving the goals described in paragraph (7)(A)(v) with respect to reaccreditation or becoming a candidate for accreditation;

(ii) except as provided in subparagraph (B), continue to provide assistance while implementing the school's plan, and, if determined appropriate by the Secretary, take corrective action with respect to the

[2] So in original. Probably should be ''Regulations,''.

school if it fails to be accredited at the end of the third full year immediately following the date that the school's plan was first in effect under paragraph (7);

(iii) provide all students enrolled in a school that is eligible for a corrective action determination by the Secretary under clause (ii) with the option to transfer to another public or Bureau-funded school, including a public charter school, that is accredited;

(iv) promptly notify the parents of children enrolled in a school that is eligible for a corrective action determination by the Secretary under clause (ii) of the option to transfer their child to another public or Bureau-funded school; and

(v) provide, or pay for the provision of, transportation for each student described in clause (iii) to the school described in clause (iii) to which the student elects to be transferred to the extent funds are available, as determined by the tribal governing body.

(D) Failure of school plan of Bureau-operated school

With respect to a Bureau-operated school that fails to be accredited at the end of the third full year immediately following the date that the school's plan was first in effect under paragraph (7), the Secretary may take one or more of the following corrective actions:

(i) Institute and fully implement actions suggested by the accrediting agency.

(ii) Consult with the tribe involved to determine the causes for the lack of accreditation including potential staffing and administrative changes that are or may be necessary.

(iii) Set aside a certain amount of funds that may only be used by the school to obtain accreditation.

(iv)(I) Provide the tribe with a 60-day period during which to determine whether the tribe desires to operate the school as a contract or grant school before meeting the accreditation requirements in section 5207(c) of the Tribally Controlled Schools Act of 1988[1] at the beginning of the next school year following the determination to take corrective action. If the tribe agrees to operate the school as a contract or grant school, the tribe shall prepare a plan, pursuant to paragraph (7), for approval by the Secretary in accordance with paragraph (7), to achieve accreditation.

(II) If the tribe declines to assume control of the school, the Secretary, in consultation with the tribe, may contract with an outside entity, consistent with applicable law, or appoint a receiver or trustee to operate and administer the affairs of the school until the school is accredited. The outside entity, receiver, or trustee shall prepare a plan, pursuant to paragraph (7), for approval by the Secretary in accordance with paragraph (7).

(III) Upon accreditation of the school, the Secretary shall allow the tribe to continue to operate the school as a grant or contract school, or if the school is being controlled by an outside entity, provide the tribe with the option to assume operation of the school as a contract school, in accordance with the Indian Self-Determination Act [25 U.S.C. 450f et seq.], or as a grant school in accordance with the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.], at the beginning of the school year following the school year in which the school obtains accreditation. If the tribe declines, the Secretary may allow the outside entity, receiver, or trustee to continue the operation of the school or reassume control of the school.

(E) Failure of school plan of contract or grant school

(i) Corrective action

With respect to a contract or grant school that fails to be accredited at the end of the third full year immediately following the date that the school's plan was first in effect under paragraph (7), the Secretary may take one or more of the corrective actions described in subparagraph (D)(i) and (D)(ii). The Secretary shall implement such corrective action for at least 1 year prior to taking any action described under clause (ii).

(ii) Outside entity

If the corrective action described in clause (i) does not result in accreditation of the school, the Secretary, in conjunction with the tribal governing body, may contract with an outside entity to operate the school in order to achieve accreditation of the school within 2 school years. Prior to entering into such a contract, the Secretary shall develop a proposal for such operation which shall include, at a minimum, the following elements:

(I) The identification of one or more outside entities each of which has demonstrated to the Secretary its ability to develop a satisfactory plan for achieving accreditation and its willingness and availability to undertake such a plan.

(II) A plan for implementing operation of the school by such an outside entity, including the methodology for oversight and evaluation of the performance of the outside entity by the Secretary and the tribe.

(iii) Proposal amendments

The tribal governing body shall have 60 days to amend the plan developed pursuant to clause (ii), including identifying another outside entity to operate the school. The Secretary shall reach agreement with the tribal governing body on the proposal and any such amendments to the plan not later than 30 days after the expiration of the 60-day period described in the preceding sentence. After the approval of the proposal and any amendments, the Secretary, with continuing consultation with such tribal governing body, shall implement the proposal.

(iv) Accreditation

Upon accreditation of the school, the tribe shall have the option to assume the operation and administration of the school as a contract school after complying with the Indian Self-Determination Act [25 U.S.C. 450f et seq.], or as a grant school, after complying with the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.], at the beginning of the school year following the year in which the school obtains accreditation.

(v) Retrocede

Nothing in this subparagraph shall limit a tribe's right to retrocede operation of a school to the Secretary pursuant to section 105(e) of the Indian Self-Determination Act [25 U.S.C. 450j(e)] (with respect to a contract school) or section 5204(f) of the Tribally Controlled Schools Act of 1988[1] (with respect to a grant school).

(vi) Consistent

The provisions of this subparagraph shall be construed to be consistent with the provisions of the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.] and the Indian Self-Determination Act [25 U.S.C. 450f et seq.] as in effect on the day before January 8, 2002, and shall not be construed as expanding the authority of the Secretary under any other law.

(F) Hearing

With respect to a school that is operated pursuant to a grant, or a school that is operated under a contract under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], prior to implementing any corrective action under this paragraph, the Secretary shall provide notice and an opportunity for a hearing to the affected school pursuant to section 5207 of the Tribally Controlled Schools Act of 1988.[1]

(9) Statutory construction

Nothing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded to school employees under applicable law (including applicable regulations or court orders) or under the terms of any collective bargaining agreement, memorandum of understanding, or other agreement between such employees and their employers.

(10) Fiscal control and fund accounting standards

The Bureau shall, either directly or through contract with an Indian organization, establish a consistent system of reporting standards for fiscal control and fund accounting for all contract and grant schools. Such standards shall provide data comparable to those used by Bureau-operated schools.

(c) Annual plan

(1) In general

Except as provided in subsection (b) of this section, the Secretary shall implement the standards in effect under this section[1] on the day before January 8, 2002.

(2) Plan

On an annual basis, the Secretary shall submit to the appropriate committees of Congress, all Bureau-funded schools, and the tribal governing bodies of such schools a detailed plan to ensure that all Bureau-funded schools are accredited, or if such schools are in the process of obtaining accreditation that such schools meet the Bureau standards in effect on the day before January 8, 2002, to the extent that such standards do not conflict with the standards of the accrediting agency. Such plan shall include detailed information on the status of each school's educational program in relation to the applicable standards, specific cost estimates for meeting such standards at each school, and specific timelines for bringing each school up to the level required by such standards.

(d) Closure or consolidation of schools

(1) In general

Except as specifically required by law—

(A) no Bureau-funded school or dormitory operated on or after January 1, 1992, may be closed, consolidated, or transferred to another authority; and

(B) no program of such a school may be substantially curtailed except in accordance with the requirements of this subsection.

(2) Exceptions

This subsection (other than this paragraph) shall not apply—

(A) in those cases in which the tribal governing body for a school, or the local school board concerned (if designated by the tribal governing body to act under this paragraph), requests the closure, consolidation, or substantial curtailment; or

(B) if a temporary closure, consolidation, or substantial curtailment is required by facility conditions that constitute an immediate hazard to health and safety.

(3) Regulations

The Secretary shall, by regulation, promulgate standards and procedures for the closure, transfer to another authority, consolidation, or substantial curtailment of Bureau schools, in accordance with the requirements of this subsection.

(4) Notice

(A) In general

In a case in which closure, transfer to another authority, consolidation, or substantial curtailment of a school is under active consideration or review by any division of the Bureau or the Department of the Interior, the affected tribe, tribal governing body, and designated local school board will be notified immediately in writing, kept fully and currently informed, and afforded an opportunity to comment with respect to such consideration or review.

(B) Decision to close

If a formal decision is made to close, transfer to another authority, consolidate, or substantially curtail a school, the affected tribe, tribal governing body, and des-

ignated school board shall be notified not later than 180 days before the end of the school year preceding the proposed closure date.

(C) Copies

Copies of any such notices and information shall be—

(i) submitted promptly to the appropriate committees of Congress; and

(ii) published in the Federal Register.

(5) Report

The Secretary shall submit to the appropriate committees of Congress, the affected tribe, and the designated school board, a report describing the process of the active consideration or review referred to in paragraph (4) that includes—

(A) a study of the impact of such action on the student population;

(B) a description of those students with particular educational and social needs;

(C) recommendations to ensure that alternative services are available to such students; and

(D) a description of the consultation conducted between the potential service provider, current service provider, parents, tribal representatives and the tribe or tribes involved, and the Director of the Office of Indian Education Programs within the Bureau regarding such students.

(6) Limitation on certain actions

No irrevocable action may be taken in furtherance of any such proposed school closure, transfer to another authority, consolidation, or substantial curtailment (including any action which would prejudice the personnel or programs of such school) prior to the end of the first full academic year after such report is made.

(7) Approval of Indian tribes

The Secretary shall not terminate, close, consolidate, contract, transfer to another authority, or take any other action relating to an elementary school or secondary school (or any program of such a school) of an Indian tribe without the approval of the governing body of any Indian tribe that would be affected by such an action.

(e) Application for contracts or grants for non-Bureau-funded schools or expansion of Bureau-funded schools

(1) Review by Secretary

(A) Consideration of factors

(i) In general

The Secretary shall consider only the factors described in subparagraph (B) in reviewing—

(I) applications from any tribe for the awarding of a contract or grant for a school that is not a Bureau-funded school; and

(II) applications from any tribe or school board of any Bureau-funded school for—

(aa) a school which is not a Bureau-funded school; or

(bb) the expansion of a Bureau-funded school which would increase the amount of funds received by the Indian tribe or school board under section 2007 of this title.

(ii) No denial based on geographic proximity

With respect to applications described in this subparagraph, the Secretary shall give consideration to all factors described in subparagraph (B), but no such application shall be denied based primarily upon the geographic proximity of comparable public education.

(B) Factors

With respect to applications described in subparagraph (A), the Secretary shall consider the following factors relating to the program and services that are the subject of the application:

(i) The adequacy of the facilities or the potential to obtain or provide adequate facilities.

(ii) Geographic and demographic factors in the affected areas.

(iii) The adequacy of the applicant's program plans or, in the case of a Bureau-funded school, of projected needs analysis done either by the tribe or the Bureau.

(iv) Geographic proximity of comparable public education.

(v) The stated needs of all affected parties, including students, families, tribal governments at both the central and local levels, and school organizations.

(vi) Adequacy and comparability of programs already available.

(vii) Consistency of available programs with tribal educational codes or tribal legislation on education.

(viii) The history and success of those services for the proposed population to be served, as determined from all factors, including standardized examination performance.

(2) Determination on application

(A) In general

Not later than 180 days after the date on which an application described in paragraph (1)(A) is submitted to the Secretary, the Secretary shall make a determination of whether to approve the application.

(B) Failure to make determination

If the Secretary fails to make a determination with respect to an application by the date described in subparagraph (A), the application shall be deemed to have been approved by the Secretary.

(3) Requirements for applications

(A) In general

Notwithstanding paragraph (2)(B), an application described in paragraph (1)(A) may be approved by the Secretary only if—

(i) the application has been approved by the tribal governing body of the students served by (or to be served by) the school or program that is the subject of the application; and

(ii) written evidence of such approval is submitted with the application.

(B) Included information

Each application described in paragraph (1)(A) shall include information concerning each of the factors described in paragraph (1)(B).

(4) Denial of applications

If the Secretary denies an application described in paragraph (1)(A), the Secretary shall—

(A) state the objections to the application in writing to the applicant not later than 180 days after the date the application is submitted to the Secretary;

(B) provide assistance to the applicant to overcome the stated objections;

(C) provide to the applicant a hearing on the record regarding the denial, under the same rules and regulations as apply under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.]; and

(D) provide to the applicant a notice of the applicant's appeals rights and an opportunity to appeal the decision resulting from the hearing under subparagraph (D).

(5) Effective date of a subject application

(A) In general

Except as otherwise provided in this paragraph, an action that is the subject of any application described in paragraph (1)(A) that is approved by the Secretary shall become effective—

(i) at the beginning of the academic year following the fiscal year in which the application is approved; or

(ii) at an earlier date determined by the Secretary.

(B) Applications deemed approved

If an application is deemed to have been approved by the Secretary under paragraph (2)(B), the action that is the subject of the application shall become effective—

(i) on the date that is 18 months after the date on which the application is submitted to the Secretary; or

(ii) at an earlier date determined by the Secretary.

(6) Statutory construction

Nothing in this section or any other provision of law, shall be construed to preclude the expansion of grades and related facilities at a Bureau-funded school, if such expansion is paid for with non-Bureau funds. Subject to the availability of appropriated funds the Secretary is authorized to provide the necessary funds needed to supplement the cost of operations and maintenance of such expansion.

(f) Joint administration

Administrative, transportation, and program cost funds received by Bureau-funded schools, and any program from the Department of Education or any other Federal agency for the purpose of providing education or related services, and other funds received for such education and related services from nonfederally funded programs, shall be apportioned and the funds shall be retained at the school.

(g) General use of funds

Funds received by Bureau-funded schools from the Bureau of Indian Affairs, and under any program from the Department of Education or any other Federal agency, for the purpose of providing education or related services may be used for schoolwide projects to improve the educational program for all Indian students.

(h) Study on adequacy of funds and formulas

(1) Study

The Comptroller General of the United States shall conduct a study to determine the adequacy of funding, and formulas used by the Bureau to determine funding, for programs operated by Bureau-funded schools, taking into account unique circumstances applicable to Bureau-funded schools. The study shall analyze existing information gathered and contained in germane studies that have been conducted or are currently being conducted with regard to Bureau-funded schools.

(2) Action

Upon completion of the study, the Secretary of the Interior shall take such action as necessary to ensure distribution of the findings of the study to all affected Indian tribes, local school boards, and associations of local school boards.

(Pub. L. 95–561, title XI, § 1121, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2007; amended Pub. L. 109–54, title I, § 127, Aug. 2, 2005, 119 Stat. 525.)

REFERENCES IN TEXT

This section, referred to in subsec. (b)(4) and the second place appearing in subsec. (c)(1), mean section 1121 of Pub. L. 95–561, prior to the general amendment of this chapter by Pub. L. 107–110. See Prior Provisions notes below.

The Indian Self-Determination Act, referred to in subsec. (b)(8)(D) to (F), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Tribally Controlled Schools Act of 1988, referred to in subsec. (b)(8)(D) to (F), is part B (§§ 5201–5212) of title V of Pub. L. 100–297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§ 2501 et seq.) of this title. Sections 5204 and 5207 of the Act were classified to sections 2503 and 2506, respectively, of this title, prior to repeal by Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063. Pub. L. 107–110 enacted new sections 5204 and 5207 which are classified to sections 2503 and 2506, respectively, of this title. Pub. L. 107–110 enacted new sections 5203 and 5206 of Pub. L. 100–297, relating to subject matter similar to that of former sections 5204 and 5207, respectively, which are classified to sections 2502 and 2505, respectively, of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Indian Self-Determination and Education Assistance Act referred to in subsec. (e)(4)(C), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

PRIOR PROVISIONS

A prior section 2001, Pub. L. 95–561, title XI, § 1121, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 3979; amended Pub. L. 104–134, title I, § 101(d) [title VII, § 703(d)], Apr. 26, 1996, 110 Stat. 1321–211, 1321–255; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–362, title VIII, § 801(c)(1), Nov. 10, 1998, 112 Stat. 3287, related to standards for basic education of Indian children in Bureau of Indian Affairs schools, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2001, Pub. L. 95–561, title XI, § 1121, Nov. 1, 1978, 92 Stat. 2316; Pub. L. 96–46, § 2(b)(2)–(4), Aug. 6, 1979, 93 Stat. 341; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 98–511, title V, § 502, Oct. 19, 1984, 98 Stat. 2391; Pub. L. 99–89, § 2, Aug. 15, 1985, 99 Stat. 379; Pub. L. 99–570, title IV, § 4133(b)(3), Oct. 27, 1986, 100 Stat. 3207–134; Pub. L. 100–297, title V, §§ 5102, 5104, Apr. 28, 1988, 102 Stat. 363, 365; Pub. L. 100–427, § 1(a), (b), Sept. 9, 1988, 102 Stat. 1603; Pub. L. 102–531, title III, § 312(b), Oct. 27, 1992, 106 Stat. 3504, related to standards for basic education of Indian children in Bureau or contract schools, prior to the general amendment of this chapter by Pub. L. 103–382.

AMENDMENTS

2005—Subsec. (d)(7). Pub. L. 109–54 added par. (7) and struck out heading and text of former par. (7). Text read as follows: ''The Secretary may, with the approval of the tribal governing body, terminate, contract, transfer to any other authority, consolidate, or substantially curtail the operation or facilities of—

''(A) any Bureau-funded school that is operated on or after January 1, 1999;

''(B) any program of such a school that is operated on or after January 1, 1999; or

''(C) any school board of a school operated under a grant under the Tribally Controlled Schools Act of 1988.''

CHANGE OF NAME

Committee on Education and the Workforce of House of Representatives changed to Committee on Education and Labor of House of Representatives and 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.

§ 2002. National criteria for home-living situations

(a) Revision of standards

(1) In general

The Secretary, in consultation with the Secretary of Education, Indian organizations and tribes, and Bureau-funded schools, shall revise the national standards for home-living (dormitory) situations to include such factors as heating, lighting, cooling, adult-child ratios, needs for counselors (including special needs related to off-reservation home-living (dormitory) situations), therapeutic programs, space, and privacy.

(2) Implementation

Such standards shall be implemented in Bureau-operated schools, and shall serve as minimum standards for contract or grant schools.

(3) Revision after establishment

Once established, any revisions of such standards shall be developed according to the requirements established under section 2017 of this title.

(b) Implementation

The Secretary shall implement the revised standards established under this section immediately upon completion of the standards.

(c) Plan

(1) In general

The Secretary shall submit to the appropriate committees of Congress, the tribes, and the affected schools, and publish in the Federal Register, a detailed plan to bring all Bureau-funded schools that provide home-living (dormitory) situations up to the standards established under this section.

(2) Components of plan

The plan described in paragraph (1) shall include—

(A) a statement of the relative needs of each Bureau-funded home-living (dormitory) school;

(B) projected future needs of each Bureau-funded home-living (dormitory) school;

(C) detailed information on the status of each school in relation to the standards established under this section;

(D) specific cost estimates for meeting each standard for each such school;

(E) aggregate cost estimates for bringing all such schools into compliance with the criteria established under this section; and

(F) specific timelines for bringing each school into compliance with such standards.

(d) Waiver

(1) In general

A tribal governing body or local school board may, in accordance with this subsection, waive the standards established under this section for a school described in subsection (a) of this section.

(2) Inappropriate standards

(A) In general

A tribal governing body, or the local school board so designated by the tribal governing body, may waive, in whole or in part, the standards established under this section if such standards are determined by such body or board to be inappropriate for the needs of students from that tribe.

(B) Alternative standards

The tribal governing body or school board involved shall, not later than 60 days after providing a waiver under subparagraph (A) for a school, submit to the Director a proposal for alternative standards that take into account the specific needs of the tribe's children. Such alternative standards shall be established by the Director for the school involved unless specifically rejected by the Director for good cause and in writing provided to the affected tribes or local school board.

(e) Closure for failure to meet standards prohibited

No school in operation on or before July 1, 1999 (regardless of compliance or noncompliance with the standards established under this section), may be closed, transferred to another authority, or consolidated, and no program of such

a school may be substantially curtailed, because the school failed to meet such standards.

(Pub. L. 95–561, title XI, § 1122, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2018.)

PRIOR PROVISIONS

A prior section 2002, Pub. L. 95–561, title XI, § 1122, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 3984; amended Pub. L. 105–362, title VIII, § 801(c)(2), Nov. 10, 1998, 112 Stat. 3288, related to national criteria for dormitory situations, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2002, Pub. L. 95–561, title XI, § 1122, Nov. 1, 1978, 92 Stat. 2318; Pub. L. 96–46, § 2(b)(5), Aug. 6, 1979, 93 Stat. 341; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 100–297, title V, § 5105, Apr. 28, 1988, 102 Stat. 367, related to national criteria for dormitory situations, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2003. Codification of regulations

(a) Part 32 of Title 25, Code of Federal Regulations

The provisions of part 32 of title 25, Code of Federal Regulations, as in effect on January 1, 1987, are incorporated into this Act and shall be treated as though such provisions are set forth in this subsection. Such provisions may be altered only by means of an Act of Congress. To the extent that such provisions of part 32 do not conform with this Act or any statutory provision of law enacted before November 1, 1978, the provisions of this Act and the provisions of such other statutory law shall govern.

(b) Definition of regulation

In this section, the term ''regulation'' means any rule, regulation, guideline, interpretation, order, or requirement of general applicability prescribed by any officer or employee of the executive branch.

(Pub. L. 95–561, title XI, § 1123, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2019.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), means Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

PRIOR PROVISIONS

A prior section 2003, Pub. L. 95–561, title XI, § 1123, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 3985, related to the incorporation of regulations into, or the application of regulations to, Pub. L. 95–561, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2003, Pub. L. 95–561, title XI, § 1123, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 100–297, title V, § 5106, Apr. 28, 1988, 102 Stat. 367, related to the incorporation of regulations into, or the application of regulations to, Pub. L. 95–561, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2004. School boundaries

(a) Establishment by Secretary

The Secretary shall establish, by regulation, separate geographical attendance areas for each Bureau-funded school.

(b) Establishment by tribal body

In any case where there is more than one Bureau-funded school located on an Indian reservation, at the direction of the tribal governing body, the relevant school boards of the Bureau-funded schools on the reservation may, by mutual consent, establish the relevant attendance areas for such schools, subject to the approval of the tribal governing body. Any such boundaries so established shall be accepted by the Secretary.

(c) Boundary revisions

(1) Notice

On or after July 1, 2001, no geographical attendance area shall be revised or established with respect to any Bureau-funded school unless the tribal governing body or the local school board concerned (if so designated by the tribal governing body) has been afforded—

(A) at least 6 months notice of the intention of the Bureau to revise or establish such attendance area; and

(B) the opportunity to propose alternative boundaries.

(2) Revision process

Any tribe may petition the Secretary for revision of existing attendance area boundaries. The Secretary shall accept such proposed alternative or revised boundaries unless the Secretary finds, after consultation with the affected tribe or tribes, that such revised boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the affected programs. The Secretary shall cause such revisions to be published in the Federal Register.

(3) Tribal resolution determination

Nothing in this section shall deny a tribal governing body the authority, on a continuing basis, to adopt a tribal resolution allowing parents the choice of the Bureau-funded school their children may attend, regardless of the attendance boundaries established under this section.

(d) Funding restrictions

(1) In general

The Secretary shall not deny funding to a Bureau-funded school for any eligible Indian student attending the school solely because that student's home or domicile is outside of the geographical attendance area established for that school under this section.

(2) Transportation

No funding shall be made available without tribal authorization to enable a school to provide transportation for any student to or from the school and a location outside the approved attendance area of the school.

(e) Reservation as boundary

When there is only one Bureau-funded program located on an Indian reservation—

(1) the attendance area for the program shall be the boundaries (established by treaty, agreement, legislation, court decisions, or executive decisions and as accepted by the tribe) of the reservation served; and

(2) those students residing near the reservation shall also receive services from such program.

(f) Off-reservation home-living (dormitory) schools

(1) In general

Notwithstanding any geographical attendance areas, attendance at off-reservation home-living (dormitory) schools shall include students requiring special emphasis programs to be implemented at each off-reservation home-living (dormitory) school.

(2) Coordination

Such attendance shall be coordinated between education line officers, the family, and the referring and receiving programs.

(Pub. L. 95–561, title XI, § 1124, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2019.)

PRIOR PROVISIONS

A prior section 2004, Pub. L. 95–561, title XI, § 1124, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 3986, related to school boundaries, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2004, Pub. L. 95–561, title XI, § 1124, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 98–511, title V, § 503, Oct. 19, 1984, 98 Stat. 2393; Pub. L. 99–89, § 3, Aug. 15, 1985, 99 Stat. 380; Pub. L. 100–297, title V, § 5120, Apr. 28, 1988, 102 Stat. 384, related to school boundaries, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2005. Facilities construction

(a) National survey of facilities conditions

(1) In general

Not later than 12 months after January 8, 2002, the Government Accountability Office shall compile, collect, and secure the data that are needed to prepare a national survey of the physical conditions of all Bureau-funded school facilities.

(2) Data and methodologies

In preparing the national survey required under paragraph (1), the Government Accountability Office shall use the following data and methodologies:

(A) The existing Department of Defense formula for determining the condition and adequacy of Department of Defense facilities.

(B) Data related to conditions of Bureau-funded schools that has previously been compiled, collected, or secured from whatever source derived so long as the data are accurate, relevant, timely, and necessary to the survey.

(C) The methodologies of the American Institute of Architects, or other accredited and reputable architecture or engineering associations.

(3) Consultations

(A) In general

In carrying out the survey required under paragraph (1), the Government Accountability Office shall, to the maximum extent practicable, consult (and if necessary contract) with national, regional, and tribal Indian education organizations to ensure that a complete and accurate national survey is achieved.

(B) Requests for information

All Bureau-funded schools shall comply with reasonable requests for information by the Government Accountability Office and shall respond to such requests in a timely fashion.

(4) Submission

Not later than 2 years after January 8, 2002, the Government Accountability Office shall submit the results of the national survey conducted under paragraph (1) to the Committee on Indian Affairs, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate and the Committee on Resources, the Committee on Education and the Workforce, and the Committee on Appropriations of the House of Representatives and to the Secretary. The Secretary shall submit the results of the national survey to school boards of Bureau-funded schools and their respective tribes.

(5) Negotiated rulemaking committee

(A) In general

Not later than 6 months after the date on which the submission is made under paragraph (4), the Secretary shall establish a negotiated rulemaking committee pursuant to section 2018(b)(3) of this title. The negotiated rulemaking committee shall prepare and submit to the Secretary the following:

(i) A catalog of the condition of school facilities at all Bureau-funded schools that—

(I) incorporates the findings from the Government Accountability Office study evaluating and comparing school systems of the Department of Defense and the Bureau of Indian Affairs;

(II) rates such facilities with respect to the rate of deterioration and useful life of structures and major systems;

(III) establishes a routine maintenance schedule for each facility;

(IV) identifies the complementary educational facilities that do not exist but that are needed; and

(V) makes projections on the amount of funds needed to keep each school viable, consistent with the accreditation standards required pursuant to this Act.

(ii) A school replacement and new construction report that determines replacement and new construction need, and a formula for the equitable distribution of funds to address such need, for Bureau-funded schools. Such formula shall utilize necessary factors in determining an equitable distribution of funds, including—

(I) the size of school;

(II) school enrollment;

(III) the age of the school;

(IV) the condition of the school;

(V) environmental factors at the school; and

(VI) school isolation.

(iii) A renovation repairs report that determines renovation need (major and minor), and a formula for the equitable distribution of funds to address such need, for Bureau-funded schools. Such report shall identify needed repairs or renova-

tions with respect to a facility, or a part of a facility, or the grounds of the facility, to remedy a need based on disabilities access or health and safety changes to a facility. The formula developed shall utilize necessary factors in determining an equitable distribution of funds, including the factors described in clause (ii).

(B) Submission of reports

Not later than 24 months after the negotiated rulemaking committee is established under subparagraph (A), the reports described in clauses (ii) and (iii) of subparagraph (A) shall be submitted to the committees of Congress referred to in paragraph (4), the national and regional Indian education organizations, and to all school boards of Bureau-funded schools and their respective tribes.

(6) Facilities information systems support database

The Secretary shall develop a Facilities Information Systems Support Database to maintain and update the information contained in the reports under clauses (ii) and (iii) of paragraph (5)(A) and the information contained in the survey conducted under paragraph (1). The system shall be updated every 3 years by the Bureau of Indian Affairs and monitored by Government Accountability Office, and shall be made available to school boards of Bureau-funded schools and their respective tribes, and Congress.

(b) Compliance with health and safety standards

(1) In general

The Secretary shall immediately begin to bring all schools, dormitories, and other Indian education-related facilities operated by the Bureau or under contract or grant with the Bureau, into compliance with—

(A) all applicable tribal, Federal, or State health and safety standards, whichever provides greater protection (except that the tribal standards to be applied shall be no greater than any otherwise applicable Federal or State standards);

(B) section 794 of title 29; and

(C) the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.].

(2) No termination required

Nothing in this subsection requires termination of the operations of any facility that—

(A) does not comply with the provisions and standards described in paragraph (1); and

(B) is in use on January 8, 2002.

(c) Compliance plan

At the time that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all facilities covered under subsection (a) of this section into compliance with the standards referred to in that subsection that includes—

(1) detailed information on the status of each facility's compliance with such standards;

(2) specific cost estimates for meeting such standards at each school; and

(3) specific timelines for bringing each school into compliance with such standards.

(d) Construction priorities

(1) System to establish priorities

On an annual basis, the Secretary shall submit to the appropriate committees of Congress and cause to be published in the Federal Register, the system used to establish priorities for replacement and construction projects for Bureau-funded schools and home-living schools, including boarding schools and dormitories. At the time any budget request for education is presented, the Secretary shall publish in the Federal Register and submit with the budget request the current list of all Bureau-funded school construction priorities.

(2) Long-term construction and replacement list

In addition to the plan submitted under subsection (c) of this section, the Secretary shall—

(A) not later than 18 months after January 8, 2002, establish a long-term construction and replacement list for all Bureau-funded schools;

(B) using the list prepared under subparagraph (A), propose a list for the orderly replacement of all Bureau-funded education-related facilities over a period of 40 years to enable planning and scheduling of budget requests;

(C) cause the list prepared under subparagraph (B) to be published in the Federal Register and allow a period of not less than 120 days for public comment;

(D) make such revisions to the list prepared under subparagraph (B) as are appropriate based on the comments received; and

(E) cause the final list to be published in the Federal Register.

(3) Effect on other list

Nothing in this section shall interfere with or change in any way the construction priority list as it existed on the day before January 8, 2002.

(e) Hazardous condition at Bureau-funded school

(1) Closure, consolidation, or curtailment

(A) In general

A Bureau-funded school may be closed or consolidated, or the programs of a Bureau-funded school may be substantially curtailed, by reason of facility conditions that constitute an immediate hazard to health and safety only if a health and safety officer of the Bureau and an individual designated at the beginning of the school year by the tribe involved under subparagraph (B) determine that such conditions exist at a facility of the Bureau-funded school.

(B) Designation of individual by tribe

To be designated by a tribe for purposes of subparagraph (A), an individual shall—

(i) be a licensed or certified facilities safety inspector;

(ii) have demonstrated experience in the inspection of facilities for health and safety purposes with respect to occupancy; or

(iii) have a significant educational background in the health and safety of facilities with respect to occupancy.

(C) Inspection

After making a determination described in subparagraph (A), the Bureau health and safety officer and the individual designated by the tribe shall conduct an inspection of the conditions of such facility in order to determine whether conditions at such facility constitute an immediate hazard to health and safety. Such inspection shall be completed as expeditiously as practicable, but not later than 20 days after the date on which the action described in subparagraph (A) is taken.

(D) Failure to concur

If the Bureau health and safety officer, and the individual designated by the tribe, conducting the inspection of a facility required under subparagraph (C) do not concur that conditions at the facility constitute an immediate hazard to health and safety, such officer and individual shall immediately notify the tribal governing body and provide written information related to their determinations.

(E) Consideration by tribal governing body

Not later than 10 days after a tribal governing body receives notice under subparagraph (D), the tribal governing body shall consider all information relating to the determinations of the Bureau health and safety officer and the individual designated by the tribe and make a determination regarding the closure, consolidation, or curtailment involved.

(F) Agreement to close, consolidate, or curtail

(i) In general

If the Bureau health and safety officer and the individual designated by the tribe conducting the inspection of a facility required under subparagraph (C), concur that conditions at the facility constitute an immediate hazard to health and safety, or if the tribal governing body makes such a determination under subparagraph (E), the facility involved shall be closed immediately.

(ii) Reopening of facility if no immediate hazard found to exist

If the Bureau health and safety officer or the individual designated by the tribe conducting the inspection of a facility required under subparagraph (C) determines that conditions at the facility do not constitute an immediate hazard to health and safety, any consolidation or curtailment that was made under this paragraph shall immediately cease and any school closed by reason of conditions at the facility shall be reopened immediately.

(G) General closure report

If a Bureau-funded school is temporarily closed or consolidated or the programs of a Bureau-funded school are temporarily substantially curtailed under this subsection and the Secretary determines that the closure, consolidation, or curtailment will exceed 1 year, the Secretary shall submit to the appropriate committees of Congress, the affected tribe, and the local school board, not later than 90 days after the date on which the closure, consolidation, or curtailment was initiated, a report that specifies—

(i) the reasons for such temporary action;

(ii) the actions the Secretary is taking to eliminate the conditions that constitute the hazard;

(iii) an estimated date by which the actions described in clause (ii) will be concluded; and

(iv) a plan for providing alternate education services for students enrolled at the school that is to be closed.

(2) Nonapplication of certain standards for temporary facility use

(A) Classroom activities

The Secretary shall permit the local school board to temporarily utilize facilities adjacent to the school, or satellite facilities, if such facilities are suitable for conducting classroom activities. In permitting the use of facilities under the preceding sentence, the Secretary may waive applicable minor standards under section 2001 of this title relating to such facilities (such as the required number of exit lights or configuration of restrooms) so long as such waivers do not result in the creation of an environment that constitutes an immediate and substantial threat to the health, safety, and life of students and staff.

(B) Administrative activities

The provisions of subparagraph (A) shall apply with respect to administrative personnel if the facilities involved are suitable for activities performed by such personnel.

(C) Temporary

In this paragraph, the term ''temporary'' means—

(i) with respect to a school that is to be closed for not more than 1 year, 3 months or less; and

(ii) with respect to a school that is to be closed for not less than 1 year, a time period determined appropriate by the Bureau.

(3) Treatment of closure

Any closure of a Bureau-funded school under this subsection for a period that exceeds 30 days but is less than 1 year, shall be treated by the Bureau as an emergency facility improvement and repair project.

(4) Use of funds

With respect to a Bureau-funded school that is closed under this subsection, the tribal governing body, or the designated local school board of each Bureau-funded school, involved may authorize the use of funds allocated pursuant to section 2007 of this title, to abate the hazardous conditions without further action by Congress.

(f) Funding requirement

(1) Distribution of funds

Beginning with the first fiscal year following January 8, 2002, all funds appropriated to the budget accounts for the operations and maintenance of Bureau-funded schools shall be distributed by formula to the schools. No funds from these accounts may be retained or segregated by the Bureau to pay for administrative or other costs of any facilities branch or office, at any level of the Bureau.

(2) Requirements for certain uses

No funds shall be withheld from the distribution to the budget of any school operated under contract or grant by the Bureau for maintenance or any other facilities or road-related purpose, unless such school has consented, as a modification to the contract or in writing for grants schools, to the withholding of such funds, including the amount thereof, the purpose for which the funds will be used, and the timeline for the services to be provided. The school may, at the end of any fiscal year, cancel an agreement under this paragraph upon giving the Bureau 30 days notice of its intent to do so.

(g) No reduction in Federal funding

Nothing in this section shall diminish any Federal funding due to the receipt by the school of funding for facilities improvement or construction from a State or any other source.

(Pub. L. 95–561, title XI, § 1125, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2021; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(5)(A)(i)(V), means Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (b)(1)(C), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended which is classified principally to chapter 126 (§ 12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 2005, Pub. L. 95–561, title XI, § 1125, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 3986, related to facilities construction, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2005, Pub. L. 95–561, title XI, § 1125, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 100–297, title V, § 5103, Apr. 28, 1988, 102 Stat. 364, related to facilities construction, prior to the general amendment of this chapter by Pub. L. 103–382.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' wherever appearing.

CHANGE OF NAME

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

USE OF TRIBAL PRIORITY ALLOCATIONS FUNDS FOR SCHOOL FACILITIES

Pub. L. 105–277, div. A, § 101(e) [title I], Oct. 21, 1998, 112 Stat. 2681–231, 2681–246, provided in part: ''That hereafter tribes may use tribal priority allocations funds for the replacement and repair of school facilities in compliance with [former] 25 U.S.C. 2005(a) [see now 25 U.S.C. 2005(b)], so long as such replacement or repair is approved by the Secretary and completed with non-Federal tribal and/or tribal priority allocation funds''.

§ 2006. Bureau of Indian Affairs education functions

(a) Formulation and establishment of policy and procedure; supervision of programs and expenditures

The Secretary shall vest in the Assistant Secretary for Indian Affairs all functions with respect to formulation and establishment of policy and procedure and supervision of programs and expenditures of Federal funds for the purpose of Indian education administered by the Bureau. The Assistant Secretary shall carry out such functions through the Director of the Office of Indian Education Programs.

(b) Direction and supervision of personnel operations

(1) In general

Not later than 180 days after January 8, 2002, the Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved in the provision of education program services by the Bureau, including school or institution custodial or maintenance personnel, and personnel responsible for contracting, procurement, and finance functions connected with school operation programs.

(2) Transfers

The Assistant Secretary for Indian Affairs shall, not later than 180 days after January 8, 2002, coordinate the transfer of functions relating to procurements for, contracts of, operation of, and maintenance of schools and other support functions to the Director.

(c) Inherent Federal function

For purposes of this Act, all functions relating to education that are located at the Area or Agency level and performed by an education line officer shall be subject to contract under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.], unless determined by the Secretary to be inherently Federal functions as defined in section 2021(12) of this title.

(d) Evaluation of programs; services and support functions; technical and coordinating assistance

Education personnel who are under the direction and supervision of the Director of the Office of Indian Education Programs in accordance with subsection (b)(1) of this section shall—

(1) monitor and evaluate Bureau education programs;

(2) provide all services and support functions for education programs with respect to personnel matters involving staffing actions and functions; and

(3) provide technical and coordinating assistance in areas such as procurement, contracting, budgeting, personnel, curriculum, and operation and maintenance of school facilities.

(e) Construction, improvement, operation, and maintenance of facilities

(1) Plan for construction

The Assistant Secretary shall submit as part of the annual budget a plan—

(A) for school facilities to be constructed under section 2005(c) of this title;

(B) for establishing priorities among projects and for the improvement and repair of educational facilities, which together shall form the basis for the distribution of appropriated funds; and

(C) for capital improvements to be made over the 5 succeeding years.

(2) Program for operation and maintenance

(A) Establishment

The Assistant Secretary shall establish a program, including the distribution of appropriated funds, for the operation and maintenance of education facilities. Such program shall include—

(i) a method of computing the amount necessary for each educational facility;

(ii) similar treatment of all Bureau-funded schools;

(iii) a notice of an allocation of appropriated funds from the Director of the Office of Indian Education Programs directly to the education line officers and appropriate school officials;

(iv) a method for determining the need for, and priority of, facilities repair and maintenance projects, both major and minor (to be determined, through the conduct by the Assistant Secretary, of a series of meetings at the agency and area level with representatives of the Bureau-funded schools in those areas and agencies to receive comment on the lists and prioritization of such projects); and

(v) a system for the conduct of routine preventive maintenance.

(B) Local supervisors

The appropriate education line officers shall make arrangements for the maintenance of education facilities with the local supervisors of the Bureau maintenance personnel. The local supervisors of Bureau maintenance personnel shall take appropriate action to implement the decisions made by the appropriate education line officers, except that no funds under this chapter may be authorized for expenditure unless such appropriate education line officer is assured that the necessary maintenance has been, or will be, provided in a reasonable manner.

(3) Implementation

This subsection shall be implemented as soon as practicable after January 8, 2002.

(f) Acceptance of gifts and bequests

(1) Guidelines

Notwithstanding any other provision of law, the Director of the Office shall promulgate guidelines for the establishment and administration of mechanisms for the acceptance of gifts and bequests for the use and benefit of particular schools or designated Bureau-operated education programs, including, in appropriate cases, the establishment and administration of trust funds.

(2) Monitoring and reports

Except as provided in paragraph (3), in a case in which a Bureau-operated education program is the beneficiary of such a gift or bequest, the Director shall—

(A) make provisions for monitoring use of the gift or bequest; and

(B) submit a report to the appropriate committees of Congress that describes the amount and terms of such gift or bequest, the manner in which such gift or bequest shall be used, and any results achieved by such use.

(3) Exception

The requirements of paragraph (2) shall not apply in the case of a gift or bequest that is valued at $5,000 or less.

(g) Definition of functions

For the purpose of this section, the term ''functions'' includes powers and duties.

(Pub. L. 95–561, title XI, § 1126, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2026.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), means Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

PRIOR PROVISIONS

A prior section 2006, Pub. L. 95–561, title XI, § 1126, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 3988, related to Bureau of Indian Affairs education functions, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2006, Pub. L. 95–561, title XI, § 1126, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 96–46, § 2(b)(6), Aug. 6, 1979, 93 Stat. 341; Pub. L. 98–511, title V, § 504, Oct. 19, 1984, 98 Stat. 2393; Pub. L. 99–89, § 4, Aug. 15, 1985, 99 Stat. 381; Pub. L. 100–427, § 1(c)(3), Sept. 9, 1988, 102 Stat. 1603, related to Bureau of Indian Affairs education functions, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2007. Allotment formula

(a) Factors considered; revision to reflect standards

(1) Formula

The Secretary shall establish, by regulation adopted in accordance with section 2017 of this

title, a formula for determining the minimum annual amount of funds necessary to sustain each Bureau-funded school. In establishing such formula, the Secretary shall consider—

(A) the number of eligible Indian students served and total student population of the school;

(B) special cost factors, such as—

(i) the isolation of the school;

(ii) the need for special staffing, transportation, or educational programs;

(iii) food and housing costs;

(iv) maintenance and repair costs associated with the physical condition of the educational facilities;

(v) special transportation and other costs of isolated and small schools;

(vi) the costs of home-living (dormitory) arrangements, where determined necessary by a tribal governing body or designated school board;

(vii) costs associated with greater lengths of service by education personnel;

(viii) the costs of therapeutic programs for students requiring such programs; and

(ix) special costs for gifted and talented students;

(C) the cost of providing academic services which are at least equivalent to those provided by public schools in the State in which the school is located;

(D) whether the available funding will enable the school involved to comply with the accreditation standards applicable to the school under section 2001 of this title; and

(E) such other relevant factors as the Secretary determines are appropriate.

(2) Revision of formula

(A) In general

Upon the establishment of the standards required in section 2002 of this title, the Secretary shall revise the formula established under this subsection to reflect the cost of funding such standards.

(B) Review of formula

Not later than January 1, 2003, the Secretary shall review the formula established under this section and shall take such steps as are necessary to increase the availability of counseling and therapeutic programs for students in off-reservation home-living (dormitory) schools and other Bureau-operated residential facilities.

(C) Review of standards

Concurrent with such action, the Secretary shall review the standards established under section 2002 of this title to be certain that adequate provision is made for parental notification regarding, and consent for, such counseling and therapeutic programs.

(b) Pro rata allotment

Notwithstanding any other provision of law, Federal funds appropriated for the general local operation of Bureau-funded schools shall be allotted pro rata in accordance with the formula established under subsection (a) of this section.

(c) Annual adjustment; reservation of amount for school board activities

(1) Annual adjustment

For fiscal year 2003, and for each subsequent fiscal year, the Secretary shall adjust the formula established under subsection (a) of this section to ensure that the formula does the following:

(A) Uses a weighted unit of 1.2 for each eligible Indian student enrolled in the seventh and eighth grades of the school in considering the number of eligible Indian students served by the school.

(B) Considers a school with an enrollment of less than 50 eligible Indian students as having an average daily attendance of 50 eligible Indian students for purposes of implementing the adjustment factor for small schools.

(C) Takes into account the provision of residential services on less than a 9-month basis at a school when the school board and supervisor of the school determine that a less than 9-month basis will be implemented for the school year involved.

(D) Uses a weighted unit of 2.0 for each eligible Indian student that—

(i) is gifted and talented; and

(ii) is enrolled in the school on a full-time basis,

in considering the number of eligible Indian students served by the school.

(E) Uses a weighted unit of 0.25 for each eligible Indian student who is enrolled in a year-long credit course in an Indian or Native language as part of the regular curriculum of a school, in considering the number of eligible Indian students served by such school. The adjustment required under this subparagraph shall be used for such school after—

(i) the certification of the Indian or Native language curriculum by the school board of such school to the Secretary, together with an estimate of the number of full-time students expected to be enrolled in the curriculum in the second school year for which the certification is made; and

(ii) the funds appropriated for allotment under this section are designated by the appropriations Act appropriating such funds as the amount necessary to implement such adjustment at such school without reducing allotments made under this section to any school by virtue of such adjustment.

(2) Reservation of amount

(A) In general

From the funds allotted in accordance with the formula established under subsection (a) of this section for each Bureau school, the local school board of such school may reserve an amount which does not exceed the greater of—

(i) $8,000; or

(ii) the lesser of—

(I) $15,000; or

(II) 1 percent of such allotted funds,

for school board activities for such school, including (notwithstanding any other provision of law) meeting expenses and the cost of membership in, and support of, organizations engaged in activities on behalf of Indian education.

(B) Training

(i) In general

Each local school board, and any agency school board that serves as a local school board for any grant or contract school, shall ensure that each individual who is a new member of the school board receives, within 1 year after the individual becomes a member of the school board, 40 hours of training relevant to that individual's service on the board.

(ii) Types of training

Such training may include training concerning legal issues pertaining to Bureau-funded schools, legal issues pertaining to school boards, ethics, and other topics determined to be appropriate by the school board.

(iii) Recommendation

The training described in this subparagraph shall not be required, but is recommended, for a tribal governing body that serves in the capacity of a school board.

(d) Reservation of amount for emergencies

(1) In general

The Secretary shall reserve from the funds available for distribution for each fiscal year under this section an amount that, in the aggregate, equals 1 percent of the funds available for such purpose for that fiscal year, to be used, at the discretion of the Director of the Office of Indian Education Programs, to meet emergencies and unforeseen contingencies affecting the education programs funded under this section.

(2) Use of funds

Funds reserved under this subsection may be expended only for education services or programs, including emergency repairs of educational facilities, at a schoolsite (as defined by section 2503(c)(2)[1] of this title).

(3) Availability of funds

Funds reserved under this subsection shall remain available without fiscal year limitation until expended. However, the aggregate amount available from all fiscal years may not exceed 1 percent of the current year funds.

(4) Report

When the Secretary makes funds available under this subsection, the Secretary shall report such action to the appropriate committees of Congress within the annual budget submission.

(e) Supplemental appropriations

Supplemental appropriations enacted to meet increased pay costs attributable to school level personnel shall be distributed under this section.

(f) Eligible Indian student defined

In this section, the term ''eligible Indian student'' means a student who—

(1) is a member of, or is at least one-fourth degree Indian blood descendant of a member of, a tribe that is eligible for the special programs and services provided by the United States through the Bureau to Indians because of their status as Indians;

(2) resides on or near a reservation or meets the criteria for attendance at a Bureau off-reservation home-living school; and

(3) is enrolled in a Bureau-funded school.

(g) Tuition

(1) In general

No eligible Indian student or a student attending a Bureau school under paragraph (2)(C) may be charged tuition for attendance at a Bureau school or contract or grant school.

(2) Attendance of non-Indian students at Bureau schools

The Secretary may permit the attendance at a Bureau school of a student who is not an eligible Indian student if—

(A) the Secretary determines that the student's attendance will not adversely affect the school's program for eligible Indian students because of cost, overcrowding, or violation of standards or accreditation;

(B) the school board consents;

(C) the student is a dependent of a Bureau, Indian Health Service, or tribal government employee who lives on or near the school site; or

(D) tuition is paid for the student that is not more than the tuition charged by the nearest public school district for out-of-district students and shall be in addition to the school's allocation under this section.

(3) Attendance of non-Indian students at contract and grant schools

The school board of a contract or grant school may permit students who are not eligible Indian students under this subsection to attend its contract school or grant school. Any tuition collected for those students shall be in addition to funding received under this section.

(h) Funds available without fiscal year limitation

Notwithstanding any other provision of law, at the election of the school board of a Bureau school made at any time during the fiscal year, a portion equal to not more than 15 percent of the funds allocated with respect to a school under this section for any fiscal year shall remain available to the school for expenditure without fiscal year limitation. The Assistant Secretary shall take such steps as are necessary to implement this subsection.

(i) Students at Richfield dormitory, Richfield, Utah

(1) In general

Tuition for the instruction of each out-of-State Indian student in a home-living situa-

[1] So in original. Probably should be section ''2502(c)(2)''.

tion at the Richfield dormitory in Richfield, Utah, who attends Sevier County high schools in Richfield, Utah, for an academic year, shall be paid from Indian school equalization program funds authorized in this section and section 2009[2] of this title, at a rate not to exceed the weighted amount provided for under subsection (b) of this section for a student for that year.

(2) No administrative cost funds

No additional administrative cost funds shall be provided under this chapter to pay for administrative costs relating to the instruction of the students.

(Pub. L. 95–561, title XI, § 1127, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2028.)

PRIOR PROVISIONS

A prior section 2007, Pub. L. 95–561, title XI, § 1127, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 3989, related to allotment formula, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2007, Pub. L. 95–561, title XI, § 1127, Nov. 1, 1978, 92 Stat. 2320, related to policies and procedures for implementation of transferred administrative functions, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2008. Administrative cost grants

(a) Definitions

In this section:

(1) Administrative cost

(A) In general

The term ''administrative cost'' means the cost of necessary administrative functions which—

(i) the tribe or tribal organization incurs as a result of operating a tribal elementary or secondary educational program;

(ii) are not customarily paid by comparable Bureau-operated programs out of direct program funds; and

(iii) are either—

(I) normally provided for comparable Bureau programs by Federal officials using resources other than Bureau direct program funds; or

(II) are otherwise required of tribal self-determination program operators by law or prudent management practice.

(B) Inclusions

The term ''administrative cost'' may include—

(i) contract or grant (or other agreement) administration;

(ii) executive, policy, and corporate leadership and decisionmaking;

(iii) program planning, development, and management;

(iv) fiscal, personnel, property, and procurement management;

(v) related office services and record keeping; and

(vi) costs of necessary insurance, auditing, legal, safety and security services.

(2) Bureau elementary and secondary functions

The term ''Bureau elementary and secondary functions'' means—

(A) all functions funded at Bureau schools by the Office;

(B) all programs—

(i) funds for which are appropriated to other agencies of the Federal Government; and

(ii) which are administered for the benefit of Indians through Bureau schools; and

(C) all operation, maintenance, and repair funds for facilities and Government quarters used in the operation or support of elementary and secondary education functions for the benefit of Indians, from whatever source derived.

(3) Direct cost base

(A) In general

Except as otherwise provided in subparagraph (B), the direct cost base of a tribe or tribal organization for the fiscal year is the aggregate direct cost program funding for all tribal elementary or secondary educational programs operated by the tribe or tribal organization during—

(i) the second fiscal year preceding such fiscal year; or

(ii) if such programs have not been operated by the tribe or tribal organization during the 2 preceding fiscal years, the first fiscal year preceding such fiscal year.

(B) Functions not previously operated

In the case of Bureau elementary or secondary education functions which have not previously been operated by a tribe or tribal organization under contract, grant, or agreement with the Bureau, the direct cost base for the initial year shall be the projected aggregate direct cost program funding for all Bureau elementary and secondary functions to be operated by the tribe or tribal organization during that fiscal year.

(4) Maximum base rate

The term ''maximum base rate'' means 50 percent.

(5) Minimum base rate

The term ''minimum base rate'' means 11 percent.

(6) Standard direct cost base

The term ''standard direct cost base'' means $600,000.

(7) Tribal elementary or secondary educational programs

The term ''tribal elementary or secondary educational programs'' means all Bureau elementary and secondary functions, together with any other Bureau programs or portions of programs (excluding funds for social services that are appropriated to agencies other than the Bureau and are funded through the Bureau, funds for major subcontracts, construction, and other major capital expenditures, and unexpended funds carried over from prior years) which share common administrative cost functions, that are operated directly by a tribe or tribal organization under a contract, grant, or agreement with the Bureau.

[2] So in original. Probably should be section ''2010''.

(b) Grants; effect upon appropriated amounts

(1) Grants

Subject to the availability of funds, the Secretary shall provide grants to each tribe or tribal organization operating a contract school or grant school in the amount determined under this section with respect to the tribe or tribal organization for the purpose of paying the administrative and indirect costs incurred in operating contract or grant schools, provided that no school operated as a stand-alone institution shall receive less than $200,000 per year for these purposes, in order to—

(A) enable tribes and tribal organizations operating such schools, without reducing direct program services to the beneficiaries of the program, to provide all related administrative overhead services and operations necessary to meet the requirements of law and prudent management practice; and

(B) carry out other necessary support functions which would otherwise be provided by the Secretary or other Federal officers or employees, from resources other than direct program funds, in support of comparable Bureau-operated programs.

(2) Effect upon appropriated amounts

Amounts appropriated to fund the grants provided under this section shall be in addition to, and shall not reduce, the amounts appropriated for the program being administered by the contract or grant school.

(c) Determination of grant amount

(1) In general

The amount of the grant provided to each tribe or tribal organization under this section for each fiscal year shall be determined by applying the administrative cost percentage rate of the tribe or tribal organization to the aggregate of the Bureau elementary and secondary functions operated by the tribe or tribal organization for which funds are received from or through the Bureau.

(2) Direct cost base funds

The Secretary shall—

(A) reduce the amount of the grant determined under paragraph (1) to the extent that payments for administrative costs are actually received by an Indian tribe or tribal organization under any Federal education program included in the direct cost base of the tribe or tribal organization; and

(B) take such actions as may be necessary to be reimbursed by any other department or agency of the Federal Government for the portion of grants made under this section for the costs of administering any program for Indians that is funded by appropriations made to such other department or agency.

(d) Administrative cost percentage rate

(1) In general

For purposes of this section, the administrative cost percentage rate for a contract or grant school for a fiscal year is equal to the percentage determined by dividing—

(A) the sum of—

(i) the amount equal to—

(I) the direct cost base of the tribe or tribal organization for the fiscal year, multiplied by

(II) the minimum base rate; plus

(ii) the amount equal to—

(I) the standard direct cost base; multiplied by

(II) the maximum base rate; by

(B) the sum of—

(i) the direct cost base of the tribe or tribal organization for the fiscal year; plus

(ii) the standard direct cost base.

(2) Rounding

The administrative cost percentage rate shall be determined to the 1/100 of a decimal point.

(3) Applicability

The administrative cost percentage rate determined under this subsection shall not apply to other programs operated by the tribe or tribal organization.

(e) Combining funds

(1) In general

Funds received by a tribe or contract or grant school as grants under this section for tribal elementary or secondary educational programs may be combined by the tribe or contract or grant school into a single administrative cost account without the necessity of maintaining separate funding source accounting.

(2) Indirect cost funds

Indirect cost funds for programs at the school which share common administrative services with tribal elementary or secondary educational programs may be included in the administrative cost account described in paragraph (1).

(f) Availability of funds

Funds received as grants under this section with respect to tribal elementary or secondary education programs shall remain available to the contract or grant school without fiscal year limitation and without diminishing the amount of any grants otherwise payable to the school under this section for any fiscal year beginning after the fiscal year for which the grant is provided.

(g) Treatment of funds

Funds received as grants under this section for Bureau-funded programs operated by a tribe or tribal organization under a contract or agreement shall not be taken into consideration for purposes of indirect cost underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived.

(h) Treatment of entity operating other programs

In applying this section and section 106 of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450j–1] with respect to an Indian tribe or tribal organization that—

(1) receives funds under this section for administrative costs incurred in operating a con-

tract or grant school or a school operated under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.]; and

(2) operates one or more other programs under a contract or grant provided under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.],

the Secretary shall ensure that the Indian tribe or tribal organization is provided with the full amount of the administrative costs that are associated with operating the contract or grant school, and of the indirect costs, that are associated with all of such other programs, except that funds appropriated for implementation of this section shall be used only to supply the amount of the grant required to be provided by this section.

(i) Studies for determination of factors affecting costs; base rates limits; standard direct cost base; report to Congress

(1) Studies

Not later than 120 days after January 8, 2002, the Director of the Office of Indian Education Programs shall—

(A) conduct such studies as may be needed to establish an empirical basis for determining relevant factors substantially affecting required administrative costs of tribal elementary and secondary education programs, using the formula set forth in subsection (c) of this section; and

(B) conduct a study to determine—

(i) a maximum base rate which ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of the smallest tribal elementary or secondary educational programs;

(ii) a minimum base rate which ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of the largest tribal elementary or secondary educational programs; and

(iii) a standard direct cost base which is the aggregate direct cost funding level for which the percentage determined under subsection (d) of this section will—

(I) be equal to the median between the maximum base rate and the minimum base rate; and

(II) ensure that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of tribal elementary or secondary educational programs closest to the size of the program.

(2) Guidelines

The studies required under paragraph (1) shall—

(A) be conducted in full consultation (in accordance with section 2011 of this title) with—

(i) the tribes and tribal organizations that are affected by the application of the formula set forth in subsection (c) of this section; and

(ii) all national and regional Indian organizations of which such tribes and tribal organizations are typically members;

(B) be conducted onsite with a representative statistical sample of the tribal elementary or secondary educational programs under a contract entered into with a nationally reputable public accounting and business consulting firm;

(C) take into account the availability of skilled labor commodities, business and automatic data processing services, related Indian preference and Indian control of education requirements, and any other market factors found to substantially affect the administrative costs and efficiency of each such tribal elementary or secondary educational program studied in order to ensure that all required administrative activities can reasonably be delivered in a cost effective manner for each such program, given an administrative cost allowance generated by the values, percentages, or other factors found in the studies to be relevant in such formula;

(D) identify, and quantify in terms of percentages of direct program costs, any general factors arising from geographic isolation, or numbers of programs administered, independent of program size factors used to compute a base administrative cost percentage in such formula; and

(E) identify any other incremental cost factors substantially affecting the costs of required administrative cost functions at any of the tribal elementary or secondary educational programs studied and determine whether the factors are of general applicability to other such programs, and (if so) how the factors may effectively be incorporated into such formula.

(3) Consultation with Inspector General

In carrying out the studies required under this subsection, the Director shall obtain the input of, and afford an opportunity to participate to, the Inspector General of the Department of the Interior.

(4) Consideration of delivery of administrative services

Determinations described in paragraph (2)(C) shall be based on what is practicable at each location studied, given prudent management practice, irrespective of whether required administrative services were actually or fully delivered at these sites, or whether other services were delivered instead, during the period of the study.

(5) Report

Upon completion of the studies conducted under paragraph (1), the Director shall submit to Congress a report on the findings of the studies, together with determinations based upon such studies that would affect the definitions set forth under subsection (e) of this section that are used in the formula set forth in subsection (c) of this section.

(6) Projection of costs

The Secretary shall include in the Bureau's justification for each appropriations request

beginning in the first fiscal year after the completion of the studies conducted under paragraph (1), a projection of the overall costs associated with the formula set forth in subsection (c) of this section for all tribal elementary or secondary education programs which the Secretary expects to be funded in the fiscal year for which the appropriations are sought.

(7) Determination of program size

For purposes of this subsection, the size of tribal elementary or secondary educational programs is determined by the aggregate direct cost program funding level for all Bureau-funded programs which share common administrative cost functions.

(j) Authorization of appropriations

(1) In general

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

(2) Reductions

If the total amount of funds necessary to provide grants to tribes and tribal organizations in the amounts determined under subsection (c) of this section for a fiscal year exceeds the amount of funds appropriated to carry out this section for such fiscal year, the Secretary shall reduce the amount of each grant determined under subsection (c) of this section for such fiscal year by an amount that bears the same relationship to such excess as the amount of such grants determined under subsection (c) of this section bears to the total of all grants determined under subsection (c) section[1] for all tribes and tribal organizations for such fiscal year.

(k) Applicability to schools operating under Tribally Controlled Schools Act of 1988

The provisions of this section shall apply to schools operating under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.].

(*l*) Administrative cost grant budget requests

(1) In general

Beginning with President's[2] annual budget request under section 1105 of title 31 for fiscal year 2002, and with respect to each succeeding budget request, at the discretion of the Secretary, the Secretary shall submit to the appropriate committees of Congress information and funding requests for the full funding of administrative costs grants required to be paid under this section.

(2) Requirements

(A) Funding for new conversions to contract or grant school operations

With respect to a budget request under paragraph (1), the amount required to provide full funding for an administrative cost grant for each tribe or tribal organization expected to begin operation of a Bureau-funded school as contract or grant school in the academic year funded by such annual budget request, the amount so required shall not be less than 10 percent of the amount required for subparagraph (B).

(B) Funding for continuing contract and grant school operations

With respect to a budget request under paragraph (1), the amount required to provide full funding for an administrative cost grant for each tribe or tribal organization operating a contract or grant school at the time the annual budget request is submitted, which amount shall include the amount of funds required to provide full funding for an administrative cost grant for each tribe or tribal organization which began operation of a contract or grant school with administrative cost grant funds supplied from the amount described in subparagraph (A).

(Pub. L. 95–561, title XI, § 1128, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2032.)

REFERENCES IN TEXT

The Tribally Controlled Schools Act of 1988, referred to in subsecs. (h)(1) and (k), is part B (§§ 5201–5212) of title V of Pub. L. 100–297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§ 2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (h)(2), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to part A (§ 450 et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

PRIOR PROVISIONS

A prior section 2008, Pub. L. 95–561, title XI, § 1128, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 3993, related to administrative cost grants, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2008 and a prior section 2008a were omitted in the general amendment of this chapter by Pub. L. 103–382.

Section 2008, Pub. L. 95–561, title XI, § 1128, Nov. 1, 1978, 92 Stat. 2320; Pub. L. 96–46, § 2(b)(7), (8), Aug. 6, 1979, 93 Stat. 341; Pub. L. 98–511, title V, § 505, Oct. 19, 1984, 98 Stat. 2394; Pub. L. 99–89, § 5, Aug. 15, 1985, 99 Stat. 381; Pub. L. 99–228, § 1, Dec. 28, 1985, 99 Stat. 1747; Pub. L. 100–297, title V, §§ 5107(a), 5108(b), (c), Apr. 28, 1988, 102 Stat. 368, 375; Pub. L. 100–427, §§ 2(a), (b)(1), (c), 3, 5, Sept. 9, 1988, 102 Stat. 1604, 1605; Pub. L. 101–301, § 5(d)(1), May 24, 1990, 104 Stat. 208; Pub. L. 103–382, title III, § 393(b), Oct. 20, 1994, 108 Stat. 4026, related to allotment formula.

Section 2008a, Pub. L. 95–561, title XI, § 1128A, as added Pub. L. 100–297, title V, § 5108(a), Apr. 28, 1988, 102 Stat. 369; amended Pub. L. 100–427, § 4, Sept. 9, 1988, 102 Stat. 1604; Pub. L. 101–301, § 5(f), May 24, 1990, 104 Stat. 208, related to administrative cost grants.

§ 2009. Division of Budget Analysis

(a) Establishment

Not later than 1 year after January 8, 2002, the Secretary shall establish within the Office of Indian Education Programs a Division of Budget Analysis (hereafter in this section referred to as the ''Division''). Such Division shall be under the direct supervision and control of the Director of the Office.

(b) Functions

In consultation with the tribal governing bodies and tribal school boards, the Director of the

[1] So in original.

[2] So in original. Probably should be preceded by ''the''.

Office, through the Division, shall conduct studies, surveys, or other activities to gather demographic information on Bureau-funded schools and project the amount necessary to provide Indian students in such schools the educational program set forth in this chapter.

(c) Annual reports

Not later than the date on which the Assistant Secretary for Indian Affairs makes the annual budget submission, for each fiscal year after January 8, 2002, the Director of the Office shall submit to the appropriate committees of Congress (including the Appropriations committees), all Bureau-funded schools, and the tribal governing bodies of such schools, a report that contains—

(1) projections, based upon the information gathered pursuant to subsection (b) of this section and any other relevant information, of amounts necessary to provide Indian students in Bureau-funded schools the educational program set forth in this chapter;

(2) a description of the methods and formulas used to calculate the amounts projected pursuant to paragraph (1); and

(3) such other information as the Director of the Office considers appropriate.

(d) Use of reports

The Director of the Office and the Assistant Secretary for Indian Affairs shall use the annual report required by subsection (c) of this section when preparing annual budget submissions.

(Pub. L. 95–561, title XI, § 1129, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2038.)

PRIOR PROVISIONS

A prior section 2009, Pub. L. 95–561, title XI, § 1129, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 3998, related to Division of Budget Analysis, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2009, Pub. L. 95–561, title XI, § 1129, Nov. 1, 1978, 92 Stat. 2321; Pub. L. 98–511, title V, §§ 506, 507(a), Oct. 19, 1984, 98 Stat. 2395, 2396; Pub. L. 99–89, § 6, Aug. 15, 1985, 99 Stat. 382; Pub. L. 99–570, title IV, § 4133(b)(4), Oct. 27, 1986, 100 Stat. 3207–134; Pub. L. 100–297, title V, §§ 5109, 5110, 5118, Apr. 28, 1988, 102 Stat. 375, 376, 382; Pub. L. 100–427, §§ 6, 9(d), Sept. 9, 1988, 102 Stat. 1605, 1607, related to uniform direct funding and support, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2010. Uniform direct funding and support

(a) Establishment of system and forward funding

(1) In general

The Secretary shall establish, by regulation adopted in accordance with section 2016 of this title, a system for the direct funding and support of all Bureau-funded schools. Such system shall allot funds in accordance with section 2007 of this title. All amounts appropriated for distribution in accordance with this section shall be made available in accordance with paragraph (2).

(2) Timing for use of funds

(A) Availability

For the purposes of affording adequate notice of funding available pursuant to the allotments made under section 2007 of this title and the allotments of funds for operation and maintenance of facilities, amounts appropriated in an appropriations Act for any fiscal year for such allotments—

(i) shall become available for obligation by the affected schools on July 1 of the fiscal year for which such allotments are appropriated without further action by the Secretary; and

(ii) shall remain available for obligation through the succeeding fiscal year.

(B) Publications

The Secretary shall, on the basis of the amounts appropriated as described in this paragraph—

(i) publish, not later than July 1 of the fiscal year for which the amounts are appropriated, information indicating the amount of the allotments to be made to each affected school under section 2007 of this title, of 80 percent of such appropriated amounts; and

(ii) publish, not later than September 30 of such fiscal year, information indicating the amount of the allotments to be made under section 2007 of this title, from the remaining 20 percent of such appropriated amounts, adjusted to reflect the actual student attendance.

(C) Overpayments

Any overpayments made to tribal schools shall be returned to the Secretary not later than 30 days after the final determination that the school was overpaid pursuant to this section.

(3) Limitation

(A) Expenditures

Notwithstanding any other provision of law (including a regulation), the supervisor of a Bureau-operated school may expend an aggregate of not more than $50,000 of the amount allotted to the school under section 2007 of this title to acquire materials, supplies, equipment, operation services, maintenance services, and other services for the school, and amounts received as operations and maintenance funds, funds received from the Department of Education, or funds received from other Federal sources, without competitive bidding if—

(i) the cost for any single item acquired does not exceed $15,000;

(ii) the school board approves the acquisition;

(iii) the supervisor certifies that the cost is fair and reasonable;

(iv) the documents relating to the acquisition executed by the supervisor of the school or other school staff cite this paragraph as authority for the acquisition; and

(v) the acquisition transaction is documented in a journal maintained at the school that clearly identifies when the transaction occurred, the item that was acquired and from whom, the price paid, the quantities acquired, and any other information the supervisor or the school board considers to be relevant.

(B) Notice

Not later than 6 months after January 8, 2002, the Secretary shall send notice of the provisions of this paragraph to each supervisor of a Bureau school and associated school board chairperson, the education line officer of each agency and area, and the Bureau division in charge of procurement, at both the local and national levels.

(C) Application and guidelines

The Director of the Office shall be responsible for—

(i) determining the application of this paragraph, including the authorization of specific individuals to carry out this paragraph;

(ii) ensuring that there is at least one such individual at each Bureau facility; and

(iii) the provision of guidelines on the use of this paragraph and adequate training on such guidelines.

(4) Effect of sequestration order

If a sequestration order issued under the Balanced Budget and Emergency Deficit Control Act of 1985 reduces the amount of funds available for allotment under section 2007 of this title for any fiscal year by more than 7 percent of the amount of funds available for allotment under such section during the preceding fiscal year—

(A) to fund allotments under section 2007 of this title, the Secretary, notwithstanding any other law, may use—

(i) funds appropriated for the operation of any Bureau-funded school that is closed or consolidated; and

(ii) funds appropriated for any program that has been curtailed at any Bureau school; and

(B) the Secretary may waive the application of the provisions of section 2001(h) of this title with respect to the closure or consolidation of a school, or the curtailment of a program at a school, during such fiscal year if the funds described in clauses (i) and (ii) of subparagraph (A) with respect to such school are used to fund allotments made under section 2007 of this title for such fiscal year.

(b) Local financial plans for expenditure of funds

(1) Plan required

Each Bureau-operated school that receives an allotment under section 2007 of this title shall prepare a local financial plan that specifies the manner in which the school will expend the funds made available under the allotment and ensures that the school will meet the accreditation requirements or standards for the school pursuant to section 2001 of this title.

(2) Requirement

A local financial plan under paragraph (1) shall comply with all applicable Federal and tribal laws.

(3) Preparation and revision

(A) In general

The financial plan for a school under subparagraph (A)[1] shall be prepared by the supervisor of the school in active consultation with the local school board for the school.

(B) Authority of school board

The local school board for each school shall have the authority to ratify, reject, or amend such financial plan and, at the initiative of the local school board or in response to the supervisor of the school, to revise such financial plan to meet needs not foreseen at the time of preparation of the financial plan.

(4) Role of supervisor

The supervisor of the school—

(A) shall implement the decisions of the school board relating to the financial plan under paragraph (1);

(B) shall provide the appropriate local union representative of the education employees of the school with copies of proposed financial plans relating to the school and all modifications and proposed modifications to the plans, and at the same time submit such copies to the local school board; and

(C) may appeal any such action of the local school board to the appropriate education line officer of the Bureau agency by filing a written statement describing the action and the reasons the supervisor believes such action should be overturned.

(5) Statements

(A) In general

A copy of each statement filed under paragraph (4)(C) shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal.

(B) Overturned actions

After reviewing such written appeal and response, the appropriate education line officer may, for good cause, overturn the action of the local school board.

(C) Transmission of determination

The appropriate education line officer shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such action.

(c) Tribal division of education, self-determination grant and contract funds

The Secretary may approve applications for funding tribal divisions of education and developing tribal codes of education, from funds made available pursuant to section 450h(a) of this title.

(d) Technical assistance and training

In carrying out this section, a local school board may request technical assistance and training from the Secretary, and the Secretary shall, to the maximum extent practicable, pro-

[1] So in original. Probably should be ''paragraph (1)''.

vide those services and make appropriate provisions in the budget of the Office for the provision of those services.

(e) Summer program of academic and support services

(1) Plan

(A) In general

A financial plan under subsection (b) of this section for a school may include, at the discretion of the local administrator and the school board of such school, a provision for a summer program of academic and support services for students of the school.

(B) Prevention activities

Any such program may include activities related to the prevention of alcohol and substance abuse.

(C) Summer use

The Assistant Secretary for Indian Affairs shall provide for the use of any such school facility during any summer in which such use is requested.

(2) Use of other funds

Notwithstanding any other provision of law, funds authorized under the Act of April 16, 1934 [25 U.S.C. 452 et seq.], and this Act may be used to augment the services provided in each summer program at the option, and under the control, of the tribe or Indian controlled school receiving such funds.

(3) Technical assistance and program coordination

The Assistant Secretary for Indian Affairs, acting through the Director of the Office, shall—

(A) provide technical assistance and coordination for any program described in paragraph (1); and

(B) to the extent practicable, encourage the coordination of such programs with any other summer programs that might benefit Indian youth, regardless of the funding source or administrative entity of any such program.

(f) Cooperative agreements

(1) Implementation

(A) In general

From funds allotted to a Bureau school under section 2007 of this title, the Secretary shall, if specifically requested by the appropriate tribal governing body, implement a cooperative agreement that is entered into between the tribe, the Bureau, the local school board, and a local public school district that meets the requirements of paragraph (2) and involves the school.

(B) Terms

The tribe, the Bureau, the school board, and the local public school district shall determine the terms of an agreement entered into under subparagraph (A).

(2) Coordination provisions

An agreement under paragraph (1) may, with respect to the Bureau school and schools in the school district involved, encompass coordination of all or any part of the following:

(A) The academic program and curriculum, unless the Bureau school is accredited by a State or regional accrediting entity and would not continue to be so accredited if the agreement encompassed the program and curriculum.

(B) Support services, including procurement and facilities maintenance.

(C) Transportation.

(3) Equal benefit and burden

(A) In general

Each agreement entered into under paragraph (1) shall confer a benefit upon the Bureau school commensurate with the burden assumed by the school.

(B) Limitation

Subparagraph (A) shall not be construed to require equal expenditures, or an exchange of similar services, by the Bureau school and schools in the school district.

(g) Product or result of student projects

Notwithstanding any other provision of law, in a case in which there is agreement on action between the superintendent and the school board of a Bureau-funded school, the product or result of a project conducted in whole or in major part by a student may be given to that student upon the completion of such project.

(h) Matching fund requirements

(1) Not considered Federal funds

Notwithstanding any other provision of law, funds received by a Bureau-funded school under this chapter for education-related activities (not including funds for construction, maintenance, and facilities improvement or repair) shall not be considered Federal funds for the purposes of a matching funds requirement for any Federal program.

(2) Limitation

In considering an application from a Bureau-funded school for participation in a program or project that requires matching funds, the entity administering such program or project or awarding such grant shall not give positive or negative weight to such application based solely on the provisions of paragraph (1).

(Pub. L. 95–561, title XI, § 1130, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2039.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (a)(4), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, as amended which enacted chapter 20 (§ 900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

Act of April 16, 1934, referred to in subsec. (e)(2), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popu-

larly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

This Act, referred to in subsec. (e)(2), means Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

This chapter, referred to in subsec. (h)(1), was in the original ''this title'', meaning title XI (§ 1101 et seq.) of Pub. L. 95–561, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

PRIOR PROVISIONS

A prior section 2010, Pub. L. 95–561, title XI, § 1130, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 3999, related to uniform direct funding and support, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2010, Pub. L. 95–561, title XI, § 1130, Nov. 1, 1978, 92 Stat. 2321; Pub. L. 100–297, title V, § 5111, Apr. 28, 1988, 102 Stat. 376; Pub. L. 100–427, § 7, Sept. 9, 1988, 102 Stat. 1605, related to policy for Indian control of Indian education, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2011. Policy for Indian control of Indian education

(a) Facilitation of Indian control

It shall be the policy of the United States acting through the Secretary, in carrying out the functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education.

(b) Consultation with tribes

(1) In general

All actions under this Act shall be done with active consultation with tribes. The United States acting through the Secretary and tribes shall work in a government-to-government relationship to ensure quality education for all tribal members.

(2) Requirements

(A) Definition of consultation

In this subsection, the term ''consultation'' means a process involving the open discussion and joint deliberation of all options with respect to potential issues or changes between the Bureau and all interested parties.

(B) Discussion and joint deliberation

During discussions and joint deliberations, interested parties (including tribes and school officials) shall be given an opportunity—

(i) to present issues (including proposals regarding changes in current practices or programs) that will be considered for future action by the Secretary; and

(ii) to participate and discuss the options presented, or to present alternatives, with the views and concerns of the interested parties given effect unless the Secretary determines, from information available from or presented by the interested parties during one or more of the discussions and deliberations, that there is a substantial reason for another course of action.

(C) Explanation by Secretary

The Secretary shall submit to any Member of Congress, within 18 days of the receipt of a written request by such Member, a written explanation of any decision made by the Secretary which is not consistent with the views of the interested parties described in subparagraph (B).

(Pub. L. 95–561, title XI, § 1131, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2043.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), means Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

PRIOR PROVISIONS

A prior section 2011, Pub. L. 95–561, title XI, § 1131, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4001, related to policy for Indian control of Indian education, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2011, Pub. L. 95–561, title XI, § 1131, Nov. 1, 1978, 92 Stat. 2322; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 98–511, title V, § 507(b), Oct. 19, 1984, 98 Stat. 2396; Pub. L. 100–297, title V, §§ 5112(a), (b)(1), 5114, 5115, Apr. 28, 1988, 102 Stat. 377, 378, 380; Pub. L. 100–427, § 9(a)–(c), Sept. 9, 1988, 102 Stat. 1606, related to education personnel, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2012. Indian education personnel

(a) In general

Chapter 51, subchapter III of chapter 53, and chapter 63 of title 5, relating to classification, pay and leave, respectively, and the sections of such title relating to the appointment, promotion, hours of work, and removal of civil service employees, shall not apply to educators or to education positions (as defined in subsection (p) of this section).

(b) Regulations

Not later than 60 days after January 8, 2002, the Secretary shall prescribe regulations to carry out this section. Such regulations shall provide for—

(1) the establishment of education positions;

(2) the establishment of qualifications for educators and education personnel;

(3) the fixing of basic compensation for educators and education positions;

(4) the appointment of educators;

(5) the discharge of educators;

(6) the entitlement of educators to compensation;

(7) the payment of compensation to educators;

(8) the conditions of employment of educators;

(9) the leave system for educators;

(10) the annual leave and sick leave for educators;

(11) the length of the school year applicable to education positions described in subsection (a) of this section; and

(12) such additional matters as may be appropriate.

(c) Qualifications of educators

(1) Requirements

In prescribing regulations to govern the qualifications of educators, the Secretary shall require that—

(A) lists of qualified and interviewed applicants for education positions be maintained in each agency and area office of the Bureau from among individuals who have applied at the agency or area level for an education position or who have applied at the national level and have indicated in such application an interest in working in certain areas or agencies;

(B) a local school board shall have the authority to waive on a case-by-case basis, any formal education or degree qualifications established by regulation pursuant to subsection (b)(2) of this section, in order for a tribal member to be hired in an education position to teach courses on tribal culture and language and that subject to subsection (e)(2) of this section, a determination by a school board that such a person be hired shall be instituted by the supervisor of the school involved; and

(C) that[1] it shall not be a prerequisite to the employment of an individual in an education position at the local level that—

(i) such individual's name appear on a list maintained pursuant to subparagraph (A); or

(ii) such individual have applied at the national level for an education position.

(2) Exception for certain temporary employment

The Secretary may authorize the temporary employment in an education position of an individual who has not met the certification standards established pursuant to regulations if the Secretary determines that failure to do so would result in that position remaining vacant.

(d) Hiring of educators

(1) Requirements

In prescribing regulations to govern the appointment of educators, the Secretary shall require—

(A)(i)(I) that educators employed in a Bureau school (other than the supervisor of the school) shall be hired by the supervisor of the school; and

(II) in a case in which there are no qualified applicants available to fill a vacancy at a Bureau school, the supervisor may consult a list maintained pursuant to subsection (c)(1)(A) of this section;

(ii) each supervisor of a Bureau school shall be hired by the education line officer of the agency office of the Bureau for the jurisdiction in which the school is located;

(iii) each educator employed in an agency office of the Bureau shall be hired by the superintendent for education of the agency office; and

(iv) each education line officer and educator employed in the office of the Director of the Office shall be hired by the Director;

(B)(i) before an individual is employed in an education position in a Bureau school by the supervisor of the school (or, with respect to the position of supervisor, by the appropriate agency education line officer), the local school board for the school shall be consulted; and

(ii) that a determination by such school board, as evidenced by school board records, that such individual should or should not be so employed shall be instituted by the supervisor (or with respect to the position of supervisor, by the superintendent for education of the agency office);

(C)(i) before an individual is employed in an education position in an agency or area office of the Bureau, the appropriate agency school board shall be consulted; and

(ii) a determination by such school board, as evidenced by school board records, that such individual should or should not be employed shall be instituted by the superintendent for education of the agency office; and

(D) all employment decisions or actions be in compliance with all applicable Federal, State, and tribal laws.

(2) Information regarding application at national level

(A) In general

Any individual who applies at the local level for an education position shall state on such individual's application whether or not such individual has applied at the national level for an education position in the Bureau.

(B) Determination of accuracy

If such individual is employed at the local level, such individual's name shall be immediately forwarded to the Secretary, who shall, as soon as practicable but in no event in more than 30 days, ascertain the accuracy of the statement made by such individual pursuant to subparagraph (A).

(C) False statements

Notwithstanding subsection (e) of this section, if the individual's statement is found to have been false, such individual, at the Secretary's discretion, may be disciplined or discharged.

(D) Conditional appointment for national provision

If the individual has applied at the national level for an education position in the Bureau, the appointment of such individual at the local level shall be conditional for a period of 90 days, during which period the Secretary may appoint a more qualified individual (as determined by the Secretary) from the list maintained at the national level pursuant to subsection (c)(1)(A)(ii)[2] of this section to the position to which such individual was appointed.

(3) Statutory construction

Except as expressly provided, nothing in this section shall be construed as conferring upon

[1] So in original. The word ''that'' probably should not appear.

[2] So in original. Subsec. (c)(1)(A) of this section does not contain clauses.

local school boards authority over, or control of, educators at Bureau-funded schools or the authority to issue management decisions.

(4) Appeals

(A) By supervisor

(i) In general

The supervisor of a school may appeal to the appropriate agency education line officer any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school (other than that of supervisor) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned.

(ii) Action by board

A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal.

(iii) Overturning of determination

After reviewing such written appeal and response, the education line officer may, for good cause, overturn the determination of the local school board.

(iv) Transmission of determination

The education line officer shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such determination.

(B) By education line officer

(i) In general

The education line officer of an agency office of the Bureau may appeal to the Director of the Office any determination by the local school board for the school that an individual be employed, or not be employed, as the supervisor of a school by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned.

(ii) Action by board

A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal.

(iii) Overturning of determination

After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the local school board.

(iv) Transmission of determination

The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such education line officer identifying the reasons for overturning such determination.

(5) Other appeals

(A) In general

The education line officer of an agency office of the Bureau may appeal to the Director of the Office any determination by the agency school board that an individual be employed, or not be employed, in an education position in such agency office by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned.

(B) Action by board

A copy of such statement shall be submitted to the agency school board and such board shall be afforded an opportunity to respond, in writing, to such appeal.

(C) Overturning of determination

After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the agency school board.

(D) Transmission of determination

The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such education line officer identifying the reasons for overturning such determination.

(e) Discharge and conditions of employment of educators

(1) Regulations

In promulgating regulations to govern the discharge and conditions of employment of educators, the Secretary shall require—

(A) that procedures shall be established for the rapid and equitable resolution of grievances of educators;

(B) that no educator may be discharged without notice of the reasons for the discharge and an opportunity for a hearing under procedures that comport with the requirements of due process; and

(C) that each educator employed in a Bureau school shall be notified 30 days prior to the end of an academic year whether the employment contract of the individual will be renewed for the following year.

(2) Procedures for discharge

(A) Determinations

(i) In general

Except as provided in clause (iii), the supervisor of a Bureau school may discharge (subject to procedures established under paragraph (1)(B)) for cause (as determined under regulations prescribed by the Secretary) any educator employed in such school.

(ii) Notification of board

On giving notice to an educator of the supervisor's intention to discharge the educator, the supervisor shall immediately notify the local school board of the proposed discharge.

(iii) Determination by board

If the local school board determines that such educator shall not be discharged, that determination shall be followed by the supervisor.

(B) Appeals

(i) In general

The supervisor shall have the right to appeal to the education line officer of the appropriate agency office of the Bureau a determination by a local school board under subparagraph (A)(iii), as evidenced by school board records, not to discharge an educator.

(ii) Decision of agency education line officer

Upon hearing such an appeal, the agency education line officer may, for good cause, issue a decision overturning the determination of the local school board with respect to the employment of such individual.

(iii) Form of decision

The education line officer shall make the decision in writing and submit the decision to the local school board.

(3) Recommendations of school boards for discharge

Each local school board for a Bureau school shall have the right—

(A) to recommend to the supervisor that an educator employed in the school be discharged; and

(B) to recommend to the education line officer of the appropriate agency office of the Bureau and to the Director of the Office, that the supervisor of the school be discharged.

(f) Applicability of Indian preference laws

(1) Applicability

(A) In general

Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action carried out under this section with respect to an applicant or employee not entitled to an Indian preference if each tribal organization concerned—

(i) grants a written waiver of the application of those laws with respect to the personnel action; and

(ii) states that the waiver is necessary.

(B) No effect on responsibility of Bureau

This paragraph shall not be construed to relieve the responsibility of the Bureau to issue timely and adequate announcements and advertisements concerning any such personnel action if such action is intended to fill a vacancy (no matter how such vacancy is created).

(2) Definitions

In this subsection:

(A) Indian preference laws

(i) In general

The term ''Indian preference laws'' means section 472 of this title or any other provision of law granting a preference to Indians in promotions and other personnel actions.

(ii) Exclusion

The term ''Indian preference laws'' does not include section 450e(b) of this title.

(B) Tribal organization

The term ''tribal organization'' means—

(i) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 1602(c) of title 43); or

(ii) in connection with any personnel action referred to in this subsection, any local school board to which the governing body has delegated the authority to grant a waiver under this subsection with respect to a personnel action.

(g) Compensation or annual salary

(1) In general

(A) Compensation for educators and education positions

Except as otherwise provided in this section, the Secretary shall establish the compensation or annual salary rate for educators and education positions—

(i) at rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom chapter 51 of title 5 is applicable; or

(ii) on the basis of the Federal Wage System schedule in effect for the locality involved, and for the comparable positions, at the rates of compensation in effect for the senior executive service.

(B) Compensation or salary for teachers and counselors

(i) In general

The Secretary shall establish the rate of compensation, or annual salary rate, for the positions of teachers and counselors (including dormitory counselors and home-living counselors) at the rate of compensation applicable (on January 8, 2002, and thereafter) for comparable positions in the overseas schools under the Defense Department Overseas Teachers Pay and Personnel Practices Act [20 U.S.C. 901 et seq.].

(ii) Essential provisions

The Secretary shall allow the local school boards involved authority to implement only the aspects of the Defense Department Overseas Teachers Pay and Personnel Practices Act pay provisions that are considered essential for recruitment and retention of teachers and counselors. Implementation of such provisions shall not be construed to require the implementation of that entire Act.

(C) Rates for new hires

(i) In general

Beginning with the first fiscal year following January 8, 2002, each local school board of a Bureau school may establish a rate of compensation or annual salary rate described in clause (ii) for teachers and counselors (including academic counselors) who are new hires at the school and who had not worked at the school, as of the first day of such fiscal year.

(ii) Consistent rates

The rates established under clause (i) shall be consistent with the rates paid for

individuals in the same positions, with the same tenure and training, as the teachers and counselors, in any other school within whose boundaries the Bureau school is located.

(iii) Decreases

In a case in which the establishment of rates under clause (i) causes a reduction in compensation at a school from the rate of compensation that was in effect for the first fiscal year following January 8, 2002, the new rates of compensation may be applied to the compensation of employees of the school who worked at the school as of January 8, 2002, by applying those rates at each contract renewal for the employees so that the reduction takes effect in three equal installments.

(iv) Increases

In a case in which adoption of rates under clause (i) leads to an increase in the payment of compensation from that which was in effect for the fiscal year following January 8, 2002, the school board may make such rates applicable at the next contract renewal such that—

(I) the increase occurs in its entirety; or

(II) the increase is applied in three equal installments.

(D) Use of regulations; continued employment of certain educators

The establishment of rates of basic compensation and annual salary rates under subparagraphs (B) and (C) shall not—

(i) preclude the use of regulations and procedures used by the Bureau prior to April 28, 1988, in making determinations regarding promotions and advancements through levels of pay that are based on the merit, education, experience, or tenure of the educator; or

(ii) affect the continued employment or compensation of an educator who was employed in an education position on October 31, 1979, and who did not make an election under subsection (p)[3] as in effect on January 1, 1990.

(2) Post differential rates

(A) In general

The Secretary may pay a post differential rate, not to exceed 25 percent of the rate of compensation, for educators or education positions, on the basis of conditions of environment or work that warrant additional pay, as a recruitment and retention incentive.

(B) Supervisor's authority

(i) In general

Except as provided in clause (ii), on the request of the supervisor and the local school board of a Bureau school, the Secretary shall grant the supervisor of the school authorization to provide one or more post differential rates under subparagraph (A).

(ii) Exception

The Secretary shall disapprove, or approve with a modification, a request for authorization to provide a post differential rate if the Secretary determines for clear and convincing reasons (and advises the board in writing of those reasons) that the rate should be disapproved or decreased because the disparity of compensation between the appropriate educators or positions in the Bureau school, and the comparable educators or positions at the nearest public school, is—

(I)(aa) at least 5 percent; or

(bb) less than 5 percent; and

(II) does not affect the recruitment or retention of employees at the school.

(iii) Approval of requests

A request made under clause (i) shall be considered to be approved at the end of the 60th day after the request is received in the Central Office of the Bureau unless before that time the request is approved, approved with a modification, or disapproved by the Secretary.

(iv) Discontinuation of or decrease in rates

The Secretary or the supervisor of a Bureau school may discontinue or decrease a post differential rate provided for under this paragraph at the beginning of an academic year if—

(I) the local school board requests that such differential be discontinued or decreased; or

(II) the Secretary or the supervisor, respectively, determines for clear and convincing reasons (and advises the board in writing of those reasons) that there is no disparity of compensation that would affect the recruitment or retention of employees at the school after the differential is discontinued or decreased.

(v) Reports

On or before February 1 of each year, the Secretary shall submit to Congress a report describing the requests and approvals of authorization made under this paragraph during the previous year and listing the positions receiving post differential rates under contracts entered into under those authorizations.

(h) Liquidation of remaining leave upon termination

Upon termination of employment with the Bureau, any annual leave remaining to the credit of an individual covered by this section shall be liquidated in accordance with sections 5551(a) and 6306 of title 5, except that leave earned or accrued under regulations promulgated pursuant to subsection (b)(10) of this section shall not be so liquidated.

(i) Transfer of remaining sick leave upon transfer, promotion, or reemployment

In the case of any educator who is transferred, promoted, or reappointed, without break in service, to a position in the Federal Government under a different leave system, any remaining

[3] See References in Text note below.

leave to the credit of such person earned or credited under the regulations promulgated pursuant to subsection (b)(10) of this section shall be transferred to such person's credit in the employing agency on an adjusted basis in accordance with regulations which shall be promulgated by the Office of Personnel Management.

(j) Ineligibility for employment of voluntarily terminated educators

An educator who voluntarily terminates employment with the Bureau before the expiration of the existing employment contract between such educator and the Bureau shall not be eligible to be employed in another education position in the Bureau during the remainder of the term of such contract.

(k) Dual compensation

In the case of any educator employed in an education position described in subsection (*l*)(1)(A)[4] of this section who—

(1) is employed at the close of a school year;

(2) agrees in writing to serve in such position for the next school year; and

(3) is employed in another position during the recess period immediately preceding such next school year, or during such recess period receives additional compensation referred to in section 5533 of title 5, relating to dual compensation,

shall not apply to such educator by reason of any such employment during a recess period for any receipt of additional compensation.

(*l*) Voluntary services

(1) In general

Notwithstanding section 1342 of title 31, the Secretary may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau schools.

(2) Federal employee protection

Nothing in this chapter requires Federal employees to work without compensation or allows the use of volunteer services to displace or replace Federal employees.

(3) Federal status

An individual providing volunteer services under this section is a Federal employee only for purposes of chapter 81 of title 5 and chapter 171 of title 28.

(m) Proration of pay

(1) Election of employee

(A) In general

Notwithstanding any other provision of law, including laws relating to dual compensation, the Secretary, at the election of the employee, shall prorate the salary of an employee employed in an education position for the academic school year over the entire 12-month period.

(B) Election

Each educator employed for the academic school year shall annually elect to be paid on a 12-month basis or for those months while school is in session.

(C) No loss of pay or benefits

No educator shall suffer a loss of pay or benefits, including benefits under unemployment or other Federal or federally assisted programs, because of such election.

(2) Change of election

During the course of such year the employee may change election once.

(3) Lump sum payment

That portion of the employee's pay which would be paid between academic school years may be paid in a lump sum at the election of the employee.

(4) Nonapplicability

This subsection applies to those individuals employed under the provisions of this section or title 5.

(5) Definitions

For purposes of this subsection, the terms ''educator'' and ''education position'' have the meanings contained in paragraphs (1) and (2) of subsection (*o*) of this section.

(n) Extracurricular activities

(1) Stipend

(A) In general

Notwithstanding any other provision of law, the Secretary may provide, for each Bureau area, a stipend in lieu of overtime premium pay or compensatory time off.

(B) Provision to employees

Any employee of the Bureau who performs additional activities to provide services to students or otherwise support the school's academic and social programs may elect to be compensated for all such work on the basis of the stipend.

(C) Nature of stipend

Such stipend shall be paid as a supplement to the employee's base pay.

(2) Election not to receive stipend

If an employee elects not to be compensated through the stipend established by this subsection, the appropriate provisions of title 5 shall apply.

(3) Applicability of subsection

This subsection applies to all Bureau employees, regardless of whether the employee is employed under this section or title 5.

(*o*) Definitions

In this section:

(1) Education position

The term ''education position'' means a position in the Bureau the duties and responsibilities of which—

(A)(i) are performed on a school year basis principally in a Bureau school; and

(ii) involve—

(I) classroom or other instruction or the supervision or direction of classroom or other instruction;

(II) any activity (other than teaching) which requires academic credits in educational theory and practice equal to the

[4] So in original. Subsec. (*l*)(1) of this section does not contain subpars.

academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education;

(III) any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(IV) support services at, or associated with, the site of the school; or

(B) are performed at the agency level of the Bureau and involve the implementation of education-related programs other than the position for agency superintendent for education.

(2) Educator

The term ''educator'' means an individual whose services are required, or who is employed, in an education position.

(p) Covered individuals; election

This section shall apply with respect to any educator hired after November 1, 1979 (and to any educator who elected for coverage under that provision after November 1, 1979) and to the position in which such individual is employed. The enactment of this section shall not affect the continued employment of an individual employed on October 31, 1979, in an education position, or such person's right to receive the compensation attached to such position.

(q) Furlough without consent

(1) In general

An educator who was employed in an education position on October 31, 1979, who was eligible to make an election under subsection (p)[5] at that time, and who did not make the election under such subsection, may not be placed on furlough (within the meaning of section 7511(a)(5) of title 5,[6] without the consent of such educator for an aggregate of more than 4 weeks within the same calendar year, unless—

(A) the supervisor, with the approval of the local school board (or of the education line officer upon appeal under paragraph (2)), of the Bureau school at which such educator provides services determines that a longer period of furlough is necessary due to an insufficient amount of funds available for personnel compensation at such school, as determined under the financial plan process as determined under section 2009(b)[7] of this title; and

(B) all educators (other than principals and clerical employees) providing services at such Bureau school are placed on furloughs of equal length, except that the supervisor, with the approval of the local school board (or of the agency education line officer upon appeal under paragraph (2)), may continue one or more educators in pay status if—

(i) such educators are needed to operate summer programs, attend summer training sessions, or participate in special activities including curriculum development committees; and

(ii) such educators are selected based upon such educator's qualifications after public notice of the minimum qualifications reasonably necessary and without discrimination as to supervisory, nonsupervisory, or other status of the educators who apply.

(2) Appeals

The supervisor of a Bureau school may appeal to the appropriate agency education line officer any refusal by the local school board to approve any determination of the supervisor that is described in paragraph (1)(A) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be approved. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the education line officer may, for good cause, approve the determination of the supervisor. The educational line officer shall transmit the determination of such appeal in the form of a written opinion to such local school board and to the supervisor identifying the reasons for approving such determination.

(r) Stipends

The Secretary is authorized to provide annual stipends to teachers who become certified by the National Board of Professional Teaching Standards, the National Council on Teacher Quality, or other nationally recognized certification or credentialing organizations.

(Pub. L. 95–561, title XI, § 1132, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2044.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (g)(1)(A)(i), is set out under section 5332 of Title 5, Government Organization and Employees.

The Defense Department Overseas Teachers Pay and Personnel Practices Act, referred to in subsec. (g)(1)(B), is Pub. L. 86–91, July 17, 1959, 73 Stat. 213, as amended, which is classified generally to chapter 25 (§ 901 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 901 of Title 20 and Tables.

Subsection (p), referred to in subsecs. (g)(1)(D)(ii) and (q)(1), probably should be a reference to subsec. (*o*) of prior section 1131 of Pub. L. 95–561 which was classified to section 2011 of this title prior to the general amendment of this chapter by Pub. L. 103–382. See Prior Provisions note set out under section 2011 of this title.

PRIOR PROVISIONS

A prior section 2012, Pub. L. 95–561, title XI, § 1132, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4002; amended Pub. L. 105–362, title VIII, § 801(c)(3), Nov. 10, 1998, 112 Stat. 3288, related to education personnel, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2012, Pub. L. 95–561, title XI, § 1132, Nov. 1, 1978, 92 Stat. 2326; Pub. L. 96–46, § 2(b)(9), Aug. 6, 1979, 93 Stat. 341; Pub. L. 98–511, title V, § 508, Oct. 19, 1984, 98 Stat. 2397, related to establishment of a computerized management information system, prior to the general amendment of this chapter by Pub. L. 103–382.

[5] See References in Text note below.

[6] So in original. The comma probably should be a closing parenthesis.

[7] So in original. Probably should be section ''2010(b)''.

ADJUSTMENTS TO RATES OF BASIC COMPENSATION OR ANNUAL SALARY RATES FOR EDUCATION POSITIONS

Pub. L. 104–208, div. A, title I, § 101(d) [title I], Sept. 30, 1996, 110 Stat. 3009–181, 3009–193, provided in part: ''That in fiscal year 1997 and thereafter, notwithstanding the provisions of [former] 25 U.S.C. 2012(h)(1)(A) and (B) [see now 25 U.S.C. 2012(g)(1)(A), (B)], upon the recommendation of either (i) a local school board and school supervisor for an education position in a Bureau of Indian Affairs operated school, or (ii) an Agency school board and education line officer for an Agency education position, the Secretary [of the Interior] shall establish adjustments to the rates of basic compensation or annual salary rates established under [former] 25 U.S.C. 2012(h)(1)(A) and (B) for education positions at the school or the Agency, at a level not less than that for comparable positions in the nearest public school district, and the adjustment shall be deemed to be a change to basic pay and shall not be subject to collective bargaining: *Provided further*, That any reduction to rates of basic compensation or annual salary rates below the rates established under [former] 25 U.S.C. 2012(h)(1)(A) and (B) shall apply only to educators appointed after June 30, 1997, and shall not affect the right of an individual employed on June 30, 1997, in an education position, to receive the compensation attached to such position under [former] 25 U.S.C. 2012(h)(1)(A) and (B) so long as the individual remains in the same position at the same school''.

Similar provisions were contained in the following prior appropriation act:

Pub. L. 104–134, title I, § 101(c) [title I], Apr. 26, 1996, 110 Stat. 1321–156, 1321–171; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 105–83, title I, Nov. 14, 1997, 111 Stat. 1555, provided in part: ''That beginning in fiscal year 1998 and thereafter and notwithstanding [former] 25 U.S.C. 2012(h)(1)(B) [see now 25 U.S.C. 2012(g)(1)(B)], when the rates of basic compensation for teachers and counselors at Bureau-operated schools are established at the rates of basic compensation applicable to comparable positions in overseas schools under the Defense Department Overseas Teachers Pay and Personnel Practices Act [20 U.S.C. 901 et seq.], such rates shall become effective with the start of the next academic year following the issuance of the Department of Defense salary schedule and shall not be effected retroactively''.

Similar provisions were contained in the following prior appropriation act:

Pub. L. 104–208, div. A, title I, § 101(d) [title I], Sept. 30, 1996, 110 Stat. 3009–181, 3009–193.

§ 2013. Computerized management information system

(a) In general

Not later than 12 months after January 8, 2002, the Secretary shall update the computerized management information system within the Office. The information to be updated shall include information regarding—

(1) student enrollment;
(2) curricula;
(3) staffing;
(4) facilities;
(5) community demographics;
(6) student assessment information;
(7) information on the administrative and program costs attributable to each Bureau program, divided into discrete elements;
(8) relevant reports;
(9) personnel records;
(10) finance and payroll; and
(11) such other items as the Secretary determines to be appropriate.

(b) Implementation of system

Not later than July 1, 2003, the Secretary shall complete the implementation of the updated computerized management information system at each Bureau field office and Bureau-funded school.

(Pub. L. 95–561, title XI, § 1133, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2055.)

PRIOR PROVISIONS

A prior section 2013, Pub. L. 95–561, title XI, § 1133, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4010, related to management information system, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2013, Pub. L. 95–561, title XI, § 1133, Nov. 1, 1978, 92 Stat. 2327, related to Bureau education policies, practices, and procedures, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2014. Recruitment of Indian educators

The Secretary shall institute a policy for the recruitment of qualified Indian educators and a detailed plan to promote employees from within the Bureau. Such plan shall include opportunities for acquiring work experience prior to actual work assignment.

(Pub. L. 95–561, title XI, § 1134, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2055.)

PRIOR PROVISIONS

A prior section 2014, Pub. L. 95–561, title XI, § 1134, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4010, related to Bureau education policies, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2014, Pub. L. 95–561, title XI, § 1134, Nov. 1, 1978, 92 Stat. 2327, related to uniform education procedures and practices by Bureau divisions, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2015. Annual report; audits

(a) Annual reports

The Secretary shall submit to each appropriate committee of Congress, all Bureau-funded schools, and the tribal governing bodies of such schools, a detailed annual report on the state of education within the Bureau, and any problems encountered in Indian education during the period covered by the report, that includes—

(1) suggestions for the improvement of the Bureau educational system and for increasing tribal or local Indian control of such system; and
(2) information on the status of tribally controlled community colleges.

(b) Budget request

The annual budget request for the education programs of the Bureau, as submitted as part of the President's next annual budget request under section 1105 of title 31 shall include the plans required by sections 2001(c), 2002(c), and 2004(c)[1] of this title.

(c) Financial and compliance audits

The Inspector General of the Department of the Interior shall establish a system to ensure that financial and compliance audits, based upon the extent to which a school described in subsection (a) of this section has complied with the local financial plan under section 2010 of this

[1] So in original. Probably should be ''2005(c)''.

title, are conducted of each Bureau-operated school at least once every 3 years.

(d) Administrative evaluation of schools

The Director shall, at least once every 3 to 5 years, conduct a comprehensive evaluation of Bureau-operated schools. Such evaluation shall be in addition to any other program review or evaluation that may be required under Federal law.

(Pub. L. 95–561, title XI, § 1135, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2056.)

PRIOR PROVISIONS

A prior section 2015, Pub. L. 95–561, title XI, § 1135, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4010, related to uniform education procedures and practices, prior to the general amendment of this chapter by Pub. L. 107–110.

Another prior section 2015, Pub. L. 95–561, title XI, § 1135, Nov. 1, 1978, 92 Stat. 2327, related to recruitment policy for Indian educators and promotion plan for Bureau employees, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2016. Rights of Indian students

The Secretary shall prescribe such rules and regulations as are necessary to ensure the constitutional and civil rights of Indian students attending Bureau-funded schools, including such students' rights to—

(1) privacy under the laws of the United States;

(2) freedom of religion and expression; and

(3) due process in connection with disciplinary actions, suspensions, and expulsions.

(Pub. L. 95–561, title XI, § 1136, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2056.)

PRIOR PROVISIONS

A prior section 2016, Pub. L. 95–561, title XI, § 1136, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4010, related to recruitment of Indian educators, prior to the general amendment of this chapter by Pub. L. 107–110. See section 2014 of this title.

Another prior section 2016, Pub. L. 95–561, title XI, § 1136, Nov. 1, 1978, 92 Stat. 2327; Pub. L. 97–375, title II, § 208(b), Dec. 21, 1982, 96 Stat. 1825; Pub. L. 98–511, title V, § 509, Oct. 19, 1984, 98 Stat. 2397; Pub. L. 99–89, § 7, Aug. 15, 1985, 99 Stat. 383, related to annual reports to Congressional committees and audits, prior to the general amendment of this chapter by Pub. L. 103–382.

A prior section 2016a, Pub. L. 100–297, title VI, § 6210, Apr. 28, 1988, 102 Stat. 427, directed Assistant Secretary of the Interior for Bureau of Indian Affairs to submit to appropriate committees of Congress, the President, and the Secretary by September 30 of every other year a report on education of Indian children, prior to repeal by Pub. L. 100–427, § 27, Sept. 9, 1988, 102 Stat. 1614.

§ 2017. Regulations

(a) Promulgation

(1) In general

The Secretary may promulgate only such regulations—

(A) as are necessary to ensure compliance with the specific provisions of this chapter; and

(B) as the Secretary is authorized to promulgate pursuant to section 2510 of this title.[1]

[1] So in original. Probably should be section "2509".

(2) Publication

In promulgating the regulations, the Secretary shall—

(A) publish proposed regulations in the Federal Register; and

(B) provide a period of not less than 120 days for public comment and consultation on the regulations.

(3) Citation

The regulations shall contain, immediately following each regulatory section, a citation to any statutory provision providing authority to promulgate such regulatory section.

(b) Miscellaneous

The provisions of this Act shall supersede any conflicting provisions of law (including any conflicting regulations) in effect on the day before the date of enactment of this Act and the Secretary is authorized to repeal any regulation inconsistent with the provisions of this Act.

(Pub. L. 95–561, title XI, § 1137, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2056.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), means Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

PRIOR PROVISIONS

A prior section 2017, Pub. L. 95–561, title XI, § 1137, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4011; amended Pub. L. 105–244, title IX, § 901(d), Oct. 7, 1998, 112 Stat. 1828; Pub. L. 105–362, title VIII, § 801(c)(4), Nov. 10, 1998, 112 Stat. 3288, related to biennial report, prior to the general amendment of this chapter by Pub. L. 107–110. See section 2015 of this title.

Another prior section 2017, Pub. L. 95–561, title XI, § 1137, Nov. 1, 1978, 92 Stat. 2327, related to constitutional and civil rights of Indian children attending Bureau schools, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2018. Regional meetings and negotiated rulemaking

(a) Regional meetings

Prior to publishing any proposed regulations under subsection (b)(1) of this section, and prior to establishing the negotiated rulemaking committee under subsection (b)(3) of this section, the Secretary shall convene regional meetings to consult with personnel of the Office of Indian Education Programs, educators at Bureau schools, and tribal officials, parents, teachers, administrators, and school board members of tribes served by Bureau-funded schools to provide guidance to the Secretary on the content of regulations authorized to be promulgated under this chapter and the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.].

(b) Negotiated rulemaking

(1) In general

Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary shall promulgate regulations authorized under subsection (a) of this section and under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.], in

accordance with the negotiated rulemaking procedures provided for under subchapter III of chapter 5 of title 5, and shall publish final regulations in the Federal Register.

(2) Notification to Congress

If draft regulations implementing this chapter and the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.] are not promulgated in final form within 18 months after January 8, 2002, the Secretary shall notify the appropriate committees of Congress of which draft regulations were not promulgated in final form by the deadline and the reason such final regulations were not promulgated.

(3) Rulemaking committee

The Secretary shall establish a negotiated rulemaking committee to carry out this subsection. In establishing such committee, the Secretary shall—

(A) apply the procedures provided for under subchapter III of chapter 5 of title 5 in a manner that reflects the unique government-to-government relationship between Indian tribes and the United States;

(B) ensure that the membership of the committee includes only representatives of the Federal Government and of tribes served by Bureau-funded schools;

(C) select the tribal representatives of the committee from among individuals nominated by the representatives of the tribal and tribally operated schools;

(D) ensure, to the maximum extent possible, that the tribal representative membership on the committee reflects the proportionate share of students from tribes served by the Bureau-funded school system; and

(E) comply with the Federal Advisory Committee Act (5 U.S.C. App.).

(4) Special rule

The Secretary shall carry out this section using the general administrative funds of the Department of the Interior. In accordance with subchapter III of chapter 5 of title 5 and section 7(d) of the Federal Advisory Committee Act, payment of costs associated with negotiated rulemaking shall include the reasonable expenses of committee members.

(c) Application of section

(1) Supremacy of provisions

The provisions of this section shall supersede any conflicting regulations in effect on the day before the date of enactment of this chapter, and the Secretary may repeal any regulation that is inconsistent with the provisions of this chapter.

(2) Modifications

The Secretary may modify regulations promulgated under this section or the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.], only in accordance with this section.

(Pub. L. 95–561, title XI, § 1138, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2057.)

REFERENCES IN TEXT

The Tribally Controlled Schools Act of 1988, referred to in subsecs. (a), (b)(1), (2), and (c)(2), is part B (§ 5201–5212) of title V of Pub. L. 100–297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§ 2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (b)(3)(E), (4), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The date of enactment of this chapter, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 107–110, which amended this chapter generally and was approved Jan. 8, 2002.

PRIOR PROVISIONS

A prior section 2018, Pub. L. 95–561, title XI, § 1138, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4011, related to rights of Indian students, prior to the general amendment of this chapter by Pub. L. 107–110. See section 2016 of this title.

Another prior section 2018, Pub. L. 95–561, title XI, § 1138, Nov. 1, 1978, 92 Stat. 2327; Pub. L. 98–511, title V, § 510, Oct. 19, 1984, 98 Stat. 2397, related to regulations implementing administrative provisions, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2019. Early childhood development program

(a) In general

The Secretary shall provide grants to tribes, tribal organizations, and consortia of tribes and tribal organizations to fund early childhood development programs that are operated by such tribes, organizations, or consortia.

(b) Amount of grants

(1) In general

The total amount of the grants provided under subsection (a) of this section with respect to each tribe, tribal organization, or consortium of tribes or tribal organizations for each fiscal year shall be equal to the amount which bears the same relationship to the total amount appropriated under the authority of subsection (g) of this section for such fiscal year (less amounts provided under subsection (f) of this section) as—

(A) the total number of children under 6 years of age who are members of—

(i) such tribe;

(ii) the tribe that authorized such tribal organization; or

(iii) any tribe that—

(I) is a member of such consortium; or

(II) authorizes any tribal organization that is a member of such consortium;

bears to

(B) the total number of all children under 6 years of age who are members of any tribe that—

(i) is eligible to receive funds under subsection (a) of this section;

(ii) is a member of a consortium that is eligible to receive such funds; or

(iii) authorizes a tribal organization that is eligible to receive such funds.

(2) Limitation

No grant may be provided under subsection (a) of this section—

(A) to any tribe that has less than 500 members;

(B) to any tribal organization which is authorized—

(i) by only one tribe that has less than 500 members; or

(ii) by one or more tribes that have a combined total membership of less than 500 members; or

(C) to any consortium composed of tribes, or tribal organizations authorized by tribes, that have a combined total tribal membership of less than 500 members.

(c) Application

(1) In general

A grant may be provided under subsection (a) of this section to a tribe, tribal organization, or consortium of tribes and tribal organizations only if the tribe, organization, or consortium submits to the Secretary an application for the grant at such time and in such form as the Secretary shall prescribe.

(2) Contents

Applications submitted under paragraph (1) shall set forth the early childhood development program that the applicant desires to operate.

(d) Requirement of programs funded

The early childhood development programs that are funded by grants provided under subsection (a) of this section—

(1) shall coordinate existing programs and may provide services that meet identified needs of parents and children under 6 years of age which are not being met by existing programs, including—

(A) prenatal care;

(B) nutrition education;

(C) health education and screening;

(D) family literacy services;

(E) educational testing; and

(F) other educational services;

(2) may include instruction in the language, art, and culture of the tribe; and

(3) shall provide for periodic assessment of the program.

(e) Coordination of family literacy programs

Family literacy programs operated under this section and other family literacy programs operated by the Bureau of Indian Affairs shall be coordinated with family literacy programs for Indian children under part B of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6361 et seq.] in order to avoid duplication and to encourage the dissemination of information on quality family literacy programs serving Indians.

(f) Administrative costs

The Secretary shall, out of funds appropriated under subsection (g) of this section, include in the grants provided under subsection (a) of this section amounts for administrative costs incurred by the tribe, tribal organization, or consortium of tribes in establishing and maintaining the early childhood development program.

(g) Authorization of appropriations

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

(Pub. L. 95–561, title XI, § 1139, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2058.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (e), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Part B of title I of the Act is classified generally to part B (§ 6361 et seq.) of subchapter I of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 2019, Pub. L. 95–561, title XI, § 1139, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4011, related to promulgation of regulations, prior to repeal by Pub. L. 105–362, title VIII, § 801(c)(5), Nov. 10, 1998, 112 Stat. 3288. See section 2017 of this title.

Another prior section 2019, Pub. L. 95–561, title XI, § 1139, Nov. 1, 1978, 92 Stat. 2328; Pub. L. 100–297, title V, § 5117, Apr. 28, 1988, 102 Stat. 382; Pub. L. 100–427, § 1(c)(1), (2), Sept. 9, 1988, 102 Stat. 1603; Pub. L. 101–301, § 5(a), May 24, 1990, 104 Stat. 207, defined terms used in this chapter, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2020. Tribal departments or divisions of education

(a) In general

Subject to the availability of appropriations, the Secretary shall make grants and provide technical assistance to tribes for the development and operation of tribal departments or divisions of education for the purpose of planning and coordinating all educational programs of the tribe.

(b) Applications

For a tribe to be eligible to receive a grant under this section, the governing body of the tribe shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) Diversity

The Secretary shall award grants under this section in a manner that fosters geographic and population diversity.

(d) Use

Tribes that receive grants under this section shall use the funds made available through the grants—

(1) to facilitate tribal control in all matters relating to the education of Indian children on reservations (and on former Indian reservations in Oklahoma);

(2) to provide for the development of coordinated educational programs (including all preschool, elementary, secondary, and higher or vocational educational programs funded by tribal, Federal, or other sources) on reservations (and on former Indian reservations in Oklahoma) by encouraging tribal administrative support of all Bureau-funded educational programs as well as encouraging tribal cooperation and coordination with entities carrying out all educational programs receiving financial support from other Federal agencies, State agencies, or private entities; and

(3) to provide for the development and enforcement of tribal educational codes, including tribal educational policies and tribal standards applicable to curriculum, personnel, students, facilities, and support programs.

(e) Priorities

In making grants under this section, the Secretary shall give priority to any application that—

(1) includes—

(A) assurances that the applicant serves three or more separate Bureau-funded schools; and

(B) assurances from the applicant that the tribal department of education to be funded under this section will provide coordinating services and technical assistance to all of such schools;

(2) includes assurances that all education programs for which funds are provided by such a contract or grant will be monitored and audited, by or through the tribal department of education, to ensure that the programs meet the requirements of law; and

(3) provides a plan and schedule that—

(A) provides for—

(i) the assumption, by the tribal department of education, of all assets and functions of the Bureau agency office associated with the tribe, to the extent the assets and functions relate to education; and

(ii) the termination by the Bureau of such functions and office at the time of such assumption; and

(B) provides that the assumption shall occur over the term of the grant made under this section, except that, when mutually agreeable to the tribal governing body and the Assistant Secretary, the period in which such assumption is to occur may be modified, reduced, or extended after the initial year of the grant.

(f) Time period of grant

Subject to the availability of appropriated funds, a grant provided under this section shall be provided for a period of 3 years. If the performance of the grant recipient is satisfactory to the Secretary, the grant may be renewed for additional 3-year terms.

(g) Terms, conditions, or requirements

A tribe that receives a grant under this section shall comply with regulations relating to grants made under section 450h(a) of this title that are in effect on the date that the tribal governing body submits the application for the grant under subsection (b) of this section. The Secretary shall not impose any terms, conditions, or requirements on the provision of grants under this section that are not specified in this section.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section $2,000,000.

(Pub. L. 95–561, title XI, § 1140, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2059.)

PRIOR PROVISIONS

A prior section 2020, Pub. L. 95–561, title XI, § 1140, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4011, related to voluntary services, prior to the general amendment of this chapter by Pub. L. 107–110. See section 2012 of this title.

Another prior section 2020, Pub. L. 95–561, title XI, § 1140, as added Pub. L. 98–511, title V, § 511, Oct. 19, 1984, 98 Stat. 2397; amended Pub. L. 99–89, § 8, Aug. 15, 1985, 99 Stat. 383, related to voluntary services, prior to the general amendment of this chapter by Pub. L. 103–382.

§ 2021. Definitions

For the purposes of this chapter, unless otherwise specified:

(1) Agency school board

The term ''agency school board'' means a body—

(A) the members of which are appointed by all of the school boards of the schools located within an agency, including schools operated under contract or grant; and

(B) the number of such members is determined by the Secretary, in consultation with the affected tribes;

except that, in agencies serving a single school, the school board of such school shall fulfill these duties, and in agencies having schools or a school operated under contract or grant, one such member at least shall be from such a school.

(2) Bureau

The term ''Bureau'' means the Bureau of Indian Affairs of the Department of the Interior.

(3) Bureau-funded school

The term ''Bureau-funded school'' means—

(A) a Bureau school;

(B) a contract or grant school; or

(C) a school for which assistance is provided under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.].

(4) Bureau school

The term ''Bureau school'' means a Bureau-operated elementary or secondary day or boarding school or a Bureau-operated dormitory for students attending a school other than a Bureau school.

(5) Complementary educational facilities

The term ''complementary educational facilities'' means educational program functional spaces such as libraries, gymnasiums, and cafeterias.

(6) Contract or grant school

The term ''contract or grant school'' means an elementary school, secondary school, or dormitory that receives financial assistance for its operation under a contract, grant, or agreement with the Bureau under section 450f, 450h(a), or 458d of this title, or under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.].

(7) Director

The term ''Director'' means the Director of the Office of Indian Education Programs.

(8) Education line officer

The term ''education line officer'' means a member of the education personnel under the supervision of the Director of the Office, whether located in a central, area, or agency office.

(9) Family literacy services

The term ''family literacy services'' has the meaning given that term in section 7801[1] of title 20.

[1] See References in Text note below.

(10) Financial plan

The term ''financial plan'' means a plan of services provided by each Bureau school.

(11) Indian organization

The term ''Indian organization'' means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized tribes.

(12) Inherently Federal functions

The term ''inherently Federal functions'' means functions and responsibilities which, under section 2006(c) of this title, are noncontractable, including—

(A) the allocation and obligation of Federal funds and determinations as to the amounts of expenditures;

(B) the administration of Federal personnel laws for Federal employees;

(C) the administration of Federal contracting and grant laws, including the monitoring and auditing of contracts and grants in order to maintain the continuing trust, programmatic, and fiscal responsibilities of the Secretary;

(D) the conducting of administrative hearings and deciding of administrative appeals;

(E) the determination of the Secretary's views and recommendations concerning administrative appeals or litigation and the representation of the Secretary in administrative appeals and litigation;

(F) the issuance of Federal regulations and policies as well as any documents published in the Federal Register;

(G) reporting to Congress and the President;

(H) the formulation of the Secretary's and the President's policies and their budgetary and legislative recommendations and views; and

(I) the nondelegable statutory duties of the Secretary relating to trust resources.

(13) Local educational agency

The term ''local educational agency'' means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, or independent or other school district located within a State, and includes any State agency that directly operates and maintains facilities for providing free public education.

(14) Local school board

The term ''local school board'', when used with respect to a Bureau school, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school, except that, for a school serving a substantial number of students from different tribes—

(A) the members of the body shall be appointed by the tribal governing bodies of the tribes affected; and

(B) the number of such members shall be determined by the Secretary in consultation with the affected tribes.

(15) Office

The term ''Office'' means the Office of Indian Education Programs within the Bureau.

(16) Regulation

(A) In general

The term ''regulation'' means any part of a statement of general or particular applicability of the Secretary designed to carry out, interpret, or prescribe law or policy in carrying out this Act.

(B) Rule of construction

Nothing in subparagraph (A) or any other provision of this chapter shall be construed to prohibit the Secretary from issuing guidance, internal directives, or other documents similar to the documents found in the Indian Affairs Manual of the Bureau of Indian Affairs.

(17) Secretary

The term ''Secretary'' means the Secretary of the Interior.

(18) Supervisor

The term ''supervisor'' means the individual in the position of ultimate authority at a Bureau school.

(19) Tribal governing body

The term ''tribal governing body'' means, with respect to any school, the tribal governing body, or tribal governing bodies, that represent at least 90 percent of the students served by such school.

(20) Tribe

The term ''tribe'' means any Indian tribe, band, nation, or other organized group or community, including an Alaska Native Regional Corporation or Village Corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Pub. L. 95–561, title XI, § 1141, as added Pub. L. 107–110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2061.)

REFERENCES IN TEXT

The Tribally Controlled Schools Act of 1988, referred to in pars. (3)(C) and (6), is part B (§ 5201–5212) of title V of Pub. L. 100–297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§ 2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

Section 7801 of title 20, referred to in par. (9), was in the original ''section 8101 of the Elementary and Secondary Education Act of 1965'', meaning section 8101 of Pub. L. 89–10, which was translated as if it referred to section 9101 of that Act to reflect the probable intent of Congress, because section 8101 was repealed by Pub. L. 107–110, title X, § 1011(5)(C), Jan. 8, 2002, 115 Stat. 1986, and section 9101, as added by Pub. L. 107–110, title IX, § 901, Jan. 8, 2002, 115 Stat. 1956, defines ''family literacy services''.

This Act, referred to in par. (16)(A), means Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

This chapter, referred to in par. (16)(B), was in the original ''this title'', meaning title XI (§ 1101 et seq.) of Pub. L. 95–561, as amended, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

The Alaska Native Claims Settlement Act, referred to in par. (20), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

PRIOR PROVISIONS

A prior section 2021, Pub. L. 95–561, title XI, § 1141, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4012, related to proration of pay, prior to the general amendment of this chapter by Pub. L. 107–110. See section 2012 of this title.

Another prior section 2021, Pub. L. 95–561, title XI, § 1140A, formerly § 1141, as added Pub. L. 98–511, title V, § 512, Oct. 19, 1984, 98 Stat. 2398; renumbered § 1140A and amended Pub. L. 99–89, § 9(a)(1), (b), Aug. 15, 1985, 99 Stat. 383, related to proration of pay, prior to the general amendment of this chapter by Pub. L. 103–382.

A prior section 2022, Pub. L. 95–561, title XI, § 1142, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4012, related to extracurricular activities, prior to the general amendment of this chapter by Pub. L. 107–110. See section 2012 of this title.

Another prior section 2022 and prior sections 2022a and 2022b were omitted in the general amendment of this chapter by Pub. L. 103–382.

Section 2022, Pub. L. 95–561, title XI, § 1140B, formerly § 1142, as added Pub. L. 98–511, title V, § 512, Oct. 19, 1984, 98 Stat. 2398; renumbered § 1140B, and amended Pub. L. 99–89, § 9(a)(1), (c), Aug. 15, 1985, 99 Stat. 383, related to extracurricular activities.

Section 2022a, Pub. L. 95–561, title XI, § 1141, as added Pub. L. 100–297, title V, § 5116(2), Apr. 28, 1988, 102 Stat. 381, related to early childhood development program.

Section 2022b, Pub. L. 95–561, title XI, § 1142, as added Pub. L. 100–297, title V, § 5119, Apr. 28, 1988, 102 Stat. 383, related to tribal departments of education.

A prior section 2023, Pub. L. 95–561, title XI, § 1143, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4012; amended Pub. L. 106–554, § 1(a)(4) [div. B, title XVI, § 1607(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–335, related to early childhood development program, prior to the general amendment of this chapter by Pub. L. 107–110. See section 2019 of this title.

Another prior section 2023, Pub. L. 95–561, title XI, § 1143, as added Pub. L. 98–511, title V, § 512, Oct. 19, 1984, 98 Stat. 2398, related to employee housing, rental rates, and waiver of rentals during non-session periods and non-pay status, prior to repeal by Pub. L. 99–89, § 9(a)(2), Aug. 15, 1985, 99 Stat. 383.

Prior sections 2024 to 2026 were omitted in the general amendment of this chapter by Pub. L. 107–110.

Section 2024, Pub. L. 95–561, title XI, § 1144, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4013; amended Pub. L. 105–244, title IX, § 901(d), Oct. 7, 1998, 112 Stat. 1828, related to tribal departments of education. See section 2020 of this title.

Section 2025, Pub. L. 95–561, title XI, § 1145, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4015, related to payments to grantees.

Section 2026, Pub. L. 95–561, title XI, § 1146, as added Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 4015; amended Pub. L. 106–554, § 1(a)(4) [div. B, title XVI, § 1607(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–335, defined terms. See section 2021 of this title.

CHAPTER 23—DEVELOPMENT OF TRIBAL MINERAL RESOURCES

Sec.
2101. Definitions.
2102. Minerals Agreements.
2103. Secretary's determination on Minerals Agreements.
2104. Secretary's review of prior Minerals Agreements.
2105. Effect of other provisions.
2106. Assistance to tribes or individuals during Minerals Agreement negotiations.
2107. Regulations; consultation with Indian organizations; pending agreements.
2108. Tribal right to develop mineral resources.

§ 2101. Definitions

For the purposes of this chapter, the term—

(1) ''Indian'' means any individual Indian or Alaska Native who owns land or interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States;

(2) ''Indian tribe'' means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in land title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; and

(3) ''Secretary'' means the Secretary of the Interior.

(Pub. L. 97–382, § 2, Dec. 22, 1982, 96 Stat. 1938.)

SHORT TITLE

Section 1 of Pub. L. 97–382 provided: ''That this Act [enacting this chapter] may be cited as the 'Indian Mineral Development Act of 1982'.''

§ 2102. Minerals Agreements

(a) Authorization for tribes; approval by Secretary

Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into any joint venture, operating, production sharing, service, managerial, lease or other agreement, or any amendment, supplement or other modification of such agreement (hereinafter referred to as a ''Minerals Agreement'') providing for the exploration for, or extraction, processing, or other development of, oil, gas, uranium, coal, geothermal, or other energy or nonenergy mineral resources (hereinafter referred to as ''mineral resources'') in which such Indian tribe owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or products of such mineral resources.

(b) Inclusion of individual holdings; approval by parties and Secretary

Any Indian owning a beneficial or restricted interest in mineral resources may include such resources in a tribal Minerals Agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

(Pub. L. 97–382, § 3, Dec. 22, 1982, 96 Stat. 1938.)

§ 2103. Secretary's determination on Minerals Agreements

(a) Time; enforcement

The Secretary shall approve or disapprove any Minerals Agreement submitted to him for ap-

proval within (1) one hundred and eighty days after submission or (2) sixty days after compliance, if required, with section 4332(2)(C) of title 42 or any other requirement of Federal law, whichever is later. Any party to such an agreement may enforce the provisions of this subsection pursuant to section 1361 of title 28.

(b) Factors for consideration; extent of required study

In approving or disapproving a Minerals Agreement, the Secretary shall determine if it is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement and shall consider, among other things, the potential economic return to the tribe; the potential environmental, social, and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement: *Provided*, That the Secretary shall not be required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a Minerals Agreement apart from that which may be required under section 4332(2)(C) of title 42.

(c) Prior notice of proposed finding; privileged information

Not later than thirty days prior to formal approval or disapproval of any Minerals Agreement, the Secretary shall provide written findings forming the basis of his intent to approve or disapprove such agreement to the affected Indian tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information possessed by the Department of the Interior regarding the terms and conditions of the Minerals Agreement, the financial return to the Indian parties thereto, or the extent, nature, value or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged proprietary information of the affected Indian or Indian tribe.

(d) Delegation; final action; appeal; burden on Secretary

The authority to disapprove agreements under this section may only be delegated to the Assistant Secretary of the Interior for Indian Affairs. The decision of the Secretary or, where authority is delegated, of the Assistant Secretary of the Interior for Indian Affairs, to disapprove a Minerals Agreement shall be deemed a final agency action. The district courts of the United States shall have jurisdiction to review the Secretary's disapproval action and shall determine the matter de novo. The burden is on the Secretary to sustain his action.

(e) Nonliability of United States; continuing obligations

Where the Secretary has approved a Minerals Agreement in compliance with the provisions of this chapter and any other applicable provision of law, the United States shall not be liable for losses sustained by a tribe or individual Indian under such agreement: *Provided*, That the Secretary shall continue to have a trust obligation to ensure that the rights of a tribe or individual Indian are protected in the event of a violation of the terms of any Minerals Agreement by any other party to such agreement: *Provided further*, That nothing in this chapter shall absolve the United States from any responsibility to Indians, including those which derive from the trust relationship and from any treaties, Executive orders, or agreement between the United States and any Indian tribe.

(Pub. L. 97–382, § 4, Dec. 22, 1982, 96 Stat. 1938.)

§ 2104. Secretary's review of prior Minerals Agreements

(a) Time; criteria; notice of modifications; time for compliance; effect of noncompliance

The Secretary shall review, within ninety days of December 22, 1982, any existing Minerals Agreement, which does not purport to be a lease, entered into by any Indian tribe and approved by the Secretary after January 1, 1975, but prior to December 22, 1982, to determine if such agreement complies with the purposes of this chapter. Such review shall be limited to the terms of the agreement and shall not address questions of the parties' compliance therewith. The Secretary shall notify the affected tribe and other parties to the agreement of any modifications necessary to bring an agreement into compliance with the purposes of this chapter. The tribe and other parties to such agreement shall within ninety days after notice make such modifications. If such modifications are not made within ninety days, the provisions of this chapter may not be used as a defense in any proceeding challenging the validity of the agreement.

(b) Review before promulgation of regulations; not Federal action

The review required by subsection (a) of this section may be performed prior to the promulgation of regulations required under section 2107 of this title and shall not be considered a Federal action within the meaning of that term in section 4332(2)(C) of title 42.

(Pub. L. 97–382, § 5, Dec. 22, 1982, 96 Stat. 1939.)

§ 2105. Effect of other provisions

Nothing in this chapter shall affect, nor shall any Minerals Agreement approved pursuant to this chapter be subject to or limited by, sections 396a to 396g of this title, or any other law authorizing the development or disposition of the mineral resources of an Indian or Indian tribe.

(Pub. L. 97–382, § 6, Dec. 22, 1982, 96 Stat. 1940.)

§ 2106. Assistance to tribes or individuals during Minerals Agreement negotiations

In carrying out the obligations of the United States, the Secretary shall ensure that upon the request of an Indian tribe or individual Indian and to the extent of his available resources, such tribe or individual Indian shall have available advice, assistance, and information during the negotiation of a Minerals Agreement. The Secretary may fulfill this responsibility either directly through the use of Federal officials and resources or indirectly by providing financial assistance to the Indian tribe or individual Indian to secure independent assistance.

(Pub. L. 97–382, § 7, Dec. 22, 1982, 96 Stat. 1940.)

§ 2107. Regulations; consultation with Indian organizations; pending agreements

Within one hundred and eighty days of December 22, 1982, the Secretary of the Interior shall promulgate rules and regulations to facilitate implementation of this chapter. The Secretary shall, to the extent practicable, consult with national and regional Indian organizations and tribes with expertise in mineral development both in the initial formulation of rules and regulations and any future revision or amendment of such rules and regulations. Where there is pending before the Secretary for his approval a Minerals Agreement of the type authorized by section 2102 of this title which was submitted prior to December 22, 1982, the Secretary shall evaluate and approve or disapprove such agreement based upon section 2103 of this title, but shall not withhold or delay such approval or disapproval on the grounds that the rules and regulations implementing this chapter have not been promulgated.

(Pub. L. 97–382, § 8, Dec. 22, 1982, 96 Stat. 1940.)

§ 2108. Tribal right to develop mineral resources

Nothing in this chapter shall impair any right of an Indian tribe organized under section 16 or 17 of the Act of June 18, 1934 (48 Stat. 987), as amended [25 U.S.C. 476, 477], to develop their mineral resources as may be provided in any constitution or charter adopted by such tribe pursuant to that Act [25 U.S.C. 461 et seq.].

(Pub. L. 97–382, § 9, Dec. 22, 1982, 96 Stat. 1940.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§ 461 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

CHAPTER 24—INDIAN LAND CONSOLIDATION

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§ 2201. Definitions

For the purpose of this chapter—

(1) ''Indian tribe'' or ''tribe'' means any Indian tribe, band, group, pueblo, or community for which, or for the members of which, the United States holds lands in trust;

(2) ''Indian'' means—

(A) any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(B) any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; and

(C) with respect to the inheritance and ownership of trust or restricted land in the State of California pursuant to section 2206 of this title, any person described in subparagraph (A) or (B) or any person who owns a trust or restricted interest in a parcel of such land in that State.[1]

(3) ''Secretary'' means the Secretary of the Interior;

(4)(i) ''trust or restricted lands'' means lands, title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation; and (ii) ''trust or restricted interest in land'' or ''trust or restricted interest in a parcel of land'' means an interest in land, the title to which interest is held in trust by the United States for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation.[1]

(5) ''heirs of the first or second degree'' means parents, children, grandchildren, grandparents, brothers and sisters of a decedent.[1]

(6) ''parcel of highly fractionated Indian land'' means a parcel of land that the Secretary, pursuant to authority under a provision of this chapter, determines to have, as evidenced by the Secretary's records at the time of the determination—

(A) 50 or more but less than 100 co-owners of undivided trust or restricted interests, and no 1 of such co-owners holds a total undivided trust or restricted interest in the parcel that is greater than 10 percent of the entire undivided ownership of the parcel; or

(B) 100 or more co-owners of undivided trust or restricted interests;

(7) the term ''land'' means any real property;

(8) ''person'' or ''individual'' means a natural person;

[1] So in original. The period probably should be a semicolon.

(9) ''eligible heirs'' means, for purposes of section 2206 of this title, any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are—

(A) Indian; or

(B) lineal descendents within 2 degrees of consanguinity of an Indian; or

(C) owners of a trust or restricted interest in a parcel of land for purposes of inheriting by descent, renunciation, or consolidation agreement under section 2206 of this title, another trust or restricted interest in such parcel from the decedent; and

(10) ''without regard to waste'' means, with respect to a life estate interest in land, that the holder of such estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

(Pub. L. 97–459, title II, § 202, Jan. 12, 1983, 96 Stat. 2517; Pub. L. 106–462, title I, § 103(1), Nov. 7, 2000, 114 Stat. 1992; Pub. L. 108–374, § 6(b), Oct. 27, 2004, 118 Stat. 1804; Pub. L. 110–453, title II, § 207(a), Dec. 2, 2008, 122 Stat. 5030.)

REFERENCES IN TEXT

The Indian Reorganization Act, referred to in par. (2)(B), is act June 18, 1934, ch. 576, 48 Stat. 984, which is classified generally to subchapter V (§ 461 et seq.) of chapter 14 of this title. The term ''Indian'' is defined for purposes of this Act in section 479 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

This chapter, referred to in par. (6), was in the original ''this Act'', which was translated as reading ''this title'', meaning title II of Pub. L. 97–459, to reflect the probable intent of Congress.

AMENDMENTS

2008—Par. (4). Pub. L. 110–453, § 207(a)(1), designated existing provisions as cls. (i) and (ii) and, in cl. (ii), substituted ''an interest in land, the title to which interest'' for ''an interest in land, title to which''.

Par. (7). Pub. L. 110–453, § 207(a)(2), added par. (7) and struck out former par. (7) which read as follows: '' 'land' means any real property, and includes within its meaning for purposes of this chapter improvements permanently affixed to real property;''.

2004—Par. (2). Pub. L. 108–374, § 6(b)(1), added par. (2) and struck out former par. (2) which read as follows: '' 'Indian' means any person who is a member of any Indian tribe or is eligible to become a member of any Indian tribe, or any person who has been found to meet the definition of 'Indian' under a provision of Federal law if the Secretary determines that using such law's definition of Indian is consistent with the purposes of this chapter;''.

Par. (4). Pub. L. 108–374, § 6(b)(2), added par. (4) and struck out former par. (4) which read as follows: '' 'trust or restricted lands' means lands, title to which is held by the United States in trust for an Indian or an Indian tribe or lands title to which is held by Indians or an Indian tribe subject to a restriction by the United States against alienation; and''.

Pars. (6) to (10). Pub. L. 108–374, § 6(b)(3), added pars. (6) to (10).

2000—Par. (1). Pub. L. 106–462, § 103(1)(A), substituted ''(1)'Indian tribe' or 'tribe' '' for ''(1) 'tribe' ''.

Par. (2). Pub. L. 106–462, § 103(1)(B), added par. (2) and struck out former par. (2) which read as follows: '' 'Indian' means any person who is a member of a tribe or any person who is recognized as an Indian by the Secretary of the Interior;''.

Par. (5). Pub. L. 106–462, § 103(1)(C)–(E), added par. (5).

NOTICE; EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–374, § 8, Oct. 27, 2004, 118 Stat. 1809, as amended by Pub. L. 109–221, title V, § 501(b)(3), May 12, 2006, 120 Stat. 344, provided that:

''(a) NOTICE.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Oct. 27, 2004], the Secretary shall notify Indian tribes and owners of trust or restricted lands of the amendments made by this Act [see Short Title of 2004 Amendment note below].

''(2) SPECIFICATIONS.—The notice required under paragraph (1) shall be designed to inform Indian owners of trust or restricted land of—

''(A) the effect of this Act and the amendments made by this Act, with emphasis on the effect of the provisions of this Act and the amendments made by this Act, on the testate disposition and intestate descent of their interests in trust or restricted land;

''(B) estate planning options available to the owners, including any opportunities for receiving estate planning assistance or advice;

''(C) the use of negotiated sales, gift deeds, land exchanges, and other transactions for consolidating the ownership of land; and

''(D) a toll-free telephone number to be used for obtaining information regarding the provisions of this Act and any trust assets of such owners.

''(3) REQUIREMENTS.—The Secretary shall provide the notice required under paragraph (1)—

''(A) by direct mail for those Indians with interests in trust and restricted lands for which the Secretary has an address for the interest holder;

''(B) through the Federal Register;

''(C) through local newspapers in areas with significant Indian populations, reservation newspapers, and newspapers that are directed at an Indian audience; and

''(D) through any other means determined appropriate by the Secretary.

''(4) CERTIFICATION.—After providing notice under this subsection, the Secretary shall—

''(A) certify that the requirements of this subsection have been met; and

''(B) publish notice of that certification in the Federal Register.

''(b) EFFECTIVE DATES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this Act [see Short Title of 2004 Amendment note below] apply on and after the date that is 1 year after the date on which the Secretary makes the certification required under subsection (a)(4) [such certification made June 20, 2005, see 70 F.R. 37107].

''(2) EXCEPTIONS.—The following provisions of law apply as of the date of enactment of this Act [Oct. 27, 2004]:

''(A) Subsections (e) and (f) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) (as amended by this Act).

''(B) Subsection (g) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) (as in effect on March 1, 2006).

''(C) The amendments made by section 4, section 5, paragraphs (1), (3), (4), (5), (6), (7), (8), (9), (10), and (11) of section 6(a), section 6(b)(3), and section 7 of this Act [see Tables for classification].''

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–157, § 1, Dec. 30, 2005, 119 Stat. 2949, provided that: ''This Act [amending sections 464, 2204 to 2206, 2212, 2214, and 2216 of this title, enacting provisions set out as a note under section 464 of this title, and amending provisions set out as a note under this section] may be cited as the 'Indian Land Probate Reform Technical Corrections Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–374, § 1, Oct. 27, 2004, 118 Stat. 1773, provided that: ''This Act [enacting sections 2220 and 2221 of

this title, amending this section and sections 348, 464, 2204 to 2206, 2212 to 2216, and 2218 of this title, and enacting provisions set out as notes under this section] may be cited as the 'American Indian Probate Reform Act of 2004'.''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–462, §1, Nov. 7, 2000, 114 Stat. 1991, provided that: ''This Act [enacting sections 2205, 2206, and 2212 to 2219 of this title, amending this section and sections 348, 372, 373, 464, 2204, and 2207 of this title, repealing sections 331 to 333, 2205, and 2206 of this title, and enacting provisions set out as notes under this section and sections 396 and 2206 of this title] may be cited as the 'Indian Land Consolidation Act Amendments of 2000'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–238, §1, Dec. 17, 1991, 105 Stat. 1908, provided that: ''This Act [amending sections 2203, 2703, and 2718 of this title, enacting provisions set out as a note under section 1437f of Title 42, The Public Health and Welfare, and repealing provisions set out as a note under section 1437f of Title 42] may be cited as the 'Technical Amendments to Various Indian Laws Act of 1991'.''

SHORT TITLE

Section 201 of title II of Pub. L. 97–459 provided that: ''This title [enacting this chapter] may be cited as the 'Indian Land Consolidation Act'.''

REGULATIONS

Pub. L. 108–374, §10, Oct. 27, 2004, 118 Stat. 1810, provided that: ''The Secretary is authorized to adopt such regulations as may be necessary to implement the provisions of this Act [see Short Title of 2004 Amendment note above].''

SEVERABILITY

Pub. L. 108–374, §9, Oct. 27, 2004, 118 Stat. 1810, as amended by Pub. L. 109–157, §8(a)(2), Dec. 30, 2005, 119 Stat. 2952, provided that: ''If any provision of this Act [see Short Title of 2004 Amendment note above] or of any amendment made by this Act, or the application of any such provision to any person or circumstance, is held to be invalid for any reason, the remainder of this Act and of amendments made by this Act, and the application of the provisions and of the amendments made by this Act to any other person or circumstance shall not be affected by such holding, except that each of subclauses (II), (III), and (IV) of section 205(c)(2)(I)(i) of the Indian Land Consolidation Act (25 U.S.C. 2204(c)(2)(I)(i)) is deemed to be inseverable from the other 2, such that if any 1 of those 3 subclauses is held to be invalid for any reason, neither of the other 2 of such subclauses shall be given effect.''

CONGRESSIONAL FINDINGS

Pub. L. 108–374, §2, Oct. 27, 2004, 118 Stat. 1773, provided that: ''Congress finds that—

''(1) the Act of February 8, 1887 (commonly known as the 'Indian General Allotment Act') (25 U.S.C. 331 et seq.), which authorized the allotment of Indian reservations, did not permit Indian allotment owners to provide for the testamentary disposition of the land that was allotted to them;

''(2) that Act provided that allotments would descend according to State law of intestate succession based on the location of the allotment;

''(3) the reliance of the Federal Government on the State law of intestate succession with respect to the descent of allotments has resulted in numerous problems affecting Indian tribes, members of Indian tribes, and the Federal Government, including—

''(A) the increasingly fractionated ownership of trust and restricted land as that land is inherited by successive generations of owners as tenants in common;

''(B) the application of different rules of intestate succession to each interest of a decedent in or to trust or restricted land if that land is located within the boundaries of more than 1 State, which application—

''(i) makes probate planning unnecessarily difficult; and

''(ii) impedes efforts to provide probate planning assistance or advice;

''(C) the absence of a uniform general probate code for trust and restricted land, which makes it difficult for Indian tribes to work cooperatively to develop tribal probate codes; and

''(D) the failure of Federal law to address or provide for many of the essential elements of general probate law, either directly or by reference, which—

''(i) is unfair to the owners of trust and restricted land (and heirs and devisees of owners); and

''(ii) makes probate planning more difficult;

''(4) a uniform Federal probate code would likely—

''(A) reduce the number of fractionated interests in trust or restricted land;

''(B) facilitate efforts to provide probate planning assistance and advice and create incentives for owners of trust and restricted land to engage in estate planning;

''(C) facilitate intertribal efforts to produce tribal probate codes in accordance with section 206 of the Indian Land Consolidation Act (25 U.S.C. 2205); and

''(D) provide essential elements of general probate law that are not applicable on the date of enactment of this Act [Oct. 27, 2004] to interests in trust or restricted land; and

''(5) the provisions of a uniform Federal probate code and other forth [sic] in this Act [see Short Title of 2004 Amendment note above] should operate to further the policy of the United States as stated in the Indian Land Consolidated Act Amendments of 2000, Public Law 106–462, [§]102, November 7, 2000, 114 Stat. 1992 [set out as a note below].''

Pub. L. 106–462, title I, §101, Nov. 7, 2000, 114 Stat. 1991, provided that: ''Congress finds that—

''(1) in the 1800's and early 1900's, the United States sought to assimilate Indian people into the surrounding non-Indian culture by allotting tribal lands to individual members of Indian tribes;

''(2) as a result of the allotment Acts and related Federal policies, over 90,000,000 acres of land have passed from tribal ownership;

''(3) many trust allotments were taken out of trust status, often without their owner's consent;

''(4) without restrictions on alienation, allotment owners were subject to exploitation and their allotments were often sold or disposed of without any tangible or enduring benefit to their owners;

''(5) the trust periods for trust allotments have been extended indefinitely;

''(6) because of the inheritance provisions in the original treaties or allotment Acts, the ownership of many of the trust allotments that have remained in trust status has become fractionated into hundreds or thousands of undivided interests, many of which represent 2 percent or less of the total interests;

''(7) Congress has authorized the acquisition of lands in trust for individual Indians, and many of those lands have also become fractionated by subsequent inheritance;

''(8) the acquisitions referred to in paragraph (7) continue to be made;

''(9) the fractional interests described in this section often provide little or no return to the beneficial owners of those interests and the administrative costs borne by the United States for those interests are inordinately high;

''(10) in Babbitt v. Youpee (117 S[.] Ct. 727 (1997)), the United States Supreme Court found the application of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) to the facts presented in that case

to be unconstitutional, forcing the Department of the Interior to address the status of thousands of undivided interests in trust and restricted lands;

''(11)(A) on February 19, 1999, the Secretary of the Interior issued a Secretarial Order which officially reopened the probate of all estates where an interest in land was ordered to escheat to an Indian tribe pursuant to section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206); and

''(B) the Secretarial Order also directed appropriate officials of the Bureau of Indian Affairs to distribute such interests 'to the rightful heirs and beneficiaries without regard to 25 U.S.C. 2206';

''(12) in the absence of comprehensive remedial legislation, the number of the fractional interests will continue to grow exponentially;

''(13) the problem of the fractionation of Indian lands described in this section is the result of a policy of the Federal Government, cannot be solved by Indian tribes, and requires a solution under Federal law.[;]

''(14) any devise or inheritance of an interest in trust or restricted Indian lands is a matter of Federal law; and

''(15) consistent with the Federal policy of tribal self-determination, the Federal Government should encourage the recognized tribal government that exercises jurisdiction over a reservation to establish a tribal probate code for that reservation.''

DECLARATION OF POLICY

Pub. L. 106–462, title I, § 102, Nov. 7, 2000, 114 Stat. 1992, provided that: ''It is the policy of the United States—

''(1) to prevent the further fractionation of trust allotments made to Indians;

''(2) to consolidate fractional interests and ownership of those interests into usable parcels;

''(3) to consolidate fractional interests in a manner that enhances tribal sovereignty;

''(4) to promote tribal self-sufficiency and self-determination; and

''(5) to reverse the effects of the allotment policy on Indian tribes.''

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 106–462, title I, § 105, Nov. 7, 2000, 114 Stat. 2007, provided that: ''There are authorized to be appropriated not to exceed $8,000,000 for fiscal year 2001 and each subsequent fiscal year to carry out the provisions of this title [enacting sections 2205, 2206, and 2212 to 2219 of this title, amending this section and sections 348, 372, 373, 464, 2204, and 2207 of this title, repealing sections 331 to 333, 2205, and 2206 of this title, and enacting provisions set out as notes under this section and section 2206 of this title] (and the amendments made by this title) that are not otherwise funded under the authority provided for in any other provision of Federal law.''

§ 2202. Other applicable provisions

The provisions of section 465 of this title shall apply to all tribes notwithstanding the provisions of section 478 of this title: *Provided*, That nothing in this section is intended to supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land for Indians with respect to any specific tribe, reservation, or state(s).

(Pub. L. 97–459, title II, § 203, Jan. 12, 1983, 96 Stat. 2517.)

§ 2203. Adoption of land consolidation plan with approval of Secretary

(a) Statement of purpose; sales or exchanges: terms and conditions

Notwithstanding any other provision of law, any tribe, acting through its governing body, is authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal landholdings: *Provided*, That—

(1) except as provided by subsection (c) of this section, the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;

(2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;

(3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;

(4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and

(5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.

(b) Conveyancing requirement; specific findings for nonexecution

The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or exchange is not in the best interest of the tribe or is not in compliance with the tribal land consolidation plan.

(c) Below market value conveyance of Cherokee Nation of Oklahoma homesites

The Secretary may execute instruments of conveyance for less than fair market value to effectuate the transfer of lands used as homesites held, on December 17, 1991, by the United States in trust for the Cherokee Nation of Oklahoma. Only the lands used as homesites, and described in the land consolidation plan of the Cherokee Nation of Oklahoma approved by the Secretary on February 6, 1987, shall be subject to this subsection.

(Pub. L. 97–459, title II, § 204, Jan. 12, 1983, 96 Stat. 2517; Pub. L. 98–608, § 1(1), Oct. 30, 1984, 98 Stat. 3171; Pub. L. 102–238, § 3, Dec. 17, 1991, 105 Stat. 1908.)

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102–238, § 3(1), substituted ''(1) except as provided by subsection (c) of this section, the sale price'' for ''(1) the sale price''.

Subsec. (c). Pub. L. 102–238, § 3(2), added subsec. (c).

1984—Subsec. (a). Pub. L. 98–608 amended subsec. (a) generally, substituting '': *Provided*, That—'' for period

at end and inserting five numbered pars., thereby correcting errors originally contained in this section as enacted by Pub. L. 97–459, the text of which had a portion of section 204 appearing in section 206 (classified to section 2205 of this title) as the result of inadvertent error in the execution of committee amendments (see House Report No. 97–908, Sept. 30, 1982) to the bill. Pub. L. 97–459 enacted subsec. (a) as ending with ''tribal landholdings.'', and included portion of section 204 containing proviso and five numbered pars. within text of section 206.

Subsec. (b). Pub. L. 98–608 included subsec. (b) within this section and substituted a period for the dash after ''tribal land consolidation plan'', thereby correcting errors originally contained in this section as enacted by Pub. L. 97–459, which, as the result of inadvertent error in the execution of committee amendments (see House Report No. 97–908, Sept. 30, 1982) to the bill, enacted subsec. (b) as part of section 206(b) of Pub. L. 97–459 and ended it with ''tribal land consolidation plan—''.

§ 2204. Purchase of trust or restricted or controlled lands at no less than fair market value; requisite conditions

(a) Purchase of land

(1) In general

Subject to subsection (b) of this section, any Indian tribe may purchase, at not less than fair market value and with the consent of the owners of the interests, part or all of the interests in—

(A) any tract of trust or restricted land within the boundaries of the reservation of the tribe; or

(B) land that is otherwise subject to the jurisdiction of the tribe.

(2) Required consent

(A) In general

The Indian tribe may purchase all interests in a tract described in paragraph (1) with the consent of the owners of undivided interests equal to at least 50 percent of the undivided interest in the tract.

(B) Interest owned by tribe

Interests owned by an Indian tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under subparagraph (A) has been met.

(b) Conditions applicable to purchase

Subsection (a) of this section applies on the condition that—

(1) any Indian owning any undivided interest, and in actual use and possession of such tract for at least three years preceding the tribal initiative, may purchase such tract by matching the tribal offer;

(2) if at any time within five years following the date of acquisition of such land by an individual pursuant to this section, such property is offered for sale or a petition is filed with the Secretary for removal of the property from trust or restricted status, the tribe shall have 180 days from the date it is notified of such offer or petition to acquire such property by paying to the owner the fair market value as determined by the Secretary; and

(3) the approval of the Secretary shall be required for a land sale initiated under this section, except that such approval shall not be required with respect to a land sale transaction initiated by an Indian tribe that has in effect a land consolidation plan that has been approved by the Secretary under section 2203 of this title.

(c) Partition of highly fractionated Indian lands

(1) Applicability

This subsection shall be applicable only to parcels of land (including surface and subsurface interests, except with respect to a subsurface interest that has been severed from the surface interest, in which case this subsection shall apply only to the surface interest) which the Secretary has determined, pursuant to paragraph (2)(B),[1] to be parcels of highly fractionated Indian land.

(2) Requirements

Each partition action under this subsection shall be conducted by the Secretary in accordance with the following requirements:

(A) Application

Upon receipt of any payment or bond required under subparagraph (B), the Secretary shall commence a process for partitioning a parcel of land by sale in accordance with the provisions of this subsection upon receipt of an application by—

(i) the Indian tribe with jurisdiction over the subject land that owns an undivided interest in the parcel of land; or

(ii) any person owning an undivided interest in the parcel of land who is eligible to bid at the sale of the parcel pursuant to subclause (II), (III), or (IV) of subparagraph (I)(i);

provided that no such application shall be valid or considered if it is received by the Secretary prior to the date that is 1 year after the date on which notice is published pursuant to section 8(a)(4) of the American Indian Probate Reform Act of 2004.

(B) Costs of serving notice and publication

The costs of serving and publishing notice under subparagraph (F) shall be borne by the applicant. Upon receiving written notice from the Secretary, the applicant must pay to the Secretary an amount determined by the Secretary to be the estimated costs of such service of notice and publication, or furnish a sufficient bond for such estimated costs within the time stated in the notice, failing which, unless an extension is granted by the Secretary, the Secretary shall not be required to commence the partition process under subparagraph (A) and may deny the application. The Secretary shall have the discretion and authority in any case to waive either the payment or the bond (or any portion of such payment or bond) otherwise required by this subparagraph, upon making a determination that such waiver will further the policies of this chapter.

(C) Determination

Upon receipt of an application pursuant to subparagraph (A), the Secretary shall deter-

[1] So in original. Probably should be paragraph ''(2)(C),''.

mine whether the subject parcel meets the requirements set forth in section 2201(6) of this title to be classified as a parcel of highly fractionated Indian land.

(D) Consent requirements

(i) In general

A parcel of land may be partitioned under this subsection only if the applicant obtains the written consent of—

(I) the Indian tribe with jurisdiction over the subject land if such Indian tribe owns an undivided interest in the parcel;

(II) any owner who, for the 3-year period immediately preceding the date on which the Secretary receives the application, has

(aa) continuously maintained a bona fide residence on the parcel; or

(bb) operated a bona fide farm, ranch, or other business on the parcel; and

(III) the owners (including parents of minor owners and legal guardians of incompetent owners) of at least 50 percent of the undivided interests in the parcel, but only in cases where the Secretary determines that, based on the final appraisal prepared pursuant to subparagraph (F), any 1 owner's total undivided interest in the parcel (not including the interest of an Indian tribe or that of the owner requesting the partition) has a value in excess of $1,500.

Any consent required by this clause must be in writing and acknowledged before a notary public (or other official authorized to make acknowledgments), and shall be approved by the Secretary unless the Secretary has reason to believe that the consent was obtained as a result of fraud or undue influence.

(ii) Consent by the Secretary on behalf of certain individuals

For the purposes of clause (i)(III), the Secretary may consent on behalf of—

(I) undetermined heirs of trust or restricted interests and owners of such interests who are minors and legal incompetents having no parents or legal guardian; and

(II) missing owners or owners of trust or restricted interests whose whereabouts are unknown, but only after a search for such owners has been completed in accordance with the provisions of this subsection.

(E) Appraisal

After the Secretary has determined that the subject parcel is a parcel of highly fractionated Indian land pursuant to subparagraph (C), the Secretary shall cause to be made, in accordance with the provisions of this chapter for establishing fair market value, an appraisal of the fair market value of the subject parcel.

(F) Notice to owners on completion of appraisal

Upon completion of the appraisal, the Secretary shall give notice of the requested partition and appraisal to all owners of undivided interests in the parcel, in accordance with principles of due process. Such notice shall include the following requirements:

(i) Written notice

The Secretary shall attempt to give each owner written notice of the partition action stating the following:

(I) That a proceeding to partition the parcel of land by sale has been commenced.

(II) The legal description of the subject parcel.

(III) The owner's ownership interest in the subject parcel as evidenced by the Secretary's records as of the date that owners are determined in accordance with clause (ii).

(IV) The results of the appraisal.

(V) The owner's right to receive a copy of the appraisal upon written request.

(VI) The owner's right to comment on or object to the proposed partition and the appraisal.

(VII) That the owner must timely comment on or object in writing to the proposed partition or the appraisal, in order to receive notice of approval of the appraisal and right to appeal.

(VIII) The date by which the owner's written comments or objections must be received, which shall not be less than 90 days after the date that the notice is mailed under this clause or last published under clause (ii)(II).

(IX) The address for requesting copies of the appraisal and for submitting written comments or objections.

(X) The name and telephone number of the official to be contacted for purposes of obtaining information regarding the proceeding, including the time and date of the auction of the land or the date for submitting sealed bids.

(XI) Any other information the Secretary deems to be appropriate.

(ii) Manner of service

(I) Service by certified mail

The Secretary shall use due diligence to provide all owners of interests in the subject parcel, as evidenced by the Secretary's records at the time of the determination under subparagraph (C), with actual notice of the partition proceedings by mailing a copy of the written notice described in clause (i) by certified mail, restricted delivery, to each such owner at the owner's last known address. For purposes of this subsection, owners shall be determined from the Secretary's land title records as of the date of the determination under subparagraph (C) or a date that is not more than 90 days prior to the date of mailing under this clause, whichever is later. In the event the written notice to an owner is returned undelivered, the Secretary shall attempt to obtain a current address for such owner by conducting a reasonable

search (including a reasonable search of records maintained by local, State, Federal and tribal governments and agencies) and by inquiring with the Indian tribe with jurisdiction over the subject parcel, and, if different from that tribe, the Indian tribe of which the owner is a member, and, if successful in locating any such owner, send written notice by certified mail in accordance with this subclause.

(II) Notice by publication

The Secretary shall give notice by publication of the partition proceedings to all owners that the Secretary was unable to serve pursuant to subclause (I), and to unknown heirs and assigns by—

(aa) publishing the notice described in clause (i) at least 2 times in a newspaper of general circulation in the county or counties where the subject parcel of land is located or, if there is an Indian tribe with jurisdiction over the parcel of land and that tribe publishes a tribal newspaper or newsletter at least once every month, 1 time in such newspaper of general circulation and 1 time in such tribal newspaper or newsletter;

(bb) posting such notice in a conspicuous place in the tribal headquarters or administration building (or such other tribal building determined by the Secretary to be most appropriate for giving public notice) of the Indian tribe with jurisdiction over the parcel of land, if any; and

(cc) in addition to the foregoing, in the Secretary's discretion, publishing notice in any other place or means that the Secretary determines to be appropriate.

(G) Review of comments on appraisal

(i) In general

After reviewing and considering comments or information timely submitted by any owner of an interest in the parcel in response to the notice required under subparagraph (F), the Secretary may, consistent with the provisions of this chapter for establishing fair market value—

(I) order a new appraisal; or

(II) approve the appraisal;

provided that if the Secretary orders a new appraisal under subclause (I), notice of the new appraisal shall be given as specified in clause (ii).

(ii) Notice

Notice shall be given—

(I) in accordance with subparagraph (H), where the new appraisal results in a value of the land that is equal to or greater than that of the earlier appraisal; or

(II) in accordance with subparagraph (F)(ii), where the new appraisal results in a lower valuation of the land.

(H) Notice to owners of approval of appraisal and right to appeal

Upon making the determination under subparagraph (G), the Secretary shall provide to the Indian tribe with jurisdiction over the subject land and to all persons who submitted written comments on or objections to the proposed partition or appraisal, a written notice to be served on such tribe and persons by certified mail. Such notice shall state—

(i) the results of the appraisal;

(ii) that the owner has the right to review a copy of the appraisal upon request;

(iii) that the land will be sold for not less than the appraised value, subject to the consent requirements under paragraph (2)(D);

(iv) the time of the sale or for submitting bids under subparagraph (I);

(v) that the owner has the right, under the Secretary's regulations governing administrative appeals, to pursue an administrative appeal from—

(I) the determination that the land may be partitioned by sale under the provisions of this section; and

(II) the Secretary's order approving the appraisal;

(vi) the date by which an administrative appeal must be taken, a citation to the provisions of the Secretary's regulations that will govern the owner's appeal, and any other information required by such regulations to be given to parties affected by adverse decisions of the Secretary;

(vii) in cases where the Secretary determines that any person's undivided trust or restricted interest in the parcel exceeds $1,500 pursuant to paragraph (2)(D)(iii), that the Secretary has authority to consent to the partition on behalf of undetermined heirs of trust or restricted interests in the parcel and owners of such interests whose whereabouts are unknown; and

(viii) any other information the Secretary deems to be appropriate.

(I) Sale to eligible purchaser

(i) In general

Subject to clauses (ii) and (iii) and the consent requirements of paragraph (2)(D), the Secretary shall, after providing notice to owners under subparagraph (H), including the time and place of sale or for receiving sealed bids, at public auction or by sealed bid (whichever of such methods of sale the Secretary determines to be more appropriate under the circumstances) sell the parcel of land by competitive bid for not less than the final appraised fair market value to the highest bidder from among the following eligible bidders:

(I) The Indian tribe, if any, with jurisdiction over the trust or restricted interests in the parcel being sold.

(II) Any person who is a member, or is eligible to be a member, of the Indian tribe described in subclause (I).

(III) Any person who is a member, or is eligible to be a member, of an Indian

tribe but not of the tribe described in subclause (I), but only if such person already owns an undivided interest in the parcel at the time of sale.

(IV) Any lineal descendent of the original allottee of the parcel who is a member or is eligible to be a member of an Indian tribe or, with respect to a parcel located in the State of California that is not within an Indian tribe's reservation or not otherwise subject to the jurisdiction of an Indian tribe, who is a member, or eligible to be a member, of an Indian tribe or owns a trust or restricted interest in the parcel.

(ii) Right to match highest bid

If the highest bidder is a person who is only eligible to bid under clause (i)(III), the Indian tribe that has jurisdiction over the parcel, if any, shall have the right to match the highest bid and acquire the parcel, but only if—

(I) prior to the date of the sale, the governing body of such tribe has adopted a tribal law or resolution reserving its right to match the bids of such nonmember bidders in partition sales under this subsection and delivered a copy of such law or resolution to the Secretary; and

(II) the parcel is not acquired under clause (iii).

(iii) Right to purchase

Any person who is a member, or eligible to be a member, of the Indian tribe with jurisdiction over the trust or restricted interests in the parcel being sold and is, as of the time of sale under this subparagraph, the owner of the largest undivided interest in the parcel shall have a right to purchase the parcel by tendering to the Secretary an amount equal to the highest sufficient bid submitted at the sale, less that amount of the bid attributable to such owner's share, but only if—

(I) the owner submitted a sufficient bid at the sale;

(II) the owner's total undivided interest in the parcel immediately prior to the sale was—

(aa) greater than the undivided interest held by any other co-owners, except where there are 2 or more co-owners whose interests are of equal size but larger than the interests of all other co-owners and such owners of the largest interests have agreed in writing that 1 of them may exercise the right of purchase under this clause; and

(bb) equal to or greater than 20 percent of the entire undivided ownership of the parcel;

(III) within 3 days following the date of the auction or for receiving sealed bids, and in accordance with the regulations adopted to implement this section (if any), the owner delivers to the Secretary a written notice of intent to exercise the owner's rights under this clause; and

(IV) such owner tenders the amount of the purchase price required under this clause—

(aa) not more than 30 days after the date of the auction or time for receiving sealed bids; and

(bb) in accordance with any requirements of the regulations promulgated under paragraph (5).

(iv) Interest acquired

A purchaser of a parcel of land under this subparagraph shall acquire title to the parcel in trust or restricted status, free and clear of any and all claims of title or ownership of all persons or entities (not including the United States) owning or claiming to own an interest in such parcel prior to the time of sale.

(J) Proceeds of sale

(i) Subject to clauses (ii) and (iii), the Secretary shall distribute the proceeds of sale of a parcel of land under the provisions of this section to the owners of interests in such parcel in proportion to their respective ownership interests.

(ii) Proceeds attributable to the sale of trust or restricted interests shall be maintained in accounts as trust personalty.

(iii) Proceeds attributable to the sale of interests of owners whose whereabouts are unknown, of undetermined heirs, and of other persons whose ownership interests have not been recorded shall be held by the Secretary until such owners, heirs, or other persons have been determined, at which time such proceeds shall be distributed in accordance with clauses (i) and (ii).

(K) Lack of bids or consent

(i) Lack of bids

If no bidder described in subparagraph (I) presents a bid that equals or exceeds the final appraised value, the Secretary may either—

(I) purchase the parcel of land for its appraised fair market value on behalf of the Indian tribe with jurisdiction over the land, subject to the lien and procedures provided under section 2213(b) of this title; or

(II) terminate the partition process.

(ii) Lack of consent

If an applicant fails to obtain any applicable consent required under the provisions of subparagraph (D) by the date established by the Secretary prior to the proposed sale, the Secretary may either extend the time for obtaining any such consent or deny the request for partition.

(3) Enforcement

(A) In general

If a partition is approved under this subsection and an owner of an interest in the parcel of land refuses to surrender possession in accordance with the partition decision, or refuses to execute any conveyance necessary to implement the partition, then any affected owner or the United States may—

(i) commence a civil action in the United States district court for the district in which the parcel of land is located; and

(ii) request that the court issue an order for ejectment or any other appropriate remedy necessary for the partition of the land by sale.

(B) Federal role

With respect to any civil action brought under subparagraph (A)—

(i) the United States—

(I) shall receive notice of the civil action; and

(II) may be a party to the civil action; and

(ii) the civil action shall not be dismissed, and no relief requested shall be denied, on the ground that the civil action is against the United States or that the United States is a necessary and indispensable party.

(4) Grants and loans

The Secretary may provide grants and low interest loans to successful bidders at sales authorized by this subsection, provided that—

(A) the total amount of such assistance in any such sale shall not exceed 20 percent of the appraised value of the parcel of land sold; and

(B) the grant or loan funds provided shall only be applied toward the purchase price of the parcel of land sold.

(5) Regulations

The Secretary is authorized to adopt such regulations as may be necessary to implement the provisions of this subsection. Such regulations may include provisions for giving notice of sales to prospective purchasers eligible to submit bids at sales conducted under paragraph (2)(I).

(Pub. L. 97–459, title II, § 205, Jan. 12, 1983, 96 Stat. 2517; Pub. L. 98–608, § 1(2), Oct. 30, 1984, 98 Stat. 3171; Pub. L. 106–462, title I, § 103(2), Nov. 7, 2000, 114 Stat. 1993; Pub. L. 108–374, §§ 4, 6(a)(1), Oct. 27, 2004, 118 Stat. 1787, 1797; Pub. L. 109–157, §§ 2, 8(a)(1), Dec. 30, 2005, 119 Stat. 2949, 2952; Pub. L. 110–453, title II, § 207(b), Dec. 2, 2008, 122 Stat. 5030.)

REFERENCES IN TEXT

Section 8(a)(4) of the American Indian Probate Reform Act of 2004, referred to in subsec. (c)(2)(A), is section 8(a)(4) of Pub. L. 108–374, which is set out as a note under section 2201 of this title.

This chapter, referred to in subsec. (c)(2)(B), (E), (G)(i), was in the original ''this Act'', which was translated as reading ''this title'', meaning title II of Pub. L. 97–459, to reflect the probable intent of Congress.

AMENDMENTS

2008—Subsec. (c)(2)(D)(i). Pub. L. 110–453 substituted ''by the Secretary'' for ''by Secretary'' in concluding provisions.

2005—Subsec. (a). Pub. L. 109–157, § 2(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''Subject to subsection (b) of this section, any Indian tribe may purchase at no less than the fair market value part or all of the interests in any tract of trust or restricted land within that tribe's reservation or otherwise subject to that tribe's jurisdiction with the consent of the owners of such interests. The tribe may purchase all of the interests in such tract with the consent of the owners of undivided interests equal to at least 50 percent of the undivided interest in such tract. Interests owned by an Indian tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under the preceding sentence has been met.''

Subsec. (c). Pub. L. 109–157, § 2(2), redesignated subsec. (d) as (c). Prior to amendment, no subsec. (c) had been enacted.

Subsec. (c)(2)(G)(ii)(I). Pub. L. 109–157, § 2(3)(A)(i), substituted ''a value of the land that is equal to or greater than that of the earlier appraisal'' for ''a higher valuation of the land''.

Subsec. (c)(2)(I)(iii)(III). Pub. L. 109–157, § 2(3)(A)(ii)(I), inserted ''(if any)'' after ''this section''.

Subsec. (c)(2)(I)(iii)(IV)(aa). Pub. L. 109–157, § 2(3)(A)(ii)(II)(aa), substituted ''more'' for ''less''.

Subsec. (c)(2)(I)(iii)(IV)(bb). Pub. L. 109–157, § 2(3)(A)(ii)(II)(bb), substituted ''under paragraph (5)'' for ''to implement this section''.

Subsec. (c)(5). Pub. L. 109–157, § 2(3)(B), in second sentence, substituted ''may'' for ''shall''.

Subsec. (d). Pub. L. 109–157, § 8(a)(1), amended directory language of Pub. L. 108–374, § 4. See 2004 Amendment note below.

Pub. L. 109–157, § 2(2), redesignated subsec. (d) as (c).

2004—Subsec. (a). Pub. L. 108–374, § 6(a)(1), in second sentence, substituted ''undivided interests equal to at least 50 percent of the undivided interest'' for ''over 50 per centum of the undivided interests''.

Subsec. (d). Pub. L. 108–374, § 4, as amended by Pub. L. 109–157, § 8(a)(1), added subsec. (d).

2001—Pub. L. 106–462, § 103(2)(A)(iii), which directed substitution of subsec. (b) designation and heading and ''Subsection (a) of this section applies on the condition that—'' for '': *Provided*, That—'', was executed by making the substitution for ''*Provided*, That—'' to reflect the probable intent of Congress and the amendment by Pub. L. 106–462, § 103(2)(A)(ii). See below.

Pub. L. 106–462, § 103(2)(A)(i), (ii), substituted subsec. (a) designation and heading and ''Subject to subsection (b) of this section, any Indian'' for ''Any Indian'' and ''. Interests owned by an Indian tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under the preceding sentence has been met.'' for the colon before ''*Provided*, That—''.

Subsec. (b)(2). Pub. L. 106–462, § 103(2)(B)(ii), inserted ''and'' at end.

Pub. L. 106–462, § 103(2)(B)(i), which directed substitution of ''if'' for ''If,'', was executed by making the substitution for ''if,'' to reflect the probable intent of Congress.

Subsec. (b)(3). Pub. L. 106–462, § 103(2)(C), added par. (3) and struck out former par. (3) which read as follows: ''all purchases and sales initiated under this section shall be subject to approval by the Secretary.''

1984—Pub. L. 98–608 amended section generally, substituting ''the owners of such interests. The tribe may purchase all of the interests in such tract with the consent of the owners of over 50 per centum of the undivided interests in such tract'' for ''of over 50 per centum of the owners or with the consent of the owners of over 50 per centum of undivided interests in such tract'' before proviso.

Par. (1). Pub. L. 98–608 redesignated par. (2) as (1) and inserted ''for at least three years preceding the tribal initiative,'' before ''may purchase such tract''. Former par. (1), which provided that no such tract shall be acquired by any Indian or tribe over the objections of three or less owners owning 50 per centum or more of the total interest in such tract, was struck out.

Par. (2). Pub. L. 98–608 added par. (2). Former par. (2) redesignated (1).

Pars. (3), (4). Pub. L. 98–608 redesignated par. (4) as (3), and in par. (3), as so redesignated, substituted ''subject

to approval'' for ''approved'' and struck out former par. (3), which provided that ''this section shall not apply to any tract of land owned by less than fifteen persons; and''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–157 effective as if included in Pub. L. 108–374, see section 9 of Pub. L. 109–157, set out as a note under section 464 of this title.

SEVERABILITY

Invalidity of any provision of Pub. L. 108–374 not to affect validity of remaining provisions, except that each of subcls. (II), (III), or (IV) of subsection (c)(2)(I)(i) of this section deemed to be inseverable from the other two, such that invalidity of any one subcl. renders the other two without effect, see section 9 of Pub. L. 108–374, as amended, set out as a note under section 2201 of this title.

§ 2205. Tribal probate codes; acquisitions of fractional interests by tribes

(a) Tribal probate codes

(1) In general

Notwithstanding any other provision of law, any Indian tribe may adopt a tribal probate code to govern descent and distribution of trust or restricted lands that are—

(A) located within that Indian tribe's reservation; or

(B) otherwise subject to the jurisdiction of that Indian tribe.

(2) Possible inclusions

A tribal probate code referred to in paragraph (1) may include—

(A) rules of intestate succession; and

(B) other tribal probate code provisions that are consistent with Federal law and that promote the policies set forth in section 102 of the Indian Land Consolidation Act Amendments of 2000.

(3) Tribal probate codes

Except as provided in any applicable Federal law, the Secretary shall not approve a tribal probate code, or an amendment to such a code, that prohibits the devise of an interest in trust or restricted land to—

(A) an Indian lineal descendant of the original allottee; or

(B) an Indian who is not a member of the Indian tribe with jurisdiction over such an interest;

unless the code provides for—

(i) the renouncing of interests to eligible devisees in accordance with the code;

(ii) the opportunity for a devisee who is the spouse or lineal descendant of a testator to reserve a life estate without regard to waste; and

(iii) payment of fair market value in the manner prescribed under subsection (c)(2) of this section.

(b) Secretarial approval

(1) In general

Any tribal probate code enacted under subsection (a) of this section, and any amendment to such a tribal probate code, shall be subject to the approval of the Secretary.

(2) Review and approval

(A) In general

Each Indian tribe that adopts a tribal probate code under subsection (a) of this section shall submit that code to the Secretary for review. Not later than 180 days after a tribal probate code is submitted to the Secretary under this paragraph, the Secretary shall review and approve or disapprove that tribal probate code.

(B) Consequence of failures to approve or disapprove a tribal probate code

If the Secretary fails to approve or disapprove a tribal probate code submitted for review under subparagraph (A) by the date specified in that subparagraph, the tribal probate code shall be deemed to have been approved by the Secretary, but only to the extent that the tribal probate code is consistent with Federal law and promotes the policies set forth in section 102 of the Indian Land Consolidation Act Amendments of 2000.

(C) Consistency of tribal probate code with chapter

The Secretary may not approve a tribal probate code, or any amendment to such a code, under this paragraph unless the Secretary determines that the tribal probate code promotes the policies set forth in section 102 of the Indian Land Consolidation Act Amendments of 2000.

(D) Explanation

If the Secretary disapproves a tribal probate code, or an amendment to such a code, under this paragraph, the Secretary shall include in the notice of disapproval to the Indian tribe a written explanation of the reasons for the disapproval.

(E) Amendments

(i) In general

Each Indian tribe that amends a tribal probate code under this paragraph shall submit the amendment to the Secretary for review and approval. Not later than 60 days after receiving an amendment under this subparagraph, the Secretary shall review and approve or disapprove the amendment.

(ii) Consequence of failure to approve or disapprove an amendment

If the Secretary fails to approve or disapprove an amendment submitted under clause (i), the amendment shall be deemed to have been approved by the Secretary, but only to the extent that the amendment is consistent with Federal law and promotes the policies set forth in section 102 of the Indian Land Consolidation Act[1] of 2000.

(3) Effective dates

A tribal probate code approved under paragraph (2) shall become effective on the later of—

[1] So in original. Probably should be followed by ''Amendments''.

(A) the date that is 1 year after the date on which the Secretary makes the certification required under section 8(a)(4) of the American Indian Probate Reform Act of 2004 (25 U.S.C. 2201 note; Public Law 108–374); or

(B) 180 days after the date of approval.

(4) Limitations

(A) Tribal probate codes

Each tribal probate code enacted under subsection (a) of this section shall apply only to the estate of a decedent who dies on or after the effective date of the tribal probate code.

(B) Amendments to tribal probate codes

With respect to an amendment to a tribal probate code referred to in subparagraph (A), that amendment shall apply only to the estate of a decedent who dies on or after the effective date of the amendment.

(5) Repeals

The repeal of a tribal probate code shall—

(A) not become effective earlier than the date that is 180 days after the Secretary receives notice of the repeal; and

(B) apply only to the estate of a decedent who dies on or after the effective date of the repeal.

(c) Authority available to Indian tribes

(1) Authority

(A) In general

If the owner of an interest in trust or restricted land devises an interest in such land to a non-Indian under section 2206(b)(2)(A)(ii) of this title, the Indian tribe that exercises jurisdiction over the parcel of land involved may acquire such interest by paying to the Secretary the fair market value of such interest, as determined by the Secretary on the date of the decedent's death.

(B) Transfer

The Secretary shall transfer payments received under subparagraph (A) to any person or persons who would have received an interest in land if the interest had not been acquired by the Indian tribe in accordance with this paragraph.

(2) Limitation

(A) Inapplicability to certain interests

(i) In general

Paragraph (1) shall not apply to an interest in trust or restricted land if—

(I) while the decedent's estate is pending before the Secretary, the non-Indian devisee renounces the interest in favor of an Indian person; or

(II)(aa) the interest is part of a family farm that is devised to a member of the family of the decedent; and

(bb) the devisee agrees in writing that the Indian tribe with jurisdiction over the land will have the opportunity to acquire the interest for fair market value if the interest is offered for sale to a person or entity that is not a member of the family of the owner of the land.

(ii) Recording of interest

On request by the Indian tribe described in clause (i)(II)(bb), a restriction relating to the acquisition by the Indian tribe of an interest in a family farm involved shall be recorded as part of the deed relating to the interest involved.

(iii) Mortgage and foreclosure

Nothing in clause (i)(II) limits—

(I) the ability of an owner of land to which that clause applies to mortgage the land; or

(II) the right of the entity holding such a mortgage to foreclose or otherwise enforce such a mortgage agreement in accordance with applicable law.

(iv) Definition of "member of the family"

In this paragraph, the term ''member of the family'', with respect to a decedent or landowner, means—

(I) a lineal descendant of a decedent or landowner;

(II) a lineal descendant of the grandparent of a decedent or landowner;

(III) the spouse of a descendant or landowner described in subclause (I) or (II); and

(IV) the spouse of a decedent or landowner.

(B) Reservation of life estate

A non-Indian devisee described in paragraph (1), may retain a life estate in the interest involved, including a life estate to the revenue produced from the interest. The amount of any payment required under paragraph (1) shall be reduced to reflect the value of any life estate reserved by a non-Indian devisee under this subparagraph.

(3) Payments

With respect to payments by an Indian tribe under paragraph (1), the Secretary shall—

(A) upon the request of the tribe, allow a reasonable period of time, not to exceed 2 years, for the tribe to make payments of amounts due pursuant to paragraph (1); or

(B) recognize alternative agreed upon exchanges of consideration or extended payment terms between the non-Indian devisee described in paragraph (1) and the tribe in satisfaction of the payment under paragraph (1).

(d) Use of proposed findings by tribal justice systems

(1) Tribal justice system defined

In this subsection, the term ''tribal justice system'' has the meaning given that term in section 3602 of this title.

(2) Regulations

The Secretary by regulation may provide for the use of findings of fact and conclusions of law, as rendered by a tribal justice system, as proposed findings of fact and conclusions of law in the adjudication of probate proceedings by the Department of the Interior.

(Pub. L. 97–459, title II, § 206, as added Pub. L. 106–462, title I, § 103(3), Nov. 7, 2000, 114 Stat. 1993;

amended Pub. L. 108–374, § 6(a)(3), Oct. 27, 2004, 118 Stat. 1799; Pub. L. 109–157, § 3, Dec. 30, 2005, 119 Stat. 2950.)

REFERENCES IN TEXT

Section 102 of the Indian Land Consolidation Act Amendments of 2000, referred to in subsecs. (a)(2)(B), (b)(2)(B), (C), (E)(ii), is section 102 of Pub. L. 106–462, which is set out as a note under section 2201 of this title.

This chapter, referred to in subsec. (b)(2)(C), was in the original ''this Act'', which was translated as reading ''this title'', meaning title II of Pub. L. 97–459, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 2205, Pub. L. 97–459, title II, § 206, Jan. 12, 1983, 96 Stat. 2518; Pub. L. 98–608, § 1(3), Oct. 30, 1984, 98 Stat. 3172, related to descent and distribution of trust or restricted or controlled lands, tribal ordinance barring nonmembers of tribe or non-Indians from inheritance by devise or descent, and limitation on life estate, prior to repeal by Pub. L. 106–462, title I, § 103(3), Nov. 7, 2000, 114 Stat. 1993.

AMENDMENTS

2005—Subsec. (b)(3)(A). Pub. L. 109–157, § 3(1), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the date specified in section 2206(g)(5) of this title; or''.

Subsec. (c)(1)(A). Pub. L. 109–157, § 3(2)(A), substituted ''section 2206(b)(2)(A)(ii)'' for ''section 2206(a)(6)(A)''.

Subsec. (c)(2)(A)(i)(II)(bb). Pub. L. 109–157, § 3(2)(B), inserted ''in writing'' after ''agrees''.

2004—Subsec. (a)(3). Pub. L. 108–374, § 6(a)(3)(A), added par. (3) and struck out heading and text of former par. (3). Text read as follows: ''The Secretary shall not approve a tribal probate code if such code prevents an Indian person from inheriting an interest in an allotment that was originally allotted to his or her lineal ancestor.''

Subsec. (c)(1). Pub. L. 108–374, § 6(a)(3)(B)(i)(I), (III), substituted ''Authority'' for ''In general'' in heading, designated existing provisions as subpar. (A), inserted heading, and struck out at end ''The Secretary shall transfer such payment to the devisee.'', and added subpar. (B).

Subsec. (c)(1)(A). Pub. L. 108–374, § 6(a)(3)(B)(i)(II), which directed the substitution of ''section 207(b)(2)(A)(ii) of this title'' for ''section 207(a)(6)(A) of this title'' in the original, could not be executed, because ''of this title'' did not appear in the original.

Subsec. (c)(2)(A). Pub. L. 108–374, § 6(a)(3)(B)(ii)(I), substituted ''Inapplicability to certain interests'' for ''In general'' in heading, designated existing provisions as cl. (i) and inserted heading, inserted subcl. (I) designation and added subcl. (II), and added cls. (ii) to (iv).

Subsec. (c)(2)(B). Pub. L. 108–374, § 6(a)(3)(B)(ii)(II), which directed the substitution of ''paragraph (1)'' for ''subparagraph (A) or a non-Indian devisee described in section 2206(a)(6)(B) of this title'' was executed by making the substitution for language which did not contain the words ''of this title'' in the original, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–157 effective as if included in Pub. L. 108–374, see section 9 of Pub. L. 109–157, set out as a note under section 464 of this title.

§ 2206. Descent and distribution

(a) Nontestamentary disposition

(1) Rules of descent

Subject to any applicable Federal law relating to the devise or descent of trust or restricted property, any trust or restricted interest in land or interest in trust personalty that is not disposed of by a valid will—

(A) shall descend according to an applicable tribal probate code approved in accordance with section 2205 of this title; or

(B) in the case of a trust or restricted interest in land or interest in trust personalty to which a tribal probate code does not apply, shall descend in accordance with—

(i) paragraphs (2) through (5); and

(ii) other applicable Federal law.

(2)[1] Rules governing descent of estate

(A) Surviving spouse

If there is a surviving spouse of the decedent, such spouse shall receive trust and restricted land and trust personalty in the estate as follows:

(i) If the decedent is survived by 1 or more eligible heirs described in subparagraph (B)(i), (ii), (iii), or (iv), the surviving spouse shall receive ⅓ of the trust personalty of the decedent and a life estate without regard to waste in the interests in trust or restricted lands of the decedent.

(ii) If there are no eligible heirs described in subparagraph (B)(i), (ii), (iii), or (iv), the surviving spouse shall receive all of the trust personalty of the decedent and a life estate without regard to waste in the trust or restricted lands of the decedent.

(iii) The remainder shall pass as set forth in subparagraph (B).

(iv) Trust personalty passing to a surviving spouse under the provisions of this subparagraph shall be maintained by the Secretary in an account as trust personalty, but only if such spouse is Indian.

(B) Individual and tribal heirs

Where there is no surviving spouse of the decedent, or there is a remainder interest pursuant to subparagraph (A), the trust or restricted estate or such remainder shall, subject to subparagraphs (A) and (D), pass as follows:

(i) To those of the decedent's children who are eligible heirs (or if 1 or more of such children do not survive the decedent, the children of any such deceased child who are eligible heirs, by right of representation, but only if such children of the deceased child survive the decedent) in equal shares.

(ii) If the property does not pass under clause (i), to those of the decedent's surviving great-grandchildren who are eligible heirs, in equal shares.

(iii) If the property does not pass under clause (i) or (ii), to the decedent's surviving parent who is an eligible heir, and if both parents survive the decedent and are both eligible heirs, to both parents in equal shares.

(iv) If the property does not pass under clause (i), (ii), or (iii), to those of the decedent's surviving siblings who are eligible heirs, in equal shares.

(v) If the property does not pass under clause (i), (ii), (iii), or (iv), to the Indian

[1] So in original. Another par. (2) follows par. (5).

tribe with jurisdiction over the interests in trust or restricted lands;

except that notwithstanding clause (v), an Indian co-owner (including the Indian tribe referred to in clause (v)) of a parcel of trust or restricted land may acquire an interest that would otherwise descend under that clause by paying into the estate of the decedent, before the close of the probate of the estate, the fair market value of the interest in the land; if more than 1 Indian co-owner offers to pay for such interest, the highest bidder shall acquire the interest.

(C) No Indian tribe

(i) In general

If there is no Indian tribe with jurisdiction over the interests in trust or restricted lands that would otherwise descend under subparagraph (B)(v), then such interests shall be divided equally among co-owners of trust or restricted interests in the parcel; if there are no such co-owners, then to the United States, provided that any such interests in land passing to the United States under this subparagraph shall be sold by the Secretary and the proceeds from such sale deposited into the land acquisition fund established under section 2215 of this title and used for the purposes described in subsection (b) of that section.

(ii) Contiguous parcel

If the interests passing to the United States under this subparagraph are in a parcel of land that is contiguous to another parcel of trust or restricted land, the Secretary shall give the owner or owners of the trust or restricted interest in the contiguous parcel the first opportunity to purchase the interest at not less than fair market value determined in accordance with this chapter. If more than 1 such owner in the contiguous parcel request to purchase the parcel, the Secretary shall sell the parcel by public auction or sealed bid (as determined by the Secretary) at not less than fair market value to the owner of a trust or restricted interest in the contiguous parcel submitting the highest bid.

(D) Intestate descent of small fractional interests in land

(i) General rule

Notwithstanding subparagraphs (A) and (B), and subject to any applicable Federal law, any trust or restricted interest in land in the decedent's estate that is not disposed of by a valid will and represents less than 5 percent of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the decedent's estate inventory at the time of the heirship determination, shall descend in accordance with clauses (ii) through (v).

(ii) Surviving spouse

If there is a surviving spouse, and such spouse was residing on a parcel of land described in clause (i) at the time of the decedent's death, the spouse shall receive a life estate without regard to waste in the decedent's trust or restricted interest in only such parcel, and the remainder interest in that parcel shall pass in accordance with clause (iii).

(iii) Single heir rule

Where there is no life estate created under clause (ii) or there is a remainder interest under that clause, the trust or restricted interest or remainder interest that is subject to this subparagraph shall descend, in trust or restricted status, to—

(I) the decedent's surviving child, but only if such child is an eligible heir; and if 2 or more surviving children are eligible heirs, then to the oldest of such children;

(II) if the interest does not pass under subclause (I), the decedent's surviving grandchild, but only if such grandchild is an eligible heir; and if 2 or more surviving grandchildren are eligible heirs, then to the oldest of such grandchildren;

(III) if the interest does not pass under subclause (I) or (II), the decedent's surviving great grandchild, but only if such great grandchild is an eligible heir; and if 2 or more surviving great grandchildren are eligible heirs, then to the oldest of such great grandchildren;

(IV) if the interest does not pass under subclause (I), (II), or (III), the Indian tribe with jurisdiction over the interest; or

(V) if the interest does not pass under subclause (I), (II), or (III), and there is no such Indian tribe to inherit the property under subclause (IV), the interest shall be divided equally among co-owners of trust or restricted interests in the parcel; and if there are no such co-owners, then to the United States, to be sold, and the proceeds from sale used, in the same manner provided in subparagraph (C).

The determination of which person is the oldest eligible heir for inheritance purposes under this clause shall be made by the Secretary in the decedent's probate proceeding and shall be consistent with the provisions of this chapter.

(iv) Exceptions

Notwithstanding clause (iii)—

(I)(aa) the heir of an interest under this subparagraph, unless the heir is a minor or incompetent person, may agree in writing entered into the record of the decedent's probate proceeding to renounce such interest, in trust or restricted status, in favor of—

(AA) any other eligible heir or Indian person related to the heir by blood, but in any case never in favor of more than 1 such heir or person;

(BB) not more than 1 co-owner of another trust or restricted interest in such parcel of land; or

(CC) the Indian tribe with jurisdiction over the interest, if any; and

(bb) the Secretary shall give effect to such agreement in the distribution of the interest in the probate proceeding; and

(II) the governing body of the Indian tribe with jurisdiction over an interest in trust or restricted land that is subject to the provisions of this subparagraph may adopt a rule of intestate descent applicable to such interest that differs from the order of descent set forth in clause (iii). The Secretary shall apply such rule to the interest in distributing the decedent's estate, but only if—

(aa) a copy of the tribal rule is delivered to the official designated by the Secretary to receive copies of tribal rules for the purposes of this clause;

(bb) the tribal rule provides for the intestate inheritance of such interest by no more than 1 heir, so that the interest does not further fractionate;

(cc) the tribal rule does not apply to any interest disposed of by a valid will;

(dd) the decedent died on or after the date described in subsection (b) of section 8 of the American Indian Probate[2] Act of 2004, or on or after the date on which a copy of the tribal rule was delivered to the Secretary pursuant to item (aa), whichever is later; and

(ee) the Secretary does not make a determination within 90 days after a copy of the tribal rule is delivered pursuant to item (aa) that the rule would be unreasonably difficult to administer or does not conform with the requirements in item (bb) or (cc).

(v) Effect of subparagraph

Nothing in this subparagraph limits the right of any person to devise any trust or restricted interest pursuant to a valid will in accordance with subsection (b).

(3) Right of representation

If, under this subsection, all or any part of the estate of a decedent is to pass to children of a deceased child by right of representation, that part is to be divided into as many equal shares as there are living children of the decedent and pre-deceased children who left issue who survive the decedent. Each living child of the decedent, if any, shall receive 1 share, and the share of each pre-deceased child shall be divided equally among the pre-deceased child's children.

(4) Special rule relating to survival

In the case of intestate succession under this subsection, if an individual fails to survive the decedent by at least 120 hours, as established by clear and convincing evidence—

(A) the individual shall be deemed to have predeceased the decedent for the purpose of intestate succession; and

(B) the heirs of the decedent shall be determined in accordance with this section.

(5) Status of inherited interests

Except as provided in paragraphs (2)(A) and (D) regarding the life estate of a surviving spouse, a trust or restricted interest in land or trust personalty that descends under the provisions of this subsection shall vest in the heir in the same trust or restricted status as such interest was held immediately prior to the decedent's death.

(2)[3] Intestate descent of permanent improvements

(A) Definition of covered permanent improvement

In this paragraph, the term ''covered permanent improvement'' means a permanent improvement (including an interest in such an improvement) that is—

(i) included in the estate of a decedent; and

(ii) attached to a parcel of trust or restricted land that is also, in whole or in part, included in the estate of that decedent.

(B) Rule of descent

Except as otherwise provided in a tribal probate code approved under section 2205 of this title or a consolidation agreement approved under subsection (j)(9), a covered permanent improvement in the estate of a decedent shall—

(i) descend to each eligible heir to whom the trust or restricted interest in land in the estate descends pursuant to this subsection; or

(ii) pass to the recipient of the trust or restricted interest in land in the estate pursuant to a renunciation under subsection (j)(8).

(C) Application and effect

The provisions of this paragraph apply to a covered permanent improvement—

(i) even though that covered permanent improvement is not held in trust; and

(ii) without altering or otherwise affecting the non-trust status of such a covered permanent improvement.'[4]

(b) Testamentary disposition

(1) General devise of an interest in trust or restricted land

(A) In general

Subject to any applicable Federal law relating to the devise or descent of trust or restricted land, or a tribal probate code approved by the Secretary in accordance with section 2205 of this title, the owner of a trust or restricted interest in land may devise such interest to—

(i) any lineal descendant of the testator;

(ii) any person who owns a preexisting undivided trust or restricted interest in the same parcel of land;

(iii) the Indian tribe with jurisdiction over the interest in land; or

(iv) any Indian;

in trust or restricted status.

(B) Rules of interpretation

Any devise of a trust or restricted interest in land pursuant to subparagraph (A) to an

[2] So in original. Probably should be followed by ''Reform''.

[3] So in original. Another par. (2) follows par. (1).

[4] So in original. The quotation mark probably should not appear.

Indian or the Indian tribe with jurisdiction over the interest shall be deemed to be a devise of the interest in trust or restricted status. Any devise of a trust or restricted interest in land to a person who is only eligible to be a devisee under clause (i) or (ii) of subparagraph (A) shall be presumed to be a devise of the interest in trust or restricted status unless language in such devise clearly evidences an intent on the part of the testator that the interest is to pass as a life estate or fee interest in accordance with paragraph (2)(A).

(2) Devise of trust or restricted land as a life estate or in fee

(A) In general

Except as provided under any applicable Federal law, any trust or restricted interest in land that is not devised in accordance with paragraph (1)(A) may be devised only—

(i) as a life estate to any person, with the remainder being devised only in accordance with subparagraph (B) or paragraph (1); or

(ii) except as provided in subparagraph (B), as a fee interest without Federal restrictions against alienation to any person who is not eligible to be a devisee under clause (iv) of paragraph (1)(A).

(B) Indian reorganization act lands

(i) In general

Subject to clauses (ii) and (iii), any interest'';[5] in trust or restricted land that is subject to section 464 of this title, may be devised only in accordance with—

(I) that section;

(II) subparagraph (A)(i); or

(III) paragraph (1)(A).

(ii) Exception

(I) In general

Notwithstanding clause (i), in any case in which a resolution, law, or other duly adopted enactment of the Indian tribe with jurisdiction over the land of which an interest described in clause (i) is a part requests the Secretary to apply subparagraph (A)(ii) to devises of trust or restricted land under the jurisdiction of the Indian tribe, the interest may be devised in fee in accordance with subparagraph (A)(ii).

(II) Effect

Subclause (I) shall apply with respect to a devise of a trust or restricted interest in land by any decedent who dies on or after the date on which the applicable Indian tribe adopts the resolution, law, or other enactment described in subclause (I), regardless of the date on which the devise is made.

(III) Notice of request

An Indian tribe shall provide to the Secretary a copy of any resolution, law, or other enactment of the Indian tribe that requests the Secretary to apply subparagraph (A)(ii) to devises of trust or restricted land under the jurisdiction of the Indian tribe.

(iii) Effect

Except as provided in clause (ii), nothing; and[6] in this section or in section 464 of this title, shall be construed to authorize the devise of any interest in trust or restricted land that is subject to section 464 of this title to any person as a fee interest under subparagraph (A)(ii).

(3) General devise of an interest in trust personalty

(A) Trust personality[7] defined

The term ''trust personalty'' as used in this section includes all funds and securities of any kind which are held in trust in an individual Indian money account or otherwise supervised by the Secretary.

(B) In general

Subject to any applicable Federal law relating to the devise or descent of such trust personalty, or a tribal probate code approved by the Secretary in accordance with section 2205 of this title, the owner of an interest in trust personalty may devise such an interest to any person or entity.

(C) Maintenance as trust personalty

In the case of a devise of an interest in trust personalty to a person or Indian tribe eligible to be a devisee under paragraph (1)(A), the Secretary shall maintain and continue to manage such interests as trust personalty.

(D) Direct disbursement and distribution

In the case of a devise of an interest in trust personalty to a person or Indian tribe not eligible to be a devisee under paragraph (1)(A), the Secretary shall directly disburse and distribute such personalty to the devisee.

(4) Invalid devises and wills

(A) Land

Any trust or restricted interest in land that is not devised in accordance with paragraph (1) or (2) or that is not disposed of by a valid will shall descend in accordance with the applicable law of intestate succession as provided for in subsection (a) of this section.

(B) Personalty

Any trust personalty that is not disposed of by a valid will shall descend in accordance with the applicable law of intestate succession as provided for in subsection (a) of this section.

(c) Joint tenancy; right of survivorship

(1) Presumption of joint tenancy

If a testator devises trust or restricted interests in the same parcel of land to more than 1 person, in the absence of clear and express language in the devise stating that the interest is

[5] So in original.

[6] So in original. The semicolon and word ''and'' probably should not appear.

[7] So in original. Probably should be ''personalty''.

to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship in the interests involved.

(2) Exception

Paragraph (1) shall not apply to any devise of an interest in trust or restricted land where the will in which such devise is made was executed prior to the date that is 1 year after the date on which the Secretary publishes the certification required by section 8(a)(4) of the American Indian Probate Reform Act of 2004.

(d) Descent of off-reservation lands

(1) Indian reservation defined

For purposes of this subsection, the term ''Indian reservation'' includes lands located within—

(A)(i) Oklahoma; and

(ii) the boundaries of an Indian tribe's former reservation (as defined and determined by the Secretary);

(B) the boundaries of any Indian tribe's current or former reservation; or

(C) any area where the Secretary is required to provide special assistance or consideration of a tribe's acquisition of land or interests in land.

(2) Descent

Except in the State of California, upon the death of an individual holding an interest in trust or restricted lands that are located outside the boundaries of an Indian reservation and that are not subject to the jurisdiction of any Indian tribe, that interest shall descend either—

(A) by testate or intestate succession in trust to an Indian; or

(B) in fee status to any other devises or heirs.

(e) Approval of agreements

The official authorized to adjudicate the probate of trust or restricted lands shall have the authority to approve agreements between a decedent's heirs and devisees to consolidate interests in trust or restricted lands. The agreements referred to in the preceding sentence may include trust or restricted lands that are not a part of the decedent's estate that is the subject of the probate. The Secretary may promulgate regulations for the implementation of this subsection.

(f) Estate planning assistance

(1) In general

(A) The activities conducted under this subsection shall be conducted in accordance with any applicable—

(i) tribal probate code; or

(ii) tribal land consolidation plan.

(B) The Secretary shall provide estate planning assistance in accordance with this subsection, to the extent amounts are appropriated for such purpose.

(2) Requirements

The estate planning assistance provided under paragraph (1) shall be designed to—

(A) inform, advise, and assist Indian landowners with respect to estate planning in order to facilitate the transfer of trust or restricted lands to a devisee or devisees selected by the landowners;

(B) dramatically increase the use of wills and other methods of devise among Indian landowners;

(C) substantially reduce the quantity and complexity of Indian estates that pass intestate through the probate process, while protecting the rights and interests of Indian landowners; and

(D) assist Indian landowners in accessing information pursuant to section 2216(e) of this title.

(3) Probate code development and legal assistance grants

In carrying out this section, the Secretary may award grants, including noncompetitive grants, to—

(A) Indian tribes, for purposes of tribal probate code development and estate planning services to tribal members;

(B) organizations that provide legal assistance services for Indian tribes, Indian organizations, and individual owners of interests in trust or restricted lands that are qualified as nonprofit organizations under section 501(c)(3) of title 26 and provide such services pursuant to Federal poverty guidelines, for purposes of providing civil legal assistance to such Indian tribes, individual owners, and Indian organizations for the development of tribal probate codes, for estate planning services or for other purposes consistent with the services they provide to Indians and Indian tribes; and

(C) in specific areas and reservations where qualified nonprofit organizations referred to in subparagraph (B) do not provide such legal assistance to Indian tribes, Indian organizations, or individual owners of trust or restricted land, to other providers of such legal assistance;

that submit an application to the Secretary, in such form and manner as the Secretary may prescribe.

(4) Authorization for appropriations

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of paragraph (3).

(g) Applicable Federal law

(1) In general

Any references in subsections (a) and (b) of this section to applicable Federal law include—

(A) Public Law 91–627 (84 Stat. 1874);

(B) Public Law 92–377 (86 Stat. 530);

(C) Public Law 92–443 (86 Stat. 744);

(D) Public Law 96–274 (94 Stat. 537); and

(E) Public Law 98–513 (98 Stat. 2411).

(2) No effect on laws

Nothing in this chapter amends or otherwise affects the application of any law specified in paragraph (1), or any other Federal law that pertains specifically to—

(A) trust or restricted land located on 1 or more specific Indian reservations that are expressly identified in such law; or

(B) the allotted land (or any interest relating to such land) of 1 or more specific Indian tribes expressly identified in such law, including any of the Federal laws governing the probate or determination of heirs associated with, or otherwise relating to, the land, interest in land, or other interests or assets that are owned by individuals in—

(i) Five Civilized Tribes restricted fee status; or

(ii) Osage Tribe restricted fee status.

(3) Limitation on effect of paragraph

Except to the extent that this chapter would amend or otherwise affect the application of a Federal law specified or described in paragraph (1) or (2), nothing in paragraph (2) limits the application of this chapter to trust or restricted land, interests in such land, or any other trust or restricted interests or assets.

(h) Rules of interpretation

In the absence of a contrary intent, and except as otherwise provided under this chapter, applicable Federal law, or a tribal probate code approved by the Secretary pursuant to section 2205 of this title, wills shall be construed as to trust and restricted land and trust personalty in accordance with the following rules:

(1) Construction that will passes all property

(A) In general

A will shall be construed to apply to all trust and restricted land and trust personalty which the testator owned at his death, including any such land or personalty acquired after the execution of his will.

(B) Permanent improvements

Except as otherwise expressly provided in the will, a devise of a trust or restricted interest in a parcel of land shall be presumed to include the interest of the testator in any permanent improvements attached to the parcel of land.

(C) Application and effect

The provisions of this paragraph apply to a covered permanent improvement—

(i) even though that covered permanent improvement is not held in trust; and

(ii) without altering or otherwise affecting the non-trust status of such a covered permanent improvement.

(2) Class gifts

(A) No differentiation between relationship by blood and relationship by affinity

Terms of relationship that do not differentiate relationships by blood from those by affinity, such as ''uncles'', ''aunts'', ''nieces'', or ''nephews'', are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as ''brothers'', ''sisters'', ''nieces'', or ''nephews'', are construed to include both types of relationships.

(B) Meaning of "heirs" and "next of kin", etc.; time of ascertaining class

A devise of trust or restricted interest in land or an interest in trust personalty to the testator's or another designated person's ''heirs'', ''next of kin'', ''relatives'', or ''family'' shall mean those persons, including the spouse, who would be entitled to take under the provisions of this chapter for nontestamentary disposition. The class is to be ascertained as of the date of the testator's death.

(C) Time for ascertaining class

In construing a devise to a class other than a class described in subparagraph (B), the class shall be ascertained as of the time the devise is to take effect in enjoyment. The surviving issue of any member of the class who is then dead shall take by right of representation the share which their deceased ancestor would have taken.

(3) Meaning of "die without issue" and similar phrases

In any devise under this chapter,[8] the words ''die without issue'', ''die without leaving issue'', ''have no issue'', or words of a similar import shall be construed to mean that an individual had no lineal descendants in his lifetime or at his death, and not that there will be no lineal descendants at some future time.

(4) Persons born out of wedlock

In construing provisions of this chapter[8] relating to lapsed and void devises, and in construing a devise to a person or persons described by relationship to the testator or to another, a person born out of wedlock shall be considered the child of the natural mother and also of the natural father.

(5) Lapsed devises

Subject to the provisions of subsection (b) of this section, where the testator devises or bequeaths a trust or restricted interest in land or trust personalty to the testator's grandparents or to the lineal descendent of a grandparent, and the devisee or legatee dies before the testator leaving lineal descendents, such descendents shall take the interest so devised or bequeathed per stirpes.

(6) Void devises

Except as provided in paragraph (5), and if the disposition shall not be otherwise expressly provided for by a tribal probate code approved under section 2205 of this title, if a devise other than a residuary devise of a trust or restricted interest in land or trust personalty fails for any reason, such interest shall become part of the residue and pass, subject to the provisions of subsection (b) of this section, to the other residuary devisees, if any, in proportion to their respective shares or interests in the residue.

(7) Family cemetery plot

If a family cemetery plot owned by the testator in trust or restricted status at his decease is not mentioned in the decedent's will, the ownership of the plot shall descend to his heirs as if he had died intestate.

[8] See References in Text note below.

(i) Heirship by killing

(1) Heir by killing defined

As used in this subsection, ''heir by killing'' means any person who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent.

(2) No acquisition of property by killing

Subject to any applicable Federal law relating to the devise or descent of trust or restricted land, no heir by killing shall in any way acquire any trust or restricted interests in land or interests in trust personalty as the result of the death of the decedent, but such property shall pass in accordance with this subsection.

(3) Descent, distribution, and right of survivorship

The heir by killing shall be deemed to have predeceased the decedent as to decedent's trust or restricted interests in land or trust personalty which would have passed from the decedent or his estate to such heir—

(A) under intestate succession under this section;

(B) under a tribal probate code, unless otherwise provided for;

(C) as the surviving spouse;

(D) by devise;

(E) as a reversion or a vested remainder;

(F) as a survivorship interest; and

(G) as a contingent remainder or executory or other future interest.

(4) Joint tenants, joint owners, and joint obligees

(A) Any trust or restricted land or trust personalty held by only the heir by killing and the decedent as joint tenants, joint owners, or joint obligees shall pass upon the death of the decedent to his or her estate, as if the heir by killing had predeceased the decedent.

(B) As to trust or restricted land or trust personalty held jointly by 3 or more persons, including both the heir by killing and the decedent, any income which would have accrued to the heir by killing as a result of the death of the decedent shall pass to the estate of the decedent as if the heir by killing had predeceased the decedent and any surviving joint tenants.

(C) Notwithstanding any other provision of this subsection, the decedent's trust or restricted interest in land or trust personalty that is held in a joint tenancy with the right of survivorship shall be severed from the joint tenancy as though the property held in the joint tenancy were to be severed and distributed equally among the joint tenants and the decedent's interest shall pass to his estate; the remainder of the interests shall remain in joint tenancy with right of survivorship among the surviving joint tenants.

(5) Life estate for the life of another

If the estate is held by a third person whose possession expires upon the death of the decedent, it shall remain in such person's hands for the period of time following the decedent's death equal to the life expectancy of the decedent but for the killing.

(6) Preadjudication rule

(A) In general

If a person has been charged, whether by indictment, information, or otherwise by the United States, a tribe, or any State, with voluntary manslaughter or homicide in connection with a decedent's death, then any and all trust or restricted land or trust personalty that would otherwise pass to that person from the decedent's estate shall not pass or be distributed by the Secretary until the charges have been resolved in accordance with the provisions of this paragraph.

(B) Dismissal or withdrawal

Upon dismissal or withdrawal of the charge, or upon a verdict of not guilty, such land and personalty shall pass as if no charge had been filed or made.

(C) Conviction

Upon conviction of such person, and the exhaustion of all appeals, if any, the trust and restricted land and trust personalty in the estate shall pass in accordance with this subsection.

(7) Broad construction; policy of subsection

This subsection shall not be considered penal in nature, but shall be construed broadly in order to effect the policy that no person shall be allowed to profit by his own wrong, wherever committed.

(j) General rules governing probate

(1) Scope

Except as provided under applicable Federal law or a tribal probate code approved under section 2205 of this title, the provisions of this subsection shall govern the probate of estates containing trust and restricted interests in land or trust personalty.

(2) Pretermitted spouses and children

(A) Spouses

(i) In general

Except as provided in clause (ii), if the surviving spouse of a testator married the testator after the testator executed the will of the testator, the surviving spouse shall receive the intestate share in the decedent's trust or restricted land and trust personalty that the spouse would have received if the testator had died intestate.

(ii) Exception

Clause (i) shall not apply to a trust or restricted interest in land where—

(I) the will of a testator is executed before the date that is 1 year after the date on which the Secretary publishes a notice of certification under section 8(a)(4) of the American Indian Probate Reform Act of 2004 (25 U.S.C. 2201 note; Public Law 108–374);

(II)(aa) the spouse of a testator is a non-Indian; and

(bb) the testator devised the interests in trust or restricted land of the testator to 1 or more Indians;

(III) it appears, based on an examination of the will or other evidence, that

the will was made in contemplation of the marriage of the testator to the surviving spouse;

(IV) the will expresses the intention that the will is to be effective notwithstanding any subsequent marriage; or

(V)(aa) the testator provided for the spouse by a transfer of funds or property outside the will; and

(bb) an intent that the transfer be in lieu of a testamentary provision is demonstrated by statements of the testator or through a reasonable inference based on the amount of the transfer or other evidence.

(iii) Spouses married at the time of the will

Should the surviving spouse of the testator be omitted from the will of the testator, the surviving spouse shall be treated, for purposes of trust or restricted land or trust personalty in the testator's estate, in accordance with subsection (a)(2)(A) of this section, as though there was no will but only if—

(I) the testator and surviving spouse were continuously married without legal separation for the 5-year period preceding the decedent's death;

(II) the testator and surviving spouse have a surviving child who is the child of the testator;

(III) the surviving spouse has made substantial payments toward the purchase of, or improvements to, the trust or restricted land in such estate; or

(IV) the surviving spouse is under a binding obligation to continue making loan payments for the trust or restricted land for a substantial period of time;

except that, if there is evidence that the testator adequately provided for the surviving spouse and any minor children by a transfer of funds or property outside of the will, this clause shall not apply.

(B) Children

(i) In general

If a testator executed the will of the testator before the birth or adoption of 1 or more children of the testator, and the omission of the children from the will is a product of inadvertence rather than an intentional omission, the children shall share in the trust or restricted interests in land and trust personalty as if the decedent had died intestate.

(ii) Adopted heirs

Any person recognized as an heir by virtue of adoption under the Act of July 8, 1940 (25 U.S.C. 372a), shall be treated as the child of a decedent under this subsection.

(iii) Adopted-out children

(I) In general

For purposes of this chapter, an adopted person shall not be considered the child or issue of his natural parents, except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person. If a natural parent shall have married the adopting parent, the adopted person for purposes of inheritance by, from and through him shall also be considered the issue of such natural parent.

(II) Eligible heir pursuant to other Federal law or tribal law

Notwithstanding the provisions of subparagraph (B)(iii)(I), other Federal laws and laws of the Indian tribe with jurisdiction over the trust or restricted interest in land may otherwise define the inheritance rights of adopted-out children.

(3) Divorce

(A) Surviving spouse

(i) In general

An individual who is divorced from a decedent, or whose marriage to the decedent has been annulled, shall not be considered to be a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death of the decedent.

(ii) Separation

A decree of separation that does not dissolve a marriage, and terminate the status of husband and wife, shall not be considered a divorce for the purpose of this subsection.

(iii) No effect on adjudications

Nothing in clause (i) shall prevent the Secretary from giving effect to a property right settlement relating to a trust or restricted interest in land or an interest in trust personalty if 1 of the parties to the settlement dies before the issuance of a final decree dissolving the marriage of the parties to the property settlement.

(B) Effect of subsequent divorce on a will or devise

(i) In general

If, after executing a will, a testator is divorced or the marriage of the testator is annulled, as of the effective date of the divorce or annulment, any disposition of trust or restricted interests in land or of trust personalty made by the will to the former spouse of the testator shall be considered to be revoked unless the will expressly provides otherwise.

(ii) Property

Property that is prevented from passing to a former spouse of a decedent under clause (i) shall pass as if the former spouse failed to survive the decedent.

(iii) Provisions of wills

Any provision of a will that is considered to be revoked solely by operation of this subparagraph shall be revived by the remarriage of a testator to the former spouse of the testator.

(4) After-born heirs

A child in gestation at the time of decedent's death will be treated as having survived

the decedent if the child lives at least 120 hours after its birth.

(5) Advancements of trust personalty during lifetime; effect on distribution of estate

(A) The trust personalty of a decedent who dies intestate as to all or a portion of his or her estate, given during the decedent's lifetime to a person eligible to be an heir of the decedent under subsection (b)(2)(B) of this section, shall be treated as an advancement against the heir's inheritance, but only if the decedent declared in a contemporaneous writing, or the heir acknowledged in writing, that the gift is an advancement or is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(B) For the purposes of this section, trust personalty advanced during the decedent's lifetime is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever occurs first.

(C) If the recipient of the trust personalty predeceases the decedent, the property shall not be treated as an advancement or taken into account in computing the division and distribution of the decedent's intestate estate unless the decedent's contemporaneous writing provides otherwise.

(6) Heirs related to decedent through 2 lines; single share

A person who is related to the decedent through 2 lines of relationship is entitled to only a single share of the trust or restricted land or trust personalty in the decedent's estate based on the relationship that would entitle such person to the larger share.

(7) Notice

(A) In general

To the maximum extent practicable, the Secretary shall notify each owner of trust and restricted land of the provisions of this chapter.

(B) Combined notices

The notice under subparagraph (A) may, at the discretion of the Secretary, be provided with the notice required under subsection (a) of section 8 of the American Indian Probate Reform Act of 2004.

(8) Renunciation or disclaimer of interests

(A) In general

Any person 18 years of age or older may renounce or disclaim an inheritance of a trust or restricted interest in land or in trust personalty through intestate succession or devise, either in full or subject to the reservation of a life estate (where the interest is an interest in land), in accordance with subparagraph (B), by filing a signed and acknowledged declaration with the probate decisionmaker prior to entry of a final probate order. No interest so renounced or disclaimed shall be considered to have vested in the renouncing or disclaiming heir or devisee, and the renunciation or disclaimer shall not be considered to be a transfer or gift of the renounced or disclaimed interest.

(B) Eligible recipients of renounced or disclaimed interests; notice to recipients

(i) Interests in land

A trust or restricted interest in land may be renounced or disclaimed only in favor of—

(I) an eligible heir;

(II) any person who would have been eligible to be a devisee of the interest in question pursuant to subsection (b)(1)(A) of this section (but only in cases where the renouncing person is a devisee of the interest under a valid will); or

(III) the Indian tribe with jurisdiction over the interest in question;

and the interest so renounced shall pass to its recipient in trust or restricted status.

(ii) Trust personalty

An interest in trust personalty may be renounced or disclaimed in favor of any person who would be eligible to be a devisee of such an interest under subsection (b)(3) of this section and shall pass to the recipient in accordance with the provisions of that subsection.

(iii) Unauthorized renunciations and disclaimers

Unless renounced or disclaimed in favor of a person or Indian tribe eligible to receive the interest in accordance with the provisions of this subparagraph, a renounced or disclaimed interest shall pass as if the renunciation or disclaimer had not been made.

(C) Acceptance of interest

A renunciation or disclaimer of an interest filed in accordance with this paragraph shall be considered accepted when implemented in a final order by a decisionmaker, and shall thereafter be irrevocable. No renunciation or disclaimer of an interest shall be included in such order unless the recipient of the interest has been given notice of the renunciation or disclaimer and has not refused to accept the interest. All disclaimers and renunciations filed and implemented in probate orders made effective prior to October 27, 2004, are hereby ratified.

(D) Rule of construction

Nothing in this paragraph shall be construed to allow the renunciation of an interest that is subject to subsection (a)(2)(D) of this section in favor of more than 1 person.

(9) Consolidation agreements

(A) In general

During the pendency of probate, the decisionmaker is authorized to approve written consolidation agreements effecting exchanges or gifts voluntarily entered into between the decedent's eligible heirs or devisees, to consolidate interests in any tract of land included in the decedent's trust inventory. Such agreements may provide for the conveyance of interests already owned by such heirs or devisees in such tracts, without having to comply with the Secretary's

rules and requirements otherwise applicable to conveyances by deed of trust or restricted interests in land.

(B) Effective

An agreement approved under subparagraph (A) shall be considered final when implemented in an order by a decisionmaker. The final probate order shall direct any changes necessary to the Secretary's land records, to reflect and implement the terms of the approved agreement.

(C) Effect on purchase option at probate

Any interest in trust or restricted land that is subject to a consolidation agreement under this paragraph or subsection (e) of this section shall not be available for purchase under subsection (*o*) of this section unless the decisionmaker determines that the agreement should not be approved.

(k) Notification to landowners

After receiving a written request by any owner of a trust or restricted interest in land, the Secretary shall provide to such landowner the following information with respect to each tract of trust or restricted land in which the landowner has an interest:

(1) The location of the tract of land involved.

(2) The identity of each other co-owner of interests in the parcel of land.

(3) The percentage of ownership of each owner of an interest in the tract.

(*l*) Pilot project for the management of trust assets of Indian families and relatives

(1) Development pilot project

The Secretary shall consult with tribes, individual landowner organizations, Indian advocacy organizations, and other interested parties to—

(A) develop a pilot project for the creation of legal entities such as private or family trusts, partnerships corporations, or other organizations to improve, facilitate, and assist in the efficient management of interests in trust or restricted lands or funds owned by Indian family members and relatives; and

(B) develop proposed rules, regulations, and guidelines to implement the pilot project, including—

(i) the criteria for establishing such legal entities;

(ii) reporting and other requirements that the Secretary determines to be appropriate for administering such entities; and

(iii) provisions for suspending or revoking the authority of an entity to engage in activities relating to the management of trust or restricted assets under the pilot project in order to protect the interests of the beneficial owners of such assets.

(2) Primary purposes; limitation; approval of transactions; payments by Secretary

(A) Purposes

The primary purpose of any entity organized under the pilot project shall be to improve, facilitate, and assist in the management of interests in trust or restricted land, held by 1 or more persons, in furtherance of the purposes of this chapter.

(B) Limitation

The organization or activities of any entity under the pilot project shall not be construed to impair, impede, replace, abrogate, or modify in any respect the trust duties or responsibilities of the Secretary, nor shall anything in this subsection or in any rules, regulations, or guidelines developed under this subsection enable any private or family trustee of trust or restricted interests in land to exercise any powers over such interests greater than that held by the Secretary with respect to such interests.

(C) Secretarial approval of transactions

Any transaction involving the lease, use, mortgage or other disposition of trust or restricted land or other trust assets administered by or through an entity under the pilot project shall be subject to approval by the Secretary in accordance with applicable Federal law.

(D) Payments

The Secretary shall have the authority to make payments of income and revenues derived from trust or restricted land or other trust assets administered by or through an entity participating in the pilot project directly to the entity, in accordance with requirements of the regulations adopted pursuant to this subsection.

(3) Limitations on pilot project

(A) Number of organizations

The number of entities established under the pilot project authorized by this subsection shall not exceed 30.

(B) Regulations required

No entity shall commence activities under the pilot project authorized by this subsection until the Secretary has adopted final rules and regulations under paragraph (1)(B).

(4) Report to Congress

Prior to the expiration of the pilot project provided for under this subsection, the Secretary shall submit a report to Congress stating—

(A) a description of the Secretary's consultation with Indian tribes, individual landowner associations, Indian advocacy organizations, and other parties consulted with regarding the development of rules and regulations for the creation and management of interests in trust and restricted lands under the pilot project;

(B) the feasibility of accurately monitoring the performance of legal entities such as those involved in the pilot project, and the effectiveness of such entities as mechanisms to manage and protect trust assets;

(C) the impact that the use of entities such as those in the pilot project may have with respect to the accomplishment of the goals of this chapter; and

(D) any recommendations that the Secretary may have regarding whether to adopt a permanent program as a management and consolidation measure for interests in trust or restricted lands.

(m) Notice to heirs

Prior to holding a hearing to determine the heirs to trust or restricted property, or making a decision determining such heirs, the Secretary shall seek to provide actual written notice of the proceedings to all heirs. Such efforts shall include—

(1) a search of publicly available records and Federal records, including telephone and address directories and including electronic search services or directories;

(2) an inquiry with family members and coheirs of the property;

(3) an inquiry with the tribal government of which the owner is a member, and the tribal government with jurisdiction over the property, if any; and

(4) if the property is of a value greater than $2,000, engaging the services of an independent firm to conduct a missing persons search.

(n) Missing heirs

(1) For purposes of this subsection and subsection (m) of this section, an heir may be presumed missing if—

(A) such heir's whereabouts remain unknown 60 days after completion of notice efforts under subsection (m) of this section; and

(B) in the proceeding to determine a decedent's heirs, the Secretary finds that the heir has had no contact with other heirs of the decedent, if any, or with the Department relating to trust or restricted land or other trust assets at any time during the 6-year period preceding the hearing to determine heirs.

(2) Before the date for declaring an heir missing, any person may request an extension of time to locate such heir. The Secretary shall grant a reasonable extension of time for good cause.

(3) An heir shall be declared missing only after a review of the efforts made in the heirship proceeding and a finding has been made that this subsection has been complied with.

(4) An heir determined to be missing pursuant to this subsection shall be deemed to have predeceased the decedent for purposes of descent and devise of trust or restricted land and trust personalty within that decedent's estate.

(*o*) Purchase option at probate

(1) In general

The trust or restricted interests in a parcel of land in the decedent's estate may be purchased at probate in accordance with the provisions of this subsection.

(2) Sale of interest at fair market value

Subject to paragraph (3), the Secretary is authorized to sell trust or restricted interests in land subject to this subsection, including the interest that a surviving spouse would otherwise receive under subparagraph (A) or (D) of subsection (a)(2) of this section, at no less than fair market value, as determined in accordance with the provisions of this chapter, to any of the following eligible purchasers:

(A) Any other eligible heir taking an interest in the same parcel of land by intestate succession or the decedent's other devisees of interests in the same parcel who are eligible to receive a devise under subsection (b)(1)(A) of this section.

(B) All persons who own undivided trust or restricted interests in the same parcel of land involved in the probate proceeding.

(C) The Indian tribe with jurisdiction over the interest, or the Secretary on behalf of such Indian tribe.

(3) Request to purchase; consent requirements; multiple requests to purchase

(A) In general

No sale of an interest in probate shall occur under this subsection unless—

(i) an eligible purchaser described in paragraph (2) submits a written request to purchase prior to the distribution of the interest to heirs or devisees of the decedent and in accordance with any regulations of the Secretary; and

(ii) except as provided in paragraph (5), the heirs or devisees of such interest, and the decedent's surviving spouse, if any, receiving a life estate under subparagraph (A) or (D) of subsection (a)(2) of this section consent to the sale.

(B) Multiple requests to purchase

Except for interests purchased pursuant to paragraph (5), if the Secretary receives a request with respect to an interest from more than 1 eligible purchaser under paragraph (2), the Secretary shall sell the interest to the eligible purchaser that is selected by the applicable heir, devisee, or surviving spouse.

(4) Appraisal and notice

Prior to the sale of an interest pursuant to this subsection, the Secretary shall—

(A) appraise the interest at its fair market value in accordance with this chapter; and

(B) provide eligible heirs, other devisees, and the Indian tribe with jurisdiction over the interest with written notice, sent by first class mail, that the interest is available for purchase in accordance with this subsection.

(5) Small undivided interests in Indian lands

(A) In general

Subject to subparagraph (B), the consent of a person who is an heir or surviving spouse otherwise required under paragraph (3)(A)(ii) shall not be required for the sale of an interest at probate under this subsection if—

(i) the interest is passing by intestate succession;

(ii) prior to the sale the Secretary determines in the probate proceeding that, at the time of death of the applicable decedent, the interest of the decedent in the land represented less than 5 percent of the entire undivided ownership of the parcel of land as evidenced by the Secretary's records as of the time the determination is made; and

(iii)(I) the Secretary is purchasing the interest under the program authorized under section 2212(a)(1) of this title; or

(II) after receiving a notice under paragraph (4)(B), the Indian tribe with jurisdic-

tion over the interest is proposing to purchase the interest from an heir or surviving spouse who is not residing on the property in accordance with clause (i), and who is not a member, and is not eligible to become a member, of that Indian tribe.

(B) Exception

Notwithstanding subparagraph (A), the consent of such heir or surviving spouse shall be required for the sale at probate of the interest of the heir or surviving spouse if, at the time of the decedent's death, the heir or surviving spouse was residing on the parcel of land of which the interest to be sold was a part.

(6) Distribution of proceeds

(A) In general

Proceeds from the sale of interests under this subsection shall be distributed to the heirs, devisees, or spouse whose interest was sold in accordance with the values of their respective interests.

(B) Holding in trust

Proceeds described in subparagraph (A) shall be deposited and held in an account as trust personalty if the interest sold would otherwise pass to—

(i) the heir, by intestate succession under subsection (a) of this section; or

(ii) the devisee in trust or restricted status under subsection (b)(1) of this section.

(Pub. L. 97–459, title II, § 207, as added Pub. L. 106–462, title I, § 103(4), Nov. 7, 2000, 114 Stat. 1995; amended Pub. L. 108–374, §§ 3, 6(a)(2), (4), (e), Oct. 27, 2004, 118 Stat. 1774, 1797, 1800, 1805; Pub. L. 109–157, § 4, Dec. 30, 2005, 119 Stat. 2950; Pub. L. 109–221, title V, § 501(a), May 12, 2006, 120 Stat. 343; Pub. L. 110–453, title II, § 207(c), Dec. 2, 2008, 122 Stat. 5030.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2)(C)(ii), (D)(iii), (g)(2), (3), introductory provisions of (h) and (h)(2)(B), (j)(2)(B)(iii)(I), (7)(A), (*l*)(2)(A), (*o*)(2), (4)(A), was in the original ''this Act'', which was translated as reading ''this title'', meaning title II of Pub. L. 97–459, to reflect the probable intent of Congress. This chapter, referred to in the original in subsec. (h)(3), (4), probably should have been ''this title'', meaning title II of Pub. L. 97–459 which enacted this chapter.

Section 8 of the American Indian Probate Reform Act of 2004, referred to in subsecs. (a)(2)(D)(iv)(II)(dd), (c)(2), and (j)(2)(A)(ii)(I), (7)(B), is section 8 of Pub. L. 108–374, which is set out as a note under section 2201 of this title.

Public Law 91–627, referred to in subsec. (g)(1)(A), is Pub. L. 91–627, Dec. 31, 1970, 84 Stat. 1874, which amended section 607 of this title and enacted provisions set out as a note under section 607 of this title.

Public Law 92–377, referred to in subsec. (g)(1)(B), is Pub. L. 92–377, Aug. 10, 1972, 86 Stat. 530, which is not classified to the Code.

Public Law 92–443, referred to in subsec. (g)(1)(C), is Pub. L. 92–443, Sept. 29, 1972, 86 Stat. 744, which is not classified to the Code.

Public Law 96–274, referred to in subsec. (g)(1)(D), is Pub. L. 96–274, June 17, 1980, 94 Stat. 537, which is not classified to the Code.

Public Law 98–513, referred to in subsec. (g)(1)(E), is Pub. L. 98–513, Oct. 19, 1984, 98 Stat. 2411, which is not classified to the Code.

Act of July 8, 1940, referred to in subsec. (j)(2)(B)(ii), is act July 8, 1940, ch. 555, 54 Stat. 746, which enacted section 372a of this title and provisions set out as a note under section 372a of this title.

PRIOR PROVISIONS

A prior section 2206, Pub. L. 97–459, title II, § 207, Jan. 12, 1983, 96 Stat. 2519; Pub. L. 98–608, § 1(4), Oct. 30, 1984, 98 Stat. 3172; Pub. L. 101–644, title III, § 301(a), Nov. 29, 1990, 104 Stat. 4666, related to escheat to tribe of trust or restricted or controlled lands, fractional interests, and Indian tribal codes, prior to repeal by Pub. L. 106–462, title I, § 103(4), Nov. 7, 2000, 114 Stat. 1995.

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110–453, § 207(c)(1)(B), added par. (2) relating to intestate descent of permanent improvements.

Subsec. (a)(2)(D)(i). Pub. L. 110–453, § 207(c)(1)(A)(i), substituted ''clauses (ii) through (v)'' for ''clauses (ii) through (iv)''.

Subsec. (a)(2)(D)(iv)(II). Pub. L. 110–453, § 207(c)(1)(A)(ii), which directed substitution of ''descent'' for ''decedent'', was executed by making the substitution only in introductory provisions after ''order of'', to reflect the probable intent of Congress.

Subsec. (a)(2)(D)(v). Pub. L. 110–453, § 207(c)(1)(A)(iii), added cl. (v) and struck out former cl. (v). Prior to amendment, text read as follows: ''This subparagraph shall not be construed to limit a person's right to devise any trust or restricted interest by way of a valid will in accordance with subsection (b) of this section.''

Subsec. (b)(2)(B). Pub. L. 110–453, § 207(c)(2), designated introductory provisions and cls. (i) to (iii) as cl. (i), inserted heading, and substituted ''Subject to clauses (ii) and (iii), any interest';'' for ''Any interest'', redesignated former cls. (i) to (iii) as subcls. (I) to (III), respectively, of cl. (i) and realigned margins, substituted period for semicolon at end of subcl. (III), added cl. (ii), and designated concluding provisions as cl. (iii), inserted heading, and substituted ''Except as provided in clause (ii), nothing; and'' for ''provided that nothing''.

Subsec. (h)(1). Pub. L. 110–453, § 207(c)(3), designated existing provisions as subpar. (A), inserted heading, and added subpars. (B) and (C).

Subsecs. (i)(4)(C), (j)(2)(A)(ii). Pub. L. 110–453, § 207(c)(4), (5), substituted ''interest in land'' for ''interest land''.

Subsec. (k). Pub. L. 110–453, § 207(c)(6), inserted ''a'' after ''receiving'' in introductory provisions.

Subsec. (*o*)(3). Pub. L. 110–453, § 207(c)(7)(A), substituted ''Request to purchase; consent requirements; multiple requests to purchase'' for ''Request to purchase; auction; consent requirements'' in heading, designated introductory provisions and subpars. (A) and (B) as subpar. (A) and inserted heading, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A) and realigned margins, added subpar. (B), and struck out former concluding provisions which read as follows: ''If the Secretary receives more than 1 request to purchase the same interest, the Secretary shall sell the interest by public auction or sealed bid (as determined by the Secretary) at not less than the appraised fair market value to the eligible purchaser submitting the highest bid.''

Subsec. (*o*)(4). Pub. L. 110–453, § 207(c)(7)(B), inserted ''and'' at end of subpar. (A), substituted period for ''; and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''if the Secretary receives more than 1 request to purchase the interest by a person described in subparagraph (B), provide notice of the manner (auction or sealed bid), time and place of the sale, a description, and the appraised fair market value, of the interest to be sold—

''(i) to the heirs or other devisees and the Indian tribe with jurisdiction over the interest, by first class mail; and

''(ii) to all other eligible purchasers, by posting written notice in at least 5 conspicuous places in the vicinity of the place of hearing.''

Subsec. (*o*)(5)(A). Pub. L. 110–453, § 207(c)(7)(C)(i)(I), in introductory provisions, inserted ''or surviving spouse'' after ''heir'', substituted ''paragraph (3)(A)(ii)'' for ''paragraph (3)(B)'', and struck out ''auction and'' after ''required for the''.

Subsec. (*o*)(5)(A)(ii). Pub. L. 110–453, § 207(c)(7)(C)(i)(III)(aa), (bb), substituted ''sale'' for ''auction'' and '', at the time of death of the applicable decedent, the interest of the decedent in the land represented'' for ''the interest passing to such heir represents''.

Subsec. (*o*)(5)(A)(iii). Pub. L. 110–453, § 207(c)(7)(C)(i)(II), (III)(cc), (IV), added cl. (iii).

Subsec. (*o*)(5)(B). Pub. L. 110–453, § 207(c)(7)(C)(ii), inserted ''or surviving spouse'' after ''heir'' in two places and substituted ''interest of the heir or surviving spouse'' for ''heir's interest''.

2006—Subsec. (g)(2). Pub. L. 109–221, § 501(a)(1), substituted ''specified in paragraph (1)'' for ''described in paragraph (1)'' in introductory provisions and ''identified in such law'' for ''identified in Federal law'' in subpar. (B).

Subsec. (g)(3). Pub. L. 109–221, § 501(a)(2), added par. (3) and struck out former par. (3). Text read as follows: ''Except to the extent that this chapter otherwise affects the application of a Federal law described in paragraph (2), nothing in this subsection limits the application of this chapter to trust or restricted land, interests in such land, or any other trust or restricted interests or assets.''

2005—Subsec. (a)(2)(D)(iv)(I)(aa). Pub. L. 109–157, § 4(b)(1), substituted ''this subparagraph'' for ''clause (iii)''.

Subsec. (a)(2)(D)(iv)(I)(aa)(BB). Pub. L. 109–157, § 4(b)(2), substituted ''not more than 1 co-owner'' for ''any co-owner''.

Subsec. (c). Pub. L. 109–157, § 4(c), reenacted heading without change.

Subsec. (f)(3). Pub. L. 109–157, § 4(d), inserted '', including noncompetitive grants,'' after ''award grants'' in introductory provisions.

Subsec. (g). Pub. L. 109–157, § 4(a)(1), redesignated subsec. (h) as (g).

Subsec. (g)(2). Pub. L. 109–157, § 4(a)(2)(A)(i), inserted ''specifically'' after ''pertains'' in introductory provisions.

Subsec. (g)(2)(B). Pub. L. 109–157, § 4(a)(2)(A)(ii), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the allotted lands of 1 or more specific Indian tribes that are expressly identified in such law.''

Subsec. (g)(3). Pub. L. 109–157, § 4(a)(2)(B), added par. (3).

Subsec. (h). Pub. L. 109–157, § 4(a)(1), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Subsec. (h)(6). Pub. L. 109–157, § 4(a)(3)(A), made technical amendment to reference in original act which appears in text as reference to section 2205 of this title.

Subsec. (h)(7). Pub. L. 109–157, § 4(a)(3)(B), inserted ''in trust or restricted status'' after ''testator''.

Subsec. (i). Pub. L. 109–157, § 4(a)(1), redesignated subsec. (j) as (i). Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 109–157, § 4(a)(1), redesignated subsec. (k) as (j). Former subsec. (j) redesignated (i).

Subsec. (j)(2)(A)(ii)(I). Pub. L. 109–157, § 4(a)(4)(A)(i), substituted ''the date that is 1 year after the date on which the Secretary publishes a notice of certification under section 8(a)(4) of the American Indian Probate Reform Act of 2004 (25 U.S.C. 2201 note; Public Law 108–374)'' for ''October 27, 2004''.

Subsec. (j)(2)(A)(iii). Pub. L. 109–157, § 4(a)(4)(A)(ii), struck out ''the provisions of'' before ''subsection (a)(2)(A)'' and made technical amendment to reference in original act which appears in text as reference to subsection (a)(2)(A) in introductory provisions.

Subsec. (j)(8)(D). Pub. L. 109–157, § 4(a)(4)(B), struck out ''the provisions of'' before ''subsection (a)(2)(D)'' and made technical amendment to reference in original act which appears in text as reference to subsection (a)(2)(D).

Subsec. (j)(9)(C). Pub. L. 109–157, § 4(a)(4)(C), made technical amendment to reference in original act which appears in text as reference to subsection (e) and substituted ''subsection (*o*)'' for ''subsection (p)''.

Subsecs. (k) to (n). Pub. L. 109–157, § 4(a)(1), redesignated subsecs. (*l*) to (*o*) as (k) to (n), respectively. Former subsec. (k) redesignated (j).

Subsec. (*o*). Pub. L. 109–157, § 4(a)(1), redesignated subsec. (p) as (*o*). Former subsec. (*o*) redesignated (n).

Subsec. (*o*)(2). Pub. L. 109–157, § 4(a)(5)(A)(i), substituted ''subparagraph (A) or (D) of subsection (a)(2)'' for ''subsection (a)(2)(A) or (D)'' in introductory provisions.

Subsec. (*o*)(2)(A). Pub. L. 109–157, § 4(a)(5)(A)(ii), made technical amendment to reference in original act which appears in text as reference to subsection (b)(1)(A).

Subsec. (*o*)(3)(B). Pub. L. 109–157, § 4(a)(5)(B), substituted ''subparagraph (A) or (D) of subsection (a)(2)'' for ''subsection (a)(2)(A) or (D)''.

Subsec. (*o*)(6). Pub. L. 109–157, § 4(a)(5)(C), designated first sentence as subpar. (A), inserted subpar. heading, added subpar. (B), and struck out former second sentence which read as follows: ''The proceeds attributable to an heir or devisee shall be held in an account as trust personalty if the interest sold would have otherwise passed to the heir or devisee in trust or restricted status.''

2004—Subsec. (a). Pub. L. 108–374, § 3(a), added subsec. (a) and struck out heading and text of former subsec. (a) which related to testamentary disposition.

Subsec. (b). Pub. L. 108–374, § 3(b), added subsec. (b) and struck out heading and text of former subsec. (b) which related to intestate succession.

Subsec. (c). Pub. L. 108–374, § 3(c), added text of subsec. (c) and struck out text of former subsec. (c) which related to ownership interests in the same parcel of trust or restricted lands devised or passed to more than one person.

Subsec. (f)(1). Pub. L. 108–374, § 6(e)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''The Secretary shall provide estate planning assistance in accordance with this subsection, to the extent amounts are appropriated for such purpose.''

Subsec. (f)(2)(B) to (D). Pub. L. 108–374, § 6(e)(2), added subpars. (B) and (C) and redesignated former subpar. (B) as (D).

Subsec. (f)(3), (4). Pub. L. 108–374, § 6(e)(3), added pars. (3) and (4) and struck out heading and text of former par. (3). Text read as follows: ''In carrying out this section, the Secretary may enter into contracts with entities that have expertise in Indian estate planning and tribal probate codes.''

Subsec. (g). Pub. L. 108–374, § 6(a)(4), struck out heading and text of subsec. (g) which related to notification to Indian tribes and owners of trust or restricted lands of amendments made by the Indian Land Consolidation Act Amendments of 2000.

Subsecs. (h) to (k). Pub. L. 108–374, § 3(d), added subsecs. (h) to (k).

Subsecs. (*l*) to (*o*). Pub. L. 108–374, § 6(e)(4), which directed amendment of section by adding subsecs. (*l*) to (*o*) at end, was executed by adding those subsecs. after subsec. (k), to reflect the probable intent of Congress.

Subsec. (p). Pub. L. 108–374, § 6(a)(2), added subsec. (p).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–453, title II, § 207(f), Dec. 2, 2008, 122 Stat. 5033, provided that:

''(1) TESTAMENTARY DISPOSITION.—The amendments made by subsection (c)(2) of this section to section 207(b) of the Indian Land Consolidation Act (25 U.S.C. 2206(b)) shall not apply to any will executed before the date that is 1 year after the date of enactment of this Act [Dec. 2, 2008].

''(2) SMALL UNDIVIDED INTERESTS IN INDIAN LANDS.—The amendments made by subsection (c)(7)(C) of this section to subsection (*o*)(5) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) shall not apply to or affect any sale of an interest under subsection (*o*)(5) of that section that was completed before the date of enactment of this Act.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–157 effective as if included in Pub. L. 108–374, see section 9 of Pub. L. 109–157, set out as a note under section 464 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–374 applicable on and after the date that is 1 year after June 20, 2005, except that subsecs. (e) and (f) of this section (as amended by Pub. L. 108–374), subsec. (g) of this section (as in effect on Mar. 1, 2006), and amendment by section 6(a)(4) of Pub. L. 108–374 are applicable as of Oct. 27, 2004, see section 8(b) of Pub. L. 108–374, set out as a Notice; Effective Date of 2004 Amendment note under section 2201 of this title.

JUDICIAL REVIEW

Pub. L. 106–462, title I, § 104, Nov. 7, 2000, 114 Stat. 2006, provided that after the Secretary of the Interior provided the certification required under former subsec. (g)(4) of this section, the owner of an interest in trust or restricted land could bring an administrative action to challenge the application of this section to the devise or descent of his or her interest or interests in trust or restricted lands, and could seek judicial review of the final decision of the Secretary with respect to such challenge.

§ 2207. Full faith and credit to tribal actions under tribal ordinances limiting descent and distribution of trust or restricted or controlled lands

The Secretary in carrying out his responsibility to regulate the descent and distribution of trust lands under section 372 of this title, and other laws, shall give full faith and credit to any tribal actions taken pursuant to subsections (a) and (b) of section 2205 of this title, which provision shall apply only to estates of decedent's whose deaths occur on or after the effective date of tribal ordinances adopted pursuant to this chapter.

(Pub. L. 97–459, title II, § 208, Jan. 12, 1983, 96 Stat. 2519; Pub. L. 106–462, title I, § 103(5), Nov. 7, 2000, 114 Stat. 1999.)

AMENDMENTS

2000—Pub. L. 106–462 substituted ''subsections (a) and (b) of section 2205'' for ''section 2205''.

§ 2208. Conveyancing authority upon sale or exchange of tribal lands; removal of trust status of individually owned lands

The Secretary shall have the authority to issue deeds, patents, or such other instruments of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to the terms of this chapter and to remove, at the request of an Indian owner, the trust status of individually held lands or interests therein, where authorized by law.

(Pub. L. 97–459, title II, § 209, Jan. 12, 1983, 96 Stat. 2519.)

§ 2209. Trusteeship title of United States for any Indian or Indian tribe

Title to any land acquired under this chapter by any Indian or Indian tribe shall be taken in trust by the United States for that Indian or Indian tribe.

(Pub. L. 97–459, title II, § 210, Jan. 12, 1983, 96 Stat. 2519.)

§ 2210. Tax exemption

All lands or interests in land acquired by the United States for an Indian or Indian tribe under authority of this chapter shall be exempt from Federal, State and local taxation.

(Pub. L. 97–459, title II, § 211, Jan. 12, 1983, 96 Stat. 2519.)

§ 2211. Governing body of tribe; construction of chapter as not vesting with authority not authorized by tribal constitution or by-laws

Nothing in this chapter shall be construed as vesting the governing body of an Indian tribe with any authority which is not authorized by the constitution and by-laws or other organizational document of such tribe.

(Pub. L. 97–459, title II, § 212, as added Pub. L. 98–608, § 1(5), Oct. 30, 1984, 98 Stat. 3173.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', which was translated as reading ''this title'', meaning title II of Pub. L. 97–459, to reflect the probable intent of Congress.

§ 2212. Fractional interest acquisition program

(a) Acquisition by Secretary

(1) In general

The Secretary may acquire, at the discretion of the Secretary and with the consent of the owner, or from an heir during probate in accordance with section 2206(*o*) of this title and at fair market value, any fractional interest in trust or restricted lands.

(2) Authority of Secretary

The Secretary shall submit the report required under section 2217 of this title concerning how the fractional interest acquisition program should be enhanced to increase the resources made available to Indian tribes and individual Indian landowners.

(3) Interests held in trust

Subject to section 2213 of this title, the Secretary shall immediately hold interests acquired under this chapter in trust for the recognized tribal government that exercises jurisdiction over the land involved.

(b) Requirements

In implementing subsection (a) of this section, the Secretary—

(1) shall promote the policies provided for in section 102 of the Indian Land Consolidation Act Amendments of 2000;

(2) may give priority to the acquisition of fractional interests representing 2 percent or less of a parcel of trust or restricted land, especially those interests that would have escheated to a tribe but for the Supreme Court's decision in Babbitt v. Youpee (117 S[1] Ct. 727 (1997));

(3) to the extent practicable—

(A) shall consult with the tribal government that exercises jurisdiction over the land involved in determining which tracts to acquire on a reservation;

[1] So in original. Probably should be followed by a period.

(B) shall coordinate the acquisition activities with the acquisition program of the tribal government that exercises jurisdiction over the land involved, including a tribal land consolidation plan approved pursuant to section 2203 of this title; and

(C) may enter into agreements (such agreements will not be subject to the provisions of the Indian Self-Determination and Education Assistance Act of 1974 [25 U.S.C. 450 et seq.]) with the tribal government that exercises jurisdiction over the land involved or a subordinate entity of the tribal government to carry out some or all of the Secretary's land acquisition program; and

(4) shall minimize the administrative costs associated with the land acquisition program through the use of policies and procedures designed to accommodate the voluntary sale of interests under this section, notwithstanding the existence of any otherwise applicable policy, procedure, or regulation, through the elimination of duplicate—

(A) conveyance documents;

(B) administrative proceedings; and

(C) transactions.

(c) Sale of interest to Indian landowners

(1) Conveyance at request

(A) In general

At the request of any Indian who owns an undivided interest in a parcel of trust or restricted land, the Secretary shall convey an interest in such parcel acquired under this section to the Indian landowner—

(i) on payment by the Indian landowner of the amount paid for the interest by the Secretary; or

(ii) if—

(I) the Indian referred to in this subparagraph provides assurances that the purchase price will be paid by pledging revenue from any source, including trust resources; and

(II) the Secretary determines that the purchase price will be paid in a timely and efficient manner.

(B) Limitation

With respect to a conveyance under this subsection, the Secretary shall not approve an application to terminate the trust status or remove the restrictions of such an interest unless the interest is subject to a foreclosure of a mortgage in accordance with section 483a of this title.

(2) Multiple owners

If more than one Indian owner requests an interest under paragraph (1), the Secretary shall convey the interest to the Indian owner who owns the largest percentage of the undivided interest in the parcel of trust or restricted land involved.

(3) Limitation

If an Indian tribe that has jurisdiction over a parcel of trust or restricted land owns an undivided interest in a parcel of such land, such interest may only be acquired under paragraph (1) with the consent of such Indian tribe.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section $75,000,000 for fiscal year 2005, $95,000,000 for fiscal year 2006, and $145,000,000 for each of fiscal years 2007 through 2010.

(Pub. L. 97–459, title II, § 213, as added Pub. L. 106–462, title I, § 103(6), Nov. 7, 2000, 114 Stat. 1999; amended Pub. L. 108–374, § 6(a)(5), Oct. 27, 2004, 118 Stat. 1800; Pub. L. 109–157, § 5, Dec. 30, 2005, 119 Stat. 2952; Pub. L. 110–453, title II, § 207(d), Dec. 2, 2008, 122 Stat. 5033.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(3), was in the original ''this Act'', which was translated as reading ''this title'', meaning title II of Pub. L. 97–459, to reflect the probable intent of Congress.

Section 102 of the Indian Land Consolidation Act Amendments of 2000, referred to in subsec. (b)(1), is section 102 of Pub. L. 106–462, which is set out as a note under section 2201 of this title.

The Indian Self-Determination and Education Assistance Act of 1974, referred to in subsec. (b)(3)(C), probably means the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–453 substituted ''section 2206(*o*)'' for ''section 2206(p)''.

2005—Pub. L. 109–157, § 5(1), amended section catchline generally making technical correction to section designation.

Subsec. (a)(1). Pub. L. 109–157, § 5(2), made technical amendment to reference in original act which appears in text as reference to section 2206(p) of this title.

2004—Pub. L. 108–374, § 6(a)(5)(A), substituted ''Fractional interest acquisition program'' for ''Pilot program for the acquisition of fractional interests'' in section catchline.

Subsec. (a)(1). Pub. L. 108–374, § 6(a)(5)(B)(i), inserted ''or from an heir during probate in accordance with section 2206(p) of this title'' after ''owner,''.

Subsec. (a)(2). Pub. L. 108–374, § 6(a)(5)(B)(ii), (iii), reenacted heading without change, substituted ''The Secretary shall submit'' for ''(B) REQUIRED REPORT.—Prior to expiration of the authority provided for in subparagraph (A), the Secretary shall submit'' and ''how the fractional interest acquisition program should be enhanced to increase the resources made'' for ''whether the program to acquire fractional interests should be extended or altered to make resources'', and struck out heading and text of subpar. (A). Text of subpar. (A) read as follows: ''The Secretary shall have the authority to acquire interests in trust or restricted lands under this section during the 3-year period beginning on the date of certification that is referred to in section 2206(g)(5) of this title.''

Subsec. (b)(4). Pub. L. 108–374, § 6(a)(5)(C), added par. (4) and struck out former par. (4) which read as follows: ''shall minimize the administrative costs associated with the land acquisition program.''

Subsec. (c)(1)(A). Pub. L. 108–374, § 6(a)(5)(D)(i)(I)–(III), substituted ''an undivided interest'' for ''at least 5 percent of the undivided interest'', inserted ''in such parcel'' after ''the Secretary shall convey an interest'', and substituted ''landowner—'' and cls. (i) and (ii) for ''landowner upon payment by the Indian landowner of the amount paid for the interest by the Secretary.''

Subsec. (c)(1)(B). Pub. L. 108–374, § 6(a)(5)(D)(i)(IV), inserted ''unless the interest is subject to a foreclosure of a mortgage in accordance with section 483a of this title'' before period at end.

Subsec. (c)(3). Pub. L. 108–374, § 6(a)(5)(D)(ii), substituted ''an undivided interest'' for ''10 percent or more of the undivided interests''.

Subsec. (d). Pub. L. 108–374, § 6(a)(5)(E), added subsec. (d).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–157 effective as if included in Pub. L. 108–374, see section 9 of Pub. L. 109–157, set out as a note under section 464 of this title.

§ 2213. Administration of acquired fractional interests; disposition of proceeds

(a) In general

Subject to the conditions described in subsection (b)(1) of this section, an Indian tribe receiving a fractional interest under section 2212 of this title may, as a tenant in common with the other owners of the trust or restricted lands, lease the interest, sell the resources, consent to the granting of rights-of-way, or engage in any other transaction affecting the trust or restricted land authorized by law.

(b) Application of revenue from acquired interests to land consolidation program

(1) In general

The Secretary shall have a lien on any revenue accruing to an interest described in subsection (a) of this section until the Secretary provides for the removal of the lien under paragraph (3), (4), or (5).

(2) Requirements

(A) In general

Until the Secretary removes a lien from an interest in land under paragraph (1)—

(i) any lease, resource sale contract, right-of-way, or other document evidencing a transaction affecting the interest shall contain a clause providing that all revenue derived from the interest shall be paid to the Secretary; and

(ii) any revenue derived from any interest acquired by the Secretary in accordance with section 2212 of this title shall be deposited in the fund created under section 2215 of this title.

(B) Approval of transactions

Notwithstanding section 476 of this title, or any other provision of law, until the Secretary removes a lien from an interest in land under paragraph (1), the Secretary may approve a transaction covered under this section on behalf of an Indian tribe.

(3) Removal of liens after findings

The Secretary may remove a lien referred to in paragraph (1) if the Secretary makes a finding that—

(A) the costs of administering the interest from which revenue accrues under the lien will equal or exceed the projected revenues for the parcel of land involved;

(B) in the discretion of the Secretary, it will take an unreasonable period of time for the parcel of land to generate revenue that equals the purchase price paid for the interest; or

(C) a subsequent decrease in the value of land or commodities associated with the parcel of land make it likely that the interest will be unable to generate revenue that equals the purchase price paid for the interest in a reasonable time.

(4) Removal of liens upon payment into the acquisition fund

The Secretary shall remove a lien referred to in paragraph (1) upon payment of an amount equal to the purchase price of that interest in land into the Acquisition Fund created under section 2215[1] of this title, except where the tribe with jurisdiction over such interest in land authorizes the Secretary to continue the lien in order to generate additional acquisition funds.

(5) Other removal of liens

The Secretary may, in consultation with tribal governments and other entities described in section 2212(b)(3) of this title, periodically remove liens referred to in paragraph (1) from interests in land acquired by the Secretary.

(c) Tribe not treated as party to lease; no effect on tribal sovereignty, immunity

(1) In general

Paragraph (2) shall apply with respect to any undivided interest in allotted land held by the Secretary in trust for a tribe if a lease or agreement under subsection (a) of this section is otherwise applicable to such undivided interest by reason of this section even though the Indian tribe did not consent to the lease or agreement.

(2) Application of lease

The lease or agreement described in paragraph (1) shall apply to the portion of the undivided interest in allotted land described in such paragraph (including entitlement of the Indian tribe to payment under the lease or agreement), and the Indian tribe shall not be treated as being a party to the lease or agreement. Nothing in this section (or in the lease or agreement) shall be construed to affect the sovereignty of the Indian tribe.

(Pub. L. 97–459, title II, § 214, as added Pub. L. 106–462, title I, § 103(6), Nov. 7, 2000, 114 Stat. 2000; amended Pub. L. 108–374, § 6(a)(6), Oct. 27, 2004, 118 Stat. 1801.)

REFERENCES IN TEXT

Section 2215 of this title, referred to in the original in subsec. (b)(4), probably should have been ''section 216'', meaning section 216 of Pub. L. 97–459, which is classified to section 2215 of this title and relates to the establishment of an Acquisition Fund. Pub. L. 97–459 does not contain a section 2215.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–374 added subsec. (b) and struck out heading and text of former subsec. (b) which related to conditions applicable to the administration by Indian tribes of acquired fractional interests in trust or restricted lands.

§ 2214. Establishing fair market value

For purposes of this chapter, the Secretary may develop a system for establishing the fair

[1] See References in Text note below.

market value of various types of lands and improvements. Such a system may include determinations of fair market value based on appropriate geographic units as determined by the Secretary. Such a system may govern the amounts offered for the purchase of interests in trust or restricted land under this chapter.

(Pub. L. 97–459, title II, § 215, as added Pub. L. 106–462, title I, § 103(6), Nov. 7, 2000, 114 Stat. 2002; amended Pub. L. 108–374, § 6(a)(7), Oct. 27, 2004, 118 Stat. 1802; Pub. L. 109–157, § 6, Dec. 30, 2005, 119 Stat. 2952.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', which was translated as reading ''this title'', meaning title II of Pub. L. 97–459, to reflect the probable intent of Congress.

AMENDMENTS

2005—Pub. L. 109–157 substituted ''Such a system may govern the amounts offered for the purchase of interests in trust or restricted land under this chapter.'' for ''Such system may govern the amounts offered for the purchase of interests in trust or restricted lands under this chapter.''

2004—Pub. L. 108–374, which directed substitution of ''this Act'' for ''section 2212 of this title'' in last sentence, was executed by substituting ''this chapter'' for ''section 213'', meaning section 213 of Pub. L. 97–459, which is classified to section 2212 of this title, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–157 effective as if included in Pub. L. 108–374, see section 9 of Pub. L. 109–157, set out as a note under section 464 of this title.

§ 2215. Acquisition Fund

(a) In general

The Secretary shall establish an Acquisition Fund to—

(1) disburse appropriations authorized to accomplish the purposes of section 2212 of this title; and

(2) collect all revenues received from the lease, permit, or sale of resources from interests acquired under section 2212 of this title or paid by Indian landowners under section 2212 of this title.

(b) Deposits; use

(1) In general

All proceeds from leases, permits, or resource sales derived from an interest in trust or restricted lands described in subsection (a)(2) of this section shall—

(A) be deposited in the Acquisition Fund;

(B) as specified in advance in appropriations Acts, be available for the purpose of acquiring additional fractional interests in trust or restricted lands; and

(C) be used to acquire undivided interests on the reservation from which the income was derived.

(2) Use of funds

The Secretary may use the revenue deposited in the Acquisition Fund under paragraph (1) to acquire some or all of the undivided interests in any parcels of land in accordance with section 2204 of this title.

(Pub. L. 97–459, title II, § 216, as added Pub. L. 106–462, title I, § 103(6), Nov. 7, 2000, 114 Stat. 2002; amended Pub. L. 108–374, § 6(a)(8), Oct. 27, 2004, 118 Stat. 1802.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–374, § 6(a)(8)(A), added par. (2) and struck out former par. (2) which read as follows: ''collect all revenues received from the lease, permit, or sale of resources from interests in trust or restricted lands transferred to Indian tribes by the Secretary under section 2212 of this title or paid by Indian landowners under section 2212(c) of this title.''

Subsec. (b)(1). Pub. L. 108–374, § 6(a)(8)(B)(i), substituted ''All'' for ''Subject to paragraph (2), all'' in introductory provisions and added subpar. (C).

Subsec. (b)(2). Pub. L. 108–374, § 6(a)(8)(B)(ii), added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''With respect to the deposit of proceeds derived from an interest under paragraph (1), the aggregate amount deposited under that paragraph shall not exceed the purchase price of that interest under section 2212 of this title.''

§ 2216. Trust and restricted land transactions

(a) Policy

It is the policy of the United States to encourage and assist the consolidation of land ownership through transactions—

(1) involving individual Indians;

(2) between Indians and the tribal government that exercises jurisdiction over the land; or

(3) between individuals who own an interest in trust and restricted land who wish to convey that interest to an Indian or the tribal government that exercises jurisdiction over the parcel of land involved;

in a manner consistent with the policy of maintaining the trust status of allotted lands. Nothing in this section shall be construed to apply to or to authorize the sale of trust or restricted lands to a person who is not an Indian.

(b) Sales, exchanges and gift deeds between Indians and between Indians and Indian tribes

(1) In general

(A) Estimate of value

Notwithstanding any other provision of law and only after the Indian selling, exchanging, or conveying by gift deed for no or nominal consideration an interest in land, has been provided with an estimate of the value of the interest of the Indian pursuant to this section—

(i) the sale or exchange or conveyance of an interest in trust or restricted land may be made for an amount that is less than the fair market value of that interest; and

(ii) the approval of a transaction that is in compliance with this section shall not constitute a breach of trust by the Secretary.

(B) Waiver of requirement

The requirement for an estimate of value under subparagraph (A) may be waived in writing by an owner of a trust or restricted interest in land either selling, exchanging, or conveying by gift deed for no or nominal consideration such interest—

(i) to an Indian person who is the owner's spouse, brother, sister, lineal ancestor, lineal descendant, or collateral heir; or

(ii) to an Indian co-owner or to the tribe with jurisdiction over the subject parcel of land, where the grantor owns a fractional interest that represents 5 percent or less of the parcel.

(2) Limitation

For a period of 5 years after the Secretary approves a conveyance pursuant to this subsection, the Secretary shall not approve an application to terminate the trust status or remove the restrictions of such an interest.

(c) Acquisition of interest by Secretary

An Indian, or the recognized tribal government of a reservation, in possession of an interest in trust or restricted lands, at least a portion of which is in trust or restricted status on November 7, 2000, and located within a reservation, may request that the interest be taken into trust by the Secretary. Upon such a request, the Secretary shall forthwith take such interest into trust.

(d) Status of lands

The sale, exchange, or conveyance by gift deed for no or nominal consideration of an interest in trust or restricted land under this section shall not affect the status of that land as trust or restricted land.

(e) Land ownership information

Notwithstanding any other provision of law, the names and mailing addresses of the owners of any interest in trust or restricted lands, and information on the location of the parcel and the percentage of undivided interest owned by each individual shall, upon written request, be made available to—

(1) other owners of interests in trust or restricted lands within the same reservation;

(2) the tribe that exercises jurisdiction over the land where the parcel is located or any person who is eligible for membership in that tribe; and

(3) any person that is leasing, using, or consolidating, or is applying to lease, use, or consolidate, such trust or restricted land or the interest in trust or restricted lands.

(f) Purchase of land by Indian tribe

(1) In general

Except as provided in paragraph (2), before the Secretary approves an application to terminate the trust status or remove the restrictions on alienation from a parcel of, or interest in, trust or restricted land, the Indian tribe with jurisdiction over the parcel shall have the opportunity—

(A) to match any offer contained in the application; or

(B) in a case in which there is no purchase price offered, to acquire the interest in the parcel by paying the fair market value of the interest.

(2) Exception for family farms

(A) In general

Paragraph (1) shall not apply to a parcel of, or interest in, trust or restricted land that is part of a family farm that is conveyed to a member of the family of a landowner (as defined in section 2205(c)(2)(A)(iv) of this title) if the conveyance requires that in the event that the parcel or interest is offered for sale to an entity or person that is not a member of the family of the landowner, the Indian tribe with jurisdiction over the land shall be afforded the opportunity to purchase the interest pursuant to paragraph (1).

(B) Applicability of other provision

Section 2205(c)(2)(A) of this title shall apply with respect to the recording and mortgaging of any trust or restricted land referred to in subparagraph (A).

(Pub. L. 97–459, title II, § 217, as added Pub. L. 106–462, title I, § 103(6), Nov. 7, 2000, 114 Stat. 2002; amended Pub. L. 108–374, § 6(a)(9), Oct. 27, 2004, 118 Stat. 1803; Pub. L. 109–157, § 7, Dec. 30, 2005, 119 Stat. 2952.)

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–157 substituted ''be made available to—'' for ''be made available to''.

2004—Subsec. (b)(1)(B). Pub. L. 108–374, § 6(a)(9)(A), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: ''The requirement for an estimate of value under subparagraph (A) may be waived in writing by an Indian selling, exchanging, or conveying by gift deed for no or nominal consideration an interest in land with an Indian person who is the owner's spouse, brother, sister, lineal ancestor of Indian blood, lineal descendant, or collateral heir.''

Subsec. (e). Pub. L. 108–374, § 6(a)(9)(B), added introductory provisions and struck out former introductory provisions which read as follows: ''Notwithstanding any other provision of law, the names and mailing addresses of the Indian owners of trust or restricted lands, and information on the location of the parcel and the percentage of undivided interest owned by each individual, or of any interest in trust or restricted lands, shall, upon written request, be made available to—''.

Subsec. (e)(1). Pub. L. 108–374, § 6(a)(9)(C), struck out ''Indian'' before ''owners''.

Subsec. (e)(3). Pub. L. 108–374, § 6(a)(9)(D), substituted ''any person that is leasing, using, or consolidating, or is applying to lease, use, or consolidate,'' for ''prospective applicants for the leasing, use, or consolidation of''.

Subsec. (f). Pub. L. 108–374, § 6(a)(9)(E), added subsec. (f) and struck out heading and text of former subsec. (f). Text read as follows: ''After the expiration of the limitation period provided for in subsection (b)(2) of this section and prior to considering an Indian application to terminate the trust status or to remove the restrictions on alienation from trust or restricted land sold, exchanged or otherwise conveyed under this section, the Indian tribe that exercises jurisdiction over the parcel of such land shall be notified of the application and given the opportunity to match the purchase price that has been offered for the trust or restricted land involved.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–157 effective as if included in Pub. L. 108–374, see section 9 of Pub. L. 109–157, set out as a note under section 464 of this title.

§ 2217. Reports to Congress

(a) In general

Prior to expiration of the authority provided for in section 2212(a)(2)(A) of this title, the Secretary, after consultation with Indian tribes and other interested parties, shall submit to the Committee on Indian Affairs and the Committee

on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that indicates, for the period covered by the report—

(1) the number of fractional interests in trust or restricted lands acquired; and

(2) the impact of the resulting reduction in the number of such fractional interests on the financial and realty recordkeeping systems of the Bureau of Indian Affairs.

(b) Report

The reports described in subsection (a) of this section and section 2212(a) of this title shall contain findings as to whether the program under this chapter to acquire fractional interests in trust or restricted lands should be extended and whether such program should be altered to make resources available to Indian tribes and individual Indian landowners.

(Pub. L. 97–459, title II, § 218, as added Pub. L. 106–462, title I, § 103(6), Nov. 7, 2000, 114 Stat. 2004.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', which was translated as reading ''this title'', meaning title II of Pub. L. 97–459, to reflect the probable intent of Congress.

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.

§ 2218. Approval of leases, rights-of-way, and sales of natural resources

(a) Approval by the Secretary

(1) In general

Notwithstanding any other provision of law, the Secretary may approve any lease or agreement that affects individually owned allotted land or any other land held in trust or restricted status by the Secretary on behalf of an Indian, if—

(A) the owners of not less than the applicable percentage (determined under subsection (b) of this section) of the undivided interest in the allotted land that is covered by the lease or agreement consent in writing to the lease or agreement; and

(B) the Secretary determines that approving the lease or agreement is in the best interest of the owners of the undivided interest in the allotted land.

(2) Rule of construction

Nothing in this section shall be construed to apply to leases involving coal or uranium.

(3) Definition

In this section, the term ''allotted land'' includes any land held in trust or restricted status by the Secretary on behalf of one or more Indians.

(b) Applicable percentage

(1) Percentage interest

The applicable percentage referred to in subsection (a)(1) of this section shall be determined as follows:

(A) If there are 5 or fewer owners of the undivided interest in the allotted land, the applicable percentage shall be 90 percent.

(B) If there are more than 5 such owners, but fewer than 11 such owners, the applicable percentage shall be 80 percent.

(C) If there are more than 10 such owners, but fewer than 20 such owners, the applicable percentage shall be 60 percent.

(D) If there are 20 or more such owners, the applicable percentage shall be a majority of the interests in the allotted land.

(2) Determination of owners

(A) In general

For purposes of this subsection, in determining the number of owners of, and their interests in, the undivided interest in the allotted land with respect to a lease or agreement, the Secretary shall make such determination based on the records of the Department of the Interior that identify the owners of such lands and their interests and the number of owners of such land on the date on which the lease or agreement involved is submitted to the Secretary under this section.

(B) Rule of construction

Nothing in subparagraph (A) shall be construed to authorize the Secretary to treat an Indian tribe as the owner of an interest in allotted land that did not escheat to the tribe pursuant to section 2206 of this title as a result of the Supreme Court's decision in Babbitt v. Youpee (117 S[1] Ct. 727 (1997)).

(c) Authority of Secretary to sign lease or agreement on behalf of certain owners

The Secretary may give written consent to a lease or agreement under subsection (a) of this section—

(1) on behalf of the individual Indian owner if the owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined; or

(2) on behalf of any heir or devisee referred to in paragraph (1) if the heir or devisee has been determined but cannot be located[1]

(d) Effect of approval

(1) Application to all parties

(A) In general

Subject to paragraph (2), a lease or agreement approved by the Secretary under subsection (a) of this section shall be binding on the parties described in subparagraph (B), to the same extent as if all of the owners of the undivided interest in allotted land covered under the lease or agreement consented to the lease or agreement.

(B) Description of parties

The parties referred to in subparagraph (A) are—

(i) the owners of the undivided interest in the allotted land covered under the lease or agreement referred to in such subparagraph; and

(ii) all other parties to the lease or agreement.

[1] So in original. Probably should be followed by a period.

(2) Tribe not treated as party to lease; no effect on tribal sovereignty, immunity

(A) In general

Subparagraph (B) shall apply with respect to any undivided interest in allotted land held by the Secretary in trust for a tribe if a lease or agreement under subsection (a) of this section is otherwise applicable to such undivided interest by reason of this section even though the Indian tribe did not consent to the lease or agreement.

(B) Application of lease

The lease or agreement described in subparagraph (A) shall apply to the portion of the undivided interest in allotted land described in such paragraph (including entitlement of the Indian tribe to payment under the lease or agreement), and the Indian tribe shall not be treated as being a party to the lease or agreement. Nothing in this section (or in the lease or agreement) shall be construed to affect the sovereignty of the Indian tribe.

(e) Distribution of proceeds

(1) In general

The proceeds derived from a lease or agreement that is approved by the Secretary under subsection (a) of this section shall be distributed to all owners of undivided interest in the allotted land covered under the lease or agreement.

(2) Determination of amounts distributed

The amount of the proceeds under paragraph (1) that are distributed to each owner under that paragraph shall be determined in accordance with the portion of the undivided interest in the allotted land covered under the lease or agreement that is owned by that owner.

(f) Rule of construction

Nothing in this section shall be construed to amend or modify the provisions of Public Law 105–188 (25 U.S.C. 396 note), the American Indian Agricultural Resources Management Act (25 U.S.C. 3701 et seq.), title II of the Indian Land Consolidation Act Amendments of 2000, or any other Act that provides specific standards for the percentage of ownership interest that must approve a lease or agreement on a specified reservation.

(g) Other laws

Nothing in this chapter shall be construed to supersede, repeal, or modify any general or specific statute authorizing the grant or approval of any type of land use transaction involving fractional interests in trust or restricted land.

(Pub. L. 97–459, title II, § 219, as added Pub. L. 106–462, title I, § 103(6), Nov. 7, 2000, 114 Stat. 2004; amended Pub. L. 108–374, § 6(a)(10), (11), Oct. 27, 2004, 118 Stat. 1804.)

REFERENCES IN TEXT

The American Indian Agricultural Resources Management Act, referred to in subsec. (f), probably means the American Indian Agricultural Resource Management Act, Pub. L. 103–177, Dec. 3, 1993, 107 Stat. 2011, as amended, which is classified generally to chapter 39 (§ 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

The Indian Land Consolidation Act Amendments of 2000, referred to in subsec. (f), is Pub. L. 106–462, Nov. 7, 2000, 114 Stat. 1991. Title II of the Act enacted provisions classified as a note under section 396 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 2201 of this title and Tables.

This chapter, referred to in subsec. (g), was in the original ''this Act'', which was translated as reading ''this title'', meaning title II of Pub. L. 97–459, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (b)(1)(A). Pub. L. 108–374, § 6(a)(10), substituted ''90'' for ''100''.

Subsec. (g). Pub. L. 108–374, § 6(a)(11), added subsec. (g).

§ 2219. Application to Alaska

(a) Findings

Congress finds that—

(1) numerous academic and governmental organizations have studied the nature and extent of fractionated ownership of Indian land outside of Alaska and have proposed solutions to this problem; and

(2) despite these studies, there has not been a comparable effort to analyze the problem, if any, of fractionated ownership in Alaska.

(b) Application of chapter to Alaska

Except as provided in this section, this chapter shall not apply to land located within Alaska.

(c) Rule of construction

Nothing in this section shall be construed to constitute a ratification of any determination by any agency, instrumentality, or court of the United States that may support the assertion of tribal jurisdiction over allotment lands or interests in such land in Alaska.

(Pub. L. 97–459, title II, § 220, as added Pub. L. 106–462, title I, § 103(6), Nov. 7, 2000, 114 Stat. 2006.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', which was translated as reading ''this title'', meaning title II of Pub. L. 97–459, to reflect the probable intent of Congress.

§ 2220. Owner-managed interests

(a) Purpose

The purpose of this section is to provide a means for the owner or co-owners of trust or restricted interests in a parcel of land to enter into surface leases of such parcel for certain purposes without approval of the Secretary.

(b) Mineral interests

Nothing in this section shall be construed to limit or otherwise affect the application of any Federal law requiring the Secretary to approve mineral leases or other agreements for the development of the mineral interest in trust or restricted land.

(c) Owner management

(1) In general

Notwithstanding any provision of Federal law requiring the Secretary to approve indi-

vidual Indian leases of individual Indian trust or restricted land, where the owners of all of the undivided trust or restricted interests in a parcel of land have submitted applications to the Secretary pursuant to subsection (a) of this section, and the Secretary has approved such applications under subsection (d) of this section, such owners may, without further approval by the Secretary, enter into a lease of the parcel for agricultural purposes for a term not to exceed 10 years.

(2) Rule of construction

No such lease shall be effective until it has been executed by the owners of all undivided trust or restricted interests in the parcel.

(d) Approval of applications for owner management

(1) In general

Subject to the provisions of paragraph (2), the Secretary shall approve an application for owner management submitted by a qualified applicant pursuant to this section unless the Secretary has reason to believe that the applicant is submitting the application as the result of fraud or undue influence. No such application shall be valid or considered if it is received by the Secretary prior to the date that is 1 year after the date on which notice is published pursuant to section 8(a)(4) of the American Indian Probate Reform Act of 2004.

(2) Commencement of owner-managed status

Notwithstanding the approval of 1 or more applications pursuant to paragraph (1), no trust or restricted interest in a parcel of land shall acquire owner-managed status until applications for all of the trust or restricted interests in such parcel of land have been submitted to and approved by the Secretary pursuant to this section.

(e) Validity of leases

No lease of trust or restricted interests in a parcel of land that is owner-managed under this section shall be valid or enforceable against the owners of such interests, or against the land, the interest or the United States, unless such lease—

(1) is consistent with, and entered into in accordance with, the requirements of this section; or

(2) has been approved by the Secretary in accordance with other Federal laws applicable to the leasing of trust or restricted land.

(f) Lease revenues

The Secretary shall not be responsible for the collection of, or accounting for, any lease revenues accruing to any interests under a lease authorized by subsection (e) of this section, so long as such interest is in owner-managed status under the provisions of this section.

(g) Jurisdiction

(1) Jurisdiction unaffected by status

The Indian tribe with jurisdiction over an interest in trust or restricted land that becomes owner-managed pursuant to this section shall continue to have jurisdiction over the interest to the same extent and in all respects that such tribe had prior to the interest acquiring owner-managed status.

(2) Persons using land

Any person holding, leasing, or otherwise using such interest in land shall be considered to consent to the jurisdiction of the Indian tribe referred to in paragraph (1), including such tribe's laws and regulations, if any, relating to the use, and any effects associated with the use, of the interest.

(h) Continuation of owner-managed status; revocation

(1) In general

Subject to the provisions of paragraph (2), after the applications of the owners of all of the trust or restricted interests in a parcel of land have been approved by the Secretary pursuant to subsection (d) of this section, each such interest shall continue in owner-managed status under this section notwithstanding any subsequent conveyance of the interest in trust or restricted status to another person or the subsequent descent of the interest in trust or restricted status by testate or intestate succession to 1 or more heirs.

(2) Revocation

Owner-managed status of an interest may be revoked upon written request of the owners (including the parents or legal guardians of minors or incompetent owners) of all trust or restricted interests in the parcel, submitted to the Secretary in accordance with regulations adopted under subsection (*l*).[1] The revocation shall become effective as of the date on which the last of all such requests has been delivered to the Secretary.

(3) Effect of revocation

Revocation of owner-managed status under paragraph (2) shall not affect the validity of any lease made in accordance with the provisions of this section prior to the effective date of the revocation, provided that, after such revocation becomes effective, the Secretary shall be responsible for the collection of, and accounting for, all future lease revenues accruing to the trust or restricted interests in the parcel from and after such effective date.

(i) Defined terms

(1) For purposes of subsection (d)(1) of this section, the term ''qualified applicant'' means—

(A) a person over the age of 18 who owns a trust or restricted interest in a parcel of land; and

(B) the parent or legal guardian of a minor or incompetent person who owns a trust or restricted interest in a parcel of land.

(2) For purposes of this section, the term ''owner-managed status'' means, with respect to a trust or restricted interest, that—

(A) the interest is a trust or restricted interest in a parcel of land for which applications covering all trust or restricted interests in such parcel have been submitted to and approved by the Secretary pursuant to subsection (d) of this section;

[1] See References in Text note below.

(B) the interest may be leased without approval of the Secretary pursuant to, and in a manner that is consistent with, the requirements of this section; and

(C) no revocation has occurred under subsection (h)(2) of this section.

(j) Secretarial approval of other transactions

Except with respect to the specific lease transaction described in paragraph (1) of subsection (c) of this section, interests that acquire owner-managed status under the provisions of this section shall continue to be subject to all Federal laws requiring the Secretary to approve transactions involving trust or restricted land (including leases with terms of a duration in excess of 10 years) that would otherwise apply to such interests if the interests had not acquired owner-managed status under this section.

(k) Effect of section

Subject to subsections (c), (f), and (h) of this section, nothing in this section diminishes or otherwise affects any authority or responsibility of the Secretary with respect to an interest in trust or restricted land.

(Pub. L. 97–459, title II, § 221, as added Pub. L. 108–374, § 5, Oct. 27, 2004, 118 Stat. 1795; amended Pub. L. 110–453, title II, § 207(e), Dec. 2, 2008, 122 Stat. 5033.)

REFERENCES IN TEXT

Section 8(a)(4) of the American Indian Probate Reform Act of 2004, referred to in subsec. (d)(1), is section 8(a)(4) of Pub. L. 108–374, which is set out as a note under section 2201 of this title.

Subsection (*l*), referred to in subsec. (h)(2), probably should be a reference to section 10 of Pub. L. 108–374, which is set out as a note under section 2201 of this title and relates to the adoption of regulations. This section does not contain a subsec. (*l*).

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–453 inserted ''owner or'' before ''co-owners''.

§ 2221. Annual notice and filing; current whereabouts of interest owners

On at least an annual basis, the Secretary shall include along with other regular reports to owners of trust or restricted interests in land and individual Indian money account owners a change of name and address form by means of which the owner may confirm or update the owner's name and address. The change of name and address form shall include a section in which the owner may confirm and update the owner's name and address.

(Pub. L. 97–459, title II, § 222, as added Pub. L. 108–374, § 7, Oct. 27, 2004, 118 Stat. 1809.)

CHAPTER 25—OLD AGE ASSISTANCE CLAIMS SETTLEMENT

Sec.
2301. Definitions.
2302. Payment of claims.
2303. Notice.
2304. Identification of right to payment and expedited claim payment.
2305. Discharge and barring of claims.
2306. Authorization of appropriations.
2307. Treatment of funds.

§ 2301. Definitions

For purposes of this chapter, the term—

(1) ''Secretary'' means the Secretary of the Interior;

(2) ''unauthorized disbursement'' means a disbursement made from the trust estate of a deceased Indian which was made by the Secretary to a State or a political subdivision of a State for the purpose of reimbursing the State or political subdivision for any old age assistance made to the deceased Indian before death in violation of Federal laws governing Indian trust property: *Provided*, That, except for purposes of section 2303 of this title, the term also includes the reimbursements for welfare payments identified in either the list published on April 17, 1985, at page 15290 of volume 50 of the Federal Register, as modified or amended on November 13, 1985, at page 46835 of volume 50 of the Federal Register, or the list published on March 31, 1983, at page 13698 of volume 48 of the Federal Register, as modified or amended on November 7, 1983, at page 51204 of volume 48 of the Federal Register; and

(3) ''trust estate'' means that portion of the estate that consists of real or personal property, title to which is held by the United States for the benefit of the Indian or which may not be alienated without the consent of the Secretary.

(Pub. L. 98–500, § 2, Oct. 19, 1984, 98 Stat. 2317; Pub. L. 100–153, § 5, Nov. 5, 1987, 101 Stat. 886.)

AMENDMENTS

1987—Par. (2). Pub. L. 100–153 inserted proviso that ''unauthorized disbursement'' includes specifically identified reimbursements for welfare payments.

SHORT TITLE

Section 1 of Pub. L. 98–500 provided: ''That this Act [enacting this chapter] may be cited as the 'Old Age Assistance Claims Settlement Act'.''

§ 2302. Payment of claims

(a) Authority of Secretary

The Secretary is authorized and directed to determine the portion of any unauthorized disbursement to which any individual under this chapter is entitled, and to pay to such individual the amount which the Secretary determines such individual to be entitled. Any payment under this provision shall include interest at a rate of 5 per centum per annum, simple interest, from the date on which such disbursement was made from the trust estate of the deceased Indian.

(b) Minimum amount for payment

No payment shall be made to a person under subsection (a) of this section with respect to any unauthorized disbursement from the trust estate of a deceased Indian if—

(1) the total amount of unauthorized disbursements from such trust estate was less than $50; or

(2) the payment (not including interest) would be less than $10.

(Pub. L. 98–500, § 3, Oct. 19, 1984, 98 Stat. 2317; Pub. L. 100–581, title II, § 201, Nov. 1, 1988, 102 Stat. 2939.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–581 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''No payment shall be made under subsection (a) of this section with respect to any unauthorized disbursement from the trust estate of a deceased Indian if the total amount of unauthorized disbursement from such trust estate was less than $50.''

§ 2303. Notice

(a) Publication; list of trust estates; unauthorized disbursements; Federal Register

Within one hundred and eighty days after October 19, 1984, the Secretary shall publish in the Federal Register a list of all trust estates from which unauthorized disbursements are known to have been made, including the amount of the unauthorized disbursement made from each such trust estate.

(b) Secretary to provide information to affected tribes, bands, or groups

Within thirty days after the publication of this list, the Secretary shall provide a copy of this chapter and a copy of the Federal Register containing this list, or such parts as may be pertinent, to each Indian tribe, band, or group the rights of whose members may be affected by this chapter.

(c) Submission of additional unauthorized disbursement claims

Any tribe, band or group of Indians, or any individual Indian shall have one hundred and eighty days after the date of the publication in the Federal Register of the list provided for in subsection (b) of this section to submit to the Secretary any additional unauthorized disbursement claims not contained on the list.

(d) Publication of additional unauthorized disbursement claims

Not more than thirty days after the expiration of the one hundred and eighty day period provided for in subsection (c) of this section, the Secretary shall publish in the Federal Register a list containing the additional unauthorized disbursement claims submitted during such period.

(Pub. L. 98–500, § 4, Oct. 19, 1984, 98 Stat. 2317.)

§ 2304. Identification of right to payment and expedited claim payment

(a) Search of records

The Secretary shall conduct a search of the records of the Department of the Interior to identify individuals who are entitled to any portion of the unauthorized disbursements which were made and to ascertain the amount of such unauthorized disbursements to which each of such individuals is entitled.

(b) Payment without filing of claim

In any case in which the Secretary ascertains the name and location of any individual who is entitled to any portion of an unauthorized disbursement and determines the amount of such unauthorized disbursement to which such individual is entitled, the Secretary shall pay such amount, including interest thereon as provided in section 2302 of this title, to such individual immediately without requiring such individual to file a formal claim for payment.

(c) Notification

The Secretary shall use the best available means of notifying each individual who is identified in the search conducted under subsection (a) of this section of the right of such individual to receive payment under this chapter. The means of notification available to the Secretary shall include—

(1) notice provided directly to such individual;

(2) notification of the next of kin of such individual;

(3) notification of the chairman or chief executive officer of the tribe of which such individual is a member or of which the deceased Indian was a member; and

(4) publication of notice in newspapers of general circulation in the appropriate area.

(Pub. L. 98–500, § 5, Oct. 19, 1984, 98 Stat. 2318.)

§ 2305. Discharge and barring of claims

(a) Payment and acceptance

The payment and acceptance of any claim, after its determination in accordance with this chapter, shall be a full discharge to the United States or any State or political subdivision thereof of all claims and demands touching any of the matters involved in the controversy.

(b) Claims filed prior to October 19, 1984

The provisions of this chapter shall not affect claims arising from any unauthorized disbursement which were filed in any court of competent jurisdiction prior to October 19, 1984.

(Pub. L. 98–500, § 6, Oct. 19, 1984, 98 Stat. 2318.)

§ 2306. Authorization of appropriations

(a) There are authorized to be appropriated for the purpose of carrying out the provisions of this chapter $2,500,000 for each of the fiscal years 1986 and 1987, and such sums as may be necessary for any subsequent fiscal year. The amounts appropriated under the authority of this subsection shall remain available without fiscal year limitation for purposes of carrying out the provisions of this chapter until all claims filed under this chapter have been resolved.

(b) Funds necessary to pay the expenses of administering this chapter shall be appropriated and expended under the authority of section 13 of this title.

(Pub. L. 98–500, § 7, Oct. 19, 1984, 98 Stat. 2318.)

§ 2307. Treatment of funds

Funds distributed under the provisions of this chapter shall not be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act [42 U.S.C. 301 et seq.] or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.

(Pub. L. 98–500, § 8, Oct. 19, 1984, 98 Stat. 2319.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

CHAPTER 26—INDIAN ALCOHOL AND SUBSTANCE ABUSE PREVENTION AND TREATMENT

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SUBCHAPTER VI—INDIAN ALCOHOL AND SUBSTANCE ABUSE TREATMENT AND REHABILITATION

2471 to 2478. Transferred or Repealed.

SUBCHAPTER I—GENERAL PROVISIONS

§ 2401. Congressional findings

The Congress finds and declares that—

(1) the Federal Government has a historical relationship and unique legal and moral responsibility to Indian tribes and their members,

(2) included in this responsibility is the treaty, statutory, and historical obligation to assist the Indian tribes in meeting the health and social needs of their members,

(3) alcoholism and alcohol and substance abuse is the most severe health and social problem facing Indian tribes and people today and nothing is more costly to Indian people than the consequences of alcohol and substance abuse measured in physical, mental, social, and economic terms,

(4) alcohol and substance abuse is the leading generic risk factor among Indians, and Indians die from alcoholism at over 4 times the age-adjusted rates for the United States population and alcohol and substance misuse results in a rate of years of potential life lost nearly 5 times that of the United States,

(5) 4 of the top 10 causes of death among Indians are alcohol and drug related injuries (18 percent of all deaths), chronic liver disease and cirrhosis (5 percent), suicide (3 percent), and homicide (3 percent),

(6) primarily because deaths from unintentional injuries and violence occur disproportionately among young people, the age-specific death rate for Indians is approximately double the United States rate for the 15 to 45 age group,

(7) Indians between the ages of 15 and 24 years of age are more than 2 times as likely to commit suicide as the general population and approximately 80 percent of those suicides are alcohol-related,

(8) Indians between the ages of 15 and 24 years of age are twice as likely as the general population to die in automobile accidents, 75 percent of which are alcohol-related,

(9) the Indian Health Service, which is charged with treatment and rehabilitation efforts, has directed only 1 percent of its budget for alcohol and substance abuse problems,

(10) the Bureau of Indian Affairs, which has responsibility for programs in education, social services, law enforcement, and other areas, has assumed little responsibility for coordinating its various efforts to focus on the epidemic of alcohol and substance abuse among Indian people,

(11) this lack of emphasis and priority continues despite the fact that Bureau of Indian Affairs and Indian Health Service officials publicly acknowledge that alcohol and substance abuse among Indians is the most serious health and social problem facing the Indian people, and

(12) the Indian tribes have the primary responsibility for protecting and ensuring the well-being of their members and the resources made available under this chapter will assist Indian tribes in meeting that responsibility.

(Pub. L. 99–570, title IV, § 4202, Oct. 27, 1986, 100 Stat. 3207–137.)

REFERENCES IN TEXT

This chapter, referred to in par. (12), was in the original ''this subtitle'', meaning subtitle C of title IV of Pub. L. 99–570, Oct. 27, 1986, 100 Stat. 3207–137, known as the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, which is classified generally to this chapter. For complete classification of subtitle C to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 4201 of Pub. L. 99–570 provided that: ''This subtitle [subtitle C (§§ 4201–4230) of title IV of Pub. L. 99–570, enacting this chapter, amending section 1302 of this title, and enacting provisions set out as a note under section 1302 of this title] may be cited as the 'Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986'.''

RULE OF CONSTRUCTION FOR PUB. L. 100–690

Pub. L. 100–690, title II, § 2219, Nov. 18, 1988, 102 Stat. 4222, provided that: ''Except as otherwise provided in

this Act or the amendments made by this Act [see Tables for classification], nothing in this Act or the amendments made by this Act shall be construed to affect the obligation of the United States to any Indian or Indian tribe arising out of any treaty, statute, Executive order, or the trust responsibility of the United States owing to such Indian or Indian tribe. Nothing in this section shall exempt any individual Indian from the sanctions of 'user accountability' provided for elsewhere in this Act: *Provided*, That no individual Indian shall be denied any benefit under Federal Indian programs comparable to those 'means tested' safety net programs otherwise excluded under this Act.''

§ 2402. Purpose

It is the purpose of this chapter to—

(1) authorize and develop a comprehensive, coordinated attack upon the illegal narcotics traffic in Indian country and the deleterious impact of alcohol and substance abuse upon Indian tribes and their members,

(2) provide needed direction and guidance to those Federal agencies responsible for Indian programs to identify and focus existing programs and resources, including those made available by this chapter, upon this problem,

(3) provide authority and opportunities for Indian tribes to develop and implement a coordinated program for the prevention and treatment of alcohol and substance abuse at the local level, and

(4) to[1] modify or supplement existing programs and authorities in the areas of education, family and social services, law enforcement and judicial services, and health services to further the purposes of this chapter.

(Pub. L. 99–570, title IV, § 4203, Oct. 27, 1986, 100 Stat. 3207–138.)

§ 2403. Definitions

For purposes of this chapter—

(1) The term ''agency'' means the local administrative entity of the Bureau of Indian Affairs serving one or more Indian tribes within a defined geographic area.

(2) The term ''youth'' shall have the meaning given it in any particular Tribal Action Plan adopted pursuant to section 2411 of this title, except that, for purposes of statistical reporting under this chapter, it shall mean a person who is 19 years or younger or who is in attendance at a secondary school.

(3) The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)) which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(4) The term ''prevention and treatment'' includes, as appropriate—

(A) efforts to identify, and the identification of, Indians who are at risk with respect to, or who are abusers of, alcohol or controlled substances,

(B) intervention into cases of on-going alcohol and substance abuse to halt a further progression of such abuse,

(C) prevention through education and the provision of alternative activities,

(D) treatment for alcohol and substance abusers to help abstain from, and alleviate the effects of, abuse,

(E) rehabilitation to provide on-going assistance, either on an inpatient or outpatient basis, to help Indians reform or abstain from alcohol or substance abuse,

(F) follow-up or after-care to provide the appropriate counseling and assistance on an outpatient basis, and

(G) referral to other sources of assistance or resources.

(5) The term ''service unit'' means an administrative entity within the Indian Health Service or a tribe or tribal organization operating health care programs or facilities with funds from the Indian Health Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] through which the services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.

(6) The terms ''Urban Indian'', ''Urban Center'', and ''Urban Indian Organization'' shall have the same meaning as provided in section 1603 of this title.

(Pub. L. 99–570, title IV, § 4204, Oct. 27, 1986, 100 Stat. 3207–138; Pub. L. 100–690, title II, § 2202, Nov. 18, 1988, 102 Stat. 4217.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (3), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Indian Self-Determination Act, referred to in par. (5), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1988—Par. (6). Pub. L. 100–690 added par. (6).

SUBCHAPTER II—COORDINATION OF RESOURCES AND PROGRAMS

§ 2411. Inter-departmental Memorandum of Agreement

(a) In general

Not later than 120 days after October 27, 1986, the Secretary of the Interior and the Secretary of Health and Human Services shall develop and enter into a Memorandum of Agreement which shall, among other things—

(1) determine and define the scope of the problem of alcohol and substance abuse for Indian tribes and their members and its financial and human costs, and specifically identify such problems affecting Indian youth,

(2) identify—

(A) the resources and programs of the Bureau of Indian Affairs and Indian Health Service, and

(B) other Federal, tribal, State and local, and private resources and programs,

[1] So in original.

which would be relevant to a coordinated effort to combat alcohol and substance abuse among Indian people, including those programs and resources made available by this chapter,

(3) develop and establish appropriate minimum standards for each agency's program responsibilities under the Memorandum of Agreement which may be—

(A) the existing Federal or State standards in effect, or

(B) in the absence of such standards, new standards which will be developed and established in consultation with Indian tribes,

(4) coordinate the Bureau of Indian Affairs and Indian Health Service alcohol and substance abuse programs existing on October 27, 1986, with programs or efforts established by this chapter,

(5) delineate the responsibilities of the Bureau of Indian Affairs and the Indian Health Service to coordinate alcohol and substance abuse-related services at the central, area, agency, and service unit levels,

(6) direct Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit directors to cooperate fully with tribal requests made pursuant to section 2412 of this title, and

(7) provide for an annual review of such agreements by the Secretary of the Interior and the Secretary of Health and Human Services.

(b) Character of activities

To the extent that there are new activities undertaken pursuant to this chapter, those activities shall supplement, not supplant, activities, programs, and local actions that are ongoing on October 27, 1986. Such activities shall be undertaken in the manner least disruptive to tribal control, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and local control, in accordance with section 2010[1] of this title.

(c) Consultation

The Secretary of the Interior and the Secretary of Health and Human Services shall, in developing the Memorandum of Agreement under subsection (a) of this section, consult with and solicit the comments of—

(1) interested Indian tribes,

(2) Indian individuals,

(3) Indian organizations, and

(4) professionals in the treatment of alcohol and substance abuse.

(d) Publication

The Memorandum of Agreement under subsection (a) of this section shall be submitted to Congress and published in the Federal Register not later than 130 days after October 27, 1986. At the same time as publication in the Federal Register, the Secretary of the Interior shall provide a copy of this chapter and the Memorandum of Agreement under subsection (a) of this section to each Indian tribe.

[1] See References in Text note below.

(Pub. L. 99–570, title IV, § 4205, Oct. 27, 1986, 100 Stat. 3207–139.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (b), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

Section 2010 of this title, referred to in subsec. (b), was in the original a reference to section 1130 of the Education Amendments of 1978, Pub. L. 95–561. Section 1130 of Pub. L. 95–561 was omitted in the general amendment of chapter 22 (§ 2001 et seq.) of this title by Pub. L. 103–382, title III, § 381, Oct. 20, 1994, 108 Stat. 3979. Pub. L. 103–382 enacted a new section 1130 of Pub. L. 95–561, relating to uniform direct funding and support, which is classified to section 2010 of this title. Provisions relating to Indian control of Indian education are now contained in section 2011 of this title.

§ 2412. Tribal Action Plans

(a) In general

The governing body of any Indian tribe may, at its discretion, adopt a resolution for the establishment of a Tribal Action Plan to coordinate available resources and programs, including programs and resources made available by this chapter, in an effort to combat alcohol and substance abuse among its members. Such resolution shall be the basis for the implementation of this chapter and of the Memorandum of Agreement under section 2411 of this title.

(b) Cooperation

At the request of any Indian tribe pursuant to a resolution adopted under subsection (a) of this section, the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director providing services to such tribe shall cooperate with the tribe in the development of a Tribal Action Plan to coordinate resources and programs relevant to alcohol and substance abuse prevention and treatment. Upon the development of such a plan, such superintendents and director, as directed by the Memorandum of Agreement established under section 2411 of this title, shall enter into an agreement with the tribe for the implementation of the Tribal Action Plan under subsection (a) of this section.

(c) Provisions

(1) Any Tribal Action Plan entered into under subsection (b) of this section shall provide for—

(A) the establishment of a Tribal Coordinating Committee which shall—

(i) at a minimum, have as members a tribal representative who shall serve as Chairman and the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director, or their representatives,

(ii) have primary responsibility for the implementation of the Tribal Action Plan,

(iii) have the responsibility for on-going review and evaluation of, and the making of recommendations to the tribe relating to, the Tribal Action Plan, and

(iv) have the responsibility for scheduling Federal, tribal or other personnel for train-

ing in the prevention and treatment of alcohol and substance abuse among Indians as provided under section 2475[1] of this title, and

(B) the incorporation of the minimum standards for those programs and services which it encompasses which shall be—

(i) the Federal or State standards as provided in section 2411(a)(3) of this title, or

(ii) applicable tribal standards, if such standards are no less stringent than the Federal or State standards.

(2) Any Tribal Action Plan may, among other things, provide for—

(A) an assessment of the scope of the problem of alcohol and substance abuse for the Indian tribe which adopted the resolution for the Plan,

(B) the identification and coordination of available resources and programs relevant to a program of alcohol and substance abuse prevention and treatment,

(C) the establishment and prioritization of goals and the efforts needed to meet those goals,

(D) the identification of the community and family roles in any of the efforts undertaken as part of the Tribal Action Plan,

(E) the establishment of procedures for amendment and revision of the plan as may be determined necessary by the Tribal Coordinating Committee, and

(F) an evaluation component to measure the success of efforts made.

(3) All Tribal Action Plans shall be updated every 2 years.

(d) Grants

(1) The Secretary of the Interior may make grants to Indian tribes adopting a resolution pursuant to subsection (a) of this section to provide technical assistance in the development of a Tribal Action Plan. The Secretary shall allocate funds based on need.

(2) There are authorized to be appropriated for grants under this subsection not more than $2,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(e) Federal action

If any Indian tribe does not adopt a resolution as provided in subsection (a) of this section within 90 days after the publication of the Memorandum of Agreement in the Federal Register as provided in section 2411 of this title, the Secretary of the Interior and the Secretary of Health and Human Services shall require the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director serving such tribe to enter into an agreement to identify and coordinate available programs and resources to carry out the purposes of this chapter for such tribe. After such an agreement has been entered into for a tribe such tribe may adopt a resolution under subsection (a) of this section.

(f) Grants for training, education, and prevention programs

(1) The Secretary of the Interior may make grants to Indian tribes adopting a resolution pursuant to subsection (a) of this section to implement and develop community and in-school training, education, and prevention programs on alcohol and substance abuse, fetal alcohol syndrome and fetal alcohol effect.

(2) Funds provided under this section may be used for, but are not limited to, the development and implementation of tribal programs for—

(A) youth employment;

(B) youth recreation;

(C) youth cultural activities;

(D) community awareness programs; and

(E) community training and education programs.

(3) There are authorized to be appropriated to carry out the provisions of this subsection $5,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(Pub. L. 99–570, title IV, § 4206, Oct. 27, 1986, 100 Stat. 3207–140; Pub. L. 100–690, title II, §§ 2203, 2204, Nov. 18, 1988, 102 Stat. 4217; Pub. L. 102–573, title VII, § 703(1), Oct. 29, 1992, 106 Stat. 4582.)

REFERENCES IN TEXT

Section 2475 of this title, referred to in subsec. (c)(1)(A)(iv), was repealed by Pub. L. 102–573, title VII, § 702(b)(2), Oct. 29, 1992, 106 Stat. 4582. See section 1665d of this title.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–573, § 703(1)(A), in par. (2), redesignated subpars. (2) to (4) as subpars. (B) to (D), respectively, and added subpar. (F), and added par. (3).

Subsec. (d)(2). Pub. L. 102–573, § 703(1)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''There is authorized to be appropriated not to exceed $1,000,000 for each of the fiscal years 1989, 1990, 1991, and 1992 for grants under this subsection.''

Subsec. (f). Pub. L. 102–573, § 703(1)(C), added subsec. (f).

1988—Subsec. (c)(2)(E). Pub. L. 100–690, § 2203, added subpar. (E).

Subsec. (d)(2). Pub. L. 100–690, § 2204, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''There is authorized to be appropriated not to exceed $1,000,000 for each of the fiscal year 1987, 1988, and 1989 for grants under this subsection.''

§ 2413. Departmental responsibility

(a) Implementation

The Secretary of the Interior, acting through the Bureau of Indian Affairs, and the Secretary of Health and Human Services, acting through the Indian Health Service, shall bear equal responsibility for the implementation of this chapter in cooperation with Indian tribes.

(b) Office of Alcohol and Substance Abuse

(1) In order to better coordinate the various programs of the Bureau of Indian Affairs in carrying out this chapter, there is established within the Office of the Assistant Secretary of the Interior for Indian Affairs an Office of Alcohol and Substance Abuse. The director of such office[1] shall be appointed by the Assistant Secretary of the Interior for Indian Affairs on a permanent basis at no less than a grade GS–15 of the General Schedule.

(2) In addition to other responsibilities which may be assigned to such Office, it shall be responsible for—

[1] See References in Text note below.

[1] So in original. Probably should be capitalized.

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of this chapter and the Memorandum of Agreement entered into under section 2411 of this title, and

(B) serving as a point of contact within the Bureau of Indian Affairs for Indian tribes and the Tribal Coordinating Committees regarding the implementation of this chapter, the Memorandum of Agreement, and any Tribal Action Plan established under section 2412 of this title.

(3) The Assistant Secretary of the Interior for Indian Affairs shall appoint such employees to work in the Office of Alcohol and Substance Abuse, and shall provide such funding, services, and equipment as may be necessary to enable the Office of Alcohol and Substance Abuse to carry out its responsibilities.

(c) Indian Youth Programs Officer

(1) There is established in the Office of Alcohol and Substance Abuse the position to be known as the Indian Youth Programs Officer. The Assistant Secretary of the Interior for Indian Affairs shall appoint the Indian Youth Programs Officer.

(2) The position of Indian Youth Programs Officer shall be established on a permanent basis at no less than the grade of GS–14 of the General Schedule.

(3) In addition to other responsibilities which may be assigned to the Indian Youth Programs Officer relating to Indian Youth,[2] such Officer shall be responsible for—

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of this chapter and the Memorandum of Agreement entered into under section 2411 of this title as they relate to Indian youth efforts, and

(B) providing advice and recommendations, including recommendations submitted by Indian tribes and Tribal Coordinating Committees, to the Director of the Office of Alcohol and Substance Abuse as they relate to Indian youth.

(Pub. L. 99–570, title IV, § 4207, Oct. 27, 1986, 100 Stat. 3207–141; Pub. L. 100–690, title II, § 2216, Nov. 18, 1988, 102 Stat. 4221; Pub. L. 102–573, title VII, § 703(2), Oct. 29, 1992, 106 Stat. 4583.)

REFERENCES IN TEXT

The General Schedule, referred to in subsecs. (b)(1) and (c)(2), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1992—Subsec. (b)(3). Pub. L. 102–573 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Assistant Secretary of the Interior for Indian Affairs shall appoint such employees to work in the Office of Alcohol and Substance Abuse, and shall provide such services and equipment, as may be necessary to enable the Office of Alcohol and Substance Abuse to carry out its responsibilities.''

1988—Subsec. (b)(1). Pub. L. 100–690, § 2216(1), (2), substituted ''Assistant Secretary of the Interior for'' for ''Assistant Secretary of'' and ''Assistant Secretary of the Interior for Indian Affairs on'' for ''Assistant Secretary on''.

Subsec. (b)(3). Pub. L. 100–690, § 2216(3), added par. (3).

Subsec. (c)(1). Pub. L. 100–690, § 2216(4), inserted at end ''The Assistant Secretary of the Interior for Indian Affairs shall appoint the Indian Youth Programs Officer.''

[2] So in original. Probably should not be capitalized.

§ 2414. Congressional intent in construction of laws

It is the intent of Congress that—

(1) specific Federal laws, and administrative regulations promulgated thereunder, establishing programs of the Bureau of Indian Affairs, the Indian Health Service, and other Federal agencies, and

(2) general Federal laws, including laws limiting augmentation of Federal appropriations or encouraging joint or cooperative funding,

shall be liberally construed and administered to achieve the purposes of this chapter.

(Pub. L. 99–570, title IV, § 4208, Oct. 27, 1986, 100 Stat. 3207–142.)

§ 2414a. Review of programs

(a) In general

In the development of the Memorandum of Agreement required by section 2411 of this title, the Secretary of the Interior and the Secretary of Health and Human Services shall review and consider—

(1) the various programs established by Federal law providing health services and benefits to Indian tribes, including those relating to mental health and alcohol and substance abuse prevention and treatment,

(2) tribal, State and local, and private health resources and programs,

(3) where facilities to provide such treatment are or should be located, and

(4) the effectiveness of public and private alcohol and substance abuse treatment programs in operation on October 27, 1986,

to determine their applicability and relevance in carrying out the purposes of this chapter.

(b) Dissemination

The results of the review conducted under subsection (a) of this section shall be provided to every Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan.

(Pub. L. 99–570, title IV, § 4208A, formerly § 4224, Oct. 27, 1986, 100 Stat. 3207–148; renumbered § 4208A, Pub. L. 102–573, title VII, § 702(b)(1), Oct. 29, 1992, 106 Stat. 4582.)

CODIFICATION

Section was formerly classified to section 2471 of this title prior to renumbering by Pub. L. 102–573.

§ 2415. Federal facilities, property, and equipment; leasing of tribal property

(a) Facility availability

In the furtherance of the purposes and goals of this chapter, the Secretary of the Interior and the Secretary of Health and Human Services shall make available for community use, to the extent permitted by law and as may be provided in a Tribal Action Plan, local Federal facilities,

property, and equipment, including school facilities. Such facility availability shall include school facilities under the Secretary of the Interior's jurisdiction: *Provided*, That the use of any school facilities shall be conditioned upon approval of the local school board with jurisdiction over such school.

(b) Costs

Any additional cost associated with the use of Federal facilities, property, or equipment under subsection (a) of this section may be borne by the Secretary of the Interior and the Secretary of Health and Human Services out of available Federal, tribal, State, local, or private funds, if not otherwise prohibited by law. This subsection does not require the Secretary of the Interior nor the Secretary of Health and Human Services to expend additional funds to meet the additional costs which may be associated with the provision of such facilities, property, or equipment for community use. Where the use of Federal facilities, property, or equipment under subsection (a) of this section furthers the purposes and goals of this chapter, the use of funds other than those funds appropriated to the Department of the Interior or the Department of Health and Human Services to meet the additional costs associated with such use shall not constitute an augmentation of Federal appropriations.

(c) Leases

(1) The Secretary of the Interior and the Secretary of Health and Human Services are authorized to enter into long-term leases of tribally owned or leased facilities to house programs established by this chapter where they determine that there is no Federal facility reasonably available for such purpose and the cost of constructing a new Federal facility would exceed the cost of such Federal lease unless they determine that mitigating factors favor such a lease.

(2) A tribally owned or leased facility may be leased pursuant to this authority to house a regional treatment center to be established pursuant to section 2474(b)[1] of this title only if all the tribes within the Indian Health Service area to be served by such regional treatment center initially consent to such Federal lease.

(Pub. L. 99–570, title IV, § 4209, Oct. 27, 1986, 100 Stat. 3207–142; Pub. L. 100–690, title II, § 2205, Nov. 18, 1988, 102 Stat. 4217.)

REFERENCES IN TEXT

Section 2474(b) of this title, referred to in subsec. (c)(2), was repealed by Pub. L. 102–573, title VII, § 702(b)(2), Oct. 29, 1992, 106 Stat. 4582. See section 1665c(b) of this title.

AMENDMENTS

1988—Pub. L. 100–690, § 2205(1), inserted "; leasing of tribal property" in section catchline.

Subsec. (c). Pub. L. 100–690, § 2205(2), added subsec. (c).

LEASE AND OPERATION OF FACILITIES IN FAIRBANKS, ALASKA

Pub. L. 101–630, title V, § 509(b), (c), Nov. 28, 1990, 104 Stat. 4567, provided that:

"(b) LEASE OF FACILITIES.—The Secretary of Health and Human Services, acting under section 4209(c) and 4227(b) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act [of 1986, 25 U.S.C. 2415(c), 2474(b)], may—

"(1) without regard to section 4209(c)(2) of that Act, lease from the Tanana Chiefs Conference facilities that are located in Fairbanks, Alaska, and that the Tanana Chiefs Conference has leased from another entity, and

"(2) if the Secretary enters into a lease under paragraph (1) for at least 40 years, renovate the facilities to the extent needed.

"(c) SELF-DETERMINATION CONTRACTS FOR STAFFING AND OPERATION.—The Secretary of Health and Human Services, acting under section 102 of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450f], may contract with the Tanana Chiefs Conference to staff and operate the facilities leased under subsection (b), without a request of an Indian tribe, and without regard to the definition and proviso in section 4(*l*) of that Act [25 U.S.C. 450b(*l*)]."

§ 2416. Newsletter

(a) In general

The Secretary of the Interior shall publish an alcohol and substance abuse newsletter in cooperation with the Secretary of Health and Human Services and the Secretary of Education to report on Indian alcohol and substance abuse projects and programs. The newsletter shall—

(1) be published once in each calendar quarter,

(2) include reviews of programs determined by the Secretary of the Interior to be exemplary and provide sufficient information to enable interested persons to obtain further information about such programs, and

(3) be circulated without charge to—

(A) schools,

(B) tribal offices,

(C) Bureau of Indian Affairs' agency and area offices,

(D) Indian Health Service area and service unit offices,

(E) Indian Health Service alcohol programs, and

(F) other entities providing alcohol and substance abuse related services or resources to Indian people.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out this section $500,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(Pub. L. 99–570, title IV, § 4210, Oct. 27, 1986, 100 Stat. 3207–143; Pub. L. 100–690, title II, § 2218, Nov. 18, 1988, 102 Stat. 4222; Pub. L. 102–573, title VII, § 703(3), Oct. 29, 1992, 106 Stat. 4583.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–573 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "There are authorized to be appropriated for each of the fiscal years 1989, 1990, 1991, and 1992, $300,000 to carry out the provisions of this section."

1988—Pub. L. 100–690 struck out ", not later than 120 days after October 27, 1986," after "the Interior shall", designated existing provisions as subsec. (a), and added subsec. (b).

[1] See References in Text note below.

SUBCHAPTER III—INDIAN YOUTH PROGRAMS

§ 2431. Review of programs

(a) Review

In the development of the Memorandum of Agreement required by section 2411 of this title, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Secretary of Education shall review and consider—

(1) Federal programs providing education services or benefits to Indian children,

(2) tribal, State, local, and private educational resources and programs,

(3) Federal programs providing family and social services and benefits for Indian families and children,

(4) Federal programs relating to youth employment, recreation, cultural, and community activities, and

(5) tribal, State, local, and private resources for programs similar to those cited in paragraphs (3) and (4),

to determine their applicability and relevance in carrying out the purposes of this chapter.

(b) Publication

The results of the review conducted under subsection (a) of this section shall be provided to each Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan under section 2412 of this title.

(Pub. L. 99–570, title IV, § 4211, Oct. 27, 1986, 100 Stat. 3207–143.)

§ 2432. Indian education programs

(a) Pilot programs

The Assistant Secretary of Indian Affairs shall develop and implement pilot programs in selected schools funded by the Bureau of Indian Affairs (subject to the approval of the local school board or contract school board) to determine the effectiveness of summer youth programs in furthering the purposes and goals of this chapter. The Assistant Secretary shall defray all costs associated with the actual operation and support of the pilot programs in the school from funds appropriated for this section. For the pilot programs there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993, 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(b) Use of funds

Federal financial assistance made available to public or private schools because of the enrollment of Indian children pursuant to—

(1) the Act of April 16, 1934, as amended by the Indian Education Assistance Act (25 U.S.C. 452 et seq.),

(2) the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241aa et seq.),[1] and

(3) the Indian Education Act (20 U.S.C. 3385),[1]

may be used to support a program of instruction relating to alcohol and substance abuse prevention and treatment.

[1] See References in Text note below.

(Pub. L. 99–570, title IV, § 4212, Oct. 27, 1986, 100 Stat. 3207–144; Pub. L. 100–690, title II, § 2206, Nov. 18, 1988, 102 Stat. 4218; Pub. L. 102–573, title VII, § 703(4), Oct. 29, 1992, 106 Stat. 4583.)

REFERENCES IN TEXT

Act of April 16, 1934, referred to in subsec. (b)(1), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

The Indian Education Assistance Act, referred to in subsec. (b)(1), is title II of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2213, which enacted part C (§ 458a et seq.) of subchapter II of chapter 14 of this title, sections 455 to 457 of this title, and provisions set out as a note under section 457 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Indian Elementary and Secondary School Assistance Act, referred to in subsec. (b)(2), is title III of act Sept. 30, 1950, ch. 1124, as added by Pub. L. 92–318, title IV, § 411(a), June 23, 1972, 86 Stat. 334, as amended, which was classified generally to subchapter III (§ 241aa et seq.) of chapter 13 of Title 20, Education, and was repealed by Pub. L. 100–297, title V, § 5352(1), Apr. 28, 1988, 102 Stat. 414.

The Indian Education Act, referred to in subsec. (b)(3), is title IV of Pub. L. 92–318, June 23, 1972, 86 Stat. 334, as amended. Section 3385 of Title 20, which was enacted by section 421(a) of the Act, was repealed by Pub. L. 100–297, title V, § 5352(2), Apr. 28, 1988. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–573 substituted "1993, 1994, 1995, 1996, 1997, 1998, 1999, and 2000" for "1989, 1990, 1991, and 1992".

1988—Subsec. (a). Pub. L. 100–690 substituted "1989, 1990, 1991, and 1992" for "1987, 1988, and 1989".

§ 2433. Emergency shelters

(a) In general

A Tribal Action Plan adopted pursuant to section 2412 of this title may make such provisions as may be necessary and practical for the establishment, funding, licensing, and operation of emergency shelters or half-way houses for Indian youth who are alcohol or substance abusers, including youth who have been arrested for offenses directly or indirectly related to alcohol or substance abuse. Half-way houses may be used as either intake facilities or aftercare facilities for youth admitted, or to be admitted, for long-term treatment of substance abuse. The Indian Health Service, the Bureau of Indian Affairs, and the tribes are authorized to use their respective resources to adequately staff and operate any such facility.

(b) Referrals

(1) In any case where an Indian youth is arrested or detained by the Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to alcohol or substance abuse, other than for a status offense as defined by the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5601 et seq.], under circumstances where such youth may not be immediately restored to the custody of his parents or guardians and where there is space available in an appropriately licensed and supervised emer-

gency shelter or half-way house, such youth shall be referred to such facility in lieu of incarceration in a secured facility unless such youth is deemed a danger to himself or to other persons.

(2) In any case where there is a space available in an appropriately licensed and supervised emergency shelter or half-way house, the Bureau of Indian Affairs and tribal courts are encouraged to refer Indian youth convicted of offenses directly or indirectly related to alcohol and substance abuse to such facilities in lieu of sentencing to incarceration in a secured juvenile facility.

(c) Direction to States

In the case of any State that exercises criminal jurisdiction over any part of Indian country under section 1162 of title 18 or section 1321 of this title, such State is urged to require its law enforcement officers to—

(1) place any Indian youth arrested for any offense related to alcohol or substance abuse in a temporary emergency shelter described in subsection (d) of this section or a community-based alcohol or substance abuse treatment facility in lieu of incarceration to the extent such facilities are available, and

(2) observe the standards promulgated under subsection (d) of this section.

(d) Standards

The Assistant Secretary of Indian Affairs shall, as part of the development of the Memorandum of Agreement set out in section 2411 of this title, promulgate standards by which the emergency shelters established under a program pursuant to subsection (a) of this section shall be established and operated.

(e) Authorization

(1) For the planning and design, construction, and renovation of, or purchase or lease of land or facilities for, emergency shelters and half-way houses to provide emergency care for Indian youth, there are authorized to be appropriated $10,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(2) For the staffing and operation of emergency shelters and half-way houses, there are authorized to be appropriated $5,000,000 for fiscal year 1993 and $7,000,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(3) The Secretary of the Interior shall allocate funds appropriated pursuant to this subsection on the basis of priority of need of the various Indian tribes and such funds, when allocated, shall be subject to contracting or available for grants pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(4) Funds appropriated under the authority of this subsection may be used by any Indian tribe or tribal organization to purchase or lease any land or facilities if—

(A) the Secretary of the Interior determines that no Federal land or facilities are reasonably available for emergency shelters or halfway[1] houses described in subsection (a) of this section to serve the needs of that Indian tribe or tribal organization, and

(B) the Indian tribe or tribal organization enters into an agreement with the Secretary of the Interior that requires the Indian tribe or tribal organization to use the land or facilities for emergency shelters or half-way houses described in subsection (a) of this section.

(5) Nothing in this chapter[2] may be construed—

(A) to limit the authority for contracts with, or grants to, Indian tribes or tribal organizations under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] for the construction, improvement, renovation, operation, repair, land acquisition, or maintenance of tribal juvenile detention facilities, emergency shelters, or half-way houses, or

(B) to require a lease of tribal facilities to the United States to qualify for financial assistance for the facilities under this chapter or any other Act.

(Pub. L. 99–570, title IV, § 4213, Oct. 27, 1986, 100 Stat. 3207–144; Pub. L. 100–690, title II, § 2207, Nov. 18, 1988, 102 Stat. 4218; Pub. L. 101–272, Apr. 18, 1990, 104 Stat. 137; Pub. L. 102–573, title VII, § 703(5), Oct. 29, 1992, 106 Stat. 4583.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (b)(1), is Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended, which is classified principally to chapter 72 (§ 5601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of Title 42 and Tables.

The Indian Self-Determination Act, referred to in subsec. (e)(3), (5)(A), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

This chapter, referred to in subsec. (e)(5), was in the original ''this Act'' and was translated as reading ''this subtitle'', meaning subtitle C of title IV of Pub. L. 99–570, Oct. 27, 1986, 100 Stat. 3207–137, as amended, known as the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, which is classified generally to this chapter, to reflect the probable intent of Congress. For complete classification of subtitle C to the Code, see Short Title note set out under section 2401 of this title and Tables.

AMENDMENTS

1992—Subsec. (e)(1), (2). Pub. L. 102–573 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) For the planning and design, construction, and renovation of, or purchase or lease of land or facilities for, emergency shelters or half-way houses to provide emergency care for Indian youth, there is authorized to be appropriated $5,000,000 for the fiscal year 1989 and $3,000,000 for each of the fiscal years 1990, 1991, and 1992.

''(2) For the staffing and operation of emergency shelters and half-way houses, there is authorized to be appropriated $3,000,000 for the fiscal year 1989 and $3,000,000 for fiscal year 1990. An amount equal to the amount of funds appropriated pursuant to this paragraph for fiscal year 1990 shall be included in the base budget of the Bureau of Indian Affairs and funding thereafter shall be pursuant to section 13 of this title.''

1990—Subsec. (e)(1). Pub. L. 101–272, § 1(1), inserted '', or purchase or lease of land or facilities for,'' after ''renovation of''.

[1] So in original. Probably should be ''half-way''.

[2] See References in Text note below.

Subsec. (e)(3). Pub. L. 101–272, § 1(2), inserted ''or available for grants'' after ''subject to contracting''.

Subsec. (e)(4), (5). Pub. L. 101–272, § 1(3), added pars. (4) and (5).

1988—Subsec. (a). Pub. L. 100–690, § 2207(a), inserted provisions which permitted half-way houses to be used as either intake facilities or aftercare facilities, and authorized Indian Health Service, Bureau of Indian Affairs, and tribes to use resources to staff and operate such facilities.

Subsec. (e). Pub. L. 100–690, § 2207(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''For the planning and design, construction, and renovation of emergency shelters or half-way houses to provide emergency care for Indian youth, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1987, 1988, and 1989. For the operation of emergency shelters or half-way houses there is authorized to be appropriated $3,000,000 for each of the fiscal years 1987, 1988, and 1989. The Secretary of the Interior shall allocate funds appropriated pursuant to this subsection on the basis of priority of need of the various Indian tribes and such funds, when allocated, shall be subject to contracting pursuant to the Indian Self-Determination Act.''

§ 2434. Social services reports

(a) Data

The Secretary of the Interior, with respect to the administration of any family or social services program by the Bureau of Indian Affairs directly or through contracts under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], shall require the compilation of data relating to the number and types of child abuse and neglect cases seen and the type of assistance provided. Additionally, such data should also be categorized to reflect those cases that involve, or appear to involve, alcohol and substance abuse, those cases which are recurring, and those cases which involve other minor siblings.

(b) Referral of data

The data compiled pursuant to subsection (a) of this section shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan and shall also be submitted to the Indian Health Service service unit director who will have responsibility for compiling a tribal comprehensive report as provided in section 2477[1] of this title.

(c) Confidentiality

In carrying out the requirements of subsections (a) and (b) of this section, the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals.

(Pub. L. 99–570, title IV, § 4214, Oct. 27, 1986, 100 Stat. 3207–145.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

Section 2477 of this title, referred to in subsec. (b), was repealed by Pub. L. 102–573, title VII, § 702(b)(2), Oct. 29, 1992, 106 Stat. 4582. See section 1665f of this title.

[1] See References in Text note below.

SUBCHAPTER IV—LAW ENFORCEMENT AND JUDICIAL SERVICES

§ 2441. Review of programs

(a) Law enforcement and judicial services

In the development of the Memorandum of Agreement required by section 2411 of this title, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Attorney General of the United States, shall review and consider—

(1) the various programs established by Federal law providing law enforcement or judicial services for Indian tribes, and

(2) tribal and State and local law enforcement and judicial programs and systems

to determine their applicability and relevance in carrying out the purposes of this chapter.

(b) Dissemination of review

The results of the review conducted pursuant to subsection (a) of this section shall be made available to every Indian tribe as soon as possible for their consideration and use in the development and modification of a Tribal Action Plan.

(Pub. L. 99–570, title IV, § 4215, Oct. 27, 1986, 100 Stat. 3207–145.)

§ 2442. Illegal narcotics traffic on Tohono O'odham and St. Regis Reservations; source eradication

(a) Investigation and control

(1) The Secretary of the Interior shall provide assistance to—

(A) the Tohono O'odham Tribe of Arizona for the investigation and control of illegal narcotics traffic on the Tohono O'odham Reservation along the border with Mexico,

(B) the St. Regis Band of Mohawk Indians of New York for the development of tribal law enforcement and judicial systems to aid in the investigation and control of illegal narcotics traffic on the St. Regis Reservation along the border with Canada, and

(C) the Makah Indian Tribe of Washington for the investigation and control of illegal narcotic traffic on the Makah Indian Reservation arising from its proximity to international waters.

(2) The Secretary shall ensure that tribal efforts under this subsection are coordinated with appropriate Federal law enforcement agencies, including the United States Custom[1] Service.

(3) For the purpose of providing the assistance required by this subsection, there are authorized to be appropriated—

(A) $500,000 under paragraph (1)(A) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000,

(B) $500,000 under paragraph (1)(B) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000, and

[1] So in original. Probably should be ''Customs''.

(C) $500,000 under paragraph (1)(C) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(b) Marijuana eradication and interdiction

(1) The Secretary of the Interior, in cooperation with appropriate Federal, tribal, and State and local law enforcement agencies, shall establish and implement a program for the eradication of marijuana cultivation, and interdiction, investigation, and control of illegal narcotics trafficking within Indian country as defined in section 1152 of title 18. The Secretary shall establish a priority for the use of funds appropriated under paragraph (2) for those Indian reservations where the scope of the problem is most critical, and such funds shall be available for contracting by Indian tribes pursuant to the Indian Self-Determination Act (25 U.S.C. 450f et seq.).

(2) For the purpose of establishing the program required by paragraph (1), there are authorized to be appropriated $2,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(Pub. L. 99–570, title IV, § 4216, Oct. 27, 1986, 100 Stat. 3207–146; Pub. L. 100–690, title II, § 2208, Nov. 18, 1988, 102 Stat. 4218; Pub. L. 102–573, title VII, § 703(6)–(8), Oct. 29, 1992, 106 Stat. 4583.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (b)(1), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(1)(C). Pub. L. 102–573, § 703(6), added subpar. (C).

Subsec. (a)(3). Pub. L. 102–573, § 703(7), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For the purpose of providing the assistance required by this subsection, there are authorized to be appropriated—

''(A) $500,000 under paragraph (1)(A) for each of the fiscal years 1989, 1990, 1991, and 1992, and

''(B) $450,000 under paragraph (1)(B) for each of the fiscal years 1989 and 1990.''

Subsec. (b). Pub. L. 102–573, § 703(8), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) The Secretary of the Interior, in cooperation with appropriate Federal, tribal, and State and local law enforcement agencies, shall establish and implement a program for the eradication of marijuana cultivation within Indian country as defined in section 1152 of title 18. The Secretary shall establish a priority for the use of funds appropriated under subsection (b) of this section for those Indian reservations where the scope of the problem is most critical, and such funds shall be available for contracting by Indian tribes pursuant to the Indian Self-Determination Act.

''(2) AUTHORIZATION.—For the purpose of establishing the program required by paragraph (1), there are authorized to be appropriated $500,000 for each of the fiscal years 1989, 1990, 1991, and 1992.''

1988—Pub. L. 100–690, § 2208(a), substituted ''Tohono O'odham and St. Regis Reservations;'' for ''Papago Reservation:'' in section catchline.

Subsec. (a). Pub. L. 100–690, § 2208(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(1) INVESTIGATION AND CONTROL.—The Secretary of the Interior shall provide assistance to the Papago Indian Tribe (Tohono O'odham) of Arizona for the investigation and control of illegal narcotics traffic on the Papago Reservation along the border with Mexico. The Secretary shall ensure that tribal efforts are coordinated with appropriate Federal law enforcement agencies, including the United States Customs Service.

''(2) AUTHORIZATIONS.—For the purpose of providing the assistance required by subsection (a) of this section, there is authorized to be appropriated $500,000 for each of the fiscal years 1987, 1988, and 1989.''

Subsec. (b)(2). Pub. L. 100–690, § 2208(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''To carry out subsection (a) of this section, there is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989.''

SUBCHAPTER V—BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT

§ 2451. Bureau of Indian Affairs law enforcement and judicial training

(a) In general

The Secretary of the Interior shall ensure, through the establishment of a new training program or through the supplement of existing training programs, that all Bureau of Indian Affairs and tribal law enforcement and judicial personnel shall have available training in the investigation and prosecution of offenses relating to illegal narcotics and in alcohol and substance abuse prevention and treatment. Any training provided to Bureau of Indian Affairs and tribal law enforcement and judicial personnel as provided in this subsection shall specifically include training in the problems of youth alcohol and substance abuse prevention and treatment. Such training shall be coordinated with the Indian Health Service in the carrying out of its responsibilities under section 2475[1] of this title.

(b) Authorization

For the purposes of providing the training required by subsection (a) of this section, there are authorized to be appropriated $2,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999 and 2000.

(Pub. L. 99–570, title IV, § 4218, Oct. 27, 1986, 100 Stat. 3207–146; Pub. L. 100–690, title II, § 2209, Nov. 18, 1988, 102 Stat. 4219; Pub. L. 102–573, title VII, § 703(9), Oct. 29, 1992, 106 Stat. 4584.)

REFERENCES IN TEXT

Section 2475 of this title, referred to in subsec. (a), was repealed by Pub. L. 102–573, title VII, § 702(b)(2), Oct. 29, 1992, 106 Stat. 4582. See section 1665d of this title.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–573 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For the purpose of providing the training required by subsection (a) of this section, there are authorized to be appropriated $1,500,000 for each of the fiscal years 1989, 1990, 1991, and 1992.''

1988—Subsec. (b). Pub. L. 100–690 amended subsec. (b) generally, substituting ''1989, 1990, 1991, and 1992'' for ''1987, 1988, and 1989''.

[1] See References in Text note below.

§ 2452. Medical assessment and treatment of juvenile offenders

(a) Development and implementation of procedures

The Memorandum of Agreement entered into pursuant to section 2411 of this title shall include a specific provision for the development and implementation at each Bureau of Indian Affair[1] agency and Indian Health Service unit of a procedure for the emergency medical assessment and treatment of every Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to or involving alcohol or substance abuse. The medical assessment required by this subsection—

(1) shall be conducted to determine the mental or physical state of the individual assessed so that appropriate steps can be taken to protect the individual's health and well-being,

(2) shall occur as soon as possible after the arrest or detention of an Indian youth, and

(3) shall be provided by the Indian Health Service, either through its direct or contract health service.

(b) Treatment of certain committed youth

The Indian Health Service shall not refuse to provide necessary interim treatment for any Indian youth referred pursuant to subsection (a) of this section who has been charged or is being prosecuted for any crime unless such referral is prohibited by a court of competent jurisdiction or the youth is determined by a court of competent jurisdiction to be a danger to others.

(Pub. L. 99–570, title IV, § 4219, Oct. 27, 1986, 100 Stat. 3207–147; Pub. L. 100–690, title II, § 2210, Nov. 18, 1988, 102 Stat. 4219.)

AMENDMENTS

1988—Pub. L. 100–690 designated existing provisions as subsec. (a) and added subsec. (b).

§ 2453. Juvenile detention centers

(a) Plan

The Secretary of the Interior shall construct or renovate and staff new or existing juvenile detention centers. The Secretary shall ensure that the construction and operation of the centers is consistent with the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5601 et seq.].

(b) Authorization

(1) For the purpose of constructing or renovating juvenile detention centers as provided in subsection (a) of this section, there are authorized to be appropriated $10,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(2) For the purpose of staffing and operating juvenile detention centers, there are authorized to be appropriated $7,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

(Pub. L. 99–570, title IV, § 4220, Oct. 27, 1986, 100 Stat. 3207–147; Pub. L. 100–690, title II, § 2211, Nov. 18, 1988, 102 Stat. 4219; Pub. L. 102–573, title VII, § 703(10), Oct. 29, 1992, 106 Stat. 4584.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (a), is Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended, which is classified principally to chapter 72 (§ 5601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of Title 42 and Tables.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–573 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

"(1) For the purpose of constructing or renovating juvenile detention centers as provided in subsection (a) of this section, there is authorized to be appropriated $10,000,000 for the fiscal year 1989 and $5,000,000 for each of the fiscal years 1990 and 1991.

"(2) For the purpose of staffing and operating juvenile detention centers, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1989 and 1990. An amount equal to the amount of funds appropriated pursuant to this paragraph for fiscal year 1990 shall be included in the base budget of the Bureau of Indian Affairs and funding thereafter shall be pursuant to section 13 of this title."

1988—Subsec. (b). Pub. L. 100–690 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "For the purpose of subsection (a) of this section, there is authorized to be appropriated $10,000,000 for construction and renovation for each of the fiscal years 1987, 1988, and 1989, and $5,000,000 for staffing and operation for each of the fiscal years 1987, 1988, and 1989."

§ 2454. Model Indian Juvenile Code

The Secretary of the Interior, either directly or by contract, shall provide for the development of a Model Indian Juvenile Code which shall be consistent with the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5601 et seq.] and which shall include provisions relating to the disposition of cases involving Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for alcohol or drug related offenses. The development of such model code[1] shall be accomplished in cooperation with Indian organizations having an expertise or knowledge in the field of law enforcement and judicial procedure and in consultation with Indian tribes. Upon completion of the Model Code, the Secretary shall make copies available to each Indian tribe.

(Pub. L. 99–570, title IV, § 4221, Oct. 27, 1986, 100 Stat. 3207–147.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in text, is Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended, which is classified principally to chapter 72 (§ 5601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of Title 42 and Tables.

§ 2455. Law enforcement and judicial report

(a) Compilation of law enforcement data

The Secretary of the Interior, with respect to the administration of any law enforcement or judicial services program by the Bureau of In-

[1] So in original. Probably should be "Affairs".

[1] So in original. Probably should be "Model Code".

dian Affairs, either directly or through contracts under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], shall require the compilation of data relating to calls and encounters, arrests and detentions, and disposition of cases by Bureau of Indian Affairs or tribal law enforcement or judicial personnel involving Indians where it is determined that alcohol or substance abuse is a contributing factor.

(b) Referral of data

The data compiled pursuant to subsection (a) of this section shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan and shall also be submitted to the Indian Health Service[1] unit director who will have the responsibility for compiling a tribal comprehensive report as provided in section 2477[2] of this title.

(c) Confidentiality

In carrying out this section, the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals involved.

(Pub. L. 99–570, title IV, § 4222, Oct. 27, 1986, 100 Stat. 3207–148.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

Section 2477 of this title, referred to in subsec. (b), was repealed by Pub. L. 102–573, title VII, § 702(b)(2), Oct. 29, 1992, 106 Stat. 4582. See section 1665f of this title.

SUBCHAPTER VI—INDIAN ALCOHOL AND SUBSTANCE ABUSE TREATMENT AND REHABILITATION

§ 2471. Transferred

CODIFICATION

Section, Pub. L. 99–570, title IV, § 4224, Oct. 27, 1986, 100 Stat. 3207–148, which related to review of programs providing health services and benefits to Indians, was renumbered section 4208A of Pub. L. 99–570 by Pub. L. 102–573, title VII, § 702(b)(1), Oct. 29, 1992, 106 Stat. 4582, and transferred to section 2414a of this title.

§§ 2472 to 2478. Repealed. Pub. L. 102–573, title VII, § 702(b)(2), Oct. 29, 1992, 106 Stat. 4582

Section 2472, Pub. L. 99–570, title IV, § 4225, Oct. 27, 1986, 100 Stat. 3207–148, related to responsibilities of Indian Health Service for alcohol and substance abuse prevention and treatment. See section 1665 of this title.

Section 2473, Pub. L. 99–570, title IV, § 4226, Oct. 27, 1986, 100 Stat. 3207–149; Pub. L. 100–690, title II, § 2217, Nov. 18, 1988, 102 Stat. 4222, provided for program of alcohol and substance abuse prevention and treatment through Indian Health Service. See section 1665a of this title.

Section 2474, Pub. L. 99–570, title IV, § 4227, Oct. 27, 1986, 100 Stat. 3207–149; Pub. L. 100–690, title II, § 2212, Nov. 18, 1988, 102 Stat. 4219; Pub. L. 101–630, title V, § 509(a), Nov. 28, 1990, 104 Stat. 4567, provided for Indian Health Service program of alcohol and substance abuse detoxification and rehabilitation for Indian youth. See section 1665c of this title.

Section 2475, Pub. L. 99–570, title IV, § 4228, Oct. 27, 1986, 100 Stat. 3207–150; Pub. L. 100–690, title II, § 2213, Nov. 18, 1988, 102 Stat. 4220, provided for program of training and community education about alcohol and substance abuse. See section 1665d of this title.

Section 2476, Pub. L. 99–570, title IV, § 4229, Oct. 27, 1986, 100 Stat. 3207–152; Pub. L. 100–690, title II, § 2214, Nov. 18, 1988, 102 Stat. 4220, provided for establishment of Navajo alcohol rehabilitation demonstration program.

Section 2477, Pub. L. 99–570, title IV, § 4230, Oct. 27, 1986, 100 Stat. 3207–152, related to compilation of data and preparation of reports on cases of alcohol or substance abuse in which Indian Health Service personnel or services were involved. See section 1665f of this title.

Section 2478, Pub. L. 99–570, title IV, § 4231, as added Pub. L. 100–690, title II, § 2215, Nov. 18, 1988, 102 Stat. 4221, authorized grants for alcohol and substance abuse prevention and treatment in urban centers.

CHAPTER 27—TRIBALLY CONTROLLED SCHOOL GRANTS

Sec.
2501. Declaration of policy.
2502. Grants authorized.
2503. Composition of grants.
2504. Eligibility for grants.
2505. Duration of eligibility determination.
2506. Payment of grants; investment of funds.
2507. Application with respect to Indian Self-Determination and Education Assistance Act.
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2510. The tribally controlled grant school endowment program.
2511. Definitions.

§ 2501. Declaration of policy

(a) Recognition

Congress recognizes that the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.], which was a product of the legitimate aspirations and a recognition of the inherent authority of Indian nations, was and is a crucial positive step toward tribal and community control and that the United States has an obligation to assure maximum Indian participation in the direction of educational services so as to render the persons administering such services and the services themselves more responsive to the needs and desires of Indian communities.

(b) Commitment

Congress declares its commitment to the maintenance of the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children through the establishment of a meaningful Indian self-determination policy for education that will deter further perpetuation of Federal bureaucratic domination of programs.

(c) National goal

Congress declares that a national goal of the United States is to provide the resources, processes, and structure that will enable tribes and local communities to obtain the quantity and quality of educational services and opportunities that will permit Indian children—

[1] So in original. Probably should be followed by "service".

[2] See References in Text note below.

(1) to compete and excel in areas of their choice; and

(2) to achieve the measure of self-determination essential to their social and economic well-being.

(d) Educational needs

Congress affirms—

(1) true self-determination in any society of people is dependent upon an educational process that will ensure the development of qualified people to fulfill meaningful leadership roles;

(2) that Indian people have special and unique educational needs, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities; and

(3) that those needs may best be met through a grant process.

(e) Federal relations

Congress declares a commitment to the policies described in this section and support, to the full extent of congressional responsibility, for Federal relations with the Indian nations.

(f) Termination

Congress repudiates and rejects House Concurrent Resolution 108 of the 83d Congress and any policy of unilateral termination of Federal relations with any Indian nation.

(Pub. L. 100–297, title V, § 5202, as added Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

House Concurrent Resolution 108 of the 83rd Congress, referred to in subsec. (f), is H. Con. Res. 108, Eighty-third Congress, Aug. 1, 1953, 67 Stat. B132, which is not classified to the Code.

PRIOR PROVISIONS

A prior section 2501, Pub. L. 100–297, title V, § 5202, Apr. 28, 1988, 102 Stat. 385, set forth findings, prior to repeal by Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

SHORT TITLE

Section 5201 of Pub. L. 100–297 provided that: ''This part [part B (§§ 5201–5212) of title V of Pub. L. 100–297, enacting this chapter] may be cited as the 'Tribally Controlled Schools Act of 1988'.''

TRIBAL SCHOOL CONSTRUCTION DEMONSTRATION PROGRAM

Pub. L. 108–7, div. F, title I, § 122, Feb. 20, 2003, 117 Stat. 241, as amended by Pub. L. 108–108, title I, § 136(a), Nov. 10, 2003, 117 Stat. 1270, provided that:

''(a) DEFINITIONS.—In this section:

''(1) CONSTRUCTION.—The term 'construction', with respect to a tribally controlled school, includes the construction or renovation of that school.

''(2) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

''(3) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(4) TRIBALLY CONTROLLED SCHOOL.—The term 'tribally controlled school' means a school that currently receives a grant under the Tribally Controlled Schools Act of 1988, as amended (25 U.S.C. 2501 et seq.) or is determined by the Secretary to meet the eligibility criteria of section 5205 of the Tribally Controlled Schools Act of 1988, as amended (25 U.S.C. 2504).

''(5) DEPARTMENT.—The term 'Department' means the Department of the Interior.

''(6) DEMONSTRATION PROGRAM.—The term 'demonstration program' means the Tribal School Construction Demonstration Program.

''(b) IN GENERAL.—The Secretary shall carry out a demonstration program for fiscal years 2003 through 2007 to provide grants to Indian tribes for the construction of tribally controlled schools.

''(1) IN GENERAL.—Subject to the availability of appropriations, in carrying out the demonstration program under subsection (b), the Secretary shall award a grant to each Indian tribe that submits an application that is approved by the Secretary under paragraph (2). The Secretary shall ensure that applications for funding to replace schools currently receiving funding for facility operation and maintenance from the Bureau of Indian Affairs receive the highest priority for grants under this section. Among such applications, the Secretary shall give priority to applications of Indian tribes that agree to fund all future facility operation and maintenance costs of the tribally controlled school funded under the demonstration program from other than Federal funds.

''(2) GRANT APPLICATIONS.—An application for a grant under the section shall—

''(A) include a proposal for the construction of a tribally controlled school of the Indian tribe that submits the application; and

''(B) be in such form as the Secretary determines appropriate.

''(3) GRANT AGREEMENT.—As a condition to receiving a grant under this section, the Indian tribe shall enter into an agreement with the Secretary that specifies—

''(A) the costs of construction under the grant;

''(B) that the Indian tribe shall be required to contribute towards the cost of the construction a tribal share equal to 50 percent of the costs; and

''(C) any other term or condition that the Secretary determines to be appropriate.

''(4) ELIGIBILITY.—Grants awarded under the demonstration program shall be used only for construction or replacement of a tribally controlled school.

''(c) EFFECT OF GRANT.—(1) Except as provided in paragraph (2) of this subsection, A [sic] grant received under this section shall be in addition to any other funds received by an Indian tribe under any other provision of law. The receipt of a grant under this section shall not affect the eligibility of an Indian tribe receiving funding, or the amount of funding received by the Indian tribe, under the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) or the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(2) A tribe receiving a grant for construction of a tribally controlled school under this section shall not be eligible to receive funding from the Bureau of Indian Affairs for that school for education operations or facility operation and maintenance if the school that was not at the time of the grant: (i) a school receiving funding for education operations or facility operation and maintenance under the Tribally Controlled Schools Act [25 U.S.C. 2501 et seq.] or the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] or (ii) a school operated by the Bureau of Indian Affairs.

''(d) REPORT.—At the conclusion of the five-year demonstration program, the Secretary shall report to Congress as to whether the demonstration program has achieved its purposes of providing additional tribes fair opportunities to construct tribally controlled schools, accelerating construction of needed educational facilities in Indian Country, and permitting additional funds to be provided for the Department's priority list for construction of replacement educational facilities.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–63, title I, § 125, Nov. 5, 2001, 115 Stat. 440.
Pub. L. 106–291, title I, § 153, Oct. 11, 2000, 114 Stat. 960.

§ 2502. Grants authorized

(a) In general

(1) Eligibility

The Secretary shall provide grants to Indian tribes, and tribal organizations that—

(A) operate contract schools under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.] and notify the Secretary of their election to operate the schools with assistance under this chapter rather than continuing the schools as contract schools;

(B) operate other tribally controlled schools eligible for assistance under this chapter and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants; or

(C) elect to assume operation of Bureau-funded schools with the assistance under this chapter and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants.

(2) Deposit of funds

Grants provided under this chapter shall be deposited into the general operating fund of the tribally controlled school with respect to which the grant is made.

(3) Use of funds

(A) In general

Except as otherwise provided in this paragraph, grants provided under this chapter shall be used to defray, at the discretion of the school board of the tribally controlled school with respect to which the grant is provided, any expenditures for education related activities for which any funds that compose the grant may be used under the laws described in section 2504(a) of this title, including expenditures for—

(i) school operations, academic, educational, residential, guidance and counseling, and administrative purposes; and

(ii) support services for the school, including transportation.

(B) Exception

Grants provided under this chapter may, at the discretion of the school board of the tribally controlled school with respect to which such grant is provided, be used to defray operations and maintenance expenditures for the school if any funds for the operation and maintenance of the school are allocated to the school under the provisions of any of the laws described in section 2504(a) of this title.

(b) Limitations

(1) One grant per tribe or organization per fiscal year

Not more than one grant may be provided under this chapter with respect to any Indian tribe or tribal organization for any fiscal year.

(2) Nonsectarian use

Funds provided under any grant made under this chapter may not be used in connection with religious worship or sectarian instruction.

(3) Administrative costs limitation

Funds provided under any grant under this chapter may not be expended for administrative costs (as defined in section 1128(h)(1) of the Education Amendments of 1978 [25 U.S.C. 2008(h)(1)]) in excess of the amount generated for such costs under section 1128 of such Act.

(c) Limitation on transfer of funds among school sites

(1) In general

In the case of a grantee that operates schools at more than one school site, the grantee may expend at any school site operated by the grantee not more than the lesser of—

(A) 10 percent of the funds allocated for another school site under section 1128 of the Education Amendments of 1978 [25 U.S.C. 2008]; or

(B) $400,000 of the funds allocated for another school site.

(2) Definition of school site

For purposes of this subsection, the term ''school site'' means the physical location and the facilities of an elementary or secondary educational or residential program operated by, or under contract or grant with, the Bureau for which a discreet[1] student count is identified under the funding formula established under section 1127 of the Education Amendments of 1978 [25 U.S.C. 2007].

(d) No requirement to accept grants

Nothing in this chapter may be construed—

(1) to require a tribe or tribal organization to apply for or accept; or

(2) to allow any person to coerce any tribe or tribal organization to apply for, or accept,

a grant under this chapter to plan, conduct, and administer all of, or any portion of, any Bureau program. Such applications and the timing of such applications shall be strictly voluntary. Nothing in this chapter may be construed as allowing or requiring any grant with any entity other than the entity to which the grant is provided.

(e) No effect on Federal responsibility

Grants provided under this chapter shall not terminate, modify, suspend, or reduce the responsibility of the Federal Government to provide a program.

(f) Retrocession

(1) In general

Whenever a tribal governing body requests retrocession of any program for which assist-

[1] So in original. Probably should be ''discrete''.

ance is provided under this chapter, such retrocession shall become effective upon a date specified by the Secretary that is not later than 120 days after the date on which the tribal governing body requests the retrocession. A later date may be specified if mutually agreed upon by the Secretary and the tribal governing body. If such a program is retroceded, the Secretary shall provide to any Indian tribe served by such program at least the same quantity and quality of services that would have been provided under such program at the level of funding provided under this chapter prior to the retrocession.

(2) Status after retrocession

The tribe requesting retrocession shall specify whether the retrocession is to status as a Bureau-operated school or as a school operated under contract under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.].

(3) Transfer of equipment and materials

Except as otherwise determined by the Secretary, the tribe or tribal organization operating the program to be retroceded must transfer to the Secretary (or to the tribe or tribal organization which will operate the program as a contract school) the existing equipment and materials which were acquired—

(A) with assistance under this chapter; or

(B) upon assumption of operation of the program under this chapter, if the school was a Bureau-funded school under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.] before receiving assistance under this chapter.

(g) Prohibition of termination for administrative convenience

Grants provided under this chapter may not be terminated, modified, suspended, or reduced solely for the convenience of the administering agency.

(Pub. L. 100–297, title V, § 5203, as added Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2064.)

REFERENCES IN TEXT

The Education Amendments of 1978, referred to in subsecs. (a)(1)(A) and (f)(3)(B), is Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143, as amended. Title XI of the Act is classified principally to chapter 22 (§ 2000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (f)(2), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

PRIOR PROVISIONS

A prior section 2502, Pub. L. 100–297, title V, § 5203, Apr. 28, 1988, 102 Stat. 385, set forth declaration of policy, prior to repeal by Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063. See section 2501 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

§ 2503. Composition of grants

(a) In general

The grant provided under this chapter to an Indian tribe or tribal organization for any fiscal year shall consist of—

(1) the total amount of funds allocated for such fiscal year under sections 1127 and 1128 of the Education Amendments of 1978 [25 U.S.C. 2007, 2008] with respect to the tribally controlled schools eligible for assistance under this chapter which are operated by such Indian tribe or tribal organization, including, but not limited to, funds provided under such sections, or under any other provision of law, for transportation costs;

(2) to the extent requested by such Indian tribe or tribal organization, the total amount of funds provided from operations and maintenance accounts and, notwithstanding section 450j of this title, or any other provision of law, other facilities accounts for such schools for such fiscal year (including but not limited to those referenced under section 1126(d) of the Education Amendments of 1978 [25 U.S.C. 2006(d)] or any other law); and

(3) the total amount of funds that are allocated to such schools for such fiscal year under—

(A) title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.];

(B) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]; and

(C) any other Federal education law, that are allocated to such schools for such fiscal year.[1]

(b) Special rules

(1) In general

(A) Applicability of certain laws

Funds allocated to a tribally controlled school by reason of paragraph (1) or (2) of subsection (a) of this section shall be subject to the provisions of this chapter and shall not be subject to any additional restriction, priority, or limitation that is imposed by the Bureau with respect to funds provided under—

(i) title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.];

(ii) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]; or

(iii) any Federal education law other than title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.].

(B) Applicability of Bureau provisions

Indian tribes and tribal organizations to which grants are provided under this chapter, and tribally controlled schools for which such grants are provided, shall not be subject to any requirements, obligations, restrictions, or limitations imposed by the Bureau that would otherwise apply solely by reason of the receipt of funds provided under any law referred to in clause (i), (ii), or (iii) of subparagraph (A).

[1] So in original. The words ", that are allocated to such schools for such fiscal year" probably should not appear.

(2) Schools considered contract schools

Tribally controlled schools for which grants are provided under this chapter shall be treated as contract schools for the purposes of allocation of funds under sections 1126(e), 1127, and 1128 of the Education Amendments of 1978 [25 U.S.C. 2006(e), 2007, 2008].

(3) Schools considered Bureau schools

Tribally controlled schools for which grants are provided under this chapter shall be treated as Bureau schools for the purposes of allocation of funds provided under—

(A) title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.];

(B) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]; and

(C) any other Federal education law, that are distributed through the Bureau.

(4) Accounts; use of certain funds

(A) Separate account

(i) In general

Notwithstanding section 2503(a)(2)[2] of this title, with respect to funds from facilities improvement and repair, alteration and renovation (major or minor), health and safety, or new construction accounts included in the grant provided under section 2503(a)[3] of this title, the grant recipient shall maintain a separate account for such funds.

(ii) Submission of accounting

At the end of the period designated for the work covered by the funds received, the grant recipient shall submit to the Secretary a separate accounting of the work done and the funds expended.

(iii) Use of funds

Funds received from those accounts may only be used for the purpose for which the funds were appropriated and for the work encompassed by the application or submission for which the funds were received.

(iv) Completion of project

Upon completion of a project for which a separate account is established under this paragraph, the portion of the grant related to such project may be closed out upon agreement by the grantee and the Secretary.

(B) Requirements for projects

(i) Regulatory requirements

With respect to a grant to a tribally controlled school under this chapter for new construction or facilities improvements and repair in excess of $100,000, such grant shall be subject to the Administrative and Audit Requirements and Cost Principles for Assistance Programs contained in part 12 of title 43, Code of Federal Regulations.

(ii) Exception

Notwithstanding clause (i), grants described in such clause shall not be subject to section 12.61 of title 43, Code of Federal Regulations. The Secretary and the grantee shall negotiate and determine a schedule of payments for the work to be performed.

(iii) Applications

In considering applications for a grant described in clause (i), the Secretary shall consider whether the Indian tribe or tribal organization involved would be deficient in ensuring that the construction projects under the proposed grant conform to applicable building standards and codes and Federal, tribal, or State health and safety standards as required under section 1124 of the Education Amendments of 1978 (25 U.S.C. 2005(a))[4] with respect to organizational and financial management capabilities.

(iv) Disputes

Any disputes between the Secretary and any grantee concerning a grant described in clause (i) shall be subject to the dispute provisions contained in section 2508(e)[5] of this title.

(C) New construction

Notwithstanding subparagraph (A), a school receiving a grant under this chapter for facilities improvement and repair may use such grant funds for new construction if the tribal governing body or tribal organization that submits the application for the grant provides funding for the new construction equal to at least 25 percent of the total cost of such new construction.

(D) Period

In a case in which the appropriations measure under which the funds described in subparagraph (A) are made available or the application submitted for the funds does not stipulate a period for the work covered by the funds, the Secretary and the grant recipient shall consult and determine such a period prior to the transfer of the funds. A period so determined may be extended upon mutual agreement of the Secretary and the grant recipient.

(5) Enforcement of request to include funds

(A) In general

If the Secretary fails to carry out a request filed by an Indian tribe or tribal organization to include in such tribe[6] or organization's grant under this chapter the funds described in subsection (a)(2) of this section within 180 days after the filing of the request, the Secretary shall—

(i) be deemed to have approved such request; and

(ii) immediately upon the expiration of such 180-day period amend the grant accordingly.

(B) Rights

A tribe or organization described in subparagraph (A) may enforce its rights under

[2] So in original. Probably should be "2502(a)(2)".

[3] So in original. Probably should be "2502(a)".

[4] See References in Text note below.

[5] So in original. Probably should be "2507(e)".

[6] So in original. Probably should be "tribe's".

subsection (a)(2) of this section and this paragraph, including rights relating to any denial or failure to act on such tribe's or organization's request, pursuant to the dispute authority described in section 2508(e)[5] of this title.

(Pub. L. 100–297, title V, § 5204, as added Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2066.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (a)(3)(A) and (b)(1)(A)(i), (3)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Individuals with Disabilities Education Act, referred to in subsecs. (a)(3)(B) and (b)(1)(A)(ii), (3)(B), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Education Amendments of 1978, referred to in subsec. (b)(1)(A)(iii), is Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143, as amended. Title XI of the Act is classified principally to chapter 22 (§ 2000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20, Education, and Tables.

Section 1124 of the Education Amendments of 1978 (25 U.S.C. 2005(a)), referred to in subsec. (b)(4)(B)(iii), probably should be section 1125 of the Education Amendments of 1978, Pub. L. 95–561, which is classified to section 2005 of this title and requires, in subsec. (b), compliance with health and safety standards. Section 1124 of Pub. L. 95–561, which is classified to section 2004 of this title, relates to school boundaries.

PRIOR PROVISIONS

A prior section 2503, Pub. L. 100–297, title V, § 5204, Apr. 28, 1988, 102 Stat. 386; Pub. L. 100–427, § 10(a), (b), Sept. 9, 1988, 102 Stat. 1607; Pub. L. 102–119, § 26(f), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103–382, title III, § 394(m)(1), Oct. 20, 1994, 108 Stat. 4029, authorized grants, prior to repeal by Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063. See section 2502 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

§ 2504. Eligibility for grants

(a) Rules

(1) In general

A tribally controlled school is eligible for assistance under this chapter if the school—

(A) on April 28, 1988, was a contract school under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.] and the tribe or tribal organization operating the school submits to the Secretary a written notice of election to receive a grant under this chapter;

(B) was a Bureau-operated school under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.] and has met the requirements of subsection (b) of this section;

(C) is a school for which the Bureau has not provided funds, but which has met the requirements of subsection (c) of this section; or

(D) is a school with respect to which an election has been made under paragraph (2) and which has met the requirements of subsection (b) of this section.

(2) New schools

Any application which has been submitted under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] by an Indian tribe for a school which is not in operation on January 8, 2002, shall be reviewed under the guidelines and regulations for applications submitted under the Indian Self-Determination and Education Assistance Act that were in effect at the time the application was submitted, unless the Indian tribe or tribal organization elects to have the application reviewed under the provisions of subsection (b) of this section.

(b) Additional requirements for Bureau-funded schools and certain electing schools

(1) Bureau-funded schools

A school that was a Bureau-funded school under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.] on January 8, 2002, and any school with respect to which an election is made under subsection (a)(2) of this section, meets the requirements of this subsection if—

(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting that the Secretary—

(i) transfer operation of the school to the Indian tribe or tribal organization, if the Indian tribe or tribal organization is not already operating the school; and

(ii) make a determination as to whether the school is eligible for assistance under this chapter; and

(B) the Secretary makes a determination that the school is eligible for assistance under this chapter.

(2) Certain electing schools

(A) In general

By not later than the date that is 120 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine—

(i) in the case of a school which is not being operated by the Indian tribe or tribal organization, whether to transfer operation of the school to the Indian tribe or tribal organization; and

(ii) whether the school is eligible for assistance under this chapter.

(B) Other determinations

In considering applications submitted under paragraph (1)(A), the Secretary—

(i) shall transfer operation of the school to the Indian tribe or tribal organization, if the tribe or tribal organization is not already operating the school; and

(ii) shall determine that the school is eligible for assistance under this chapter, unless the Secretary finds by clear and con-

vincing evidence that the services to be provided by the Indian tribe or tribal organization will be deleterious to the welfare of the Indians served by the school.

(C) Considerations

In considering applications submitted under paragraph (1)(A), the Secretary shall consider whether the Indian tribe or tribal organization would be deficient in operating the school with respect to—

(i) equipment;

(ii) bookkeeping and accounting procedures;

(iii) ability to adequately manage a school; or

(iv) adequately trained personnel.

(c) Additional requirements for a school which is not a Bureau-funded school

(1) In general

A school which is not a Bureau-funded school under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.] meets the requirements of this subsection if—

(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting a determination by the Secretary as to whether the school is eligible for assistance under this chapter; and

(B) the Secretary makes a determination that a school is eligible for assistance under this chapter.

(2) Deadline for determination by Secretary

(A) In general

By not later than the date that is 180 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine whether the school is eligible for assistance under this chapter.

(B) Considerations

In making the determination under subparagraph (A), the Secretary shall give equal consideration to each of the following factors:

(i) With respect to the applicant's proposal—

(I) the adequacy of facilities or the potential to obtain or provide adequate facilities;

(II) geographic and demographic factors in the affected areas;

(III) adequacy of the applicant's program plans;

(IV) geographic proximity of comparable public education; and

(V) the needs as expressed by all affected parties, including but not limited to students, families, tribal governments at both the central and local levels, and school organizations.

(ii) With respect to all education services already available—

(I) geographic and demographic factors in the affected areas;

(II) adequacy and comparability of programs already available;

(III) consistency of available programs with tribal education codes or tribal legislation on education; and

(IV) the history and success of these services for the proposed population to be served, as determined from all factors including, if relevant, standardized examination performance.

(C) Geographic proximity

The Secretary may not make a determination under this paragraph that is primarily based upon the geographic proximity of comparable public education.

(D) Other information

Applications submitted under paragraph (1)(A) shall include information on the factors described in subparagraph (B)(i), but the applicant may also provide the Secretary such information relative to the factors described in subparagraph (B)(ii) as the applicant considers appropriate.

(E) Deadline

If the Secretary fails to make a determination under subparagraph (A) with respect to an application within 180 days after the date on which the Secretary received the application, the Secretary shall be treated as having made a determination that the tribally controlled school is eligible for assistance under the title[1] and the grant shall become effective 18 months after the date on which the Secretary received the application, or on an earlier date, at the Secretary's discretion.

(d) Filing of applications and reports

(1) In general

All applications and reports submitted to the Secretary under this chapter, and any amendments to such applications or reports, shall be filed with the education line officer designated by the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs. The date on which such filing occurs shall, for purposes of this chapter, be treated as the date on which the application or amendment was submitted to the Secretary.

(2) Supporting documentation

Any application that is submitted under this chapter shall be accompanied by a document indicating the action taken by the tribal governing body in authorizing such application.

(e) Effective date for approved applications

Except as provided by subsection (c)(2)(E) of this section, a grant provided under this chapter, and any transfer of the operation of a Bureau school made under subsection (b) of this section, shall become effective beginning the academic year succeeding the fiscal year in which the application for the grant or transfer is made, or at an earlier date determined by the Secretary.

(f) Denial of applications

(1) In general

Whenever the Secretary refuses to approve a grant under this chapter, to transfer operation

[1] See References in Text note below.

of a Bureau school under subsection (b) of this section, or determines that a school is not eligible for assistance under this chapter, the Secretary shall—

(A) state the objections in writing to the tribe or tribal organization within the allotted time;

(B) provide assistance to the tribe or tribal organization to overcome all stated objections;

(C) at the request of the tribe or tribal organization, provide the tribe or tribal organization a hearing on the record under the same rules and regulations that apply under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.]; and

(D) provide an opportunity to appeal the objection raised.

(2) Timeline for reconsideration of amended applications

The Secretary shall reconsider any amended application submitted under this chapter within 60 days after the amended application is submitted to the Secretary.

(g) Report

The Bureau shall submit an annual report to the Congress on all applications received, and actions taken (including the costs associated with such actions), under this section at the same time that the President is required to submit to Congress the budget under section 1105 of title 31.

(Pub. L. 100–297, title V, § 5205, as added Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2068.)

REFERENCES IN TEXT

The Education Amendments of 1978, referred to in subsecs. (a)(1)(A), (B), (b)(1), and (c)(1), is Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2143, as amended. Title XI of the Act is classified principally to chapter 22 (§ 2000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsecs. (a)(2) and (f)(1)(C), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The title, referred to in subsec. (c)(2)(E), probably should be ''this part'', meaning part B of title V of Pub. L. 100–297, known as the Tribally Controlled Schools Act of 1988, which is classified generally to this chapter. For complete classification of part B to the Code, see Short Title note set out under section 2501 of this title and Tables.

PRIOR PROVISIONS

A prior section 2504, Pub. L. 100–297, title V, § 5205, Apr. 28, 1988, 102 Stat. 387; Pub. L. 100–427, § 10(c), Sept. 9, 1988, 102 Stat. 1608; Pub. L. 101–301, § 5(g), May 24, 1990, 104 Stat. 209; Pub. L. 102–119, § 26(f), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103–382, title III, §§ 382(a), (b), 394(m)(2), Oct. 20, 1994, 108 Stat. 4017, 4029, related to composition of grants, prior to repeal by Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063. See section 2503 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

§ 2505. Duration of eligibility determination

(a) In general

If the Secretary determines that a tribally controlled school is eligible for assistance under this chapter, the eligibility determination shall remain in effect until the determination is revoked by the Secretary, and the requirements of subsection (b) or (c) of section 2504 of this title, if applicable, shall be considered to have been met with respect to such school until the eligibility determination is revoked by the Secretary.

(b) Annual reports

(1) In general

Each recipient of a grant provided under this chapter shall complete an annual report which shall be limited to—

(A) an annual financial statement reporting revenue and expenditures as defined by the cost accounting established by the grantee;

(B) an annual financial audit conducted pursuant to the standards of the Single Audit Act of 1984 [31 U.S.C. 7501 et seq.];

(C) a biennial compliance audit of the procurement of personal property during the period for which the report is being prepared that shall be in compliance with written procurement standards that are developed by the local school board;

(D) an annual submission to the Secretary of the number of students served and a brief description of programs offered under the grant; and

(E) a program evaluation conducted by an impartial evaluation review team, to be based on the standards established for purposes of subsection (c)(1)(A)(ii)[1] of this section.

(2) Evaluation review teams

Where appropriate, other tribally controlled schools and representatives of tribally controlled community colleges shall make up members of the evaluation review teams.

(3) Evaluations

In the case of a school which is accredited, evaluations will be conducted at intervals under the terms of accreditation.

(4) Submission of report

(A) To tribal governing body

Upon completion of the report required under paragraph (1), the recipient of the grant shall send (via first class mail, return receipt requested) a copy of such annual report to the tribal governing body (as defined in section 2012(f) of this title) of the tribally controlled school.

(B) To Secretary

Not later than 30 days after receiving written confirmation that the tribal governing body has received the report sent pursuant

[1] So in original. Probably should be subsection ''(c)(1)(B)(ii)''.

to subparagraph (A), the recipient of the grant shall send a copy of the report to the Secretary.

(c) Revocation of eligibility

(1) Determination of eligibility for assistance

The Secretary shall not revoke a determination that a school is eligible for assistance under this chapter if—

(A) the Indian tribe or tribal organization submits the reports required under subsection (b) of this section with respect to the school; and

(B) at least one of the following clauses applies with respect to the school:

(i) The school is certified or accredited by a State or regional accrediting association or is a candidate in good standing for such accreditation under the rules of the State or regional accrediting association, showing that credits achieved by the students within the education programs are, or will be, accepted at grade level by a State certified or regionally accredited institution.

(ii) The Secretary determines that there is a reasonable expectation that the certification or accreditation described in clause (i), or candidacy in good standing for such certification or accreditation, will be achieved by the school within 3 years. The school seeking accreditation shall remain under the standards of the Bureau in effect on January 8, 2002, until such time as the school is accredited, except that if the Bureau standards are in conflict with the standards of the accrediting agency, the standards of such agency shall apply in such case.

(iii) The school is accredited by a tribal department of education if such accreditation is accepted by a generally recognized regional or State accreditation agency.

(iv)(I) With respect to a school that lacks accreditation, or that is not a candidate for accreditation, based on circumstances that are not beyond the control of the school board, every 3 years an impartial evaluator agreed upon by the Secretary and the grant recipient conducts evaluations of the school, and the school receives a positive assessment under such evaluations. The evaluations are conducted under standards adopted by a contractor under a contract for the school entered into under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] (or revisions of such standards agreed to by the Secretary and the grant recipient) prior to January 8, 2002.

(II) If the Secretary and a grant recipient other than a tribal governing body fail to agree on such an evaluator, the tribal governing body shall choose the evaluator or perform the evaluation. If the Secretary and a grant recipient that is a tribal governing body fail to agree on such an evaluator, subclause (I) shall not apply.

(III) A positive assessment by an impartial evaluator under this clause shall not affect the revocation of a determination of eligibility by the Secretary where such revocation is based on circumstances that were within the control of the school board.

(2) Notice requirements for revocation

The Secretary shall not revoke a determination that a school is eligible for assistance under this chapter, or reassume control of a school that was a Bureau school prior to approval of an application submitted under section 2505(b)(1)(A)[2] of this title until the Secretary—

(A) provides notice to the tribally controlled school and the tribal governing body (within the meaning of section 2021 of this title) of the tribally controlled school which states—

(i) the specific deficiencies that led to the revocation or resumption determination; and

(ii) the actions that are needed to remedy such deficiencies; and

(B) affords such authority an opportunity to effect the remedial actions.

(3) Technical assistance

The Secretary shall provide such technical assistance to enable the school and governing body to carry out such remedial actions.

(4) Hearing and appeal

In addition to notice and technical assistance under this subsection, the Secretary shall provide to the school and governing body—

(A) at the request of the school or governing body, a hearing on the record regarding the revocation or reassumption determination, to be conducted under the rules and regulations described in section 2505(f)(1)(C)[3] of this title; and

(B) an opportunity to appeal the decision resulting from the hearing.

(d) Applicability of section pursuant to election under section 2507(b)

With respect to a tribally controlled school that receives assistance under this chapter pursuant to an election made under section 2507(b) of this title—

(1) subsection (b) of this section shall apply; and

(2) the Secretary may not revoke eligibility for assistance under this chapter except in conformance with subsection (c) of this section.

(Pub. L. 100–297, title V, § 5206, as added Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2072.)

REFERENCES IN TEXT

The Single Audit Act of 1984, referred to in subsec. (b)(1)(B), is Pub. L. 98–502, Oct. 19, 1984, 98 Stat. 2327, which enacted chapter 75 (§ 7501 et seq.) of Title 31, Money and Finance, and provisions set out as notes under section 7501 of Title 31. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 7501 of Title 31 and Tables.

[2] So in original. Probably should be section ''2504(b)(1)(A)''.

[3] So in original. Probably should be section ''2504(f)(1)(C)''.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(1)(B)(iv)(I), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

PRIOR PROVISIONS

A prior section 2505, Pub. L. 100–297, title V, § 5206, Apr. 28, 1988, 102 Stat. 388; Pub. L. 100–427, § 11, Sept. 9, 1988, 102 Stat. 1608; Pub. L. 105–362, title VIII, § 801(d), Nov. 10, 1998, 112 Stat. 3288, related to eligibility for grants, prior to repeal by Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063. See section 2504 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

§ 2506. Payment of grants; investment of funds

(a) Payments

(1) In general

Except as otherwise provided in this subsection, the Secretary shall make payments to grantees under this chapter in two payments, of which—

(A) the first payment shall be made not later than July 1 of each year in an amount equal to 80 percent of the amount which the grantee was entitled to receive during the preceding academic year; and

(B) the second payment, consisting of the remainder to which the grantee is entitled for the academic year, shall be made not later than December 1 of each year.

(2) Excess funding

In a case in which the amount provided to a grant recipient under paragraph (1)(A) is in excess of the amount that the recipient is entitled to receive for the academic year involved, the recipient shall return to the Secretary such excess amount not later than 30 days after the final determination that the school was overpaid pursuant to this section. The amount returned to the Secretary under this paragraph shall be distributed equally to all schools in the system.

(3) Newly funded schools

For any school for which no payment under this chapter was made from Bureau funds in the preceding academic year, full payment of the amount computed for the first academic year of eligibility under this chapter shall be made not later than December 1 of the academic year.

(4) Late funding

With regard to funds for grantees that become available for obligation on October 1 of the fiscal year for which such funds are appropriated, the Secretary shall make payments to grantees not later than December 1 of the fiscal year.

(5) Applicability of certain title 31 provisions

The provisions of chapter 39 of title 31 shall apply to the payments required to be made by paragraphs (1), (3), and (4).

(6) Restrictions

Paragraphs (1), (3), and (4) shall be subject to any restriction on amounts of payments under this chapter that are imposed by a continuing resolution or other Act appropriating the funds involved.

(b) Investment of funds

(1) Treatment of interest and investment income

Notwithstanding any other provision of law, any interest or investment income that accrues to any funds provided under this chapter after such funds are paid to the Indian tribe or tribal organization and before such funds are expended for the purpose for which such funds were provided under this chapter shall be the property of the Indian tribe or tribal organization and shall not be taken into account by any officer or employee of the Federal Government in determining whether to provide assistance, or the amount of assistance, under any provision of Federal law. Such interest income shall be spent on behalf of the school.

(2) Permissible investments

Funds provided under this chapter may be invested by the Indian tribe or tribal organization before such funds are expended for the purposes of this chapter so long as such funds are—

(A) invested by the Indian tribe or tribal organization only in obligations of the United States, or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States, or securities that are guaranteed or insured by the United States; or

(B) deposited only into accounts that are insure by and[1] agency or instrumentality of the United States, or are fully collateralized to ensure protection of the funds, even in the event of a bank failure.

(c) Recoveries

For the purposes of underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived, funds received under this chapter shall not be taken into consideration.

(Pub. L. 100–297, title V, § 5207, as added Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2074.)

PRIOR PROVISIONS

A prior section 2506, Pub. L. 100–297, title V, § 5207, Apr. 28, 1988, 102 Stat. 391; Pub. L. 100–427, § 12, Sept. 9, 1988, 102 Stat. 1608, related to duration of eligibility determination, prior to repeal by Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063. See section 2505 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

[1] So in original. Probably should be ''insured by an''.

§ 2507. Application with respect to Indian Self-Determination and Education Assistance Act

(a) Certain provisions to apply to grants

The following provisions of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] (and any subsequent revisions thereto or renumbering thereof), shall apply to grants provided under this chapter:

(1) Section 5(f) [25 U.S.C. 450c(f)] (relating to single agency audit).

(2) Section 6 [25 U.S.C. 450d] (relating to criminal activities; penalties).

(3) Section 7 [25 U.S.C. 450e] (relating to wage and labor standards).

(4) Section 104 [25 U.S.C. 450i] (relating to retention of Federal employee coverage).

(5) Section 105(f) [25 U.S.C. 450j(f)] (relating to Federal property).

(6) Section 105(k) [25 U.S.C. 450j(k)] (relating to access to Federal sources of supply).

(7) Section 105(*l*) [25 U.S.C. 450j(*l*)] (relating to lease of facility used for administration and delivery of services).

(8) Section 106(f) [25 U.S.C. 450j–1(f)] (relating to limitation on remedies relating to cost allowances).

(9) Section 106(j) [25 U.S.C. 450j–1(j)] (relating to use of funds for matching or cost participation requirements).

(10) Section 106(k) [25 U.S.C. 450j–1(k)] (relating to allowable uses of funds).

(11) Section 108(c) [25 U.S.C. 450*l*(c)] (Model Agreements provisions (1)(a)(5)[1] (relating to limitations of costs), (1)(a)(7)[2] (relating to records and monitoring), (1)(a)(8)[3] (relating to property), and (a)(1)(9)[4] (relating to availability of funds).[5]

(12) Section 109 [25 U.S.C. 450m] (relating to reassumption).

(13) Section 111 [25 U.S.C. 450n] (relating to sovereign immunity and trusteeship rights unaffected).

(b) Election for grant in lieu of contract

(1) In general

Contractors for activities to which this chapter applies who have entered into a contract under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] that is in effect on January 8, 2002, may, by giving notice to the Secretary, elect to have the provisions of this chapter apply to such activity in lieu of such contract.

(2) Effective date of election

Any election made under paragraph (1) shall take effect on the first day of July immediately following the date of such election.

(3) Exception

In any case in which the first day of July immediately following the date of an election under paragraph (1) is less than 60 days after such election, such election shall not take effect until the first day of July of[6] year following the year in which the election is made.

(c) No duplication

No funds may be provided under any contract entered into under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] to pay any expenses incurred in providing any program or services if a grant has been made under this chapter to pay such expenses.

(d) Transfers and carryovers

(1) Buildings, equipment, supplies, materials

A tribe or tribal organization assuming the operation of—

(A) a Bureau school with assistance under this chapter shall be entitled to the transfer or use of buildings, equipment, supplies, and materials to the same extent as if it were contracting under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.]; or

(B) a contract school with assistance under this chapter shall be entitled to the transfer or use of buildings, equipment, supplies, and materials that were used in the operation of the contract school to the same extent as if it were contracting under the Indian Self-Determination and Education Assistance Act.

(2) Funds

Any tribe or tribal organization which assumes operation of a Bureau school with assistance under this chapter and any tribe or tribal organization which elects to operate a school with assistance under this chapter rather that[7] to continue as a contract school shall be entitled to any funds which would carryover from the previous fiscal year as if such school were operated as a contract school.

(3) Funding for school improvement

Any tribe or tribal organization that assumes operation of a Bureau school or a contract school with assistance under this chapter shall be eligible for funding for the improvement, alteration, replacement, and repair of facilities to the same extent as a Bureau school.

(e) Exceptions, problems, and disputes

Any exception or problem cited in an audit conducted pursuant to section 2505(b)(1) of this title, any dispute regarding a grant authorized to be made pursuant to this chapter or any amendment to such grant, and any dispute involving an administrative cost grant under section 2008 of this title shall be administered under the provisions governing such exceptions, problems, or disputes in the case of contracts under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.]. The Equal Access to Justice Act shall apply to administrative appeals filed after September 8, 1988, by grantees regarding a grant under this chapter, including an administrative cost grant.

(Pub. L. 100–297, title V, § 5208, as added Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2076.)

[1] So in original. Probably should be ''1(b)(5)''.

[2] So in original. Probably should be ''1(b)(7)''.

[3] So in original. Probably should be ''1(b)(8)''.

[4] So in original. Probably should be ''1(b)(9)''.

[5] So in original. There probably should be a second closing parenthesis.

[6] So in original. Probably should be followed by ''the''.

[7] So in original. Probably should be ''than''.

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in text, is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Equal Access to Justice Act, referred to in subsec. (e), is title II of Pub. L. 96–481, Oct. 21, 1980, 94 Stat. 2325, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 504 of Title 5, Government Organization and Employees, and Tables.

PRIOR PROVISIONS

A prior section 2507, Pub. L. 100–297, title V, § 5208, Apr. 28, 1988, 102 Stat. 393; Pub. L. 100–427, § 13, Sept. 9, 1988, 102 Stat. 1609; Pub. L. 103–382, title III, § 382(c), Oct. 20, 1994, 108 Stat. 4017, related to payment of grants and investment of funds, prior to repeal by Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063. See section 2506 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

§ 2508. Role of the Director

Applications for grants under this chapter, and all application modifications, shall be reviewed and approved by personnel under the direction and control of the Director of the Office of Indian Education Programs. Required reports shall be submitted to education personnel under the direction and control of the Director of such Office.

(Pub. L. 100–297, title V, § 5209, as added Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2077.)

PRIOR PROVISIONS

A prior section 2508, Pub. L. 100–297, title V, § 5209, Apr. 28, 1988, 102 Stat. 394; Pub. L. 100–427, § 14, Sept. 9, 1988, 102 Stat. 1609; Pub. L. 101–301, § 5(b), May 24, 1990, 104 Stat. 207; Pub. L. 103–382, title III, § 382(d), (e), Oct. 20, 1994, 108 Stat. 4017, 4018, related to application with respect to Indian Self-Determination and Education Assistance Act, prior to repeal by Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063. See section 2507 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

§ 2509. Regulations

The Secretary is authorized to issue regulations relating to the discharge of duties specifically assigned to the Secretary in this chapter. For all other matters relating to the details of planning, developing, implementing, and evaluating grants under this chapter, the Secretary shall not issue regulations.

(Pub. L. 100–297, title V, § 5210, as added Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2077.)

PRIOR PROVISIONS

A prior section 2509, Pub. L. 100–297, title V, § 5210, Apr. 28, 1988, 102 Stat. 394, related to role of Director, prior to repeal by Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063. See section 2508 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

§ 2510. The tribally controlled grant school endowment program

(a) In general

(1) Establishment

Each school receiving a grant under this chapter may establish, at a federally insured financial institution, a trust fund for the purposes of this section.

(2) Deposits and use

The school may provide—

(A) for deposit into the trust fund, only funds from non-Federal sources, except that the interest on funds received from grants provided under this chapter may be used for that purpose;

(B) for deposit into the trust fund, any earnings on funds deposited in the fund; and

(C) for the sole use of the school any noncash, in-kind contributions of real or personal property, which may at any time be used, sold, or otherwise disposed of.

(b) Interest

Interest from the fund established under subsection (a) of this section may periodically be withdrawn and used, at the discretion of the school, to defray any expenses associated with the operation of the school consistent with the purposes of this Act.[1]

(Pub. L. 100–297, title V, § 5211, as added Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2078.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 100–297 and probably should be ''this part'', meaning part B of title V of Pub. L. 100–297, known as the Tribally Controlled Schools Act of 1988, which is classified generally to this chapter. For complete classification of part B to the Code, see Short Title note set out under section 2501 of this title and Tables.

PRIOR PROVISIONS

A prior section 2510, Pub. L. 100–297, title V, § 5211, Apr. 28, 1988, 102 Stat. 394, related to regulations, prior to repeal by Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063. See section 2509 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

§ 2511. Definitions

In this chapter:

(1) Bureau

The term ''Bureau'' means the Bureau of Indian Affairs of the Department of the Interior.

(2) Eligible Indian student

The term ''eligible Indian student'' has the meaning given such term in section 2007(f) of this title.

[1] See References in Text note below.

(3) Indian

The term ''Indian'' means a member of an Indian tribe, and includes individuals who are eligible for membership in a tribe, and the child or grandchild of such an individual.

(4) Indian tribe

The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including an Alaska Native Village Corporation or Regional Corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(5) Local educational agency

The term ''local educational agency'' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State or such combination of school districts or counties as are recognized in a State as an administrative agency for the State's public elementary schools or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(6) Secretary

The term ''Secretary'' means the Secretary of the Interior.

(7) Tribal governing body

The term ''tribal governing body'' means, with respect to any school that receives assistance under this Act,[1] the recognized governing body of the Indian tribe involved.

(8) Tribal organization

(A) In general

The term ''tribal organization'' means—

(i) the recognized governing body of any Indian tribe; or

(ii) any legally established organization of Indians that—

(I) is controlled, sanctioned, or chartered by such governing body or is democratically elected by the adult members of the Indian community to be served by such organization; and

(II) includes the maximum participation of Indians in all phases of the organization's activities.

(B) Authorization

In any case in which a grant is provided under this chapter to an organization to provide services through a tribally controlled school benefiting more than one Indian tribe, the approval of the governing bodies of Indian tribes representing 80 percent of the students attending the tribally controlled school shall be considered a sufficient tribal authorization for such grant.

(9) Tribally controlled school

The term ''tribally controlled school'' means a school that—

(A) is operated by an Indian tribe or a tribal organization, enrolling students in kindergarten through grade 12, including a preschool;

(B) is not a local educational agency; and

(C) is not directly administered by the Bureau of Indian Affairs.

(Pub. L. 100–297, title V, § 5212, as added Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2078.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (4), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

This Act, referred to in par. (7), is Pub. L. 100–297 and probably should be ''this part'', meaning part B of title V of Pub. L. 100–297, known as the Tribally Controlled Schools Act of 1988, which is classified generally to this chapter. For complete classification of part B to the Code, see Short Title note set out under section 2501 of this title and Tables.

PRIOR PROVISIONS

A prior section 2511, Pub. L. 100–297, title V, § 5212, Apr. 28, 1988, 102 Stat. 394, defined terms, prior to repeal by Pub. L. 107–110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as a note under section 6301 of Title 20, Education.

CHAPTER 28—INDIAN EDUCATION PROGRAM

SUBCHAPTER I—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES FOR THE EDUCATION OF INDIAN CHILDREN

§§ 2601 to 2606. Repealed. Pub. L. 103–382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section 2601, Pub. L. 100–297, title V, § 5311, Apr. 28, 1988, 102 Stat. 395, related to policy declaration concerning academic needs of Indian students.

Section 2602, Pub. L. 100–297, title V, § 5312, Apr. 28, 1988, 102 Stat. 396; Pub. L. 100–427, § 15, Sept. 9, 1988, 102 Stat. 1610, related to grants to local educational agencies for education of Indian children.

Section 2603, Pub. L. 100–297, title V, § 5313, Apr. 28, 1988, 102 Stat. 398, related to permissible uses of Federal funds.

Section 2604, Pub. L. 100–297, title V, § 5314, Apr. 28, 1988, 102 Stat. 398; Pub. L. 100–427, § 16, Sept. 9, 1988, 102 Stat. 1610; Pub. L. 101–301, § 5(c), May 24, 1990, 104 Stat. 207, related to applications for grants and conditions for approval.

Section 2605, Pub. L. 100–297, title V, § 5315, Apr. 28, 1988, 102 Stat. 402; Pub. L. 100–427, § 17, Sept. 9, 1988, 102 Stat. 1611, related to payments to local educational agencies.

Section 2606, Pub. L. 100–297, title V, § 5316, Apr. 28, 1988, 102 Stat. 402, authorized appropriations for Indian education and permitted Secretary to reallocate funds.

SHORT TITLE

Section 5301 of Pub. L. 100–297 provided that part C (§§ 5301–5352) of title V of Pub. L. 100–297, enacting this

[1] See References in Text note below.

chapter, repealing sections 241aa, 241bb, 241cc to 241ff, 1211a, 1221f to 1221h, and 3385 to 3385b of Title 20, Education, and repealing provisions set out as notes under sections 241aa and 1411 of Title 20, could be cited as the ''Indian Education Act of 1988'', prior to repeal by Pub. L. 103–382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976.

SUBCHAPTER II—SPECIAL PROGRAMS AND PROJECTS TO IMPROVE EDUCATIONAL OPPORTUNITIES FOR INDIAN CHILDREN

§§ 2621 to 2624. Repealed. Pub. L. 103–382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section 2621, Pub. L. 100–297, title V, § 5321, Apr. 28, 1988, 102 Stat. 403; Pub. L. 100–427, § 18, Sept. 9, 1988, 102 Stat. 1612, related to improvement of educational opportunities for Indian children.

Section 2622, Pub. L. 100–297, title V, § 5322, Apr. 28, 1988, 102 Stat. 406, related to special educational training programs for teachers of Indian children.

Section 2623, Pub. L. 100–297, title V, § 5323, Apr. 28, 1988, 102 Stat. 407; Pub. L. 100–427, § 19(a), Sept. 9, 1988, 102 Stat. 1612, provided for fellowships for Indian students.

Section 2624, Pub. L. 100–297, title V, § 5324, Apr. 28, 1988, 102 Stat. 408; Pub. L. 100–427, § 20, Sept. 9, 1988, 102 Stat. 1612; Pub. L. 101–301, § 5(d)(2), May 24, 1990, 104 Stat. 208, authorized programs for gifted and talented Indian children.

SUBCHAPTER III—SPECIAL PROGRAMS RELATING TO ADULT EDUCATION FOR INDIANS

§ 2631. Repealed. Pub. L. 103–382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section, Pub. L. 100–297, title V, § 5330, Apr. 28, 1988, 102 Stat. 410, related to improvement of educational opportunities for adult Indians. See section 7851 of Title 20, Education.

SUBCHAPTER IV—PROGRAM ADMINISTRATION

§§ 2641 to 2643. Repealed. Pub. L. 103–382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section 2641, Pub. L. 100–297, title V, § 5341, Apr. 28, 1988, 102 Stat. 411; Pub. L. 100–427, § 21, Sept. 9, 1988, 102 Stat. 1612, related to establishment of Office of Indian Education within Department of Education. See section 3423c of Title 20, Education.

Section 2642, Pub. L. 100–297, title V, § 5342, Apr. 28, 1988, 102 Stat. 412; Pub. L. 100–427, § 22, Sept. 9, 1988, 102 Stat. 1613, established National Advisory Council on Indian Education.

Section 2643, Pub. L. 100–297, title V, § 5343, Apr. 28, 1988, 102 Stat. 413, authorized appropriations for administration of Indian education programs. See section 7882 of Title 20, Education.

SUBCHAPTER V—MISCELLANEOUS

§ 2651. Repealed. Pub. L. 103–382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section, Pub. L. 100–297, title V, § 5351, Apr. 28, 1988, 102 Stat. 413; Pub. L. 100–427, § 23, Sept. 9, 1988, 102 Stat. 1613, defined terms for purposes of this chapter. See section 7881 of Title 20, Education.

CHAPTER 29—INDIAN GAMING REGULATION

Sec.
2701. Findings.
2702. Declaration of policy.
2703. Definitions.
2704. National Indian Gaming Commission.
2705. Powers of Chairman.
2706. Powers of Commission.
2707. Commission staffing.
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2709. Interim authority to regulate gaming.
2710. Tribal gaming ordinances.
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2717a. Availability of class II gaming activity fees to carry out duties of Commission.
2718. Authorization of appropriations.
2719. Gaming on lands acquired after October 17, 1988.
2720. Dissemination of information.
2721. Severability.

§ 2701. Findings

The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) Federal courts have held that section 81 of this title requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;

(3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;

(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

(Pub. L. 100–497, § 2, Oct. 17, 1988, 102 Stat. 2467.)

SHORT TITLE

Section 1 of Pub. L. 100–497 provided: ''That this Act [enacting this chapter and sections 1166 to 1168 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Indian Gaming Regulatory Act'.''

§ 2702. Declaration of policy

The purpose of this chapter is—

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and

the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

(Pub. L. 100–497, § 3, Oct. 17, 1988, 102 Stat. 2467.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2703. Definitions

For purposes of this chapter—

(1) The term ''Attorney General'' means the Attorney General of the United States.

(2) The term ''Chairman'' means the Chairman of the National Indian Gaming Commission.

(3) The term ''Commission'' means the National Indian Gaming Commission established pursuant to section 2704 of this title.

(4) The term ''Indian lands'' means—

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

(5) The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community of Indians which—

(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and

(B) is recognized as possessing powers of self-government.

(6) The term ''class I gaming'' means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

(7)(A) The term ''class II gaming'' means—

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that—

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State,

but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term ''class II gaming'' does not include—

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(C) Notwithstanding any other provision of this paragraph, the term ''class II gaming'' includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term ''class II gaming'' includes, during the 1-year period beginning on October 17, 1988, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after October 17, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(E) Notwithstanding any other provision of this paragraph, the term ''class II gaming'' includes, during the 1-year period beginning on December 17, 1991, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(F) If, during the 1-year period described in subparagraph (E), there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision.

(8) The term ''class III gaming'' means all forms of gaming that are not class I gaming or class II gaming.

(9) The term ''net revenues'' means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

(10) The term ''Secretary'' means the Secretary of the Interior.

(Pub. L. 100–497, § 4, Oct. 17, 1988, 102 Stat. 2467; Pub. L. 102–238, § 2(a), Dec. 17, 1991, 105 Stat. 1908; Pub. L. 102–497, § 16, Oct. 24, 1992, 106 Stat. 3261.)

AMENDMENTS

1992—Par. (7)(E). Pub. L. 102–497 struck out ''or Montana'' after ''Wisconsin''.

1991—Par. (7)(E), (F). Pub. L. 102–238 added subpars. (E) and (F).

CLASS II GAMING WITH RESPECT TO INDIAN TRIBES IN WISCONSIN OR MONTANA ENGAGED IN NEGOTIATING TRIBAL-STATE COMPACTS

Pub. L. 101–301, § 6, May 24, 1990, 104 Stat. 209, provided that: ''Notwithstanding any other provision of law, the term 'class II gaming' includes, for purposes of applying Public Law 100–497 [25 U.S.C. 2701 et seq.] with respect to any Indian tribe located in the State of Wisconsin or the State of Montana, during the 1-year period beginning on the date of enactment of this Act [May 24, 1990], any gaming described in section 4(7)(B)(ii) of Public Law 100–497 [25 U.S.C. 2703(7)(B)(ii)] that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated made a request, by no later than November 16, 1988, to the State in which such gaming is operated to negotiate a Tribal-State compact under section 11(d)(3) of Public Law 100–497 [25 U.S.C. 2710(d)(3)].''

TRIBAL-STATE COMPACT COVERING INDIAN TRIBES IN MINNESOTA; OPERATION OF CLASS II GAMES; ALLOWANCE OF ADDITIONAL YEAR FOR NEGOTIATIONS

Pub. L. 101–121, title I, § 118, Oct. 23, 1989, 103 Stat. 722, provided that: ''Notwithstanding any other provision of law, the term 'Class II gaming' in Public Law 100–497 [25 U.S.C. 2701 et seq.], for any Indian tribe located in the State of Minnesota, includes, during the period commencing on the date of enactment of this Act [Oct. 23, 1989] and continuing for 365 days from that date, any gaming described in section 4(7)(B)(ii) of Public Law 100–497 [25 U.S.C. 2703(7)(B)(ii)] that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdication [sic] over the lands on which such gaming was operated, requested the State of Minnesota, no later than 30 days after the date of enactment of Public Law 100–497 [Oct. 17, 1988], to negotiate a tribal-state compact pursuant to section 11(d)(3) of Public Law 100–497 [25 U.S.C. 2710(d)(3)].''

§ 2704. National Indian Gaming Commission

(a) Establishment

There is established within the Department of the Interior a Commission to be known as the National Indian Gaming Commission.

(b) Composition; investigation; term of office; removal

(1) The Commission shall be composed of three full-time members who shall be appointed as follows:

(A) a Chairman, who shall be appointed by the President with the advice and consent of the Senate; and

(B) two associate members who shall be appointed by the Secretary of the Interior.

(2)(A) The Attorney General shall conduct a background investigation on any person considered for appointment to the Commission.

(B) The Secretary shall publish in the Federal Register the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and shall allow a period of not less than thirty days for receipt of public comment.

(3) Not more than two members of the Commission shall be of the same political party. At least two members of the Commission shall be enrolled members of any Indian tribe.

(4)(A) Except as provided in subparagraph (B), the term of office of the members of the Commission shall be three years.

(B) Of the initial members of the Commission—

(i) two members, including the Chairman, shall have a term of office of three years; and

(ii) one member shall have a term of office of one year.

(5) No individual shall be eligible for any appointment to, or to continue service on, the Commission, who—

(A) has been convicted of a felony or gaming offense;

(B) has any financial interest in, or management responsibility for, any gaming activity; or

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 2711 of this title.

(6) A Commissioner may only be removed from office before the expiration of the term of office of the member by the President (or, in the case of associate member, by the Secretary) for neglect of duty, or malfeasance in office, or for other good cause shown.

(c) Vacancies

Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term of office until his successor has been appointed, unless the member has been removed for cause under subsection (b)(6) of this section.

(d) Quorum

Two members of the Commission, at least one of which is the Chairman or Vice Chairman, shall constitute a quorum.

(e) Vice Chairman

The Commission shall select, by majority vote, one of the members of the Commission to serve as Vice Chairman. The Vice Chairman shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

(f) Meetings

The Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least once every 4 months.

(g) Compensation

(1) The Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5.

(2) The associate members of the Commission shall each be paid at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5.

(3) All members of the Commission shall be reimbursed in accordance with title 5 for travel, subsistence, and other necessary expenses in-

curred by them in the performance of their duties.

(Pub. L. 100–497, § 5, Oct. 17, 1988, 102 Stat. 2469.)

§ 2705. Powers of Chairman

(a) The Chairman, on behalf of the Commission, shall have power, subject to an appeal to the Commission, to—

(1) issue orders of temporary closure of gaming activities as provided in section 2713(b) of this title;

(2) levy and collect civil fines as provided in section 2713(a) of this title;

(3) approve tribal ordinances or resolutions regulating class II gaming and class III gaming as provided in section 2710 of this title; and

(4) approve management contracts for class II gaming and class III gaming as provided in sections 2710(d)(9) and 2711 of this title.

(b) The Chairman shall have such other powers as may be delegated by the Commission.

(Pub. L. 100–497, § 6, Oct. 17, 1988, 102 Stat. 2470.)

§ 2706. Powers of Commission

(a) Budget approval; civil fines; fees; subpoenas; permanent orders

The Commission shall have the power, not subject to delegation—

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 2717 of this title;

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 2713(a) of this title;

(3) by an affirmative vote of not less than 2 members, to establish the rate of fees as provided in section 2717 of this title;

(4) by an affirmative vote of not less than 2 members, to authorize the Chairman to issue subpoenas as provided in section 2715 of this title; and

(5) by an affirmative vote of not less than 2 members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 2713(b)(2) of this title.

(b) Monitoring; inspection of premises; investigations; access to records; mail; contracts; hearings; oaths; regulations

The Commission—

(1) shall monitor class II gaming conducted on Indian lands on a continuing basis;

(2) shall inspect and examine all premises located on Indian lands on which class II gaming is conducted;

(3) shall conduct or cause to be conducted such background investigations as may be necessary;

(4) may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this chapter;

(5) may use the United States mail in the same manner and under the same conditions as any department or agency of the United States;

(6) may procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(7) may enter into contracts with Federal, State, tribal and private entities for activities necessary to the discharge of the duties of the Commission and, to the extent feasible, contract the enforcement of the Commission's regulations with the Indian tribes;

(8) may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(9) may administer oaths or affirmations to witnesses appearing before the Commission; and

(10) shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter.

(c) Omitted

(d) Application of Government Performance and Results Act

(1) In general

In carrying out any action under this chapter, the Commission shall be subject to the Government Performance and Results Act of 1993 (Public Law 103–62; 107 Stat. 285).

(2) Plans

In addition to any plan required under the Government Performance and Results Act of 1993 (Public Law 103–62; 107 Stat. 285), the Commission shall submit a plan to provide technical assistance to tribal gaming operations in accordance with that Act.

(Pub. L. 100–497, § 7, Oct. 17, 1988, 102 Stat. 2470; Pub. L. 109–221, title III, § 301(a), May 12, 2006, 120 Stat. 341.)

REFERENCES IN TEXT

The Government Performance and Results Act of 1993, referred to in subsec. (d), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

CODIFICATION

Subsec. (c) of this section, which required the Commission to submit a report to Congress every two years on various matters relating to the operation of the Commission, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 114 of House Document No. 103-7.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–221 added subsec. (d).

§ 2707. Commission staffing

(a) General Counsel

The Chairman shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for GS–18 of the General Schedule under section 5332 of title 5.

(b) Staff

The Chairman shall appoint and supervise other staff of the Commission without regard to the provisions of title 5 governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–17 of the General Schedule under section 5332 of that title.

(c) Temporary services

The Chairman may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS–18 of the General Schedule.

(d) Federal agency personnel

Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this chapter, unless otherwise prohibited by law.

(e) Administrative support services

The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(Pub. L. 100–497, § 8, Oct. 17, 1988, 102 Stat. 2471.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 2708. Commission; access to information

The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this chapter. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

(Pub. L. 100–497, § 9, Oct. 17, 1988, 102 Stat. 2472.)

§ 2709. Interim authority to regulate gaming

Notwithstanding any other provision of this chapter, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before October 17, 1988, relating to supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to regulation of Indian gaming by the Commission.

(Pub. L. 100–497, § 10, Oct. 17, 1988, 102 Stat. 2472.)

§ 2710. Tribal gaming ordinances

(a) Jurisdiction over class I and class II gaming activity

(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter.

(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that—

(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than—

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies;

(C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of $25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

(F) there is an adequate system which—

(i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and

(ii) includes—

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if—

(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);

(C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

(4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 2712 of this title,

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 2717(a)(1) of this title for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on October 17, 1988.

(iii) Within sixty days of October 17, 1988, the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

(c) Issuance of gaming license; certificate of self-regulation

(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II) of this section, the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which—

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after October 17, 1988; and

(B) has otherwise complied with the provisions of this section[1]

may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has—

(A) conducted its gaming activity in a manner which—

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

[1] So in original. Probably should be followed by a comma.

(B) adopted and is implementing adequate systems for—

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation—

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 2706(b) of this title;

(B) the tribe shall continue to submit an annual independent audit as required by subsection (b)(2)(C) of this section and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 2717 of this title in excess of one quarter of 1 per centum of the gross revenue.

(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b) of this section, and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

(2)(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b) of this section.

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that—

(i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or

(ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 2711(e)(1)(D) of this title.

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D)(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(iii) Notwithstanding any other provision of this subsection—

(I) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and

(II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

(3)(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to—

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of section 1175 of title 15 shall not apply to any gaming conducted under a Tribal-State compact that—

(A) is entered into under paragraph (3) by a State in which gambling devices are legal, and

(B) is in effect.

(7)(A) The United States district courts shall have jurisdiction over—

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and

(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that—

(I) a Tribal-State compact has not been entered into under paragraph (3), and

(II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith,

the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe[2] to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court—

(I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this chapter and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this chapter, and the relevant provisions of the laws of the State, and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(8)(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

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[2] So in original. Probably should not be capitalized.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates—

(i) any provision of this chapter,

(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

(iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this chapter.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 2711 of this title.

(e) Approval of ordinances

For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this chapter.

(Pub. L. 100–497, § 11, Oct. 17, 1988, 102 Stat. 2472.)

§ 2711. Management contracts

(a) Class II gaming activity; information on operators

(1) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a class II gaming activity that the Indian tribe may engage in under section 2710(b)(1) of this title, but, before approving such contract, the Chairman shall require and obtain the following information:

(A) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(B) a description of any previous experience that each person listed pursuant to subparagraph (A) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and

(C) a complete financial statement of each person listed pursuant to subparagraph (A).

(2) Any person listed pursuant to paragraph (1)(A) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(3) For purposes of this chapter, any reference to the management contract described in paragraph (1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(b) Approval

The Chairman may approve any management contract entered into pursuant to this section only if he determines that it provides at least—

(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

(2) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) for a contract term not to exceed five years, except that, upon the request of an Indian tribe, the Chairman may authorize a contract term that exceeds five years but does not exceed seven years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time; and

(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.

(c) Fee based on percentage of net revenues

(1) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if the Chairman determines that such percentage fee is reasonable in light of surrounding circumstances. Except as otherwise provided in this subsection, such fee shall not exceed 30 percent of the net revenues.

(2) Upon the request of an Indian tribe, the Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity that exceeds 30 percent but not 40 percent of the net revenues if the Chairman is satisfied that the capital investment required, and income projections, for such tribal gaming activity require the additional fee requested by the Indian tribe.

(d) Period for approval; extension

By no later than the date that is 180 days after the date on which a management contract is submitted to the Chairman for approval, the

Chairman shall approve or disapprove such contract on its merits. The Chairman may extend the 180-day period by not more than 90 days if the Chairman notifies the Indian tribe in writing of the reason for the extension. The Indian tribe may bring an action in a United States district court to compel action by the Chairman if a contract has not been approved or disapproved within the period required by this subsection.

(e) Disapproval

The Chairman shall not approve any contract if the Chairman determines that—

(1) any person listed pursuant to subsection (a)(1)(A) of this section—

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been or subsequently is convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this chapter or has refused to respond to questions propounded pursuant to subsection (a)(2) of this section; or

(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity;

(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this chapter; or

(4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

(f) Modification or voiding

The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.

(g) Interest in land

No management contract for the operation and management of a gaming activity regulated by this chapter shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.

(h) Authority

The authority of the Secretary under section 81 of this title, relating to management contracts regulated pursuant to this chapter, is hereby transferred to the Commission.

(i) Investigation fee

The Commission shall require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in subsection (e) of this section.

(Pub. L. 100–497, § 12, Oct. 17, 1988, 102 Stat. 2479.)

§ 2712. Review of existing ordinances and contracts

(a) Notification to submit

As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to October 17, 1988, adopted an ordinance or resolution authorizing class II gaming or class III gaming or entered into a management contract, that such ordinance, resolution, or contract, including all collateral agreements relating to the gaming activity, must be submitted for his review within 60 days of such notification. Any activity conducted under such ordinance, resolution, contract, or agreement shall be valid under this chapter, or any amendment made by this chapter, unless disapproved under this section.

(b) Approval or modification of ordinance or resolution

(1) By no later than the date that is 90 days after the date on which an ordinance or resolution authorizing class II gaming or class III gaming is submitted to the Chairman pursuant to subsection (a) of this section, the Chairman shall review such ordinance or resolution to determine if it conforms to the requirements of section 2710(b) of this title.

(2) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section conforms to the requirements of section 2710(b) of this title, the Chairman shall approve it.

(3) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section does not conform to the requirements of section 2710(b) of this title, the Chairman shall provide written notification of necessary modifications to the Indian tribe which shall have not more than 120 days to bring such ordinance or resolution into compliance.

(c) Approval or modification of management contract

(1) Within 180 days after the submission of a management contract, including all collateral agreements, pursuant to subsection (a) of this section, the Chairman shall subject such contract to the requirements and process of section 2711 of this title.

(2) If the Chairman determines that a management contract submitted under subsection (a) of this section, and the management contractor under such contract, meet the requirements of section 2711 of this title, the Chairman shall approve the management contract.

(3) If the Chairman determines that a contract submitted under subsection (a) of this section, or the management contractor under a contract submitted under subsection (a) of this section, does not meet the requirements of section 2711 of this title, the Chairman shall provide written

notification to the parties to such contract of necessary modifications and the parties shall have not more than 120 days to come into compliance. If a management contract has been approved by the Secretary prior to October 17, 1988, the parties shall have not more than 180 days after notification of necessary modifications to come into compliance.

(Pub. L. 100–497, § 13, Oct. 17, 1988, 102 Stat. 2481.)

§ 2713. Civil penalties

(a) Authority; amount; appeal; written complaint

(1) Subject to such regulations as may be prescribed by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this chapter, any regulation prescribed by the Commission pursuant to this chapter, or tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman.

(3) Whenever the Commission has reason to believe that the tribal operator of an Indian game or a management contractor is engaged in activities regulated by this chapter, by regulations prescribed under this chapter, or by tribal regulations, ordinances, or resolutions, approved under section 2710 or 2712 of this title, that may result in the imposition of a fine under subsection (a)(1) of this section, the permanent closure of such game, or the modification or termination of any management contract, the Commission shall provide such tribal operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in common and concise language and must specify the statutory or regulatory provisions alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

(b) Temporary closure; hearing

(1) The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this chapter, of regulations prescribed by the Commission pursuant to this chapter, or of tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. Not later than sixty days following such hearing, the Commission shall, by a vote of not less than two of its members, decide whether to order a permanent closure of the gaming operation.

(c) Appeal from final decision

A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to chapter 7 of title 5.

(d) Regulatory authority under tribal law

Nothing in this chapter precludes an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is not inconsistent with this chapter or with any rules or regulations adopted by the Commission.

(Pub. L. 100–497, § 14, Oct. 17, 1988, 102 Stat. 2482.)

§ 2714. Judicial review

Decisions made by the Commission pursuant to sections 2710, 2711, 2712, and 2713 of this title shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of title 5.

(Pub. L. 100–497, § 15, Oct. 17, 1988, 102 Stat. 2483.)

§ 2715. Subpoena and deposition authority

(a) Attendance, testimony, production of papers, etc.

By a vote of not less than two members, the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Geographical location

The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing. The Commission may request the Secretary to request the Attorney General to bring an action to enforce any subpoena under this section.

(c) Refusal of subpoena; court order; contempt

Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena for any reason, issue an order requiring such person to appear before the Commission (and produce books, papers, or documents as so ordered) and give evidence concerning the matter in question and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Depositions; notice

A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such

deposition, and, in cases in which a Commissioner proposes to take a deposition, reasonable notice must be given. The notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission, as hereinbefore provided.

(e) Oath or affirmation required

Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify to the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Commission.

(f) Witness fees

Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(Pub. L. 100–497, § 16, Oct. 17, 1988, 102 Stat. 2483.)

§ 2716. Investigative powers

(a) Confidential information

Except as provided in subsection (b) of this section, the Commission shall preserve any and all information received pursuant to this chapter as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5.

(b) Provision to law enforcement officials

The Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.

(c) Attorney General

The Attorney General shall investigate activities associated with gaming authorized by this chapter which may be a violation of Federal law.

(Pub. L. 100–497, § 17, Oct. 17, 1988, 102 Stat. 2484.)

§ 2717. Commission funding

(a)(1) The Commission shall establish a schedule of fees to be paid to the Commission annually by each gaming operation that conducts a class II or class III gaming activity that is regulated by this chapter.

(2)(A) The rate of the fees imposed under the schedule established under paragraph (1) shall be—

(i) no more than 2.5 percent of the first $1,500,000, and

(ii) no more than 5 percent of amounts in excess of the first $1,500,000,

of the gross revenues from each activity regulated by this chapter.

(B) The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed 0.080 percent of the gross gaming revenues of all gaming operations subject to regulation under this chapter.

(3) The Commission, by a vote of not less than two of its members, shall annually adopt the rate of the fees authorized by this section which shall be payable to the Commission on a quarterly basis.

(4) Failure to pay the fees imposed under the schedule established under paragraph (1) shall, subject to the regulations of the Commission, be grounds for revocation of the approval of the Chairman of any license, ordinance, or resolution required under this chapter for the operation of gaming.

(5) To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity on a pro rata basis against such fees imposed for the succeeding year.

(6) For purposes of this section, gross revenues shall constitute the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures.

(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal year of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 2718 of this title, in an amount equal the amount of funds derived from assessments authorized by subsection (a) of this section for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations pursuant to paragraph (2) shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

(Pub. L. 100–497, § 18, Oct. 17, 1988, 102 Stat. 2484; Pub. L. 105–83, title I, § 123(a)(1)–(2)(B), Nov. 14, 1997, 111 Stat. 1566; Pub. L. 109–221, title III, § 301(b), May 12, 2006, 120 Stat. 341.)

AMENDMENTS

2006—Subsec. (a)(2)(B). Pub. L. 109–221 added subpar. (B) and struck out former subpar. (B) which read as follows: ''The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed $8,000,000.''

1997—Subsec. (a)(1). Pub. L. 105–83, § 123(a)(1), substituted ''gaming operation that conducts a class II or class III gaming activity'' for ''class II gaming activity''.

Subsec. (a)(2)(A)(i). Pub. L. 105–83, § 123(a)(2)(A), substituted ''no more than 2.5 percent'' for ''no less than 0.5 percent nor more than 2.5 percent''.

Subsec. (a)(2)(B). Pub. L. 105–83, § 123(a)(2)(B), substituted ''$8,000,000'' for ''$1,500,000''.

APPLICATION TO SELF-REGULATED TRIBES

Pub. L. 105–83, title I, § 123(a)(2)(C), Nov. 14, 1997, 111 Stat. 1566, as amended by Pub. L. 105–277, div. A, § 101(e) [title III, § 338], Oct. 21, 1998, 112 Stat. 2681–231, 2681–295, provided that: ''[N]othing in subsection (a) of this section [amending this section] shall apply to the Mississippi Band of Choctaw.''

§ 2717a. Availability of class II gaming activity fees to carry out duties of Commission

In fiscal year 1990 and thereafter, fees collected pursuant to and as limited by section 2717 of this title shall be available to carry out the duties of the Commission, to remain available until expended.

(Pub. L. 101–121, title I, Oct. 23, 1989, 103 Stat. 718.)

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1990, and not as part of the Indian Gaming Regulatory Act which comprises this chapter.

§ 2718. Authorization of appropriations

(a) Subject to section 2717 of this title, there are authorized to be appropriated, for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title.

(b) Notwithstanding section 2717 of this title, there are authorized to be appropriated to fund the operation of the Commission, $2,000,000 for fiscal year 1998, and $2,000,000 for each fiscal year thereafter. The amounts authorized to be appropriated in the preceding sentence shall be in addition to the amounts authorized to be appropriated under subsection (a) of this section.

(Pub. L. 100–497, § 19, Oct. 17, 1988, 102 Stat. 2485; Pub. L. 102–238, § 2(b), Dec. 17, 1991, 105 Stat. 1908; Pub. L. 105–83, title I, § 123(b), Nov. 14, 1997, 111 Stat. 1566; Pub. L. 105–119, title VI, § 627, Nov. 26, 1997, 111 Stat. 2522.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–119 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Subject to the provisions of section 2717 of this title, there are hereby authorized to be appropriated for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title for the fiscal year immediately preceding the fiscal year involved, for the operation of the Commission.''

Pub. L. 105–83, § 123(b)(1), substituted ''for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title for the fiscal year immediately preceding the fiscal year involved,'' for ''such sums as may be necessary''.

Subsec. (b). Pub. L. 105–83, § 123(b)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: ''Notwithstanding the provisions of section 2717 of this title, there are hereby authorized to be appropriated not to exceed $2,000,000 to fund the operation of the Commission for each of the fiscal years beginning October 1, 1988, and October 1, 1989. Notwithstanding the provisions of section 2717 of this title, there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992.''

1991—Subsec. (b). Pub. L. 102–238 inserted at end ''Notwithstanding the provisions of section 2717 of this title, there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992.''

§ 2719. Gaming on lands acquired after October 17, 1988

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless—

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and—

(A) such lands are located in Oklahoma and—

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

(1) Subsection (a) of this section will not apply when—

(A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of—

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(2) Subsection (a) of this section shall not apply to—

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86–2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to

the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Authority of Secretary not affected

Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Application of title 26

(1) The provisions of title 26 (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such title) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.

(Pub. L. 100–497, § 20, Oct. 17, 1988, 102 Stat. 2485.)

§ 2720. Dissemination of information

Consistent with the requirements of this chapter, sections 1301, 1302, 1303 and 1304 of title 18 shall not apply to any gaming conducted by an Indian tribe pursuant to this chapter.

(Pub. L. 100–497, § 21, Oct. 17, 1988, 102 Stat. 2486.)

§ 2721. Severability

In the event that any section or provision of this chapter, or amendment made by this chapter, is held invalid, it is the intent of Congress that the remaining sections or provisions of this chapter, and amendments made by this chapter, shall continue in full force and effect.

(Pub. L. 100–497, § 22, Oct. 17, 1988, 102 Stat. 2486.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

CHAPTER 30—INDIAN LAW ENFORCEMENT REFORM

Sec.
2801. Definitions.
2802. Indian law enforcement responsibilities.
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2804. Assistance by other agencies.
2805. Regulations.
2806. Jurisdiction.
2807. Uniform allowance.
2808. Source of funds.
2809. Reports to tribes.

§ 2801. Definitions

For purposes of this chapter—

(1) The term ''Bureau'' means the Bureau of Indian Affairs of the Department of the Interior.

(2) The term ''employee of the Bureau'' includes an officer of the Bureau.

(3) The term ''enforcement of a law'' includes the prevention, detection, and investigation of an offense and the detention or confinement of an offender.

(4) The term ''Indian country'' has the meaning given that term in section 1151 of title 18.

(5) The term ''Indian tribe'' has the meaning given that term in section 1301 of this title.

(6) The term ''offense'' means an offense against the United States and includes a violation of a Federal regulation relating to part or all of Indian country.

(7) The term ''Secretary'' means the Secretary of the Interior.

(8) The term ''Division of Law Enforcement Services'' means the entity established within the Bureau under section 2802(b) of this title.

(9) The term ''Branch of Criminal Investigations'' means the entity the Secretary is required to establish within the Division of Law Enforcement Services under section 2802(d)(1) of this title.

(Pub. L. 101–379, § 2, Aug. 18, 1990, 104 Stat. 473.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 101–379, Aug. 18, 1990, 104 Stat. 473, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 1 of Pub. L. 101–379 provided that: ''This Act [enacting this chapter and provisions set out as a note under section 2991a of Title 42, The Public Health and Welfare] may be cited as the 'Indian Law Enforcement Reform Act'.''

§ 2802. Indian law enforcement responsibilities

(a) Responsibility of Secretary

The Secretary, acting through the Bureau, shall be responsible for providing, or for assisting in the provision of, law enforcement services in Indian country as provided in this chapter.

(b) Division of Law Enforcement Services; establishment and responsibilities

There is hereby established within the Bureau a Division of Law Enforcement Services which, under the supervision of the Secretary, or an individual designated by the Secretary, shall be responsible for—

(1) carrying out the law enforcement functions of the Secretary in Indian country, and

(2) implementing the provisions of this section.

(c) Additional responsibilities of Division

Subject to the provisions of this chapter and other applicable Federal or tribal laws, the re-

sponsibilities of the Division of Law Enforcement Services in Indian country shall include—

(1) the enforcement of Federal law and, with the consent of the Indian tribe, tribal law;

(2) in cooperation with appropriate Federal and tribal law enforcement agencies, the investigation of offenses against criminal laws of the United States;

(3) the protection of life and property;

(4) the development of methods and expertise to resolve conflicts and solve crimes;

(5) the provision of criminal justice remedial actions, correctional and detention services, and rehabilitation;

(6) the reduction of recidivism and adverse social effects;

(7) the development of preventive and outreach programs which will enhance the public conception of law enforcement responsibilities through training and development of needed public service skills;

(8) the assessment and evaluation of program accomplishments in reducing crime; and

(9) the development and provision of law enforcement training and technical assistance.

(d) Branch of Criminal Investigations; establishment, responsibilities, regulations, personnel, etc.

(1) The Secretary shall establish within the Division of Law Enforcement Services a separate Branch of Criminal Investigations which, under such inter-agency agreement as may be reached between the Secretary and appropriate agencies or officials of the Department of Justice and subject to such guidelines as may be adopted by relevant United States attorneys, shall be responsible for the investigation, and presentation for prosecution, of cases involving violations of sections 1152 and 1153 of title 18 within Indian country.

(2) The Branch of Criminal Investigations shall not be primarily responsible for the routine law enforcement and police operations of the Bureau in Indian country.

(3) The Secretary shall prescribe regulations which shall establish a procedure for active cooperation and consultation of the criminal investigative employees of the Bureau assigned to an Indian reservation with the governmental and law enforcement officials of the Indian tribe located on such reservation.

(4)(i) Criminal investigative personnel of the Branch shall be subject only to the supervision and direction of law enforcement personnel of the Branch or of the Division. Such personnel shall not be subject to the supervision of the Bureau of Indian Affairs Agency Superintendent or Bureau of Indian Affairs Area Office Director. Nothing in this paragraph is intended to prohibit cooperation, coordination, or consultation, as appropriate, with nonlaw enforcement Bureau of Indian Affairs personnel at the agency or area levels, or prohibit or restrict the right of a tribe to contract the investigative program under the authority of Public Law 93–638 [25 U.S.C. 450 et seq.] or to maintain its own criminal investigative operations.

(ii) At the end of one year following the date of establishment of the separate Branch of Criminal Investigations, any tribe may, by resolution of the governing body of the tribe, request the Secretary to reestablish line authority through the Agency Superintendent or Bureau of Indian Affairs Area Office Director. In the absence of good cause to the contrary, the Secretary, upon receipt of such resolution, shall reestablish the line authority as requested by the tribe.

(e) Division of Law Enforcement Services personnel; standards of education, experience, etc.; classification of positions

(1) The Secretary shall establish appropriate standards of education, experience, training, and other relevant qualifications for law enforcement personnel of the Division of Law Enforcement Services who are charged with law enforcement responsibilities pursuant to section 2803 of this title.

(2) The Secretary shall also provide for the classification of such positions within the Division of Law Enforcement Services at GS grades, as provided in section 5104 of title 5, consistent with the responsibilities and duties assigned to such positions and with the qualifications established for such positions.

(3) In classifying positions in the Division of Law Enforcement Services under paragraph (2), the Secretary shall ensure that such positions are classified at GS grades comparable to those for other Federal law enforcement personnel in other Federal Agencies[1] in light of the responsibilities, duties, and qualifications required of such positions.

(Pub. L. 101–379, § 3, Aug. 18, 1990, 104 Stat. 473.)

REFERENCES IN TEXT

Public Law 93–638, referred to in subsec. (d)(4)(i), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 2803. Law enforcement authority

The Secretary may charge employees of the Bureau with law enforcement responsibilities and may authorize those employees to—

(1) carry firearms;

(2) execute or serve warrants, summonses, or other orders relating to a crime committed in Indian country and issued under the laws of—

(A) the United States (including those issued by a Court of Indian Offenses under regulations prescribed by the Secretary), or

(B) an Indian tribe if authorized by the Indian tribe;

(3) make an arrest without a warrant for an offense committed in Indian country if—

(A) the offense is committed in the presence of the employee,

(B) the offense is a felony and the employee has reasonable grounds to believe that the person to be arrested has committed, or is committing, the felony, or

(C) the offense is a misdemeanor crime of domestic violence, dating violence, stalking,

[1] So in original. Probably should not be capitalized.

or violation of a protection order and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim, and the employee has reasonable grounds to believe that the person to be arrested has committed, or is committing the crime;

(4) offer and pay a reward for services or information, or purchase evidence, assisting in the detection or investigation of the commission of an offense committed in Indian country or in the arrest of an offender against the United States;

(5) make inquiries of any person, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter relevant to the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the employee to enforce or carry out tribal laws;

(6) wear a prescribed uniform and badge or carry prescribed credentials;

(7) perform any other law enforcement related duty; and

(8) when requested, assist (with or without reimbursement) any Federal, tribal, State, or local law enforcement agency in the enforcement or carrying out of the laws or regulations the agency enforces or administers.

(Pub. L. 101–379, § 4, Aug. 18, 1990, 104 Stat. 475; Pub. L. 109–162, title IX, § 908(b), Jan. 5, 2006, 119 Stat. 3083.)

AMENDMENTS

2006–Par. (3)(C). Pub. L. 109–162 added subpar. (C).

§ 2804. Assistance by other agencies

(a) Agreement for use of personnel or facilities of Federal, tribal, State, or other government agency

The Secretary may enter into an agreement for the use (with or without reimbursement) of the personnel or facilities of a Federal, tribal, State, or other government agency to aid in the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the Secretary to enforce tribal laws. The Secretary may authorize a law enforcement officer of such an agency to perform any activity the Secretary may authorize under section 2803 of this title.

(b) Agreement to be in accord with agreements between Secretary and Attorney General

Any agreement entered into under this section relating to the enforcement of the criminal laws of the United States shall be in accord with any agreement between the Secretary and the Attorney General of the United States.

(c) Limitations on use of personnel of non-Federal agency

The Secretary may not use the personnel of a non-Federal agency under this section in an area of Indian country if the Indian tribe having jurisdiction over such area of Indian country has adopted a resolution objecting to the use of the personnel of such agency. The Secretary shall consult with Indian tribes before entering into any agreement under subsection (a) of this section with a non-Federal agency that will provide personnel for use in any area under the jurisdiction of such Indian tribes.

(d) Authority of Federal agency head to enter into agreement with Secretary

Notwithstanding the provisions of section 1535 of title 31, the head of a Federal agency with law enforcement personnel or facilities may enter into an agreement (with or without reimbursement) with the Secretary under subsection (a) of this section.

(e) Authority of Federal agency head to enter into agreement with Indian tribe

The head of a Federal agency with law enforcement personnel or facilities may enter into an agreement (with or without reimbursement) with an Indian tribe relating to—

(1) the law enforcement authority of the Indian tribe, or

(2) the carrying out of a law of either the United States or the Indian tribe.

(f) Status of person as Federal employee

While acting under authority granted by the Secretary under subsection (a) of this section, a person who is not otherwise a Federal employee shall be considered to be—

(1) an employee of the Department of the Interior only for purposes of—

(A) the provisions of law described in section 3374(c)(2) of title 5, and

(B) sections 111 and 1114 of title 18, and

(2) an eligible officer under subchapter III of chapter 81 of title 5.

(Pub. L. 101–379, § 5, Aug. 18, 1990, 104 Stat. 476.)

§ 2805. Regulations

After consultation with the Attorney General of the United States, the Secretary may prescribe under this chapter regulations relating to the enforcement of criminal laws of the United States and regulations relating to the consideration of applications for contracts awarded under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] to perform the functions of the Branch of Criminal Investigations.

(Pub. L. 101–379, § 6, Aug. 18, 1990, 104 Stat. 476.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in text, is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 2806. Jurisdiction

(a) Investigative jurisdiction over offenses against criminal laws

The Secretary shall have investigative jurisdiction over offenses against criminal laws of

the United States in Indian country subject to an agreement between the Secretary and the Attorney General of the United States.

(b) Exercise of investigative authority

In exercising the investigative authority conferred by this section, the employees of the Bureau shall cooperate with the law enforcement agency having primary investigative jurisdiction over the offense committed.

(c) Law enforcement commission or other delegation of prior authority not invalidated or diminished

This chapter does not invalidate or diminish any law enforcement commission or other delegation of authority issued under the authority of the Secretary before August 18, 1990.

(d) Authorities in addition to prior authority; civil or criminal jurisdiction, law enforcement, investigative, or judicial authority, of United States, Indian tribes, States, etc., unaffected

The authority provided by this chapter is in addition to, and not in derogation of, any authority that existed before August 18, 1990. The provisions of this chapter alter neither the civil or criminal jurisdiction of the United States, Indian tribes, States, or other political subdivisions or agencies, nor the law enforcement, investigative, or judicial authority of any Indian tribe, State, or political subdivision or agency thereof, or of any department, agency, court, or official of the United States other than the Secretary.

(Pub. L. 101–379, § 7, Aug. 18, 1990, 104 Stat. 476.)

§ 2807. Uniform allowance

Notwithstanding the limitation in section 5901(a) of title 5, the Secretary may provide a uniform allowance for uniformed law enforcement officers under section 2803 of this title of not more than $400 a year.

(Pub. L. 101–379, § 8, Aug. 18, 1990, 104 Stat. 477.)

§ 2808. Source of funds

Any expenses incurred by the Secretary under this chapter shall be paid from funds appropriated under section 13 of this title.

(Pub. L. 101–379, § 9, Aug. 18, 1990, 104 Stat. 477.)

§ 2809. Reports to tribes

(a) Reports by law enforcement officials of Bureau or Federal Bureau of Investigation

In any case in which law enforcement officials of the Bureau or the Federal Bureau of Investigation decline to initiate an investigation of a reported violation of Federal law in Indian country, or terminate such an investigation without referral for prosecution, such officials are authorized to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe involved that states, with particularity, the reason or reasons why the investigation was declined or terminated.

(b) Reports by United States attorney

In any case in which a United States attorney declines to prosecute an alleged violation of Federal criminal law in Indian country referred for prosecution by the Federal Bureau of Investigation or the Bureau, or moves to terminate a prosecution of such an alleged violation, the United States attorney is authorized to submit a report to the appropriate governmental and law enforcement officials of the Indian tribe involved that states, with particularity, the reason or reasons why the prosecution was declined or terminated.

(c) Case file included within reports

In any case—

(1) in which the alleged offender is an Indian, and

(2) for which a report is submitted under subsection (a) or (b) of this section,

the report made to the Indian tribe may include the case file, including evidence collected and statements taken, which might support an investigation or prosecution of a violation of tribal law.

(d) Transfer or disclosure of confidential or privileged communication, information or sources to tribal officials

Nothing in this section shall require any Federal agency or official to transfer or disclose any confidential or privileged communication, information, or sources to the officials of any Indian tribe. Federal agencies authorized to make reports pursuant to this section shall, by regulations, adopt standards for the protection of such communications, information, or sources.

(Pub. L. 101–379, § 10, Aug. 18, 1990, 104 Stat. 477.)

CHAPTER 31—NATIVE AMERICAN LANGUAGES

Sec.
2901. Findings.
2902. Definitions.
2903. Declaration of policy.
2904. No restrictions.
2905. Evaluations.
2906. Use of English.

§ 2901. Findings

The Congress finds that—

(1) the status of the cultures and languages of Native Americans is unique and the United States has the responsibility to act together with Native Americans to ensure the survival of these unique cultures and languages;

(2) special status is accorded Native Americans in the United States, a status that recognizes distinct cultural and political rights, including the right to continue separate identities;

(3) the traditional languages of Native Americans are an integral part of their cultures and identities and form the basic medium for the transmission, and thus survival, of Native American cultures, literatures, histories, religions, political institutions, and values;

(4) there is a widespread practice of treating Native Americans[1] languages as if they were anachronisms;

(5) there is a lack of clear, comprehensive, and consistent Federal policy on treatment of

[1] So in original. Probably should be ''American''.

Native American languages which has often resulted in acts of suppression and extermination of Native American languages and cultures;

(6) there is convincing evidence that student achievement and performance, community and school pride, and educational opportunity is clearly and directly tied to respect for, and support of, the first language of the child or student;

(7) it is clearly in the interests of the United States, individual States, and territories to encourage the full academic and human potential achievements of all students and citizens and to take steps to realize these ends;

(8) acts of suppression and extermination directed against Native American languages and cultures are in conflict with the United States policy of self-determination for Native Americans;

(9) languages are the means of communication for the full range of human experiences and are critical to the survival of cultural and political integrity of any people; and

(10) language provides a direct and powerful means of promoting international communication by people who share languages.

(Pub. L. 101–477, title I, § 102, Oct. 30, 1990, 104 Stat. 1153.)

SHORT TITLE

Section 101 of title I of Pub. L. 101–477 provided that: ''This title [enacting this chapter] may be cited as the 'Native American Languages Act'.''

§ 2902. Definitions

For purposes of this chapter—

(1) The term ''Native American'' means an Indian, Native Hawaiian, or Native American Pacific Islander.

(2) The term ''Indian'' has the meaning given to such term under section 7491(3) of title 20.

(3) The term ''Native Hawaiian'' has the meaning given to such term by section 7517 of title 20.

(4) The term ''Native American Pacific Islander'' means any descendent of the aboriginal people of any island in the Pacific Ocean that is a territory or possession of the United States.

(5) The terms ''Indian tribe'' and ''tribal organization'' have the respective meaning given to each of such terms under section 450b of this title.

(6) The term ''Native American language'' means the historical, traditional languages spoken by Native Americans.

(7) The term ''traditional leaders'' includes Native Americans who have special expertise in Native American culture and Native American languages.

(8) The term ''Indian reservation'' has the same meaning given to the term ''reservation'' under section 1452 of this title.

(Pub. L. 101–477, title I, § 103, Oct. 30, 1990, 104 Stat. 1154; Pub. L. 104–109, § 11, Feb. 12, 1996, 110 Stat. 765; Pub. L. 107–110, title VII, § 702(f), Jan. 8, 2002, 115 Stat. 1947.)

AMENDMENTS

2002—Par. (2). Pub. L. 107–110, § 702(f)(1), substituted ''section 7491(3) of title 20'' for ''section 7881(4) of title 20''.

Par. (3). Pub. L. 107–110, § 702(f)(2), substituted ''section 7517 of title 20'' for ''section 7912(1) of title 20''.

1996—Par. (2). Pub. L. 104–109, § 11(1), substituted ''section 7881(4) of title 20'' for ''section 2651(4) of this title''.

Par. (3). Pub. L. 104–109, § 11(2), substituted ''section 7912(1) of title 20'' for ''section 4909 of title 20''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

§ 2903. Declaration of policy

It is the policy of the United States to—

(1) preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages;

(2) allow exceptions to teacher certification requirements for Federal programs, and programs funded in whole or in part by the Federal Government, for instruction in Native American languages when such teacher certification requirements hinder the employment of qualified teachers who teach in Native American languages, and to encourage State and territorial governments to make similar exceptions;

(3) encourage and support the use of Native American languages as a medium of instruction in order to encourage and support—

(A) Native American language survival,

(B) educational opportunity,

(C) increased student success and performance,

(D) increased student awareness and knowledge of their culture and history, and

(E) increased student and community pride;

(4) encourage State and local education programs to work with Native American parents, educators, Indian tribes, and other Native American governing bodies in the implementation of programs to put this policy into effect;

(5) recognize the right of Indian tribes and other Native American governing bodies to use the Native American languages as a medium of instruction in all schools funded by the Secretary of the Interior;

(6) fully recognize the inherent right of Indian tribes and other Native American governing bodies, States, territories, and possessions of the United States to take action on, and give official status to, their Native American languages for the purpose of conducting their own business;

(7) support the granting of comparable proficiency achieved through course work in a Native American language the same academic credit as comparable proficiency achieved through course work in a foreign language, with recognition of such Native American language proficiency by institutions of higher education as fulfilling foreign language entrance or degree requirements; and

(8) encourage all institutions of elementary, secondary and higher education, where appropriate, to include Native American languages in the curriculum in the same manner as foreign languages and to grant proficiency in Na-

tive American languages the same full academic credit as proficiency in foreign languages.

(Pub. L. 101–477, title I, § 104, Oct. 30, 1990, 104 Stat. 1155.)

§ 2904. No restrictions

The right of Native Americans to express themselves through the use of Native American languages shall not be restricted in any public proceeding, including publicly supported education programs.

(Pub. L. 101–477, title I, § 105, Oct. 30, 1990, 104 Stat. 1155.)

§ 2905. Evaluations

(a) The President shall direct the heads of the various Federal departments, agencies, and instrumentalities to—

(1) evaluate their policies and procedures in consultation with Indian tribes and other Native American governing bodies as well as traditional leaders and educators in order to determine and implement changes needed to bring the policies and procedures into compliance with the provisions of this chapter;

(2) give the greatest effect possible in making such evaluations, absent a clear specific Federal statutory requirement to the contrary, to the policies and procedures which will give the broadest effect to the provisions of this chapter; and

(3) evaluate the laws which they administer and make recommendations to the President on amendments needed to bring such laws into compliance with the provisions of this chapter.

(b) By no later than the date that is 1 year after October 30, 1990, the President shall submit to the Congress a report containing recommendations for amendments to Federal laws that are needed to bring such laws into compliance with the provisions of this chapter.

(Pub. L. 101–477, title I, § 106, Oct. 30, 1990, 104 Stat. 1156.)

§ 2906. Use of English

Nothing in this chapter shall be construed as precluding the use of Federal funds to teach English to Native Americans.

(Pub. L. 101–477, title I, § 107, Oct. 30, 1990, 104 Stat. 1156.)

CHAPTER 32—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION

Sec.
3001. Definitions.
3002. Ownership.
3003. Inventory for human remains and associated funerary objects.
3004. Summary for unassociated funerary objects, sacred objects, and cultural patrimony.
3005. Repatriation.
3006. Review committee.
3007. Penalty.
3008. Grants.
3009. Savings provision.
3010. Special relationship between Federal Government and Indian tribes and Native Hawaiian organizations.
3011. Regulations.
3012. Authorization of appropriations.
3013. Enforcement.

§ 3001. Definitions

For purposes of this chapter, the term—

(1) ''burial site'' means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) ''cultural affiliation'' means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) ''cultural items'' means human remains and—

(A) ''associated funerary objects'' which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.[1]

(B) ''unassociated funerary objects'' which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

(C) ''sacred objects'' which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) ''cultural patrimony'' which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) ''Federal agency'' means any department, agency, or instrumentality of the United

[1] So in original. The period probably should be a comma.

States. Such term does not include the Smithsonian Institution.

(5) ''Federal lands'' means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.].

(6) ''Hui Malama I Na Kupuna O Hawai'i Nei'' means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) ''Indian tribe'' means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) ''museum'' means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) ''Native American'' means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) ''Native Hawaiian'' means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(11) ''Native Hawaiian organization'' means any organization which—

(A) serves and represents the interests of Native Hawaiians,

(B) has as a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and

shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.

(12) ''Office of Hawaiian Affairs'' means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) ''right of possession'' means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 3005(c) of this title, result in a Fifth Amendment taking by the United States as determined by the United States Court of Federal Claims pursuant to 28 U.S.C. 1491 in which event the ''right of possession'' shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) ''Secretary'' means the Secretary of the Interior.

(15) ''tribal land'' means—

(A) all lands within the exterior boundaries of any Indian reservation;

(B) all dependent Indian communities;[2]

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86–3.

(Pub. L. 101–601, § 2, Nov. 16, 1990, 104 Stat. 3048; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 101–601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Alaska Native Claims Settlement Act of 1971, referred to in par. (5), probably means the Alaska Native Claims Settlement Act. See note below.

The Alaska Native Claims Settlement Act, referred to in par. (7), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Hawaiian Homes Commission Act, 1920, referred to in par. (15)(C), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code.

Section 4 of Public Law 86–3, referred to in par. (15)(C), is section 4 of Pub. L. 86–3, which is set out as a note preceding section 491 of Title 48.

AMENDMENTS

1992—Par. (13). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

SHORT TITLE

Section 1 of Pub. L. 101–601 provided that: ''This Act [enacting this chapter and section 1170 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Native American Graves Protection and Repatriation Act'.''

§ 3002. Ownership

(a) Native American human remains and objects

The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed)—

[2] So in original. Probably should be followed by ''and''.

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

(b) Unclaimed Native American human remains and objects

Native American cultural items not claimed under subsection (a) of this section shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 3006 of this title, Native American groups, representatives of museums and the scientific community.

(c) Intentional excavation and removal of Native American human remains and objects

The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if—

(1) such items are excavated or removed pursuant to a permit issued under section 470cc of title 16 which shall be consistent with this chapter;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b) of this section; and

(4) proof of consultation or consent under paragraph (2) is shown.

(d) Inadvertent discovery of Native American remains and objects

(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after November 16, 1990, shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.], the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

(e) Relinquishment

Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

(Pub. L. 101–601, § 3, Nov. 16, 1990, 104 Stat. 3050.)

REFERENCES IN TEXT

The Indian Claims Commission, referred to in subsec. (a)(2)(C), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

The United States Court of Claims, referred to in subsec. (a)(2)(C), and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

The Alaska Native Claims Settlement Act of 1971, referred to in subsec. (d)(1), probably means the Alaska Native Claims Settlement Act, Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, and which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 3003. Inventory for human remains and associated funerary objects

(a) In general

Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.[1]

(b) Requirements

(1) The inventories and identifications required under subsection (a) of this section shall be—

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after November 16, 1990, and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 3006 of this title.

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term ''documentation'' means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this chapter shall not be construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

(c) Extension of time for inventory

Any museum which has made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B) of this section. The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.

(d) Notification

(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.

(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

(e) Inventory

For the purposes of this section, the term ''inventory'' means a simple itemized list that summarizes the information called for by this section.

(Pub. L. 101–601, § 5, Nov. 16, 1990, 104 Stat. 3052.)

§ 3004. Summary for unassociated funerary objects, sacred objects, and cultural patrimony

(a) In general

Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

(b) Requirements

(1) The summary required under subsection (a) of this section shall be—

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and

(C) completed by not later than the date that is 3 years after November 16, 1990.

(2) Upon request, Indian Tribes[1] and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such information shall be provided in a reasonable manner to be agreed upon by all parties.

(Pub. L. 101–601, § 6, Nov. 16, 1990, 104 Stat. 3053.)

[1] So in original. Probably should be ''items.''

[1] So in original. Probably should not be capitalized.

§ 3005. Repatriation

(a) Repatriation of Native American human remains and objects possessed or controlled by Federal agencies and museums

(1) If, pursuant to section 3003 of this title, the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 3004 of this title, the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this chapter shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 3003 of this title, or the summary pursuant to section 3004 of this title, or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) of this section and, in the case of unassociated funerary objects, subsection (c) of this section, such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e) of this section, sacred objects and objects of cultural patrimony shall be expeditiously returned where—

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under this chapter.

(b) Scientific study

If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.

(c) Standard of repatriation

If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this chapter and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.

(d) Sharing of information by Federal agencies and museums

Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

(e) Competing claims

Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this chapter, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this chapter or by a court of competent jurisdiction.

(f) Museum obligation

Any museum which repatriates any item in good faith pursuant to this chapter shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state[1] law that are inconsistent with the provisions of this chapter.

(Pub. L. 101–601, § 7, Nov. 16, 1990, 104 Stat. 3054.)

§ 3006. Review committee

(a) Establishment

Within 120 days after November 16, 1990, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 3003, 3004 and 3005 of this title.

[1] So in original. Probably should be capitalized.

(b) Membership

(1) The Committee[1] established under subsection (a) of this section shall be composed of 7 members,

(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;

(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and

(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) of this section shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS–18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(c) Responsibilities

The committee established under subsection (a) of this section shall be responsible for—

(1) designating one of the members of the committee as chairman;

(2) monitoring the inventory and identification process conducted under sections 3003 and 3004 of this title to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(3) upon the request of any affected party, reviewing and making findings related to—

(A) the identity or cultural affiliation of cultural items, or

(B) the return of such items;

(4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

(5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this chapter;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

(d) Admissibility of records and findings

Any records and findings made by the review committee pursuant to this chapter relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 3013 of this title.

(e) Recommendations and report

The committee shall make the recommendations under paragraph[2] (c)(5) in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups.

(f) Access

The Secretary shall ensure that the committee established under subsection (a) of this section and the members of the committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents.

(g) Duties of Secretary

The Secretary shall—

(1) establish such rules and regulations for the committee as may be necessary, and

(2) provide reasonable administrative and staff support necessary for the deliberations of the committee.

(h) Annual report

The committee established under subsection (a) of this section shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

(i) Termination

The committee established under subsection (a) of this section shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed.

(Pub. L. 101–601, § 8, Nov. 16, 1990, 104 Stat. 3055.)

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 3007. Penalty

(a) Penalty

Any museum that fails to comply with the requirements of this chapter may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed

[1] So in original. Probably should not be capitalized.

[2] So in original. Probably should be ''subsection''.

under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.

(b) Amount of penalty

The amount of a penalty assessed under subsection (a) of this section shall be determined under regulations promulgated pursuant to this chapter, taking into account, in addition to other factors—

(1) the archaeological, historical, or commercial value of the item involved;

(2) the damages suffered, both economic and noneconomic, by an aggrieved party,[1] and

(3) the number of violations that have occurred.

(c) Actions to recover penalties

If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) of this section and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

(d) Subpoenas

In hearings held pursuant to subsection (a) of this section, subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

(Pub. L. 101–601, § 9, Nov. 16, 1990, 104 Stat. 3057.)

§ 3008. Grants

(a) Indian tribes and Native Hawaiian organizations

The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

(b) Museums

The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 3003 and 3004 of this title.

(Pub. L. 101–601, § 10, Nov. 16, 1990, 104 Stat. 3057.)

§ 3009. Savings provision

Nothing in this chapter shall be construed to—

(1) limit the authority of any Federal agency or museum to—

(A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and

(B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this chapter;

(2) delay actions on repatriation requests that are pending on November 16, 1990;

(3) deny or otherwise affect access to any court;

(4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or

(5) limit the application of any State or Federal law pertaining to theft or stolen property.

(Pub. L. 101–601, § 11, Nov. 16, 1990, 104 Stat. 3057.)

§ 3010. Special relationship between Federal Government and Indian tribes and Native Hawaiian organizations

This chapter reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government.

(Pub. L. 101–601, § 12, Nov. 16, 1990, 104 Stat. 3058.)

§ 3011. Regulations

The Secretary shall promulgate regulations to carry out this chapter within 12 months of November 16, 1990.

(Pub. L. 101–601, § 13, Nov. 16, 1990, 104 Stat. 3058.)

§ 3012. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary to carry out this chapter.

(Pub. L. 101–601, § 14, Nov. 16, 1990, 104 Stat. 3058.)

§ 3013. Enforcement

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this chapter and shall have the authority to issue such orders as may be necessary to enforce the provisions of this chapter.

(Pub. L. 101–601, § 15, Nov. 16, 1990, 104 Stat. 3058.)

CHAPTER 32A—CULTURAL AND HERITAGE COOPERATION AUTHORITY

Sec.
3051. Purposes.
3052. Definitions.
3053. Reburial of human remains and cultural items.
3054. Temporary closure for traditional and cultural purposes.
3055. Forest products for traditional and cultural purposes.
3056. Prohibition on disclosure.
3057. Severability and savings provisions.

§ 3051. Purposes

The purposes of this chapter are—

(1) to authorize the reburial of human remains and cultural items on National Forest System land, including human remains and cultural items repatriated under the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.);

(2) to prevent the unauthorized disclosure of information regarding reburial sites, including

[1] So in original. The comma probably should be a semicolon.

the quantity and identity of human remains and cultural items on sites and the location of sites;

(3) to authorize the Secretary of Agriculture to ensure access to National Forest System land, to the maximum extent practicable, by Indians and Indian tribes for traditional and cultural purposes;

(4) to authorize the Secretary to provide forest products, without consideration, to Indian tribes for traditional and cultural purposes;

(5) to authorize the Secretary to protect the confidentiality of certain information, including information that is culturally sensitive to Indian tribes;

(6) to increase the availability of Forest Service programs and resources to Indian tribes in support of the policy of the United States to promote tribal sovereignty and self-determination; and

(7) to strengthen support for the policy of the United States of protecting and preserving the traditional, cultural, and ceremonial rites and practices of Indian tribes, in accordance with Public Law 95–341 (commonly known as the American Indian Religious Freedom Act; 42 U.S.C. 1996).

(Pub. L. 110–234, title VIII, § 8101, May 22, 2008, 122 Stat. 1286; Pub. L. 110–246, § 4(a), title VIII, § 8101, June 18, 2008, 122 Stat. 1664, 2048.)

REFERENCES IN TEXT

The Native American Graves Protection and Repatriation Act, referred to in par. (1), is Pub. L. 101–601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The American Indian Religious Freedom Act, referred to in par. (7), is Pub. L. 95–341, Aug. 11, 1978, 92 Stat. 469, which is classified to sections 1996 and 1996a of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1996 of Title 42 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

EFFECTIVE DATE

Enactment of this chapter and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

DEFINITION OF ''SECRETARY''

''Secretary'' as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

§ 3052. Definitions

In this chapter:

(1) Adjacent site

The term ''adjacent site'' means a site that borders a boundary line of National Forest System land.

(2) Cultural items

The term ''cultural items'' has the meaning given the term in section 3001 of this title, except that the term does not include human remains.

(3) Human remains

The term ''human remains'' means the physical remains of the body of a person of Indian ancestry.

(4) Indian

The term ''Indian'' means an individual who is a member of an Indian tribe.

(5) Indian tribe

The term ''Indian tribe'' means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 479a–1 of this title.

(6) Lineal descendant

The term ''lineal descendant'' means an individual that can trace, directly and without interruption, the ancestry of the individual through the traditional kinship system of an Indian tribe, or through the common law system of descent, to a known Indian, the human remains, funerary objects, or other sacred objects of whom are claimed by the individual.

(7) National Forest System

The term ''National Forest System'' has the meaning given the term in section 1609(a) of title 16.

(8) Reburial site

The term ''reburial site'' means a specific physical location at which cultural items or human remains are reburied.

(9) Traditional and cultural purpose

The term ''traditional and cultural purpose'', with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

(Pub. L. 110–234, title VIII, § 8102, May 22, 2008, 122 Stat. 1287; Pub. L. 110–246, § 4(a), title VIII, § 8102, June 18, 2008, 122 Stat. 1664, 2048.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

§ 3053. Reburial of human remains and cultural items

(a) Reburial sites

In consultation with an affected Indian tribe or lineal descendant, the Secretary may authorize the use of National Forest System land by the Indian tribe or lineal descendant for the reburial of human remains or cultural items in the possession of the Indian tribe or lineal descendant that have been disinterred from National Forest System land or an adjacent site.

(b) Reburial

With the consent of the affected Indian tribe or lineal descendent, the Secretary may recover and rebury, at Federal expense or using other

available funds, human remains and cultural items described in subsection (a) at the National Forest System land identified under that subsection.

(c) Authorization of use

(1) In general

Subject to paragraph (2), the Secretary may authorize such uses of reburial sites on National Forest System land, or on the National Forest System land immediately surrounding a reburial site, as the Secretary determines to be necessary for management of the National Forest System.

(2) Avoidance of adverse impacts

In carrying out paragraph (1), the Secretary shall avoid adverse impacts to cultural items and human remains, to the maximum extent practicable.

(Pub. L. 110–234, title VIII, § 8103, May 22, 2008, 122 Stat. 1287; Pub. L. 110–246, § 4(a), title VIII, § 8103, June 18, 2008, 122 Stat. 1664, 2049.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

DEFINITION OF ''SECRETARY''

''Secretary'' as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

§ 3054. Temporary closure for traditional and cultural purposes

(a) Recognition of historic use

To the maximum extent practicable, the Secretary shall ensure access to National Forest System land by Indians for traditional and cultural purposes, in accordance with subsection (b), in recognition of the historic use by Indians of National Forest System land.

(b) Closing land from public access

(1) Authority to close

Upon the approval by the Secretary of a request from an Indian tribe, the Secretary may temporarily close from public access specifically identified National Forest System land to protect the privacy of tribal activities for traditional and cultural purposes.

(2) Limitation

A closure of National Forest System land under paragraph (1) shall affect the smallest practicable area for the minimum period necessary for activities of the applicable Indian tribe.

(3) Consistency

Access by Indian tribes to National Forest System land under this subsection shall be consistent with the purposes of Public Law 95–341 (commonly known as the American Indian Religious Freedom Act; 42 U.S.C. 1996).

(Pub. L. 110–234, title VIII, § 8104, May 22, 2008, 122 Stat. 1288; Pub. L. 110–246, § 4(a), title VIII, § 8104, June 18, 2008, 122 Stat. 1664, 2049.)

REFERENCES IN TEXT

The American Indian Religious Freedom Act, referred to in subsec. (b)(3), is Pub. L. 95–341, Aug. 11, 1978, 92 Stat. 469, which is classified to sections 1996 and 1996a of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1996 of Title 42 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

DEFINITION OF ''SECRETARY''

''Secretary'' as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

§ 3055. Forest products for traditional and cultural purposes

(a) In general

Notwithstanding section 472a of title 16, the Secretary may provide free of charge to Indian tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural purposes.

(b) Prohibition

Trees, portions of trees, or forest products provided under subsection (a) may not be used for commercial purposes.

(Pub. L. 110–234, title VIII, § 8105, May 22, 2008, 122 Stat. 1288; Pub. L. 110–246, § 4(a), title VIII, § 8105, June 18, 2008, 122 Stat. 1664, 2050.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

DEFINITION OF ''SECRETARY''

''Secretary'' as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

§ 3056. Prohibition on disclosure

(a) Nondisclosure of information

(1) In general

The Secretary shall not disclose under section 552 of title 5 (commonly known as the ''Freedom of Information Act''), information relating to—

(A) subject to subsection (b)(l),[1] human remains or cultural items reburied on National Forest System land under section 3053 of this title; or

(B) subject to subsection (b)(2), resources, cultural items, uses, or activities that—

(i) have a traditional and cultural purpose; and

(ii) are provided to the Secretary by an Indian or Indian tribe under an express expectation of confidentiality in the context of forest and rangeland research activities carried out under the authority of the Forest Service.

(2) Limitations on disclosure

Subject to subsection (b)(2), the Secretary shall not be required to disclose information under section 552 of title 5 (commonly known as the ''Freedom of Information Act''), concerning the identity, use, or specific location in the National Forest System of—

[1] So in original. Probably should be ''(b)(1),''.

(A) a site or resource used for traditional and cultural purposes by an Indian tribe; or

(B) any cultural items not covered under section 3053 of this title.

(b) Limited release of information

(1) Reburial

The Secretary may disclose information described in subsection (a)(1)(A)[2] if, before the disclosure, the Secretary—

(A) consults with an affected Indian tribe or lineal descendent;

(B) determines that disclosure of the information—

(i) would advance the purposes of this chapter; and

(ii) is necessary to protect the human remains or cultural items from harm, theft, or destruction; and

(C) attempts to mitigate any adverse impacts identified by an Indian tribe or lineal descendant that reasonably could be expected to result from disclosure of the information.

(2) Other information

The Secretary, in consultation with appropriate Indian tribes, may disclose information described under paragraph (1)(B) or (2) of subsection (a) if the Secretary determines that disclosure of the information to the public—

(A) would advance the purposes of this chapter;

(B) would not create an unreasonable risk of harm, theft, or destruction of the resource, site, or object, including individual organic or inorganic specimens; and

(C) would be consistent with other applicable laws.

(Pub. L. 110–234, title VIII, § 8106, May 22, 2008, 122 Stat. 1288; Pub. L. 110–246, § 4(a), title VIII, § 8106, June 18, 2008, 122 Stat. 1664, 2050.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

DEFINITION OF ''SECRETARY''

''Secretary'' as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

§ 3057. Severability and savings provisions

(a) Severability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance is held invalid, the application of such provision or circumstance and the remainder of this chapter shall not be affected thereby.

(b) Savings

Nothing in this chapter—

(1) diminishes or expands the trust responsibility of the United States to Indian tribes, or any legal obligation or remedy resulting from that responsibility;

(2) alters, abridges, repeals, or affects any valid agreement between the Forest Service and an Indian tribe;

(3) alters, abridges, diminishes, repeals, or affects any reserved or other right of an Indian tribe; or

(4) alters, abridges, diminishes, repeals, or affects any other valid existing right relating to National Forest System land or other public land.

(Pub. L. 110–234, title VIII, § 8107, May 22, 2008, 122 Stat. 1289; Pub. L. 110–246, § 4(a), title VIII, § 8107, June 18, 2008, 122 Stat. 1664, 2051.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

CHAPTER 33—NATIONAL INDIAN FOREST RESOURCES MANAGEMENT

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§ 3101. Findings

The Congress finds and declares that—

(1) the forest lands of Indians are among their most valuable resources and Indian forest lands—

(A) encompass more than 15,990,000 acres, including more than 5,700,000 acres of commercial forest land and 8,700,000 acres of woodland,

(B) are a perpetually renewable and manageable resource,

(C) provide economic benefits, including income, employment, and subsistence, and

(D) provide natural benefits, including ecological, cultural, and esthetic values;

(2) the United States has a trust responsibility toward Indian forest lands;

(3) existing Federal laws do not sufficiently assure the adequate and necessary trust management of Indian forest lands;

(4) the Federal investment in, and the management of, Indian forest land is significantly below the level of investment in, and management of, National Forest Service forest land, Bureau of Land Management forest land, or private forest land;

(5) tribal governments make substantial contributions to the overall management of Indian forest land; and

[2] So in original. Probably should be ''(a)(1)(A)''.

(6) there is a serious threat to Indian forest lands arising from trespass and unauthorized harvesting of Indian forest land resources.

(Pub. L. 101–630, title III, § 302, Nov. 28, 1990, 104 Stat. 4532.)

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–278, § 1, July 22, 2004, 118 Stat. 868, provided that: ''This Act [enacting section 3115a of this title] may be cited as the 'Tribal Forest Protection Act of 2004'.''

SHORT TITLE

Section 301 of title III of Pub. L. 101–630 provided that: ''This title [enacting this chapter] may be cited as the 'National Indian Forest Resources Management Act'.''

§ 3102. Purposes

The purposes of this chapter are to—

(1) allow the Secretary of the Interior to take part in the management of Indian forest lands, with the participation of the lands' beneficial owners, in a manner consistent with the Secretary's trust responsibility and with the objectives of the beneficial owners;

(2) clarify the authority of the Secretary to make deductions from the proceeds of sale of Indian forest products, assure the use of such deductions on the reservation from which they are derived solely for use in forest land management activities, and assure that no other deductions shall be collected;

(3) increase the number of professional Indian foresters and related staff in forestry programs on Indian forest land; and

(4) provide for the authorization of necessary appropriations to carry out this chapter for the protection, conservation, utilization, management, and enhancement of Indian forest lands.

(Pub. L. 101–630, title III, § 303, Nov. 28, 1990, 104 Stat. 4532.)

§ 3103. Definitions

For the purposes of this chapter, the term—

(1) ''Alaska Native'' means Native as defined in section 1602(b) of title 43;

(2) ''forest'' means an ecosystem of at least one acre in size, including timberland and woodland, which—

(A) is characterized by a more or less dense and extensive tree cover,

(B) contains, or once contained, at least ten percent tree crown cover, and

(C) is not developed or planned for exclusive nonforest use;

(3) ''Indian forest land'' means Indian lands, including commercial and non-commercial timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless whether a formal inspection and land classification action has been taken;

(4) ''forest land management activities'' means all activities performed in the management of Indian forest lands, including—

(A) all aspects of program administration and executive direction such as—

(i) development and maintenance of policy and operational procedures, program oversight, and evaluation,

(ii) securing of legal assistance and handling of legal matters,

(iii) budget, finance, and personnel management, and

(iv) development and maintenance of necessary data bases and program reports;

(B) all aspects of the development, preparation and revision of forest inventory and management plans, including aerial photography, mapping, field management inventories and re-inventories, inventory analysis, growth studies, allowable annual cut calculations, environmental assessment, and forest history, consistent with and reflective of tribal integrated resource management plans;

(C) forest land development, including forestation, thinning, tree improvement activities, and the use of silvicultural treatments to restore or increase growth and yield to the full productive capacity of the forest environment;

(D) protection against losses from wildfire, including acquisition and maintenance of fire fighting equipment and fire detection systems, construction of firebreaks, hazard reduction, prescribed burning, and the development of cooperative wildfire management agreements;

(E) protection against insects and disease, including—

(i) all aspects of detection and evaluation,

(ii) preparation of project proposals containing project description, environmental assessments and statements, and cost-benefit analyses necessary to secure funding,

(iii) field suppression operations, and

(iv) reporting;

(F) assessment of damage caused by forest trespass, infestation or fire, including field examination and survey, damage appraisal, investigation assistance, and report, demand letter, and testimony preparation;

(G) all aspects of the preparation, administration, and supervision of timber sale contracts, paid and free use permits, and other Indian forest product harvest sale documents including—

(i) cruising, product marking, silvicultural prescription, appraisal and harvest supervision,

(ii) forest product marketing assistance, including evaluation of marketing and development opportunities related to Indian forest products and consultation and advice to tribes, tribal and Indian enterprises on maximization of return on forest products,

(iii) archeological, historical, environmental and other land management reviews, clearances, and analyses,

(iv) advertising, executing, and supervising contracts,

(v) marking and scaling of timber, and

(vi) collecting, recording and distributing receipts from sales;

(H) provision of financial assistance for the education of Indians enrolled in accredited programs of postsecondary and postgraduate forestry and forestry-related fields of study, including the provision of scholarships, internships, relocation assistance, and other forms of assistance to cover educational expenses;

(I) participation in the development and implementation of tribal integrated resource management plans, including activities to coordinate current and future multiple uses of Indian forest lands;

(J) improvement and maintenance of extended season primary and secondary Indian forest land road systems; and

(K) research activities to improve the basis for determining appropriate management measures to apply to Indian forest lands;

(5) ''forest management plan'' means the principal document, approved by the Secretary, reflecting and consistent with a tribal integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods assuring that such lands remain in a continuously productive state while meeting the objectives of the tribe and which shall include—

(A) standards setting forth the funding and staffing requirements necessary to carry out each management plan, with a report of current forestry funding and staffing levels; and

(B) standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan;

(6) ''forest product'' means—

(A) timber,

(B) a timber product, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles and split products,

(C) bark,

(D) Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, and herbs,

(E) other marketable material, and

(F) gravel which is extracted from, and utilized on, Indian forest lands;

(7) ''forest resources'' means all the benefits derived from Indian forest lands, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest lands;

(8) ''forest trespass'' means the act of illegally removing forest products from, or illegally damaging forest products on, forest lands;

(9) ''Indian'' means a member of an Indian tribe;

(10) ''Indian land'' means land title to which is held by—

(A) the United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe, or

(B) an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation;

(11) ''Indian tribe'' or ''tribe'' means any Indian tribe, band, nation, Pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe's reservation;

(12) ''reservation'' includes Indian reservations established pursuant to treaties, Acts of Congress or Executive orders, public domain Indian allotments, and former Indian reservations in Oklahoma;

(13) ''Secretary'' means the Secretary of the Interior;

(14) ''sustained yield'' means the yield of forest products that a forest can produce continuously at a given intensity of management; and

(15) ''tribal integrated resource management plan'' means a document, approved by an Indian tribe and the Secretary, which provides coordination for the comprehensive management of such tribe's natural resources.

(Pub. L. 101–630, title III, § 304, Nov. 28, 1990, 104 Stat. 4533.)

§ 3104. Management of Indian forest land

(a) Management activities

The Secretary shall undertake forest land management activities on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(b) Management objectives

Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives—

(1) the development, maintenance, and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans by providing effective management and protection through the application of sound silvicultural and economic principles to—

(A) the harvesting of forest products,

(B) forestation,

(C) timber stand improvement, and

(D) other forestry practices;

(2) the regulation of Indian forest lands through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives and forest marketing programs;

(3) the regulation of Indian forest lands in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a sustained yield basis, continuous productivity and a perpetual forest business;

(4) the development of Indian forest lands and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive

from their Indian forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding;

(5) the retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land;

(6) the management and protection of forest resources to retain the beneficial effects to Indian forest lands of regulating water run-off and minimizing soil erosion; and

(7) the maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values.

(Pub. L. 101–630, title III, § 305, Nov. 28, 1990, 104 Stat. 4535.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 3105. Forest management deduction

(a) Withholding of deduction

Pursuant to the authority of section 413 of this title, the Secretary shall withhold a reasonable deduction from the gross proceeds of sales of forest products harvested from Indian forest land under a timber sale contract, permit, or other harvest sale document, which has been approved by the Secretary, to cover in whole or part the cost of managing and protecting such Indian forest land.

(b) Amount of deduction

Deductions made pursuant to subsection (a) of this section shall not exceed the lesser amount of—

(1) 10 percent of gross proceeds, or

(2) the percentage of gross proceeds collected on November 28, 1990, as forest management deductions by the Secretary on such sales of Indian forest products,

unless the appropriate Indian tribe consents to an increase in the deductions.

(c) Use of deduction

The full amount of any deduction collected by the Secretary shall be expended according to an approved expenditure plan, approved by the Secretary and the appropriate Indian tribe, for the performance of forest land management activities on the reservation from which such deductions are collected and shall be made available to the tribe, upon its request, by contract or agreement for the performance of such activities.

(d) Limitations

(1) Forest management deductions withheld pursuant to this section shall not be available to—

(A) cover the costs that are paid from funds appropriated specifically for fire suppression or pest control, or

(B) otherwise offset Federal appropriations for meeting the Federal trust responsibility for management of Indian forest lands.

(2) No other forest management deductions derived from Indian forest lands shall be collected to be covered into the general funds of the United States Treasury.

(Pub. L. 101–630, title III, § 306, Nov. 28, 1990, 104 Stat. 4536.)

§ 3106. Forest trespass

(a) Civil penalties; regulations

Not later than 18 months from November 28, 1990, the Secretary shall issue regulations that—

(1) establish civil penalties for the commission of forest trespass which provide for—

(A) collection of the value of the products illegally removed plus a penalty of double their value,

(B) collection of the costs associated with damage to the Indian forest land caused by the act of trespass, and

(C) collection of the costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(2) designate responsibility with the Department of the Interior for the detection and investigation of forest trespass; and

(3) set forth responsibilities and procedures for the assessment and collection of civil penalties.

(b) Treatment of proceeds

The proceeds of civil penalties collected under this section shall be treated as proceeds from the sale of forest products from the Indian forest lands upon which such trespass occurred.

(c) Concurrent jurisdiction

Indian tribes which adopt the regulations promulgated by the Secretary pursuant to subsection (a) of this section shall have concurrent civil jurisdiction to enforce the provisions of this section and the regulation promulgated thereunder. The Bureau of Indian Affairs and other agencies of the Federal Government shall, at the request of the tribe, defer to tribal prosecutions of forest trespass cases. Tribal court judgments regarding forest trespass shall be entitled to full faith and credit in Federal and State courts to the same extent as a Federal court judgment obtained under this section.

(Pub. L. 101–630, title III, § 307, Nov. 28, 1990, 104 Stat. 4537.)

§ 3107. Direct payment of forest products receipts

(a) Regulations

Notwithstanding any other law, the Secretary shall, within 1 year from November 28, 1990, promulgate regulations providing for the payment of the receipts from the sale of Indian forest products as provided in this section.

(b) Payment into a bank depository

Upon the request of an Indian tribe, the Secretary shall provide that the purchaser of the

forest products of such tribe, which are harvested under a timber sale contract, permit or other harvest sale document which has been approved by the Secretary, shall make prompt direct payments of the gross proceeds of sales of such forest products, less any amounts segregated as forest management deductions pursuant to section 3105 of this title, into a bank depository account designated by such Indian tribe.

(Pub. L. 101–630, title III, § 308, Nov. 28, 1990, 104 Stat. 4537.)

§ 3108. Secretarial recognition of tribal laws

Subject to the Secretary's responsibilities as reflected in sections 3101(2) and 3102(1) of this title and unless otherwise prohibited by Federal statutory law, the Secretary shall comply with tribal laws pertaining to Indian forest lands, including laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest lands. Such cooperation shall include—

(1) assistance in the enforcement of such laws;

(2) provision of notice of such laws to persons or entities undertaking activities on Indian forest lands; and

(3) upon the request of an Indian tribe, the appearance in tribal forums.

(Pub. L. 101–630, title III, § 309, Nov. 28, 1990, 104 Stat. 4538.)

§ 3109. Indian forest land assistance account

(a) Establishment

At the request of an Indian tribe, the Secretary may establish a special Indian forest land assistance account within the tribe's trust fund account to fund the Indian forest land management activities of such tribe.

(b) Deposits and expenditures

(1) The Secretary may deposit into the Indian forest land assistance account established pursuant to subsection (a) of this section any funds received by the Secretary or in the Secretary's possession from—

(A) non-Federal sources, if such funds are related to activities on or for the Indian forest lands of such tribe's reservation,

(B) donations and contributions,

(C) unobligated forestry appropriations for the benefit of such Indian tribe, and

(D) user fees or other funds transferred under Federal interagency agreements if otherwise authorized by Federal law and, if such funds are related to activities on or for the Indian forest lands of such tribe's reservation.

Funds deposited in such account shall be for the purpose of conducting forest land management activities on the Indian forest lands of such tribe.

(2) Funds in the Indian forest land assistance account and any interest or other income earned thereon shall remain available until expended and shall not be available to otherwise offset Federal appropriations for meeting the Federal responsibility for management of Indian forest lands.

(c) Audits

At the request of an Indian tribe or upon the Secretary's own volition, the Secretary may conduct audits of the Indian forest land assistance account and shall publish the results of such audit.

(Pub. L. 101–630, title III, § 310, Nov. 28, 1990, 104 Stat. 4538.)

§ 3110. Tribal forestry programs

(a) Establishment

The Secretary shall establish within the Bureau of Indian Affairs a program to provide financial support to forestry programs established by an Indian tribe.

(b) Support allocation formula; criteria

(1) The Secretary, with the participation of Indian tribes with Indian forest lands, shall establish, and promulgate by regulations, a formula—

(A) for the determination of Indian tribes eligible for such support,

(B) for the provision of levels of assistance for the forestry programs of such tribes, and

(C) the allocation of base support funds to such tribes under the program established pursuant to subsection (a) of this section.

(2) The formula established pursuant to this subsection shall provide funding necessary to support—

(A) one professional forester, including fringe benefits and support costs, for each eligible tribe, and

(B) one additional professional forester or forest technician, including fringe benefits and support costs, for each level of assistance for which an eligible Indian tribe qualifies.

(3) In any fiscal year that appropriations are not sufficient to fully fund tribal forestry programs at each level of assistance under the formula required to be established in this section, available funds for each level of assistance shall be evenly divided among the tribes qualifying for that level of assistance.

(Pub. L. 101–630, title III, § 311, Nov. 28, 1990, 104 Stat. 4538.)

§ 3111. Assessment of Indian forest land and management programs

(a) Initial assessment

(1) Within 1 year after November 28, 1990, the Secretary, in consultation with affected Indian tribes, shall enter into a contract with a non-Federal entity knowledgeable in forest management practices on Federal and private lands to conduct an independent assessment of Indian forest lands and Indian forest land management practices.

(2) Such assessment shall be national in scope and shall include—

(A) an in-depth analysis of management practices on, and the level of funding for, specific Indian forest land compared with similar Federal and private forest lands,

(B) a survey of the condition of Indian forest lands, including health and productivity levels,

(C) an evaluation of the staffing patterns of forestry organizations of the Bureau of Indian Affairs and of Indian tribes,

(D) an evaluation of procedures employed in timber sales administration, including preparation, field supervision, and accountability for proceeds,

(E) an analysis of the potential for reducing or eliminating relevant administrative procedures, rules and policies of the Bureau of Indian Affairs consistent with the Federal trust responsibility,

(F) a comprehensive review of the adequacy of Indian forest land management plans, including their compatibility with applicable tribal integrated resource management plans and their ability to meet tribal needs and priorities,

(G) an evaluation of the feasibility and desirability of establishing minimum standards against which the adequacy of the forestry programs of the Bureau of Indian Affairs in fulfilling its trust responsibility to Indian tribes can be measured, and

(H) a recommendation of any reforms and increased funding levels necessary to bring Indian forest land management programs to a state-of-the-art condition.

(3) Such assessment shall include specific examples and comparisons from each of the regions of the United States where Indian forest lands are located.

(4) The initial assessment required by this subsection shall be completed no later than 36 months following November 28, 1990. Upon completion, the assessment shall be submitted to the Committee on Natural Resources of the United States House of Representatives and the Committee on Indian Affairs of the United States Senate and shall be made available to Indian tribes.

(b) Periodic assessments

On each 10-year anniversary of November 28, 1990, the Secretary shall provide for an independent assessment of Indian forest lands and Indian forest land management practices under the criteria established in subsection (a) of this section which shall include analyses measured against findings in previous assessments.

(c) Status report to Congress

The Secretary shall submit, within 1 year of the first full fiscal year after November 28, 1990, and within 6 months of the end of each succeeding fiscal year, a report to the Committee on Natural Resources of the United States House of Representatives, the Committee on Indian Affairs of the United States Senate, and to the affected Indian tribes a report on the status of Indian forest lands with respect to standards, goals and objectives set forth in approved forest management plans for each Indian tribe with Indian forest lands. The report shall identify the amount of Indian forest land in need of forestation or other silviculture treatment and the quantity of timber available for sale, offered for sale, and sold for each Indian tribe.

(d) Assistance from Secretary of Agriculture

The Secretary of Agriculture, through the Forest Service, is authorized to provide, upon the request of the Secretary of the Interior, on a nonreimbursable basis, technical assistance in the conduct of such research and evaluation activities as may be necessary for the completion of any reports or assessments required by this chapter.

(Pub. L. 101–630, title III, § 312, Nov. 28, 1990, 104 Stat. 4539; Pub. L. 103–437, § 10(f), Nov. 2, 1994, 108 Stat. 4589.)

AMENDMENTS

1994—Subsec. (a)(4). Pub. L. 103–437, § 10(f)(1), substituted ''Committee on Indian'' for ''Select Committee on Indian'' and ''Natural Resources'' for ''Interior and Insular Affairs''.

Subsec. (c). Pub. L. 103–437, inserted ''the'' after ''report to'' and substituted ''Committee on Indian'' for ''Select Committee on Indian'' and ''Natural Resources'' for ''Interior and Insular Affairs''.

§ 3112. Alaska Native technical assistance program

(a) Establishment

The Secretary, in consultation with the village and regional corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), shall establish a program of technical assistance for such corporations to promote the sustained yield management of their forest resources. Such technical assistance shall also be available to promote local processing and other value-added activities with such forest resources.

(b) Indian Self-Determination Act

The technical assistance to be provided by the Secretary pursuant to subsection (a) of this section shall be made available through contracts, grants or agreements entered into in accordance with, and made available to entities eligible for, such contracts, grants, or agreements under the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(Pub. L. 101–630, title III, § 313, Nov. 28, 1990, 104 Stat. 4540.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (a), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Indian Self-Determination Act, referred to in subsec. (b), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 3113. Establishment of Indian and Alaska Native forestry education assistance

(a) Forester intern program

(1) Notwithstanding the provisions of title 5 governing appointments in the competitive service, the Secretary shall establish and maintain in the Bureau of Indian Affairs at least 20 forester intern positions for Indian and Alaska Native students.

(2) For purposes of this subsection, the term ''forester intern'' means an Indian or Alaska Native who—

(A) is acquiring necessary academic qualifications to become a forester or a professional trained in forestry-related fields, and

(B) is appointed to one of the positions established under paragraph (1).

(3) The Secretary shall pay all costs for tuition, books, fees and living expenses incurred by a forester intern while attending an approved post-secondary or graduate school in a full-time forestry-related curriculum.

(4) A forester intern shall be required to enter into an obligated service agreement to serve as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise for 2 years for each year of education for which the Secretary pays the intern's educational costs under paragraph (3) of this subsection.

(5) A forester intern shall be required to report for service with the Bureau of Indian Affairs during any break in attendance at school of more than 3 weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service agreement.

(b) Cooperative education program

(1) The Secretary shall maintain, through the Bureau of Indian Affairs, a cooperative education program for the purpose of recruiting promising Indian and Alaska Native students who are enrolled in secondary schools, tribally-controlled community colleges, and other post-secondary or graduate schools for employment as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise.

(2) The cooperative educational program that is to be maintained under paragraph (1) shall be modeled on and shall have essentially the same features of the program operated on November 28, 1990, pursuant to chapter 308 of the Federal Personnel Manual of the Office of Personnel Management.

(3) Under the cooperative agreement program that is to be maintained under paragraph (1), the Secretary shall pay all costs for tuition, books, and fees of an Indian or Alaska Native student who—

(A) is enrolled in a course of study at an education institution with which the Secretary has entered into a cooperative agreement, and

(B) is interested in a career with the Bureau of Indian Affairs, an Indian tribe or a tribal enterprise in the management of Indian forest land.

(4) Financial need shall not be a requirement to receive assistance under the cooperative agreement program that is to be maintained under this subsection.

(5) A recipient of assistance under the cooperative education program that is to be maintained under this subsection shall be required to enter into an obligated service agreement to serve as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise for one year for each year for which the Secretary pays the recipient's educational costs pursuant to paragraph (3).

(c) Scholarship program

(1) The Secretary is authorized to grant forestry scholarships to Indians and Alaska Natives enrolled in accredited programs for post-secondary and graduate forestry and forestry-related programs of study as full-time students.

(2) A recipient of a scholarship under paragraph (1) shall be required to enter into an obligated service agreement with the Secretary in which the recipient agrees to accept employment for one year for each year the recipient received a scholarship, following completion of the recipient's forestry or forestry-related course of study, with

(A) the Bureau of Indian Affairs;

(B) a forestry program conducted under a contract, grant, or cooperative agreement entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.];

(C) an Indian enterprise engaged in a forestry or forestry-related business; or

(D) an Indian tribe's forestry-related program.

(3) The Secretary shall not deny scholarship assistance under this subsection solely on the basis of an applicant's scholastic achievement if the applicant has been admitted to and remains in good standing in an accredited postsecondary or graduate institution.

(d) Forestry education outreach

The Secretary shall conduct, through the Bureau of Indian Affairs, and in consultation with other appropriate local, State and Federal agencies, and in consultation and coordination with Indian tribes, a forestry education outreach program for Indian and Alaska Native youth to explain and stimulate interest in all aspects of Indian forest land management and careers in forestry.

(e) Adequacy of programs

The Secretary shall administer the programs described in this section until a sufficient number of Indians and Alaska Natives are trained to ensure that there is an adequate number of qualified, professional Indian foresters to manage the Bureau of Indian Affairs forestry programs and forestry programs maintained by or for Indian tribes.

(Pub. L. 101–630, title III, § 314, Nov. 28, 1990, 104 Stat. 4540.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The Indian Self-Determination Act, referred to in subsec. (c)(2)(B), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 3114. Postgraduation recruitment, education and training programs

(a) Postgraduation recruitment

The Secretary shall establish and maintain a program to attract Indian and Alaska Native professional foresters and forester technicians who have already graduated from their course of postsecondary or graduate education for em-

ployment in either the Bureau of Indian Affairs forestry programs or, subject to the approval of the tribe, in tribal forestry programs. According to such regulations as the Secretary may prescribe, such program shall provide for the employment of Indian and Alaska Native professional foresters or forestry technicians in exchange for the Secretary's assumption of the employee's outstanding student loans. The period of employment shall be determined by the amount of the loan that is assumed.

(b) Postgraduate intergovernmental internships

For the purposes of training, skill development and orientation of Indian, Alaska native,[1] and Federal forestry personnel, and the enhancement of tribal and Bureau of Indian Affairs forestry programs, the Secretary shall establish and actively conduct a program for the cooperative internship of Federal, Indian, and Alaska Native forestry personnel. Such program shall—

(1) for agencies within the Department of the Interior—

(A) provide for the internship of Bureau of Indian Affairs, Alaska Native, and Indian forestry employees in the forestry-related programs of other agencies of the Department of the Interior, and

(B) provide for the internship of forestry personnel from other Department of the Interior agencies within the Bureau of Indian Affairs and, with the consent of the tribe, within tribal forestry programs;

(2) for agencies not within the Department of the Interior, provide, pursuant to an interagency agreement, internships within the Bureau of Indian Affairs and, with the consent of the tribe, within a tribal forestry program of other forestry personnel of such agencies who are above their sixth year of Federal service;

(3) provide for the continuation of salary and benefits for participating Federal employees by their originating agency;

(4) provide for salaries and benefits of participating Indian and Alaska Native forestry employees by the host agency; and

(5) provide for a bonus pay incentive at the conclusion of the internship for any participant.

(c) Continuing education and training

The Secretary shall maintain a program within the Division of Forestry of the Bureau of Indian Affairs for the ongoing education and training of Bureau of Indian Affairs, Alaska Native, and Indian forestry personnel. Such program shall provide for—

(1) orientation training for Bureau of Indian Affairs forestry personnel in tribal-Federal relations and responsibilities;

(2) continuing technical forestry education for Bureau of Indian Affairs, Alaska Native, and tribal forestry personnel; and

(3) developmental training of Indian and Alaska Native personnel in forest land based enterprises and marketing.

(Pub. L. 101–630, title III, § 315, Nov. 28, 1990, 104 Stat. 4542.)

[1] So in original. Probably should be capitalized.

§ 3115. Cooperative agreement between Department of the Interior and Indian tribes

(a) Cooperative agreements

(1) To facilitate the administration of the programs and activities of the Department of the Interior, the Secretary is authorized to negotiate and enter into cooperative agreements with Indian tribes to—

(A) engage in cooperative manpower and job training and development programs,

(B) to develop and publish cooperative environmental education and natural resource planning materials, and

(C) to perform land and facility improvements, including forestry and other natural resources protection, fire protection, reforestation, timber stand improvement, debris removal, and other activities related to land and natural resource management.

The Secretary may enter into such agreements when the Secretary determines the public interest will be benefited.

(2) In such cooperative agreements, the Secretary is authorized to advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities or equipment without regard to the provisions of section 3324, title 31, relating to the advance of public moneys.

(b) Supervision

In any agreement authorized by this section, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise as mutually agreed to, but shall not be deemed to be Federal employees other than for purposes of section[1] 2671 through 2680 of title 28 and section[1] 8101 through 8193 of title 5.

(c) Savings provision

Nothing in this chapter shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law.

(Pub. L. 101–630, title III, § 316, Nov. 28, 1990, 104 Stat. 4543.)

§ 3115a. Tribal forest assets protection

(a) Definitions

In this section:

(1) Federal land

The term ''Federal land'' means—

(A) land of the National Forest System (as defined in section 1609(a) of title 16) administered by the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) public lands (as defined in section 1702 of title 43), the surface of which is administered by the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(2) Indian forest land or rangeland

The term ''Indian forest land or rangeland'' means land that—

[1] So in original. Probably should be ''sections''.

(A) is held in trust by, or with a restriction against alienation by, the United States for an Indian tribe or a member of an Indian tribe; and

(B)(i)(I) is Indian forest land (as defined in section 3103 of this title); or

(II) has a cover of grasses, brush, or any similar vegetation; or

(ii) formerly had a forest cover or vegetative cover that is capable of restoration.

(3) Indian tribe

The term ''Indian tribe'' has the meaning given the term in section 450b of this title.

(4) Secretary

The term ''Secretary'' means—

(A) the Secretary of Agriculture, with respect to land under the jurisdiction of the Forest Service; and

(B) the Secretary of the Interior, with respect to land under the jurisdiction of the Bureau of Land Management.

(b) Authority to protect Indian forest land or rangeland

(1) In general

Not later than 120 days after the date on which an Indian tribe submits to the Secretary a request to enter into an agreement or contract to carry out a project to protect Indian forest land or rangeland (including a project to restore Federal land that borders on or is adjacent to Indian forest land or rangeland) that meets the criteria described in subsection (c) of this section, the Secretary may issue public notice of initiation of any necessary environmental review or of the potential of entering into an agreement or contract with the Indian tribe pursuant to section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105–277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)), or such other authority as appropriate, under which the Indian tribe would carry out activities described in paragraph (3).

(2) Environmental analysis

Following completion of any necessary environmental analysis, the Secretary may enter into an agreement or contract with the Indian tribe as described in paragraph (1).

(3) Activities

Under an agreement or contract entered into under paragraph (2), the Indian tribe may carry out activities to achieve land management goals for Federal land that is—

(A) under the jurisdiction of the Secretary; and

(B) bordering or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe.

(c) Selection criteria

The criteria referred to in subsection (b) of this section, with respect to an Indian tribe, are whether—

(1) the Indian forest land or rangeland under the jurisdiction of the Indian tribe borders on or is adjacent to land under the jurisdiction of the Forest Service or the Bureau of Land Management;

(2) Forest Service or Bureau of Land Management land bordering on or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe—

(A) poses a fire, disease, or other threat to—

(i) the Indian forest land or rangeland under the jurisdiction of the Indian tribe; or

(ii) a tribal community; or

(B) is in need of land restoration activities;

(3) the agreement or contracting activities applied for by the Indian tribe are not already covered by a stewardship contract or other instrument that would present a conflict on the subject land; and

(4) the Forest Service or Bureau of Land Management land described in the application of the Indian tribe presents or involves a feature or circumstance unique to that Indian tribe (including treaty rights or biological, archaeological, historical, or cultural circumstances).

(d) Notice of denial

If the Secretary denies a tribal request under subsection (b)(1) of this section, the Secretary may issue a notice of denial to the Indian tribe, which—

(1) identifies the specific factors that caused, and explains the reasons that support, the denial;

(2) identifies potential courses of action for overcoming specific issues that led to the denial; and

(3) proposes a schedule of consultation with the Indian tribe for the purpose of developing a strategy for protecting the Indian forest land or rangeland of the Indian tribe and interests of the Indian tribe in Federal land.

(e) Proposal evaluation and determination factors

In entering into an agreement or contract in response to a request of an Indian tribe under subsection (b)(1) of this section, the Secretary may—

(1) use a best-value basis; and

(2) give specific consideration to tribally-related factors in the proposal of the Indian tribe, including—

(A) the status of the Indian tribe as an Indian tribe;

(B) the trust status of the Indian forest land or rangeland of the Indian tribe;

(C) the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;

(D) the treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;

(E) the indigenous knowledge and skills of members of the Indian tribe;

(F) the features of the landscape of the land subject to the proposal, including watersheds and vegetation types;

(G) the working relationships between the Indian tribe and Federal agencies in coordi-

nating activities affecting the land subject to the proposal; and

(H) the access by members of the Indian tribe to the land subject to the proposal.

(f) No effect on existing authority

Nothing in this section—

(1) prohibits, restricts, or otherwise adversely affects the participation of any Indian tribe in stewardship agreements or contracting under the authority of section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105–277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)) or other authority invoked pursuant to this section; or

(2) invalidates any agreement or contract under that authority.

(g) Report

Not later than 4 years after July 22, 2004, the Secretary shall submit to Congress a report that describes the Indian tribal requests received and agreements or contracts that have been entered into under this section.

(Pub. L. 108–278, § 2, July 22, 2004, 118 Stat. 868.)

REFERENCES IN TEXT

Section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999, referred to in subsecs. (b)(1) and (f)(1), is section § 101(e) [title III, § 347] of Pub. L. 105–277, div. A, as amended, which is set out as a note under section 2104 of Title 16, Conservation.

This section, referred to in subsecs. (f) and (g), was in the original ''this Act'', meaning Pub. L. 108–278, July 22, 2004, 118 Stat. 868, which enacted this section and provisions set out as a note under section 3101 of this title.

CODIFICATION

Section was enacted as part of the Tribal Forest Protection Act of 2004, and not as part of the National Indian Forest Resources Management Act which comprises this chapter.

§ 3116. Obligated service; breach of contract

(a) Obligated service

Where an individual enters into an agreement for obligated service in return for financial assistance under any provision of this chapter, the Secretary shall adopt such regulations as are necessary to provide for the offer of employment to the recipient of such assistance as required by such provision. Where an offer of employment is not reasonably made, the regulations shall provide that such service shall no longer be required.

(b) Breach of contract; repayment

Where an individual fails to accept a reasonable offer of employment in fulfillment of such obligated service or unreasonably terminates or fails to perform the duties of such employment, the Secretary shall require a repayment of the financial assistance provided, prorated for the amount of time of obligated service performed, together with interest on such amount which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(Pub. L. 101–630, title III, § 317, Nov. 28, 1990, 104 Stat. 4544.)

§ 3117. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this chapter.

(Pub. L. 101–630, title III, § 318, Nov. 28, 1990, 104 Stat. 4544.)

§ 3118. Regulations

Except as otherwise provided by this chapter, the Secretary is directed to promulgate final regulations for the implementation of the[1] chapter within eighteen months from November 28, 1990. All regulations promulgated pursuant to this chapter shall be developed by the Secretary with the participation of the affected Indian tribes.

(Pub. L. 101–630, title III, § 319, Nov. 28, 1990, 104 Stat. 4544.)

§ 3119. Severability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision or circumstance and the remainder of this chapter shall not be affected thereby.

(Pub. L. 101–630, title III, § 320, Nov. 28, 1990, 104 Stat. 4544.)

§ 3120. Trust responsibility

Nothing in this chapter shall be construed to diminish or expand the trust responsibility of the United States toward Indian forest lands, or any legal obligation or remedy resulting therefrom.

(Pub. L. 101–630, title III, § 321, Nov. 28, 1990, 104 Stat. 4544.)

CHAPTER 34—INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION

Sec.
3201. Findings and purpose.
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§ 3201. Findings and purpose

(a) Findings

The Congress, after careful review of the problem of child abuse on Indian reservations and the historical and special relationship of the Federal Government with Indian people,

(1) finds that—

[1] So in original. Probably should be ''this''.

(A) incidents of abuse of children on Indian reservations are grossly underreported;

(B) such underreporting is often a result of the lack of a mandatory Federal reporting law;

(C) multiple incidents of sexual abuse of children on Indian reservations have been perpetrated by persons employed or funded by the Federal Government;

(D) Federal Government investigations of the background of Federal employees who care for, or teach, Indian children are often deficient;

(E) funds spent by the United States on Indian reservations or otherwise spent for the benefit of Indians who are victims of child abuse or family violence are inadequate to meet the growing needs for mental health treatment and counseling for victims of child abuse or family violence and their families; and

(F) there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and the United States has a direct interest, as trustee, in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe; and

(2) declares that two major goals of the United States are to—

(A) identify the scope of incidents of abuse of children and family violence in Indian country and to reduce such incidents; and

(B) provide funds for mental health treatment for Indian victims of child abuse and family violence on Indian reservations.

(b) Purpose

The purposes of this chapter are to—

(1) require that reports of abused Indian children are made to the appropriate authorities in an effort to prevent further abuse;

(2) establish a reliable data base for statistical purposes and to authorize a study to determine the need for a central registry for reported incidents of abuse;

(3) authorize such other actions as are necessary to ensure effective child protection in Indian country;

(4) establish the Indian Child Abuse Prevention and Treatment Grant Program to provide funds for the establishment on Indian reservations of treatment programs for victims of child sexual abuse;

(5) provide for technical assistance and training related to the investigation and treatment of cases of child abuse and neglect;

(6) establish Indian Child Resource and Family Services Centers in each Bureau of Indian Affairs Area Office which will consist of multidisciplinary teams of personnel with experience and training in the prevention, identification, investigation, and treatment of child abuse and neglect;

(7) provide for the treatment and prevention of incidents of family violence;

(8) establish tribally operated programs to protect Indian children and reduce the incidents of family violence in Indian country; and

(9) authorize other actions necessary to ensure effective child protection on Indian reservations.

(Pub. L. 101–630, title IV, § 402, Nov. 28, 1990, 104 Stat. 4544.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this title'', meaning title IV of Pub. L. 101–630, Nov. 28, 1990, 104 Stat. 4544, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 401 of title IV of Pub. L. 101–630 provided that: ''This title [enacting this chapter and section 1169 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Indian Child Protection and Family Violence Prevention Act'.''

§ 3202. Definitions

For the purposes of this chapter, the term—

(1) ''Bureau'' means the Bureau of Indian Affairs of the Department of the Interior;

(2) ''child'' means an individual who—

(A) is not married, and

(B) has not attained 18 years of age;

(3) ''child abuse'' includes but is not limited to—

(A) any case in which—

(i) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and

(ii) such condition is not justifiably explained or may not be the product of an accidental occurrence; and

(B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

(4) ''child neglect'' includes but is not limited to, negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;

(5) ''family violence'' means any act, or threatened act, of violence, including any forceful detention of an individual, which—

(A) results, or threatens to result, in physical or mental injury, and

(B) is committed by an individual against another individual—

(i) to whom such person is, or was, related by blood or marriage or otherwise legally related, or

(ii) with whom such person is, or was, residing;

(6) ''Indian'' means any individual who is a member of an Indian tribe;

(7) ''Indian child'' has the meaning given to such term by section 1903(4) of this title;

(8) ''Indian country'' has the meaning given to such term by section 1151 of title 18;

(9) ''Indian reservation'' means any Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, or lands held by incorporated Native groups, regional corporations, or village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(10) ''Indian tribe'' and ''tribal organization'' have the respective meanings given to each of such terms under section 450b of this title;

(11) ''inter-tribal consortium'' means a partnership between—

(A) an Indian tribe or tribal organization of an Indian tribe, and

(B) one or more Indian tribes or tribal organizations of one or more other Indian tribes;

(12) ''local child protective services agency'' means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country;

(13) ''local law enforcement agency'' means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved;

(14) ''persons responsible for a child's welfare'' means any person who has legal or other recognized duty for the care and safety of a child, including—

(A) any employee or volunteer of a children's residential facility, and

(B) any person providing out-of-home care, education, or services to children;

(15) ''related assistance''—

(A) includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate health-care services (including alcohol and drug abuse treatment), and

(B) may include food, clothing, child care, transportation, and emergency services for victims of family violence and their dependents;

(16) ''Secretary'' means the Secretary of the Interior;

(17) ''shelter'' means the provision of temporary refuge and related assistance in compliance with applicable Federal and tribal laws and regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence or their dependents; and

(18) ''Service'' means the Indian Health Service of the Department of Health and Human Services.

(Pub. L. 101–630, title IV, § 403, Nov. 28, 1990, 104 Stat. 4545.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (9), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 3203. Reporting procedures

(a) Omitted

(b) Notification of child abuse reports

(1) When a local law enforcement agency or local child protective services agency receives an initial report from any person of—

(A) the abuse of a child in Indian country, or

(B) actions which would reasonably be expected to result in abuse of a child in Indian country, the receiving agency shall immediately notify appropriate officials of the other agency of such report and shall also submit, when prepared, a copy of the written report required under subsection (c) of this section to such agency.

(2) Where a report of abuse involves an Indian child or where the alleged abuser is an Indian and where a preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency, if other than the Federal Bureau of Investigation, shall immediately report such occurrence to the Federal Bureau of Investigation.

(c) Written report of child abuse

(1) Within 36 hours after receiving an initial report described in subsection (b) of this section, the receiving agency shall prepare a written report which shall include, if available—

(A) the name, address, age, and sex of the child that is the subject of the report;

(B) the grade and the school in which the child is currently enrolled;

(C) the name and address of the child's parents or other person responsible for the child's care;

(D) the name and address of the alleged offender;

(E) the name and address of the person who made the report to the agency;

(F) a brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse; and

(G) any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse.

(2)(A) Any local law enforcement agency or local child protective services agency that receives a report alleging abuse described in section 3202(3)[1] of this title shall immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety and well-being of the child or children involved.

(B) Upon completion of the investigation of any report of alleged abuse that is made to a local law enforcement agency or local child protective services agency, such agency shall prepare a final written report on such allegation.

(d) Confidentiality of informant

The identity of any person making a report described in subsection (b)(1) of this section shall not be disclosed, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of an Indian tribe, a State or the Federal Government who needs to know the information in the performance of such employee's duties.

(Pub. L. 101–630, title IV, § 404, Nov. 28, 1990, 104 Stat. 4547.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 3202(3) of this title, referred to in subsec. (c)(2)(A), was in the original ''section 503(3)'' meaning section 503(3) of Pub. L. 101–630, and was translated as reading section 403(3), which defines child abuse, to reflect the probable intent of Congress.

CODIFICATION

Section is comprised of section 404 of Pub. L. 101–630. Subsec. (a) of section 404 enacted section 1169 of Title 18, Crimes and Criminal Procedure.

§ 3204. Central registry

(a) Preparation of study

The Secretary, in consultation with the Secretary of Health and Human Services and the Attorney General of the United States, is hereby authorized and directed to prepare a written study on the feasibility of, and need for, the establishment of a Central Register for reports or information on the abuse of children in Indian country.

(b) Content of study

The study conducted pursuant to subsection (a) of this section shall include, but shall not be limited to—

(1) the need for, and purpose of, a Central Register;

(2) the examination of due process implication of the maintenance of such a register;

(3) the extension of access to information contained in the register;

(4) the need and process for expunging information from the register;

(5) the types, and duration of maintenance, of information in the register; and

(6) the classes of persons who should be covered by such register.

(c) Submission to Congress

The Secretary shall complete the study conducted pursuant to this section and shall submit such study, together with recommendations and draft legislation to implement such recommendations, to the Congress within 180 days after November 28, 1990.

(Pub. L. 101–630, title IV, § 405, Nov. 28, 1990, 104 Stat. 4549.)

§ 3205. Confidentiality

Pursuant to section 552a of title 5, the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), or any other provision of law, agencies of any Indian tribe, of any State, or of the Federal Government that investigate and treat incidents of abuse of children may provide information and records to those agencies of any Indian tribe, any State, or the Federal Government that need to know the information in performance of their duties. For purposes of this section, Indian tribal governments shall be treated the same as other Federal Government entities.

(Pub. L. 101–630, title IV, § 406, Nov. 28, 1990, 104 Stat. 4550.)

REFERENCES IN TEXT

The Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), referred to in text, is section 513 of title V of Pub. L. 93–380, Aug. 21, 1974, 88 Stat. 571, which enacted section 1232g of Title 20, Education, and provisions set out as notes under sections 1221 and 1232g of Title 20. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 1221 of Title 20 and Tables.

§ 3206. Waiver of parental consent

(a) Examinations and interviews

Photographs, x-rays, medical examinations, psychological examinations, and interviews of an Indian child alleged to have been subject to abuse in Indian country shall be allowed without parental consent if local child protective services or local law enforcement officials have reason to believe the child has been subject to abuse.

(b) Interviews by law enforcement and child protective services officials

In any case in which officials of the local law enforcement agency or local child protective services agency have reason to believe that an Indian child has been subject to abuse in Indian country, the officials of those agencies shall be allowed to interview the child without first obtaining the consent of the parent, guardian, or legal custodian.

(c) Protection of child

Examinations and interviews of a child who may have been the subject of abuse shall be conducted under such circumstances and with such safeguards as are designed to minimize additional trauma to the child and, where time permits, shall be conducted with the advise,[1] or under the guidance, of a local multidisciplinary team established pursuant to section 3210 of this title or, in the absence of a local team, a multidisciplinary team established pursuant to section 3209 of this title.

(d) Court orders

Upon a finding of reasonable suspicion that an Indian child has been the subject of abuse in Indian country, a Federal magistrate judge or United States District Court may issue an order enforcing any provision of this section.

(Pub. L. 101–630, title IV, § 407, Nov. 28, 1990, 104 Stat. 4550; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

CHANGE OF NAME

''Federal magistrate judge'' substituted for ''Federal magistrate'' in subsec. (d) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3207. Character investigations

(a) By Secretary of the Interior and Secretary of Health and Human Services

The Secretary and the Secretary of Health and Human Services shall—

(1) compile a list of all authorized positions within their respective departments the duties and responsibilities of which involve regular contact with, or control over, Indian children,

(2) conduct an investigation of the character of each individual who is employed, or is being considered for employment, by the respective

[1] So in original. Probably should be ''advice''.

Secretary in a position listed pursuant to paragraph (1), and

(3) prescribe by regulations minimum standards of character that each of such individuals must meet to be appointed to such positions.

(b) Criminal records

The minimum standards of character that are to be prescribed under this section shall ensure that none of the individuals appointed to positions described in subsection (a) of this section have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any of two or more misdemeanor offenses, under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

(c) Investigations by Indian tribes and tribal organizations

Each Indian tribe or tribal organization that receives funds under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] or the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.] shall—

(1) conduct an investigation of the character of each individual who is employed, or is being considered for employment, by such tribe or tribal organization in a position that involves regular contact with, or control over, Indian children, and

(2) employ individuals in those positions only if the individuals meet standards of character, no less stringent than those prescribed under subsection (a) of this section, as the Indian tribe or tribal organization shall establish.

(Pub. L. 101–630, title IV, § 408, Nov. 28, 1990, 104 Stat. 4551; Pub. L. 106–568, title VIII, § 814, Dec. 27, 2000, 114 Stat. 2918.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Tribally Controlled Schools Act of 1988, referred to in subsec. (c), is part B (§§ 5201–5212) of title V of Pub. L. 100–297, Apr. 28, 1988, 102 Stat. 385, which is classified generally to chapter 27 (§ 2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–568 substituted ''any felonious offense, or any of two or more misdemeanor offenses,'' for ''any offense'' and ''crimes against persons; or offenses committed against children'' for ''or crimes against persons''.

§ 3208. Indian Child Abuse Treatment Grant Program

(a) Establishment

The Secretary of Health and Human Services, acting through the Service and in cooperation with the Bureau, shall establish an Indian Child Abuse Treatment Grant Program that provides grants to any Indian tribe or intertribal consortium for the establishment on Indian reservations of treatment programs for Indians who have been victims of child sexual abuse.

(b) Grant applications

(1) Any Indian tribe or intertribal consortium may submit to the Secretary of Health and Human Services an application for a grant under subsection (a) of this section.

(2) Any application submitted under paragraph (1)—

(A) shall be in such form as the Secretary of Health and Human Services may prescribe;

(B) shall be submitted to such Secretary on or before the date designated by such Secretary; and

(C) shall specify—

(i) the nature of the program proposed by the applicant,

(ii) the data and information on which the program is based,

(iii) the extent to which the program plans to use or incorporate existing services available on the reservation, and

(iv) the specific treatment concepts to be used under the program.

(c) Maximum grant amount

The maximum amount of any grant awarded under subsection (a) of this section shall not exceed $500,000.

(d) Grant administration and final report

Each recipient of a grant awarded under subsection (a) of this section shall—

(1) furnish the Secretary of Health and Human Services with such information as such Secretary may require to—

(A) evaluate the program for which the grant is made, and

(B) ensure that the grant funds are expended for the purposes for which the grant was made, and

(2) submit to such Secretary at the close of the term of the grant a final report which shall include such information as the Secretary may require.

(e) Authorization of appropriations

there[1] is hereby authorized to be appropriated to carry out the provisions of this section $10,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, 1996, and 1997.

(Pub. L. 101–630, title IV, § 409, Nov. 28, 1990, 104 Stat. 4551; Pub. L. 104–16, § 1, June 21, 1995, 109 Stat. 190.)

AMENDMENTS

1995—Subsec. (e). Pub. L. 104–16 substituted ''1995, 1996, and 1997'' for ''and 1995''.

§ 3209. Indian Child Resource and Family Services Centers

(a) Establishment

The Secretary shall establish within each area office of the Bureau an Indian Child Resource and Family Services Center.

(b) Memorandum of Agreement

The Secretary and the Secretary of Health and Human Services shall enter into a Memorandum

[1] So in original. Probably should be capitalized.

of Agreement which provides for the staffing of the Centers established under this section.

(c) Center staffing

Each Center established under subsection (a) of this section shall be staffed by a multidisciplinary team of personnel with experience and training in prevention, identification, investigation, and treatment of incidents of family violence, child abuse, and child neglect.

(d) Center responsibilities and functions

Each Center established under subsection (a) of this section shall—

(1) provide advice, technical assistance, and consultation to Indian tribes, tribal organizations, and inter-tribal consortia upon request;

(2) provide training to appropriate personnel of Indian tribes, tribal organizations, the Bureau and the Service on the identification and investigation of cases of family violence, child abuse, and child neglect and, to the extent practicable, coordinate with institutions of higher education, including tribally controlled community colleges, to offer college-level credit to interested trainees;

(3) develop training materials on the prevention, identification, investigation, and treatment of incidents of family violence, child abuse, and child neglect for distribution to Indian tribes and to tribal organizations;

(4) develop recommendations to assist Federal and tribal personnel to respond to cases of family violence, child abuse, and child neglect; and

(5) develop policies and procedures for each agency office of the Bureau and service unit of the Service within the area which, to the extent feasible, comply with tribal laws pertaining to cases of family violence, child abuse, and child neglect, including any criminal laws, and which provide for maximum cooperation with the enforcement of such laws.

(e) Multidisciplinary team personnel

Each multidisciplinary team established under this section shall include, but is not limited to, personnel with a background in—

(1) law enforcement,

(2) child protective services,

(3) juvenile counseling and adolescent mental health, and

(4) domestic violence.

(f) Center advisory board

The Secretary, in consultation with the Secretary of Health and Human Services, shall establish, for each Indian Child Resource and Family Services Center, an advisory board to advise and assist such Center in carrying out its activities under this chapter. Each advisory board shall consist of 7 members appointed by the Secretary from Indian tribes and human service providers served by an area office of the Bureau. Members shall serve without compensation, but may be reimbursed for travel and other expenses while carrying out the duties of the board. The advisory board shall assist the Center in coordinating programs, identifying training materials, and developing policies and procedures relating to family violence, child abuse, and child neglect.

(g) Application of Indian Self-Determination Act to Centers

Indian Child Resource and Family Services Centers established under subsection (a) of this section shall be subject to the provisions of the Indian Self-Determination Act [25 U.S.C. 450f et seq.]. If a Center is located in an area office of the Bureau which serves more than one Indian tribe, any application to enter into a contract to operate the Center pursuant to such Act must have the consent of each of the other tribes to be served under the contract, except that, in the Juneau Area, only the consent of such tribes or tribal consortia that are engaged in contracting of Indian Child Protection and Family Violence Prevention programs pursuant to such Act shall be required. This section shall not preclude the designation of an existing child resource and family services center operated by a tribe or tribal organization as a Center if all of the tribes to be served by the Center agree to such designation.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this section $3,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, 1996, and 1997.

(Pub. L. 101–630, title IV, § 410, Nov. 28, 1990, 104 Stat. 4552; Pub. L. 104–16, § 1, June 21, 1995, 109 Stat. 190.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original ''this Act'' and was translated as reading ''this title'', meaning title IV of Pub. L. 101–630, Nov. 28, 1990, 104 Stat. 4544, known as the Indian Child Protection and Family Violence Prevention Act, which is classified principally to this chapter, to reflect the probable intent of Congress. For complete classification of title IV to the Code, see Short Title note set out under section 3201 of this title and Tables.

The Indian Self-Determination Act, referred to in subsec. (g), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1995—Subsec. (h). Pub. L. 104–16 substituted ''1995, 1996, and 1997'' for ''and 1995''.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 3210. Indian Child Protection and Family Violence Prevention Program

(a) Establishment

The Secretary shall establish within the Bureau an Indian Child Protection and Family Vio-

lence Prevention Program to provide financial assistance to any Indian tribe, tribal organization, or inter-tribal consortium for the development of an Indian Child Protection and Family Violence Prevention program.

(b) Indian Self-Determination Act agreements

The Secretary is authorized to enter into agreements with Indian tribes, tribal organizations, or inter-tribal consortia pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.] for the establishment of Indian Child Protection and Family Violence Prevention programs on Indian reservations.

(c) Investigation and treatment and prevention of child abuse and family violence

An Indian tribe operating an Indian Child Protection and Family Violence Prevention program established under this section shall designate the agency or officials which shall be responsible—

(1) for the investigation of reported cases of child abuse and child neglect; and

(2) for the treatment and prevention of incidents of family violence; and

(3) for the provision of immediate shelter and related assistance for victims of family violence and their dependents.

(d) Program responsibilities and functions

Funds provided pursuant to this section may be used for—

(1) the establishment of a child protective services program which may include—

(A) the employment of child protective services staff to investigate cases of child abuse and child neglect,

(B) training programs for child protective services personnel, law enforcement personnel, and judicial personnel in the investigation, prevention, and treatment of cases of child abuse and child neglect, and

(C) purchase of equipment to assist in the investigation of cases of child abuse and child neglect;

(2) the establishment of a family violence prevention and treatment program which may include—

(A) the employment of family violence prevention and treatment staff to respond to incidents of family violence,

(B) the provision of immediate shelter and related assistance for victims of family violence and their dependents,

(C) training programs for family violence prevention and treatment personnel, law enforcement personnel, and judicial personnel in the investigation, prevention, and treatment of cases of family violence; and

(D) construction or renovation of facilities for the establishment of family violence shelters;

(3) the development and implementation of a multidisciplinary child abuse investigation and prosecution program which may—

(A) coordinate child abuse prevention, investigation, prosecution, treatment, and counseling services,

(B) develop protocols among related agencies to ensure that investigations of child abuse cases, to the extent practicable, minimize the trauma to the child victim, and

(C) provide for the coordination and cooperation of law enforcement agencies, courts of competent jurisdiction, and other tribal, Federal, and State agencies through intergovernmental or interagency agreements that define and specify each party's responsibilities;

(4) the development of tribal child protection codes and regulations;

(5) the establishment of training programs for—

(A) professional and paraprofessional personnel in the fields of medicine, law, education, social work, and other relevant fields who are engaged in, or intend to work in, the field of prevention, identification, investigation, and treatment of family violence, child abuse, and child neglect,

(B) instruction in methods of protecting children from abuse and neglect for persons responsible for the welfare of Indian children, including parents of, and persons who work with, Indian children, or

(C) educational, identification, prevention and treatment services for child abuse and child neglect in cooperation with preschool, elementary and secondary schools, or tribally controlled college or university[1] (within the meaning of section 1801 of this title);

(6) other community education efforts for tribal members (including school children) regarding issues of family violence, child abuse, and child neglect; and

(7) such other innovative and culturally relevant programs and projects as the Secretary may approve, including programs and projects for—

(A) parental awareness and self-help,

(B) prevention and treatment of alcohol and drug-related family violence, child abuse, and child neglect, or

(C) home health visitor programs,

that show promise of successfully preventing and treating cases of family violence, child abuse, and child neglect.

(f)[2] Secretarial regulations; base support funding

(1) The Secretary, with the participation of Indian tribes, shall establish, and promulgate by regulations, a formula which establishes base support funding for Indian Child Protection and Family Violence Prevention programs.

(2) In the development of regulations for base support funding for such programs, the Secretary shall develop, in consultation with Indian tribes, appropriate caseload standards and staffing requirements which are comparable to standards developed by the National Association of Social Work, the Child Welfare League of America and other professional associations in the field of social work and child welfare. Each level of funding assistance shall correspond to the staffing requirements established by the Secretary pursuant to this section.

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[1] So in original. Probably should be ''colleges or universities''.

[2] So in original. No subsec. (e) has been enacted.

(3) Factors to be considered in the development of the base support funding formula shall include, but are not limited to—

(A) projected service population of the program;

(B) projected service area of the program;

(C) projected number of cases per month; and

(D) special circumstances warranting additional program resources, such as high incidence of child sexual abuse, high incidence of violent crimes against women, or the existence of a significant victim population within the community.

(4) The formula established pursuant to this subsection shall provide funding necessary to support—

(A) one child protective services or family violence caseworker, including fringe benefits and support costs, for each tribe; and

(B) an additional child protective services and family violence caseworker, including fringe benefits and support costs, for each level of assistance for which an Indian tribe qualifies.

(5) In any fiscal year that appropriations are not sufficient to fully fund Indian Child Protection and Family Violence Prevention programs at each level of assistance under the formula required to be established in this subsection, available funds for each level of assistance shall be evenly divided among the tribes qualifying for that level of assistance.

(g) Maintenance of effort

Services provided under contracts made under this section shall supplement, not supplant, services from any other funds available for the same general purposes, including, but not limited to—

(1) treatment, including, but not limited to—

(A) individual counseling,

(B) group counseling, and

(C) family counseling;

(2) social services and case management;

(3) training available to Indian tribes, tribal agencies, and Indian organizations regarding the identification, investigation, prevention, and treatment of family violence, child abuse, and child neglect; and

(4) law enforcement services, including investigations and prosecutions.

(h) Contract evaluation and annual report

Each recipient of funds awarded pursuant to subsection (a) of this section shall—

(1) furnish the Secretary with such information as the Secretary may require to—

(A) evaluate the program for which the award is made, and

(B) ensure that funds are expended for the purposes for which the award was made; and

(2) submit to the Secretary at the end of each fiscal year an annual report which shall include such information as the Secretary may require.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this section $30,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, 1996, and 1997.

(Pub. L. 101–630, title IV, § 411, Nov. 28, 1990, 104 Stat. 4553; Pub. L. 104–16, § 1, June 21, 1995, 109 Stat. 190; Pub. L. 105–244, title IX, § 901(d), Oct. 7, 1998, 112 Stat. 1828; Pub. L. 110–315, title IX, § 941(k)(2)(J), Aug. 14, 2008, 122 Stat. 3467.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (b), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

2008—Subsec. (d)(5)(C). Pub. L. 110–315 substituted ''tribally controlled college or university (within the meaning of section 1801 of this title)'' for ''tribally controlled community colleges (within the meaning of section 1801 of this title)''.

1998—Subsec. (d)(5)(C). Pub. L. 105–244 made technical amendment to reference in original act which appears in text as reference to section 1801 of this title.

1995—Subsec. (i). Pub. L. 104–16 substituted ''1995, 1996, and 1997'' for ''and 1995''.

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.

§ 3211. Repealed. Pub. L. 105–362, title VIII, § 801(a), Nov. 10, 1998, 112 Stat. 3287

Section, Pub. L. 101–630, title IV, § 412, Nov. 28, 1990, 104 Stat. 4556, related to annual reports to Congress on administration of provisions concerning Indian child protection and family violence prevention.

CHAPTER 35—INDIAN HIGHER EDUCATION PROGRAMS

SUBCHAPTER I—HIGHER EDUCATION TRIBAL GRANT AUTHORIZATION

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SUBCHAPTER III—TRIBAL DEVELOPMENT STUDENT ASSISTANCE REVOLVING LOAN PROGRAM

3331 to 3338. Repealed.

SUBCHAPTER IV—AMERICAN INDIAN POST-SECONDARY ECONOMIC DEVELOPMENT SCHOLARSHIP

3351 to 3355. Repealed.

SUBCHAPTER V—AMERICAN INDIAN TEACHER TRAINING

3371. Repealed.

SUBCHAPTER I—HIGHER EDUCATION TRIBAL GRANT AUTHORIZATION

§ 3301. Short title

This subchapter may be cited as the ''Higher Education Tribal Grant Authorization Act''.

(Pub. L. 102–325, title XIII, § 1311, July 23, 1992, 106 Stat. 798.)

§ 3302. Findings

The Congress finds that—

(1) there are increasing numbers of Indian students qualifying for postsecondary education, and there are increasing numbers desiring to go to postsecondary institutions;

(2) the needs of these students far outpace the resources available currently;

(3) Indian tribes have shown an increasing interest in administering programs serving these individuals and making decisions on these programs reflecting their determinations of the tribal and human needs;

(4) the contracting process under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] has provided a mechanism for the majority of the tribes to assume control over this program from the Bureau of Indian Affairs;

(5) however, inherent limitations in the contracting philosophy and mechanism, coupled with cumbersome administrative procedures developed by the Bureau of Indian Affairs have effectively limited the efficiency and effectiveness of these programs;

(6) the provision of these services in the most effective and efficient form possible is necessary for tribes, the country, and the individuals to be served; and

(7) these services are part of the Federal Government's continuing trust responsibility to provide education services to American Indian and Alaska Natives.

(Pub. L. 102–325, title XIII, § 1312, July 23, 1992, 106 Stat. 798.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in par. (4), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 3303. Program authority

(a) In general

The Secretary shall, from the amounts appropriated for the purpose of supporting higher education grants for Indian students under the authority of section 13 of this title, make grants to Indian tribes in accordance with the requirements of this subchapter to permit those tribes to provide financial assistance to individual Indian students for the cost of attendance at institutions of higher education.

(b) Limitation on Secretary's authority

The Secretary shall not place any restrictions on the use of funds provided to an Indian tribe under this subchapter that is not expressly authorized by this subchapter.

(c) Effect on Federal responsibilities

The provisions of this subchapter shall not affect any trust responsibilities of the Federal Government.

(d) No termination for administrative convenience

Grants provided under this subchapter may not be terminated, modified, suspended, or reduced only for the convenience of the administering agency.

(Pub. L. 102–325, title XIII, § 1313, July 23, 1992, 106 Stat. 798.)

§ 3304. Qualification for grants to tribes

(a) Contracting tribes

Any Indian tribe that obtains funds for educational purposes similar to those authorized in this subchapter pursuant to contract under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] may qualify for a grant under this subchapter by submitting to the Secretary a notice of intent to administer a student assistance program under section 3303 of this title. Such notice shall be effective for the fiscal year following the fiscal year in which it is submitted, except that if such notice is submitted during the last 90 days of a fiscal year such notice shall be effective the second fiscal year following the fiscal year in which it is submitted, unless the Secretary waives this limitation.

(b) Noncontracting tribes

Any Indian tribe that is not eligible to qualify for a grant under this subchapter by filing a notice under subsection (a) of this section may qualify for such a grant by filing an application for such a grant. Such application shall be submitted under guidelines for programs under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.], as in effect on January 1, 1991, and shall be reviewed under the standards, practices, and procedures applicable to applications to contract under such Act as in effect on the date the application is received, except that—

(1) if the tribe is not notified that its application has been disapproved within 180 days after it is filed with the Secretary, the application shall be deemed to be approved;

(2) if the application is disapproved, the Secretary shall provide technical assistance to the tribe for purposes of correcting deficiencies in the application;

(3) the Secretary shall designate an office or official to receive such applications, and shall toll the 180-day period described in paragraph (1) from the date of receipt by such office or official; and

(4) applications shall be approved for the fiscal year following the fiscal year in which submitted, unless the Secretary waives the limitation of this paragraph.

(c) Termination of grants

(1) Continuing eligibility presumed

An Indian tribe which has qualified under subsection (a) or (b) of this section for a grant under this subchapter for any fiscal year shall

continue to be eligible for such a grant for each succeeding fiscal year unless the Secretary revokes such eligibility for a cause described in paragraph (2).

(2) Causes for loss of eligibility

The Secretary may revoke the eligibility of an Indian tribe for a grant under this subchapter if such tribe—

(A) fails to submit to the Bureau an annual financial statement that reports revenues and expenditures determined by use of an accounting system, established by the tribe, that complies with generally accepted accounting principles;

(B) fails to submit to the Bureau an annual program description, stating the number of students served, and containing such information concerning such students, their educational programs and progress, and the financial assistance distributed to such students as the Secretary may require by regulation;

(C) fails to submit to the Secretary a biennial financial audit conducted in accordance with chapter 75 of title 31; or

(D) fails, in an evaluation of its financial assistance program conducted by an impartial third party entity, to comply with standards under this subchapter relating to (i) eligible students, programs, or institutions of higher education, (ii) satisfactory progress, or (iii) allowable administrative costs; as determined under contracts applicable to programs to provide financial assistance to individual Indian students for the cost of attendance at institutions of higher education administered by Indian tribes under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] and in effect on January 20, 1991.

(3) Procedures for revocation of eligibility

The Secretary shall not revoke the eligibility of an Indian tribe for a grant under this subchapter except—

(A) after notice in writing to the tribe of the cause and opportunity to the tribe to correct;

(B) providing technical assistance to the tribe in making such corrections; and

(C) after hearing and appeals conducted under the same rules and regulations that apply to similar termination actions under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.].

(Pub. L. 102–325, title XIII, § 1314, July 23, 1992, 106 Stat. 799.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in text, is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 3305. Allocation of grant funds

(a) Allocation of funds

(1) In general

The Secretary shall continue to determine the amount of program funds to be received by each grantee under this subchapter by the same method used for determining such distribution in fiscal year 1991 for tribally-administered and Bureau-administered programs of grants to individual Indians to defray post-secondary expenses.

(2) Administrative costs

In addition to the amount determined under paragraph (1), a grantee which has exercised the option given in section 3304(a) of this title to administer the program under a grant shall receive an amount for administrative costs determined pursuant to the method used by the grantee during the preceding contract period. All other grantees shall receive an amount for administrative costs determined pursuant to the regulations governing such determinations under the Indian Self Determination and Education Assistance Act [25 U.S.C. 450 et seq.], as in effect at the time of application to grants being made.

(3) Single grant; separate accounts

Each grantee shall receive only one grant during any fiscal year, which shall include both of the amounts under paragraphs (1) and (2). Each grantee shall maintain this grant in a separate account.

(b) Use of funds

Funds provided by grants under this subchapter shall be used—

(1) to make grants to individual Indian students to meet, on the basis of need, any educational expense of attendance in a post-secondary education program (as determined under the contracts applying to the post-secondary education program administered by tribes under the Indian Self Determination and Education Assistance Act (Public Law 93–638) [25 U.S.C. 450 et seq.]), to the extent that such expense is not met from other sources or cannot be defrayed through the action of any State, Federal, or municipal Act, except that nothing in this subsection shall be interpreted as requiring any priority in consideration of resources; and

(2) costs of administering the program under this subchapter, except that no more may be spent on administration of such program than is generated by the method for administrative cost computation specified in subsection (a)(2) of this section.

(Pub. L. 102–325, title XIII, § 1315, July 23, 1992, 106 Stat. 800.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsecs. (a)(2) and (b)(1), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 3306. Limitations on use of funds

(a) Use for religious purposes

None of the funds made available under this subchapter may be used for study at any school or department of divinity or for any religious worship or sectarian activity.

(b) Interest on funds

No interest or other income on any funds made available under this subchapter shall be used for any purpose other than those for which such funds may be used.

(c) Payments

(1) In general

Except as otherwise provided in this subsection, the Secretary shall make payments to grantees under this subchapter in two payments—

(A) one payment to be made no later than October 1 of each fiscal year in an amount equal to one-half the amount paid during the preceding fiscal year to the grantee or a contractor that has elected to have the provisions of this subchapter apply, and

(B) the second payment consisting of the remainder to which the grantee or contractor is entitled for the fiscal year to be made by no later than January 1 of the fiscal year.

(2) New grantees

For any tribe for which no payment was made under this subchapter in the preceding fiscal year, full payment of the amount computed for each fiscal year shall be made by January 1 of the fiscal year.

(d) Investment of funds

(1) Treatment as tribal property

Notwithstanding any other provision of law, any interest or investment income that accrues on any funds provided under this subchapter after such funds are paid to the Indian tribe or tribal organization and before such funds are expended for the purpose for which such funds were provided under this subchapter shall be the property of the Indian tribe or tribal organization and shall not be taken into account by any officer or employee of the Federal Government in determining whether to provide assistance, or the amount of assistance, under any provision of Federal law.

(2) Investment requirements

Funds provided under this subchapter may be—

(A) invested by the Indian tribe or tribal organization only in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States, or

(B) deposited only into accounts that are insured by an agency or instrumentality of the United States.

(e) Recoveries

For the purposes of under recovery and over recovery determinations by any Federal agency for any other funds, from whatever source derived, funds received under this subchapter shall not be taken into consideration.

(Pub. L. 102–325, title XIII, § 1316, July 23, 1992, 106 Stat. 801.)

§ 3307. Administrative provisions

(a) Omitted

(b) Role of Director

Applications for grants under this subchapter, and all application modifications, shall be reviewed and approved by personnel under the direction and control of the Director of the Office of Indian Education Programs. Required reports shall be submitted to education personnel under the direction and control of the Director of such Office.

(c) Application of Indian Self-Determination and Education Assistance Act

All provisions of sections 5, 6, 7, 105, 109, and 110 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c et seq.) [25 U.S.C. 450c, 450d, 450e, 450j, 450m, 450m–1], except those provisions pertaining to indirect costs and length of contract, shall apply to grants provided under this subchapter.

(d) Regulations

The Secretary is authorized to issue regulations relating to the discharge of duties specifically assigned to the Secretary by this subchapter. In all other matters relating to the details of planning, development, implementing, and evaluating grants under this subchapter, the Secretary shall not issue regulations. Regulations issued pursuant to this subchapter shall not have the standing of a Federal statute for the purposes of judicial review.

(e) Retrocession

Whenever an Indian tribe requests retrocession of any program for which assistance is provided under this subchapter, such retrocession shall become effective upon a date specified by the Secretary not more than 120 days after the date on which the tribe requests the retrocession, or such later date as may be mutually agreed upon by the Secretary and the tribe. If such a program is retroceded, the Secretary shall provide to any Indian tribe served by such program at least the same quantity and quality of services that would have been provided under such program at the level of funding provided under this subchapter prior to the retrocession. The tribal governing body requesting the retrocession shall specify whether the retrocession shall be to a contract administered by the tribe, or a tribal entity, under the authority of the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or to a Bureau administered program.

(f) Definitions

For the purposes of this subchapter:

(1) The term ''Secretary'' means the Secretary of the Interior.

(2) The terms ''Indian'' and ''Indian tribe'' have the same meaning given those terms in sections[1] 4(d) and (e), respectively, of the Indian Self Determination and Education Assistance Act [25 U.S.C. 450b(d), (e)].

(Pub. L. 102–325, title XIII, § 1317, July 23, 1992, 106 Stat. 802.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (e), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

[1] So in original. Probably should be ''section''.

CODIFICATION

Subsec. (a) of this section, which required the Secretary to submit a biennial report to Congress on programs established under this subchapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 79 of House Document No. 103–7.

SUBCHAPTER II—CRITICAL NEEDS FOR TRIBAL DEVELOPMENT

§ 3321. Short title

This subchapter may be cited as the ''Critical Needs for Tribal Development Act''.

(Pub. L. 102–325, title XIII, § 1321, July 23, 1992, 106 Stat. 803.)

§ 3322. Definitions

As used in this subchapter:

(1) The term ''federally funded higher education assistance'' means any grant assistance provided to an Indian student from funds made available for such purpose by contract or grant to an Indian tribe from amounts appropriated under the authority of section 13 of this title.

(2) The term ''eligible Indian tribe or tribal organization'' means any Indian tribe or tribal organization that qualifies to administer federally funded higher education assistance under a contract pursuant to the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] or under a grant pursuant to subchapter I of this chapter.

(3) The term ''Indian'' has the meaning given such term in section 4(d) of the Indian Self Determination and Education Assistance Act [25 U.S.C. 450b(d)].

(Pub. L. 102–325, title XIII, § 1322, July 23, 1992, 106 Stat. 803.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in par. (2), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 3323. Service conditions permitted

(a) In general

An eligible Indian tribe or tribal organization may, in accordance with the requirements of this subchapter, require any applicant for federally funded higher education assistance, as a condition of receipt of such assistance, to enter into a critical area service agreement in accordance with section 3324 of this title.

(b) Critical area designation

Any eligible Indian tribe or tribal organization that intends to require critical area service agreements shall, by a formal action of the tribal council or its delegate, designate particular occupational areas as critical areas for the economic or human development needs of the tribe or its members. The tribe or organization shall notify the Secretary of the Interior in writing of such designated critical areas. Such designations shall be applicable to federally funded higher education assistance for any fiscal year following the fiscal year in which the designation is made until such designation is withdrawn by the tribe or organization by formal action. The tribe or organization shall notify the Secretary of the Interior in writing of any designations that are withdrawn.

(Pub. L. 102–325, title XIII, § 1323, July 23, 1992, 106 Stat. 803.)

§ 3324. Critical area service agreements

(a) Terms of agreements

A critical area service agreement shall be an agreement between an Indian student who receives or who shall receive federally funded higher education assistance and an Indian tribe or tribal organization providing such assistance in which the student agrees—

(1) to undertake a course of study at an eligible institution (as that term is defined in section 1085(a) of title 20) in an area of critical need, as determined under section 3323 of this title, and to pursue that course of study to its completion; and

(2)(A) to perform, for each academic year for which the student receives federally funded higher education assistance under a critical area service agreement, one calendar year of service to the tribe or organization in an occupation that is in a critical area designated by the tribe pursuant to section 3323(b)[1] of this title, commencing not later than 6 months after the student ceases to carry at an institution of higher education at least one-half the normal full-time academic workload as determined by the institution; or

(B) to repay such assistance to the Secretary, together with interest thereon at a rate prescribed by the Secretary by regulation, in monthly or quarterly installments over not more than 5 years.

(b) Service limitations and conditions

The tribe or tribal organization shall agree that a student performing services under a critical area service agreement—

(1) shall be provided compensation, benefits, and working conditions at the same level and to the same extent as any other employee working a similar length of time and doing the same type of work;

(2) may be treated as providing services to the tribe or organization if the student provides services for members of the tribe or organization that are approved by the tribe or organization and agreed to by the student even though such services are performed while the student is employed by a Federal, State, or local agency or instrumentality or by a nonprofit or for-profit private institution or organization; and

(3) may obtain the benefits of a waiver or suspension in accordance with the requirements of subsection (c) of this section.

(c) Waiver and suspension of service agreement

(1) Waiver

An Indian tribe or tribal organization may, by formal action, waive the service agreement

[1] See References in Text note below.

of an Indian student for just cause, as determined in accordance with regulations prescribed by the Secretary. The tribe or organization shall notify the Secretary in writing of any waiver granted under this subsection.

(2) Suspension

The obligation of a student to perform services under a critical area service agreement—

(A) shall be suspended for not more than 18 months if, at the request of the student, the tribe or organization determines that there are no employment opportunities available in any critical service area; and

(B) shall be suspended if the student ceases to attend an institution of higher education as a consequence of an institutional determination of unsatisfactory performance.

If, at the end of a period of suspension under subparagraph (A), there are still no employment opportunities available in any critical service area, the student's obligations under the agreement shall terminate. A suspension under subparagraph (B) shall be reviewed by the tribe or organization annually, but may be continued indefinitely.

(d) Pro rata reduction for partial services

The Secretary shall, by regulation, provide for the pro rata reduction of repayment obligations under subsection (a)(2) of this section in the case of any student who partially completes the service obligation of that student under subsection (a)(2)(A) of this section.

(e) Certification of service

An Indian tribe or tribal organization receiving services under a critical area service agreement—

(1) shall establish procedures for monitoring and evaluating the provisions of this subchapter, and provide a copy of such procedures to the Secretary and to each individual providing services under a critical area service agreement;

(2) shall annually certify to the Secretary the identities of the individuals performing service under such agreements; and

(3) shall annually certify to the Secretary the amount of service performed, and the amount remaining to be performed, by each such individual under such agreements.

(Pub. L. 102–325, title XIII, § 1324, July 23, 1992, 106 Stat. 803.)

REFERENCES IN TEXT

Section 3323(b) of this title, referred to in subsec. (a)(2)(A), was in the original a reference to ''section 1322(b)'', meaning section 1322(b) of Pub. L. 102–325, which has been translated as reading section 1323(b) of Pub. L. 102–325 to reflect the probable intent of Congress because section 1322 does not have a subsec. (b) and section 1323(b) relates to designation of critical areas by tribes.

§ 3325. General provisions

(a) Application of existing procedures

Except as provided in subsection (b) of this section, the requirements relating to student eligibility, needs analysis, and determination of eligibility for the program to be attended regularly incorporated by reference into contracts under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] for tribal operation of higher education grant programs prior to January 1, 1991, shall apply.

(b) Additional, excess, and incremental costs

The tribe or tribal organization may establish in writing, subject to the review of the Secretary, procedures for determining additional, excess, or inducement costs to be associated with grants for critical area service agreements.

(Pub. L. 102–325, title XIII, § 1325, July 23, 1992, 106 Stat. 805.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

SUBCHAPTER III—TRIBAL DEVELOPMENT STUDENT ASSISTANCE REVOLVING LOAN PROGRAM

§§ 3331 to 3338. Repealed. Pub. L. 105–332, § 6(b)(1), Oct. 31, 1998, 112 Stat. 3128

Section 3331, Pub. L. 102–325, title XIII, § 1341, July 23, 1992, 106 Stat. 809, provided that subchapter could be cited as the ''Tribal Development Student Assistance Act''.

Section 3332, Pub. L. 102–325, title XIII, § 1342, July 23, 1992, 106 Stat. 809, declared congressional findings and purposes.

Section 3333, Pub. L. 102–325, title XIII, § 1343, July 23, 1992, 106 Stat. 809, related to revolving fund.

Section 3334, Pub. L. 102–325, title XIII, § 1344, July 23, 1992, 106 Stat. 810, related to eligible recipients.

Section 3335, Pub. L. 102–325, title XIII, § 1345, July 23, 1992, 106 Stat. 810, related to terms of loans.

Section 3336, Pub. L. 102–325, title XIII, § 1346, July 23, 1992, 106 Stat. 811, related to service fulfillment and conditions, repayments, and waivers.

Section, 3337, Pub. L. 102–325, title XIII, § 1347, July 23, 1992, 106 Stat. 812, related to administration.

Section 3338, Pub. L. 102–325, title XIII, § 1348, July 23, 1992, 106 Stat. 812, authorized appropriations.

SUBCHAPTER IV—AMERICAN INDIAN POST-SECONDARY ECONOMIC DEVELOPMENT SCHOLARSHIP

§§ 3351 to 3355. Repealed. Pub. L. 105–332, § 6(b)(1), Oct. 31, 1998, 112 Stat. 3128

Section 3351, Pub. L. 102–325, title XIII, § 1361, July 23, 1992, 106 Stat. 813, related to American Indian Post-Secondary Economic Development Scholarship.

Section 3352, Pub. L. 102–325, title XIII, § 1362, July 23, 1992, 106 Stat. 813, related to Indian scholarships.

Section 3353, Pub. L. 102–325, title XIII, § 1363, July 23, 1992, 106 Stat. 813, related to scholarship conditions.

Section 3354, Pub. L. 102–325, title XIII, § 1364, July 23, 1992, 106 Stat. 815, required annual reports by Indian tribes receiving grants.

Section 3355, Pub. L. 102–325, title XIII, § 1365, July 23, 1992, 106 Stat. 815, authorized appropriations.

SUBCHAPTER V—AMERICAN INDIAN TEACHER TRAINING

§ 3371. Repealed. Pub. L. 105–332, § 6(b)(1), Oct. 31, 1998, 112 Stat. 3128

Section, Pub. L. 102–325, title XIII, § 1371, July 23, 1992, 106 Stat. 815; Pub. L. 105–244, title I, § 102(a)(8)(D), Oct.

7, 1998, 112 Stat. 1619, related to American Indian teacher training.

CHAPTER 36—INDIAN EMPLOYMENT, TRAINING AND RELATED SERVICES

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§ 3401. Statement of purpose

The purposes of this chapter are to demonstrate how Indian tribal governments can integrate the employment, training and related services they provide in order to improve the effectiveness of those services, reduce joblessness in Indian communities and serve tribally-determined goals consistent with the policy of self-determination.

(Pub. L. 102–477, § 2, Oct. 23, 1992, 106 Stat. 2302.)

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–568, title XI, § 1101, Dec. 27, 2000, 114 Stat. 2930, provided that: ''This title [amending sections 3402, 3404, and 3406 to 3408 of this title and enacting provisions set out as notes under this section] may be cited as the 'Indian Employment, Training, and Related Services Demonstration Act Amendments of 2000'.''

SHORT TITLE

Section 1 of Pub. L. 102–477 provided that: ''This Act [enacting this chapter] may be cited as the 'Indian Employment, Training and Related Services Demonstration Act of 1992'.''

CONGRESSIONAL FINDINGS AND PURPOSES

Pub. L. 106–568, title XI, § 1102, Dec. 27, 2000, 114 Stat. 2931, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) [sic] Indian tribes and Alaska Native organizations that have participated in carrying out programs under the Indian Employment, Training, and Related Services Demonstration Act of 1992 (25 U.S.C. 3401 et seq.) have—

''(A) improved the effectiveness of employment-related services provided by those tribes and organizations to their members;

''(B) enabled more Indian and Alaska Native people to prepare for and secure employment;

''(C) assisted in transitioning tribal members from welfare to work; and

''(D) otherwise demonstrated the value of integrating employment, training, education and related services. [sic]

''(E) the initiatives under the Indian Employment, Training, and Related Services Demonstration Act of 1992 should be strengthened by ensuring that all Federal programs that emphasize the value of work may be included within a demonstration program of an Indian or Alaska Native organization; and

''(F) the initiatives under the Indian Employment, Training, and Related Services Demonstration Act of 1992 should have the benefit of the support and attention of the officials with policy-making authority of—

''(i) the Department of the Interior; or

''(ii) other Federal agencies that administer programs covered by the Indian Employment, Training, and Related Services Demonstration Act of 1992.

''(b) PURPOSES.—The purposes of this title [see Short Title of 2000 Amendment note above] are to demonstrate how Indian tribal governments can integrate the employment, training, and related services they provide in order to improve the effectiveness of those services, reduce joblessness in Indian communities, foster economic development on Indian lands, and serve tribally-determined goals consistent with the policies of self-determination and self-governance.''

REPORT ON EXPANDING OPPORTUNITIES FOR PROGRAM INTEGRATION

Pub. L. 106–568, title XI, § 1104, Dec. 27, 2000, 114 Stat. 2932, provided that: ''Not later than 1 year after the date of the enactment of this title [Dec. 27, 2000], the Secretary, the Secretary of Health and Human Services, the Secretary of Labor, and the tribes and organizations participating in the integration initiative under this title [see Short Title of 2000 Amendment note above] shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Resources [now Committee on Natural Resources] of the House of Representatives on the opportunities for expanding the integration of human resource development and economic development programs under this title, and the feasibility of establishing Joint Funding Agreements to authorize tribes to access and coordinated [sic] funds and resources from various agencies for purposes of human resources development, physical infrastructure development, and economic development assistance in general. Such report shall identify programs or activities which might be integrated and make recommendations for the removal of any statutory or other barriers to such integration.''

§ 3402. Definitions

For the purposes of this chapter, the following definitions apply:

(1) Federal agency

The term ''federal[1] agency'' has the same meaning given the term ''agency'' in section 551(1) of title 5.

(2) Indian tribe

The terms ''Indian tribe'' and ''tribe'' shall have the meaning given the term ''Indian tribe'' in section 450b(e) of this title.

(3) Indian

The term ''Indian'' shall have the meaning given such term in section 450b(d) of this title.

(4) Secretary

Except where otherwise provided, the term ''Secretary'' means the Secretary of the Interior.

(Pub. L. 102–477, § 3, Oct. 23, 1992, 106 Stat. 2302; Pub. L. 106–568, title XI, § 1103(a), Dec. 27, 2000, 114 Stat. 2931.)

AMENDMENTS

2000—Pub. L. 106–568 added par. (1) and redesignated former pars. (1) to (3) as (2) to (4), respectively.

[1] So in original. Probably should be capitalized.

§ 3403. Integration of services authorized

The Secretary of the Interior, in cooperation with the appropriate Secretary of Labor, Secretary of Health and Human Services, or Secretary of Education, shall, upon the receipt of a plan acceptable to the Secretary of the Interior submitted by an Indian tribal government, authorize the tribal government to coordinate, in accordance with such plan, its federally funded employment, training, and related services programs in a manner that integrates the program services involved into a single, coordinated, comprehensive program and reduces administrative costs by consolidating administrative functions.

(Pub. L. 102–477, § 4, Oct. 23, 1992, 106 Stat. 2302.)

§ 3404. Programs affected

The programs that may be integrated in a demonstration project under any such plan referred to in section 3403 of this title shall include any program under which an Indian tribe is eligible for receipt of funds under a statutory or administrative formula for the purposes of assisting Indian youth and adults to succeed in the workforce, encouraging self-sufficiency, familiarizing Indian Youth[1] and adults with the world of work, facilitating the creation of job opportunities and any services related to these activities.

(Pub. L. 102–477, § 5, Oct. 23, 1992, 106 Stat. 2302; Pub. L. 106–568, title XI, § 1103(b), Dec. 27, 2000, 114 Stat. 2931.)

AMENDMENTS

2000—Pub. L. 106–568 substituted ''assisting Indian youth and adults to succeed in the workforce, encouraging self-sufficiency, familiarizing Indian Youth and adults with the world of work, facilitating the creation of job opportunities and any services related to these activities'' for ''job training, tribal work experience, employment opportunities, or skill development, or any program designed for the enhancement of job opportunities or employment training''.

§ 3405. Plan requirements

For a plan to be acceptable pursuant to section 3403 of this title, it shall—

(1) identify the programs to be integrated;

(2) be consistent with the purposes of this chapter authorizing the services to be integrated in a demonstration project;

(3) describe a comprehensive strategy which identifies the full range of potential employment opportunities on and near the tribal government's service area, and the education, training and related services to be provided to assist Indian workers to access those employment opportunities;

(4) describe the way in which services are to be integrated and delivered and the results expected from the plan;

(5) identify the projected expenditures under the plan in a single budget;

(6) identify the agency or agencies of the tribal government to be involved in the delivery of the services integrated under the plan;

(7) identify any statutory provisions, regulations, policies, or procedures that the tribal government believes need to be waived in order to implement its plan; and

(8) be approved by the governing body of the affected tribe.

(Pub. L. 102–477, § 6, Oct. 23, 1992, 106 Stat. 2303.)

§ 3406. Plan review

Upon receipt of the plan from a tribal government, the Secretary of the Interior shall consult with the Secretary of each Federal agency providing funds to be used to implement the plan, and with the tribal government submitting the plan. The parties so consulting shall identify any waivers of statutory requirements or of Federal agency regulations, policies, or procedures necessary to enable the tribal government to implement its plan. Notwithstanding any other provision of law, the Secretary of the affected agency shall have the authority to waive any statutory requirement, regulation, policy, or procedure promulgated by that agency that has been so identified by such tribal government or agency, unless the Secretary of the affected agency determines that such a waiver is inconsistent with the purposes of this chapter or those provisions of the statute from which the program involved derives its authority which are specifically applicable to Indian programs.

(Pub. L. 102–477, § 7, Oct. 23, 1992, 106 Stat. 2303; Pub. L. 106–568, title XI, § 1103(c), Dec. 27, 2000, 114 Stat. 2932.)

AMENDMENTS

2000—Pub. L. 106–568 substituted ''Federal agency'' for ''Federal department'' and ''Federal agency regulations'' for ''Federal departmental regulations'', substituted ''agency'' for ''department'' wherever appearing, and inserted ''statutory requirement,'' after ''to waive any''.

§ 3407. Plan approval

Within 90 days after the receipt of a tribal government's plan by the Secretary, the Secretary shall inform the tribal government, in writing, of the Secretary's approval or disapproval of the plan, including any request for a waiver that is made as part of the plan submitted by the tribal government. If the plan is disapproved, the tribal government shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend its plan or to petition the Secretary to reconsider such disapproval, including reconsidering the disapproval of any waiver requested by the Indian tribe.

(Pub. L. 102–477, § 8, Oct. 23, 1992, 106 Stat. 2303; Pub. L. 106–568, title XI, § 1103(d), Dec. 27, 2000, 114 Stat. 2932.)

AMENDMENTS

2000—Pub. L. 106–568 inserted '', including any request for a waiver that is made as part of the plan submitted by the tribal government'' after ''disapproval of the plan'' and '', including reconsidering the disapproval of any waiver requested by the Indian tribe'' after ''reconsider such disapproval''.

§ 3408. Job creation activities authorized

(a) In general

The plan submitted by a tribal government may involve the expenditure of funds for the

[1] So in original. Probably should not be capitalized.

creation of employment opportunities and for the development of the economic resources of the tribal government or of individual Indian people if such expenditures are consistent with an overall regional economic activity which has a reasonable likelihood of success and consistent with the purposes specifically applicable to Indian programs in the statute under which the funds are authorized.

(b) Job creation opportunities

(1) In general

Notwithstanding any other provisions of law, including any requirement of a program that is integrated under a plan under this chapter, a tribal government may use a percentage of the funds made available under this chapter (as determined under paragraph (2)) for the creation of employment opportunities, including providing private sector training placement under section 3409 of this title.

(2) Determination of percentage

The percentage of funds that a tribal government may use under this subsection is the greater of—

(A) the rate of unemployment in the service area of the tribe up to a maximum of 25 percent; or

(B) 10 percent.

(c) Limitation

The funds used for an expenditure described in subsection (a) of this section may only include funds made available to the Indian tribe by a Federal agency under a statutory or administrative formula.

(Pub. L. 102–477, § 9, Oct. 23, 1992, 106 Stat. 2303; Pub. L. 106–568, title XI, § 1103(e), Dec. 27, 2000, 114 Stat. 2932.)

AMENDMENTS

2000—Pub. L. 106–568 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

§ 3409. Private sector training placements

A tribal government participating in a demonstration program under this chapter is authorized to utilize funds available under such plan to place participants in training positions with private employers and pay such participants a training allowance or wage for a period not to exceed 12 months, if the tribal government obtains a written agreement from the private employer to provide on-the-job training to such participants and, upon satisfactory completion of the training period, to guarantee permanent employment to such participants for a minimum of 12 months.

(Pub. L. 102–477, § 10, Oct. 23, 1992, 106 Stat. 2304.)

§ 3410. Federal responsibilities

(a) Responsibilities of Department of the Interior

Within 180 days following October 23, 1992, the Secretary of the Interior, the Secretary of Labor, the Secretary of Health and Human Services and the Secretary of Education shall enter into an interdepartmental memorandum of agreement providing for the implementation of the demonstration projects authorized under this chapter. The lead agency for a demonstration program under this chapter shall be the Bureau of Indian Affairs, Department of the Interior. The responsibilities of the lead agency shall include—

(1) the use of a single report format related to the plan for the individual project which shall be used by a tribal government to report on the activities undertaken under the project;

(2) the use of a single report format related to the projected expenditures for the individual project which shall be used by a tribal government to report on all project expenditures;

(3) the development of a single system of Federal oversight for the project, which shall be implemented by the lead agency; and

(4) the provision of technical assistance to a tribal government appropriate to the project, except that a tribal government shall have the authority to accept or reject the plan for providing such technical assistance and the technical assistance provider.

(b) Report requirements

The single report format shall be developed by the Secretary, consistent with the requirements of this chapter. Such report format, together with records maintained on the consolidated program at the tribal level shall contain such information as will allow a determination that the tribe has complied with the requirements incorporated in its approved plan and will provide assurances to each Secretary that the tribe has complied with all directly applicable statutory requirements and with those directly applicable regulatory requirements which have not been waived.

(Pub. L. 102–477, § 11, Oct. 23, 1992, 106 Stat. 2304.)

§ 3411. No reduction in amounts

In no case shall the amount of Federal funds available to a tribal government involved in any demonstration project be reduced as a result of the enactment of this chapter.

(Pub. L. 102–477, § 12, Oct. 23, 1992, 106 Stat. 2304.)

§ 3412. Interagency fund transfers authorized

The Secretary of the Interior, Secretary of Labor, Secretary of Health and Human Services, or the Secretary of Education, as appropriate, is authorized to take such action as may be necessary to provide for an interagency transfer of funds otherwise available to a tribal government in order to further the purposes of this chapter.

(Pub. L. 102–477, § 13, Oct. 23, 1992, 106 Stat. 2304.)

§ 3413. Administration of funds and overage

(a) Administration of funds

(1) In general

Program funds shall be administered in such a manner as to allow for a determination that funds from specific programs (or an amount equal to the amount attracted from each program) are spent on allowable activities authorized under such program.

(2) Separate records not required

Nothing in this section shall be construed as requiring the tribe to maintain separate

records tracing any services or activities conducted under its approved plan to the individual programs under which funds were authorized, nor shall the tribe be required to allocate expenditures among such individual programs.

(b) Overage

All administrative costs may be commingled and participating Indian tribes shall be entitled to the full amount of such costs (under each program or department's regulations), and no overage shall be counted for Federal audit purposes, provided that the overage is used for the purposes provided for under this chapter.

(Pub. L. 102–477, § 14, Oct. 23, 1992, 106 Stat. 2305.)

§ 3414. Fiscal accountability

Nothing in this chapter shall be construed so as to interfere with the ability of the Secretary or the lead agency to fulfill the responsibilities for the safeguarding of Federal funds pursuant to the Single Audit Act of 1984 [31 U.S.C. 7501 et seq.].

(Pub. L. 102–477, § 15, Oct. 23, 1992, 106 Stat. 2305.)

REFERENCES IN TEXT

The Single Audit Act of 1984, referred to in text, is Pub. L. 98–502, Oct. 19, 1984, 98 Stat. 2327, which enacted chapter 75 (§ 7501 et seq.) of Title 31, Money and Finance, and provisions set out as notes under section 7501 of Title 31. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 7501 of Title 31 and Tables.

§ 3415. Report on statutory obstacles to program integration

(a) Preliminary report

Not later than two years after October 23, 1992, the Secretary shall submit a preliminary report to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives on the status of the implementation of the demonstration program authorized under this chapter.

(b) Final report

Not later than five years after October 23, 1992, the Secretary shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources and the Committee on Education and Labor of the House of Representatives on the results of the implementation of the demonstration program authorized under this chapter. Such report shall identify statutory barriers to the ability of tribal governments to integrate more effectively their employment, training, and related services in a manner consistent with the purposes of this chapter.

(Pub. L. 102–477, § 16, Oct. 23, 1992, 106 Stat. 2305; Pub. L. 103–437, § 10(e)(1), (2)(C), Nov. 2, 1994, 108 Stat. 4589.)

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–437 substituted ''Committee on Indian'' for ''Select Committee on Indian'' and ''Natural Resources'' for ''Interior and Insular Affairs''.

§ 3416. Labor market information on Indian work force

(a) Report

The Secretary, in consultation with the Secretary of Labor, shall, in a consistent and reliable manner, develop, maintain and publish, not less than biennially, a report on the population, by gender, eligible for the services which the Secretary provides to Indian people. The report shall include, but is not limited to, information at the national level by State, Bureau of Indian Affairs Service area, and tribal level for the—

(1) total service population;

(2) the service population under age 16 and over 64;

(3) the population available for work, including those not considered to be actively seeking work;

(4) the employed population, including those employed with annual earnings below the poverty line; and

(5) the numbers employed in private sector positions and in public sector positions.

(b) Indian demographic information

The Secretary, in consultation with the Bureau of the Census of the Department of Commerce, and the National Center for Native American Studies and Policy Development authorized by Public Law 101–301, shall prepare a report on the need for comprehensive, accurate and periodically updated information on the size and characteristics of the Indian and Alaska Native population throughout the entire United States. This report shall include the need for information, together with the cost of acquiring such information, on the characteristics and need for education, health, housing, job training, and other basic needs of such population, and shall take into consideration the need for this information by Indian tribes and organizations serving Indians in nonreservation areas. The report shall be submitted to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources and the Committee on Education and Labor of the House of Representatives not later than 12 months after October 23, 1992.

(Pub. L. 102–477, § 17, Oct. 23, 1992, 106 Stat. 2305; Pub. L. 103–437, § 10(e)(1), (2)(C), Nov. 2, 1994, 108 Stat. 4589.)

REFERENCES IN TEXT

Public Law 101–301, referred to in subsec. (b), is Pub. L. 101–301, May 24, 1990, 104 Stat. 206. Section 11 of Pub. L. 101–301, which authorized feasibility study for the establishment of a National Center for Native American Studies and Policy Development, is not classified to the Code. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–437 substituted ''Committee on Indian'' for ''Select Committee on Indian'' and ''Natural Resources'' for ''Interior and Insular Affairs''.

§ 3417. Assignment of Federal personnel to State Indian economic development programs

Any State with an economic development program targeted to Indian tribes shall be eligible

to receive, at no cost to the State, such Federal personnel assignments as the Secretary, in accordance with the applicable provisions of the Intergovernmental Personnel Act of 1970 [42 U.S.C. 4701 et seq.], may deem appropriate to help ensure the success of such program.

(Pub. L. 102–477, § 18, Oct. 23, 1992, 106 Stat. 2306.)

REFERENCES IN TEXT

The Intergovernmental Personnel Act of 1970, referred to in text, is Pub. L. 91–648, Jan. 5, 1971, 84 Stat. 1909, as amended, which enacted sections 3371 to 3376 of Title 5, Government Organization and Employees, and chapter 62 (§ 4701 et seq.) of Title 42, The Public Health and Welfare, amended section 1304 of Title 5 and section 246 of Title 42, repealed sections 1881 to 1888 of Title 7, Agriculture, and section 869b of Title 20, Education, and enacted provisions set out as notes under section 3371 of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 4701 of Title 42 and Tables.

CHAPTER 37—INDIAN ENERGY

Sec.
3501. Definitions.
3502. Indian tribal energy resource development.
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3504. Leases, business agreements, and rights-of-way involving energy development or transmission.
3505. Federal power marketing administrations.
3506. Wind and hydropower feasibility study.

CODIFICATION

Title XXVI of the Energy Policy Act of 1992, comprising this chapter, was originally enacted by Pub. L. 102–486, title XXVI, Oct. 24, 1992, 106 Stat. 3113, and amended by Pub. L. 103–437, Nov. 2, 1994, 108 Stat. 4581; Pub. L. 105–388, Nov. 13, 1998, 112 Stat. 3477. Title XXVI is shown herein, however, as having been added by Pub. L. 109–58, title V, § 503(a), Aug. 8, 2005, 119 Stat. 764, without reference to such intervening amendments because of the extensive revision of the title's provisions by Pub. L. 109–58.

§ 3501. Definitions

In this chapter:

(1) The term ''Director'' means the Director of the Office of Indian Energy Policy and Programs, Department of Energy.

(2) The term ''Indian land'' means—

(A) any land located within the boundaries of an Indian reservation, pueblo, or rancheria;

(B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—

(i) in trust by the United States for the benefit of an Indian tribe or an individual Indian;

(ii) by an Indian tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or

(iii) by a dependent Indian community; and

(C) land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or that was conveyed by the United States to a Native Corporation in exchange for such land.

(3) The term ''Indian reservation'' includes—

(A) an Indian reservation in existence in any State or States as of August 8, 2005;

(B) a public domain Indian allotment; and

(C) a dependent Indian community located within the borders of the United States, regardless of whether the community is located—

(i) on original or acquired territory of the community; or

(ii) within or outside the boundaries of any State or States.

(4)(A) The term ''Indian tribe'' has the meaning given the term in section 450b of this title.

(B) For the purpose of paragraph (12) and sections 3503(b)(1)(C) and 3504 of this title, the term ''Indian tribe'' does not include any Native Corporation.

(5) The term ''integration of energy resources'' means any project or activity that promotes the location and operation of a facility (including any pipeline, gathering system, transportation system or facility, or electric transmission or distribution facility) on or near Indian land to process, refine, generate electricity from, or otherwise develop energy resources on, Indian land.

(6) The term ''Native Corporation'' has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(7) The term ''organization'' means a partnership, joint venture, limited liability company, or other unincorporated association or entity that is established to develop Indian energy resources.

(8) The term ''Program'' means the Indian energy resource development program established under section 3502(a) of this title.

(9) The term ''Secretary'' means the Secretary of the Interior.

(10) The term ''sequestration'' means the long-term separation, isolation, or removal of greenhouse gases from the atmosphere, including through a biological or geologic method such as reforestation or an underground reservoir.

(11) The term ''tribal energy resource development organization'' means an organization of two or more entities, at least one of which is an Indian tribe, that has the written consent of the governing bodies of all Indian tribes participating in the organization to apply for a grant, loan, or other assistance under section 3502 of this title.

(12) The term ''tribal land'' means any land or interests in land owned by any Indian tribe, title to which is held in trust by the United States, or is subject to a restriction against alienation under laws of the United States.

(Pub. L. 102–486, title XXVI, § 2601, as added Pub. L. 109–58, title V, § 503(a), Aug. 8, 2005, 119 Stat. 764.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (2)(C), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short

Title note set out under section 1601 of Title 43 and Tables.

PRIOR PROVISIONS

A prior section 3501, Pub. L. 102–486, title XXVI, § 2601, Oct. 24, 1992, 106 Stat. 3113, defined terms, prior to the general amendment of this chapter by Pub. L. 109–58.

CONSULTATION WITH INDIAN TRIBES

Pub. L. 109–58, title V, § 504, Aug. 8, 2005, 119 Stat. 778, provided that: ''In carrying out this title [enacting this chapter, section 7144e of Title 42, The Public Health and Welfare, and subchapter V (§ 16001) of chapter 149 of Title 42, amending section 4132 of this title and section 5315 of Title 5, Government Organization and Employees, and enacting provisions set out as a note under section 15801 of Title 42] and the amendments made by this title, the Secretary [of Energy] and the Secretary of the Interior shall, as appropriate and to the maximum extent practicable, involve and consult with Indian tribes.''

§ 3502. Indian tribal energy resource development

(a) Department of the Interior program

(1) To assist Indian tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary shall establish and implement an Indian energy resource development program to assist consenting Indian tribes and tribal energy resource development organizations in achieving the purposes of this chapter.

(2) In carrying out the Program, the Secretary shall—

(A) provide development grants to Indian tribes and tribal energy resource development organizations for use in developing or obtaining the managerial and technical capacity needed to develop energy resources on Indian land, and to properly account for resulting energy production and revenues;

(B) provide grants to Indian tribes and tribal energy resource development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use, or develop those energy resources, on Indian land;

(C) provide low-interest loans to Indian tribes and tribal energy resource development organizations for use in the promotion of energy resource development on Indian land and integration of energy resources; and

(D) provide grants and technical assistance to an appropriate tribal environmental organization, as determined by the Secretary, that represents multiple Indian tribes to establish a national resource center to develop tribal capacity to establish and carry out tribal environmental programs in support of energy-related programs and activities under this chapter, including—

(i) training programs for tribal environmental officials, program managers, and other governmental representatives;

(ii) the development of model environmental policies and tribal laws, including tribal environmental review codes, and the creation and maintenance of a clearinghouse of best environmental management practices; and

(iii) recommended standards for reviewing the implementation of tribal environmental laws and policies within tribal judicial or other tribal appeals systems.

(3) There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2006 through 2016.

(b) Department of Energy Indian energy education planning and management assistance program

(1) The Director shall establish programs to assist consenting Indian tribes in meeting energy education, research and development, planning, and management needs.

(2) In carrying out this subsection, the Director may provide grants, on a competitive basis, to an Indian tribe or tribal energy resource development organization for use in carrying out—

(A) energy, energy efficiency, and energy conservation programs;

(B) studies and other activities supporting tribal acquisitions of energy supplies, services, and facilities, including the creation of tribal utilities to assist in securing electricity to promote electrification of homes and businesses on Indian land;

(C) planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and

(D) development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.

(3)(A) The Director shall develop a program to support and implement research projects that provide Indian tribes with opportunities to participate in carbon sequestration practices on Indian land, including—

(i) geologic sequestration;

(ii) forest sequestration;

(iii) agricultural sequestration; and

(iv) any other sequestration opportunities the Director considers to be appropriate.

(B) The activities carried out under subparagraph (A) shall be—

(i) coordinated with other carbon sequestration research and development programs conducted by the Secretary of Energy;

(ii) conducted to determine methods consistent with existing standardized measurement protocols to account and report the quantity of carbon dioxide or other greenhouse gases sequestered in projects that may be implemented on Indian land; and

(iii) reviewed periodically to collect and distribute to Indian tribes information on carbon sequestration practices that will increase the sequestration of carbon without threatening the social and economic well-being of Indian tribes.

(4)(A) The Director, in consultation with Indian tribes, may develop a formula for providing grants under this subsection.

(B) In providing a grant under this subsection, the Director shall give priority to any application received from an Indian tribe with inadequate electric service (as determined by the Director).

(C) In providing a grant under this subsection for an activity to provide, or expand the provi-

sion of, electricity on Indian land, the Director shall encourage cooperative arrangements between Indian tribes and utilities that provide service to Indian tribes, as the Director determines to be appropriate.

(5) The Secretary of Energy may issue such regulations as the Secretary determines to be necessary to carry out this subsection.

(6) There is authorized to be appropriated to carry out this subsection $20,000,000 for each of fiscal years 2006 through 2016.

(c) Department of Energy loan guarantee program

(1) Subject to paragraphs (2) and (4), the Secretary of Energy may provide loan guarantees (as defined in section 661a of title 2) for an amount equal to not more than 90 percent of the unpaid principal and interest due on any loan made to an Indian tribe for energy development.

(2) In providing a loan guarantee under this subsection for an activity to provide, or expand the provision of, electricity on Indian land, the Secretary of Energy shall encourage cooperative arrangements between Indian tribes and utilities that provide service to Indian tribes, as the Secretary determines to be appropriate.

(3) A loan guarantee under this subsection shall be made by—

(A) a financial institution subject to examination by the Secretary of Energy; or

(B) an Indian tribe, from funds of the Indian tribe.

(4) The aggregate outstanding amount guaranteed by the Secretary of Energy at any time under this subsection shall not exceed $2,000,000,000.

(5) The Secretary of Energy may issue such regulations as the Secretary of Energy determines are necessary to carry out this subsection.

(6) There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

(7) Not later than 1 year after August 8, 2005, the Secretary of Energy shall submit to Congress a report on the financing requirements of Indian tribes for energy development on Indian land.

(d) Preference

(1) In purchasing electricity or any other energy product or byproduct, a Federal agency or department may give preference to an energy and resource production enterprise, partnership, consortium, corporation, or other type of business organization the majority of the interest in which is owned and controlled by 1 or more Indian tribes.

(2) In carrying out this subsection, a Federal agency or department shall not—

(A) pay more than the prevailing market price for an energy product or byproduct; or

(B) obtain less than prevailing market terms and conditions.

(Pub. L. 102–486, title XXVI, § 2602, as added Pub. L. 109–58, title V, § 503(a), Aug. 8, 2005, 119 Stat. 765.)

CODIFICATION

August 8, 2005, referred to in subsec. (c)(7), was in the original ''the date of enactment of this section'', which was translated as meaning the date of enactment of Pub. L. 109–58, which amended this chapter generally, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 3502, Pub. L. 102–486, title XXVI, § 2602, Oct. 24, 1992, 106 Stat. 3113, related to tribal consultation in implementing provisions, prior to the general amendment of this chapter by Pub. L. 109–58.

§ 3503. Indian tribal energy resource regulation

(a) Grants

The Secretary may provide to Indian tribes, on an annual basis, grants for use in accordance with subsection (b).

(b) Use of funds

Funds from a grant provided under this section may be used—

(1)(A) by an Indian tribe for the development of a tribal energy resource inventory or tribal energy resource on Indian land;

(B) by an Indian tribe for the development of a feasibility study or other report necessary to the development of energy resources on Indian land;

(C) by an Indian tribe (other than an Indian Tribe in the State of Alaska, except the Metlakatla Indian Community) for—

(i) the development and enforcement of tribal laws (including regulations) relating to tribal energy resource development; and

(ii) the development of technical infrastructure to protect the environment under applicable law; or

(D) by a Native Corporation for the development and implementation of corporate policies and the development of technical infrastructure to protect the environment under applicable law; and

(2) by an Indian tribe for the training of employees that—

(A) are engaged in the development of energy resources on Indian land; or

(B) are responsible for protecting the environment.

(c) Other assistance

(1) In carrying out the obligations of the United States under this chapter, the Secretary shall ensure, to the maximum extent practicable and to the extent of available resources, that on the request of an Indian tribe, the Indian tribe shall have available scientific and technical information and expertise, for use in the regulation, development, and management of energy resources of the Indian tribe on Indian land.

(2) The Secretary may carry out paragraph (1)—

(A) directly, through the use of Federal officials; or

(B) indirectly, by providing financial assistance to an Indian tribe to secure independent assistance.

(Pub. L. 102–486, title XXVI, § 2603, as added Pub. L. 109–58, title V, § 503(a), Aug. 8, 2005, 119 Stat. 768.)

PRIOR PROVISIONS

A prior section 3503, Pub. L. 102–486, title XXVI, § 2603, Oct. 24, 1992, 106 Stat. 3114; Pub. L. 105–388, § 10, Nov. 13,

1998, 112 Stat. 3484, related to promotion of energy resource development and energy vertical integration on Indian reservations, prior to the general amendment of this chapter by Pub. L. 109–58.

§ 3504. Leases, business agreements, and rights-of-way involving energy development or transmission

(a) Leases and business agreements

In accordance with this section—

(1) an Indian tribe may, at the discretion of the Indian tribe, enter into a lease or business agreement for the purpose of energy resource development on tribal land, including a lease or business agreement for—

(A) exploration for, extraction of, processing of, or other development of the energy mineral resources of the Indian tribe located on tribal land; or

(B) construction or operation of—

(i) an electric generation, transmission, or distribution facility located on tribal land; or

(ii) a facility to process or refine energy resources developed on tribal land; and

(2) a lease or business agreement described in paragraph (1) shall not require review by or the approval of the Secretary under section 81 of this title, or any other provision of law, if—

(A) the lease or business agreement is executed pursuant to a tribal energy resource agreement approved by the Secretary under subsection (e);

(B) the term of the lease or business agreement does not exceed—

(i) 30 years; or

(ii) in the case of a lease for the production of oil resources, gas resources, or both, 10 years and as long thereafter as oil or gas is produced in paying quantities; and

(C) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to subsection (e)(2)(D)(i)).

(b) Rights-of-way for pipelines or electric transmission or distribution lines

An Indian tribe may grant a right-of-way over tribal land for a pipeline or an electric transmission or distribution line without review or approval by the Secretary if—

(1) the right-of-way is executed in accordance with a tribal energy resource agreement approved by the Secretary under subsection (e);

(2) the term of the right-of-way does not exceed 30 years;

(3) the pipeline or electric transmission or distribution line serves—

(A) an electric generation, transmission, or distribution facility located on tribal land; or

(B) a facility located on tribal land that processes or refines energy resources developed on tribal land; and

(4) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including the periodic review and evaluation of the activities of the Indian tribe under an agreement described in subparagraphs (D) and (E) of subsection (e)(2)).

(c) Renewals

A lease or business agreement entered into, or a right-of-way granted, by an Indian tribe under this section may be renewed at the discretion of the Indian tribe in accordance with this section.

(d) Validity

No lease, business agreement, or right-of-way relating to the development of tribal energy resources under this section shall be valid unless the lease, business agreement, or right-of-way is authorized by a tribal energy resource agreement approved by the Secretary under subsection (e)(2).

(e) Tribal energy resource agreements

(1) On the date on which regulations are promulgated under paragraph (8), an Indian tribe may submit to the Secretary for approval a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.

(2)(A) Not later than 270 days after the date on which the Secretary receives a tribal energy resource agreement from an Indian tribe under paragraph (1), or not later than 60 days after the Secretary receives a revised tribal energy resource agreement from an Indian tribe under paragraph (4)(C) (or a later date, as agreed to by the Secretary and the Indian tribe), the Secretary shall approve or disapprove the tribal energy resource agreement.

(B) The Secretary shall approve a tribal energy resource agreement submitted under paragraph (1) if—

(i) the Secretary determines that the Indian tribe has demonstrated that the Indian tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe;

(ii) the tribal energy resource agreement includes provisions required under subparagraph (D); and

(iii) the tribal energy resource agreement includes provisions that, with respect to a lease, business agreement, or right-of-way under this section—

(I) ensure the acquisition of necessary information from the applicant for the lease, business agreement, or right-of-way;

(II) address the term of the lease or business agreement or the term of conveyance of the right-of-way;

(III) address amendments and renewals;

(IV) address the economic return to the Indian tribe under leases, business agreements, and rights-of-way;

(V) address technical or other relevant requirements;

(VI) establish requirements for environmental review in accordance with subparagraph (C);

(VII) ensure compliance with all applicable environmental laws, including a require-

ment that each lease, business agreement, and right-of-way state that the lessee, operator, or right-of-way grantee shall comply with all such laws;

(VIII) identify final approval authority;

(IX) provide for public notification of final approvals;

(X) establish a process for consultation with any affected States regarding off-reservation impacts, if any, identified under subparagraph (C)(i);

(XI) describe the remedies for breach of the lease, business agreement, or right-of-way;

(XII) require each lease, business agreement, and right-of-way to include a statement that, if any of its provisions violates an express term or requirement of the tribal energy resource agreement pursuant to which the lease, business agreement, or right-of-way was executed—

(aa) the provision shall be null and void; and

(bb) if the Secretary determines the provision to be material, the Secretary may suspend or rescind the lease, business agreement, or right-of-way or take other appropriate action that the Secretary determines to be in the best interest of the Indian tribe;

(XIII) require each lease, business agreement, and right-of-way to provide that it will become effective on the date on which a copy of the executed lease, business agreement, or right-of-way is delivered to the Secretary in accordance with regulations promulgated under paragraph (8);

(XIV) include citations to tribal laws, regulations, or procedures, if any, that set out tribal remedies that must be exhausted before a petition may be submitted to the Secretary under paragraph (7)(B);

(XV) specify the financial assistance, if any, to be provided by the Secretary to the Indian tribe to assist in implementation of the tribal energy resource agreement, including environmental review of individual projects; and

(XVI) in accordance with the regulations promulgated by the Secretary under paragraph (8), require that the Indian tribe, as soon as practicable after receipt of a notice by the Indian tribe, give written notice to the Secretary of—

(aa) any breach or other violation by another party of any provision in a lease, business agreement, or right-of-way entered into under the tribal energy resource agreement; and

(bb) any activity or occurrence under a lease, business agreement, or right-of-way that constitutes a violation of Federal or tribal environmental laws.

(C) Tribal energy resource agreements submitted under paragraph (1) shall establish, and include provisions to ensure compliance with, an environmental review process that, with respect to a lease, business agreement, or right-of-way under this section, provides for, at a minimum—

(i) the identification and evaluation of all significant environmental effects (as compared to a no-action alternative), including effects on cultural resources;

(ii) the identification of proposed mitigation measures, if any, and incorporation of appropriate mitigation measures into the lease, business agreement, or right-of-way;

(iii) a process for ensuring that—

(I) the public is informed of, and has an opportunity to comment on, the environmental impacts of the proposed action; and

(II) responses to relevant and substantive comments are provided, before tribal approval of the lease, business agreement, or right-of-way;

(iv) sufficient administrative support and technical capability to carry out the environmental review process; and

(v) oversight by the Indian tribe of energy development activities by any other party under any lease, business agreement, or right-of-way entered into pursuant to the tribal energy resource agreement, to determine whether the activities are in compliance with the tribal energy resource agreement and applicable Federal environmental laws.

(D) A tribal energy resource agreement between the Secretary and an Indian tribe under this subsection shall include—

(i) provisions requiring the Secretary to conduct a periodic review and evaluation to monitor the performance of the activities of the Indian tribe associated with the development of energy resources under the tribal energy resource agreement; and

(ii) if a periodic review and evaluation, or an investigation, by the Secretary of any breach or violation described in a notice provided by the Indian tribe to the Secretary in accordance with subparagraph (B)(iii)(XVI), results in a finding by the Secretary of imminent jeopardy to a physical trust asset arising from a violation of the tribal energy resource agreement or applicable Federal laws, provisions authorizing the Secretary to take actions determined by the Secretary to be necessary to protect the asset, including reassumption of responsibility for activities associated with the development of energy resources on tribal land until the violation and any condition that caused the jeopardy are corrected.

(E) Periodic review and evaluation under subparagraph (D) shall be conducted on an annual basis, except that, after the third annual review and evaluation, the Secretary and the Indian tribe may mutually agree to amend the tribal energy resource agreement to authorize the review and evaluation under subparagraph (D) to be conducted once every 2 years.

(3) The Secretary shall provide notice and opportunity for public comment on tribal energy resource agreements submitted for approval under paragraph (1). The Secretary's review of a tribal energy resource agreement shall be limited to activities specified by the provisions of the tribal energy resource agreement.

(4) If the Secretary disapproves a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), the Secretary shall, not later than 10 days after the date of disapproval—

(A) notify the Indian tribe in writing of the basis for the disapproval;

(B) identify what changes or other actions are required to address the concerns of the Secretary; and

(C) provide the Indian tribe with an opportunity to revise and resubmit the tribal energy resource agreement.

(5) If an Indian tribe executes a lease or business agreement, or grants a right-of-way, in accordance with a tribal energy resource agreement approved under this subsection, the Indian tribe shall, in accordance with the process and requirements under regulations promulgated under paragraph (8), provide to the Secretary—

(A) a copy of the lease, business agreement, or right-of-way document (including all amendments to and renewals of the document); and

(B) in the case of a tribal energy resource agreement or a lease, business agreement, or right-of-way that permits payments to be made directly to the Indian tribe, information and documentation of those payments sufficient to enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and protect the rights of the Indian tribe under, the lease, business agreement, or right-of-way.

(6)(A) In carrying out this section, the Secretary shall—

(i) act in accordance with the trust responsibility of the United States relating to mineral and other trust resources; and

(ii) act in good faith and in the best interests of the Indian tribes.

(B) Subject to the provisions of subsections (a)(2), (b), and (c) waiving the requirement of Secretarial approval of leases, business agreements, and rights-of-way executed pursuant to tribal energy resource agreements approved under this section, and the provisions of subparagraph (D), nothing in this section shall absolve the United States from any responsibility to Indians or Indian tribes, including, but not limited to, those which derive from the trust relationship or from any treaties, statutes, and other laws of the United States, Executive orders, or agreements between the United States and any Indian tribe.

(C) The Secretary shall continue to fulfill the trust obligation of the United States to ensure that the rights and interests of an Indian tribe are protected if—

(i) any other party to a lease, business agreement, or right-of-way violates any applicable Federal law or the terms of any lease, business agreement, or right-of-way under this section; or

(ii) any provision in a lease, business agreement, or right-of-way violates the tribal energy resource agreement pursuant to which the lease, business agreement, or right-of-way was executed.

(D)(i) In this subparagraph, the term ''negotiated term'' means any term or provision that is negotiated by an Indian tribe and any other party to a lease, business agreement, or right-of-way entered into pursuant to an approved tribal energy resource agreement.

(ii) Notwithstanding subparagraph (B), the United States shall not be liable to any party (including any Indian tribe) for any negotiated term of, or any loss resulting from the negotiated terms of, a lease, business agreement, or right-of-way executed pursuant to and in accordance with a tribal energy resource agreement approved by the Secretary under paragraph (2).

(7)(A) In this paragraph, the term ''interested party'' means any person (including an entity) that has demonstrated that an interest of the person has sustained, or will sustain, an adverse environmental impact as a result of the failure of an Indian tribe to comply with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).

(B) After exhaustion of any tribal remedy, and in accordance with regulations promulgated by the Secretary under paragraph (8), an interested party may submit to the Secretary a petition to review the compliance by an Indian tribe with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).

(C)(i) Not later than 20 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall—

(I) provide to the Indian tribe a copy of the petition; and

(II) consult with the Indian tribe regarding any noncompliance alleged in the petition.

(ii) Not later than 45 days after the date on which a consultation under clause (i)(II) takes place, the Indian tribe shall respond to any claim made in a petition under subparagraph (B).

(iii) The Secretary shall act in accordance with subparagraphs (D) and (E) only if the Indian tribe—

(I) denies, or fails to respond to, each claim made in the petition within the period described in clause (ii); or

(II) fails, refuses, or is unable to cure or otherwise resolve each claim made in the petition within a reasonable period, as determined by the Secretary, after the expiration of the period described in clause (ii).

(D)(i) Not later than 120 days after the date on which the Secretary receives a petition under subparagraph (B), the Secretary shall determine whether the Indian tribe is not in compliance with the tribal energy resource agreement.

(ii) The Secretary may adopt procedures under paragraph (8) authorizing an extension of time, not to exceed 120 days, for making the determination under clause (i) in any case in which the Secretary determines that additional time is necessary to evaluate the allegations of the petition.

(iii) Subject to subparagraph (E), if the Secretary determines that the Indian tribe is not in compliance with the tribal energy resource agreement, the Secretary shall take such action as the Secretary determines to be necessary to ensure compliance with the tribal energy resource agreement, including—

(I) temporarily suspending any activity under a lease, business agreement, or right-of-way under this section until the Indian tribe is

in compliance with the approved tribal energy resource agreement; or

(II) rescinding approval of all or part of the tribal energy resource agreement, and if all of the agreement is rescinded, reassuming the responsibility for approval of any future leases, business agreements, or rights-of-way described in subsection (a) or (b).

(E) Before taking an action described in subparagraph (D)(iii), the Secretary shall—

(i) make a written determination that describes the manner in which the tribal energy resource agreement has been violated;

(ii) provide the Indian tribe with a written notice of the violations together with the written determination; and

(iii) before taking any action described in subparagraph (D)(iii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal energy resource agreement.

(F) An Indian tribe described in subparagraph (E) shall retain all rights to appeal under any regulation promulgated by the Secretary.

(8) Not later than 1 year after August 8, 2005, the Secretary shall promulgate regulations that implement this subsection, including—

(A) criteria to be used in determining the capacity of an Indian tribe under paragraph (2)(B)(i), including the experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe;

(B) a process and requirements in accordance with which an Indian tribe may—

(i) voluntarily rescind a tribal energy resource agreement approved by the Secretary under this subsection; and

(ii) return to the Secretary the responsibility to approve any future lease, business agreement, or right-of-way under this subsection;

(C) provisions establishing the scope of, and procedures for, the periodic review and evaluation described in subparagraphs (D) and (E) of paragraph (2), including provisions for review of transactions, reports, site inspections, and any other review activities the Secretary determines to be appropriate; and

(D) provisions describing final agency actions after exhaustion of administrative appeals from determinations of the Secretary under paragraph (7).

(f) No effect on other law

Nothing in this section affects the application of—

(1) any Federal environmental law;

(2) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

(3) except as otherwise provided in this chapter, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).

(g) Authorization of appropriations

There are authorized to be appropriated to the Secretary such sums as are necessary for each of fiscal years 2006 through 2016 to carry out this section and to make grants or provide other appropriate assistance to Indian tribes to assist the Indian tribes in developing and implementing tribal energy resource agreements in accordance with this section.

(Pub. L. 102–486, title XXVI, § 2604, as added Pub. L. 109–58, title V, § 503(a), Aug. 8, 2005, 119 Stat. 769.)

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (f)(2), is Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (§ 1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

The Indian Mineral Development Act of 1982, referred to in subsec. (f)(3), is Pub. L. 97–382, Dec. 22, 1982, 96 Stat. 1938, which is classified generally to chapter 23 (§ 2101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2101 of this title and Tables.

PRIOR PROVISIONS

A prior section 3504, Pub. L. 102–486, title XXVI, § 2604, Oct. 24, 1992, 106 Stat. 3114, related to Indian energy resource regulation, prior to the general amendment of this chapter by Pub. L. 109–58.

§ 3505. Federal power marketing administrations

(a) Definitions

In this section:

(1) The term ''Administrator'' means the Administrator of the Bonneville Power Administration and the Administrator of the Western Area Power Administration.

(2) The term ''power marketing administration'' means—

(A) the Bonneville Power Administration;

(B) the Western Area Power Administration; and

(C) any other power administration the power allocation of which is used by or for the benefit of an Indian tribe located in the service area of the administration.

(b) Encouragement of Indian tribal energy development

Each Administrator shall encourage Indian tribal energy development by taking such actions as the Administrators determine to be appropriate, including administration of programs of the power marketing administration, in accordance with this section.

(c) Action by Administrators

In carrying out this section, in accordance with laws in existence on August 8, 2005—

(1) each Administrator shall consider the unique relationship that exists between the United States and Indian tribes;

(2) power allocations from the Western Area Power Administration to Indian tribes may be used to meet firming and reserve needs of Indian-owned energy projects on Indian land;

(3) the Administrator of the Western Area Power Administration may purchase non-federally generated power from Indian tribes to meet the firming and reserve requirements of the Western Area Power Administration; and

(4) each Administrator shall not—

(A) pay more than the prevailing market price for an energy product; or

(B) obtain less than prevailing market terms and conditions.

(d) Assistance for transmission system use

(1) An Administrator may provide technical assistance to Indian tribes seeking to use the high-voltage transmission system for delivery of electric power.

(2) The costs of technical assistance provided under paragraph (1) shall be funded—

(A) by the Secretary of Energy using non-reimbursable funds appropriated for that purpose; or

(B) by any appropriate Indian tribe.

(e) Power allocation study

Not later than 2 years after August 8, 2005, the Secretary of Energy shall submit to Congress a report that—

(1) describes the use by Indian tribes of Federal power allocations of the power marketing administration (or power sold by the Southwestern Power Administration) to or for the benefit of Indian tribes in a service area of the power marketing administration; and

(2) identifies—

(A) the quantity of power allocated to, or used for the benefit of, Indian tribes by the Western Area Power Administration;

(B) the quantity of power sold to Indian tribes by any other power marketing administration; and

(C) barriers that impede tribal access to and use of Federal power, including an assessment of opportunities to remove those barriers and improve the ability of power marketing administrations to deliver Federal power.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section $750,000, non-reimbursable, to remain available until expended.

(Pub. L. 102–486, title XXVI, § 2605, as added Pub. L. 109–58, title V, § 503(a), Aug. 8, 2005, 119 Stat. 776.)

PRIOR PROVISIONS

A prior section 3505, Pub. L. 102–486, title XXVI, § 2605, Oct. 24, 1992, 106 Stat. 3115; Pub. L. 103–437, § 10(e)(1), (2)(D), Nov. 2, 1994, 108 Stat. 4589, related to Indian Energy Resource Commission, prior to the general amendment of this chapter by Pub. L. 109–58.

§ 3506. Wind and hydropower feasibility study

(a) Study

The Secretary of Energy, in coordination with the Secretary of the Army and the Secretary, shall conduct a study of the cost and feasibility of developing a demonstration project that uses wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to the Western Area Power Administration.

(b) Scope of study

The study shall—

(1) determine the economic and engineering feasibility of blending wind energy and hydropower generated from the Missouri River dams operated by the Army Corps of Engineers, including an assessment of the costs and benefits of blending wind energy and hydropower compared to current sources used for firming power to the Western Area Power Administration;

(2) review historical and projected requirements for, patterns of availability and use of, and reasons for historical patterns concerning the availability of firming power;

(3) assess the wind energy resource potential on tribal land and projected cost savings through a blend of wind and hydropower over a 30-year period;

(4) determine seasonal capacity needs and associated transmission upgrades for integration of tribal wind generation and identify costs associated with these activities;

(5) include an independent tribal engineer and a Western Area Power Administration customer representative as study team members; and

(6) incorporate, to the extent appropriate, the results of the Dakotas Wind Transmission study prepared by the Western Area Power Administration.

(c) Report

Not later than 1 year after August 8, 2005, the Secretary of Energy, the Secretary, and the Secretary of the Army shall submit to Congress a report that describes the results of the study, including—

(1) an analysis and comparison of the potential energy cost or benefits to the customers of the Western Area Power Administration through the use of combined wind and hydropower;

(2) an economic and engineering evaluation of whether a combined wind and hydropower system can reduce reservoir fluctuation, enhance efficient and reliable energy production, and provide Missouri River management flexibility;

(3) if found feasible, recommendations for a demonstration project to be carried out by the Western Area Power Administration, in partnership with an Indian tribal government or tribal energy resource development organization, and Western Area Power Administration customers to demonstrate the feasibility and potential of using wind energy produced on Indian land to supply firming energy to the Western Area Power Administration; and

(4) an identification of—

(A) the economic and environmental costs of, or benefits to be realized through, a Federal-tribal-customer partnership; and

(B) the manner in which a Federal-tribal-customer partnership could contribute to the energy security of the United States.

(d) Funding

(1) Authorization of appropriations

There is authorized to be appropriated to carry out this section $1,000,000, to remain available until expended.

(2) Nonreimbursability

Costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

(Pub. L. 102–486, title XXVI, § 2606, as added Pub. L. 109–58, title V, § 503(a), Aug. 8, 2005, 119 Stat. 777.)

PRIOR PROVISIONS

A prior section 3506, Pub. L. 102–486, title XXVI, § 2606, Oct. 24, 1992, 106 Stat. 3118, related to tribal government energy assistance program, prior to the general amendment of this chapter by Pub. L. 109–58.

CHAPTER 38—INDIAN TRIBAL JUSTICE SUPPORT

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3601. Findings.
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SUBCHAPTER I—TRIBAL JUSTICE SYSTEMS

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3631. Tribal authority.

§ 3601. Findings

The Congress finds and declares that—

(1) there is a government-to-government relationship between the United States and each Indian tribe;

(2) the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government;

(3) Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes;

(4) Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems;

(5) tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments;

(6) Congress and the Federal courts have repeatedly recognized tribal justice systems as the appropriate forums for the adjudication of disputes affecting personal and property rights;

(7) traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this chapter;

(8) tribal justice systems are inadequately funded, and the lack of adequate funding impairs their operation; and

(9) tribal government involvement in and commitment to improving tribal justice systems is essential to the accomplishment of the goals of this chapter.

(Pub. L. 103–176, § 2, Dec. 3, 1993, 107 Stat. 2004.)

SHORT TITLE

Section 1 of Pub. L. 103–176 provided that: ''This Act [enacting this chapter] may be cited as the 'Indian Tribal Justice Act'.''

§ 3602. Definitions

For purposes of this chapter:

(1) The term ''Bureau'' means the Bureau of Indian Affairs of the Department of the Interior.

(2) The term ''Courts of Indian Offenses'' means the courts established pursuant to part 11 of title 25, Code of Federal Regulations.

(3) The term ''Indian tribe'' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native entity, which administers justice under its inherent authority or the authority of the United States and which is recognized as eligible for the special programs and services provided by the United States to Indian tribes because of their status as Indians.

(4) The term ''judicial personnel'' means any judge, magistrate, court counselor, court clerk, court administrator, bailiff, probation officer, officer of the court, dispute resolution facilitator, or other official, employee, or volunteer within the tribal justice system.

(5) The term ''Office'' means the Office of Tribal Justice Support within the Bureau of Indian Affairs.

(6) The term ''Secretary'' means the Secretary of the Interior.

(7) The term ''tribal organization'' means any organization defined in section 450b(*l*) of this title.

(8) The term ''tribal justice system'' means the entire judicial branch, and employees thereof, of an Indian tribe, including (but not limited to) traditional methods and forums for dispute resolution, lower courts, appellate courts (including intertribal appellate courts), alternative dispute resolution systems, and circuit rider systems, established by inherent tribal authority whether or not they constitute a court of record.

(Pub. L. 103–176, § 3, Dec. 3, 1993, 107 Stat. 2004.)

SUBCHAPTER I—TRIBAL JUSTICE SYSTEMS

§ 3611. Office of Tribal Justice Support

(a) Establishment

There is hereby established within the Bureau the Office of Tribal Justice Support. The purpose of the Office shall be to further the development, operation, and enhancement of tribal justice systems and Courts of Indian Offenses.

(b) Transfer of existing functions and personnel

All functions performed before December 3, 1993, by the Branch of Judicial Services of the Bureau and all personnel assigned to such Branch as of December 3, 1993, are hereby transferred to the Office of Tribal Justice Support. Any reference in any law, regulation, executive order, reorganization plan, or delegation of authority to the Branch of Judicial Services is deemed to be a reference to the Office of Tribal Justice Support.

(c) Functions

In addition to the functions transferred to the Office pursuant to subsection (b) of this section, the Office shall perform the following functions:

(1) Provide funds to Indian tribes and tribal organizations for the development, enhancement, and continuing operation of tribal justice systems.

(2) Provide technical assistance and training, including programs of continuing education and training for personnel of Courts of Indian Offenses.

(3) Study and conduct research concerning the operation of tribal justice systems.

(4) Promote cooperation and coordination among tribal justice systems and the Federal and State judiciary systems.

(5) Oversee the continuing operations of the Courts of Indian Offenses.

(6) Provide funds to Indian tribes and tribal organizations for the continuation and enhancement of traditional tribal judicial practices.

(d) No imposition of standards

Nothing in this chapter shall be deemed or construed to authorize the Office to impose justice standards on Indian tribes.

(e) Assistance to tribes

(1) The Office shall provide technical assistance and training to any Indian tribe or tribal organization upon request. Technical assistance and training shall include (but not be limited to) assistance for the development of—

(A) tribal codes and rules of procedure;

(B) tribal court administrative procedures and court records management systems;

(C) methods of reducing case delays;

(D) methods of alternative dispute resolution;

(E) tribal standards for judicial administration and conduct; and

(F) long-range plans for the enhancement of tribal justice systems.

(2) Technical assistance and training provided pursuant to paragraph (1) may be provided through direct services, by contract with independent entities, or through grants to Indian tribes or tribal organizations.

(f) Information clearinghouse on tribal justice systems

The Office shall maintain an information clearinghouse (which shall include an electronic data base) on tribal justice systems and Courts of Indian Offenses, including (but not limited to) information on staffing, funding, model tribal codes, tribal justice activities, and tribal judicial decisions. The Office shall take such actions as may be necessary to ensure the confidentiality of records and other matters involving privacy rights.

(Pub. L. 103–176, title I, § 101, Dec. 3, 1993, 107 Stat. 2005.)

§ 3612. Survey of tribal judicial systems

(a) In general

Not later than six months after December 3, 1993, the Secretary, in consultation with Indian tribes, shall enter into a contract with a non-Federal entity to conduct a survey of conditions of tribal justice systems and Courts of Indian Offenses to determine the resources and funding, including base support funding, needed to provide for expeditious and effective administration of justice. The Secretary, in like manner, shall annually update the information and findings contained in the survey required under this section.

(b) Local conditions

In the course of any annual survey, the non-Federal entity shall document local conditions of each Indian tribe, including, but not limited to—

(1) the geographic area and population to be served;

(2) the levels of functioning and capacity of the tribal justice system;

(3) the volume and complexity of the caseloads;

(4) the facilities, including detention facilities, and program resources available;

(5) funding levels and personnel staffing requirements for the tribal justice system; and

(6) the training and technical assistance needs of the tribal justice system.

(c) Consultation with Indian tribes

The non-Federal entity shall actively consult with Indian tribes and tribal organizations in the development and conduct of the surveys, including updates thereof, under this section. Indian tribes and tribal organizations shall have the opportunity to review and make recommendations regarding the findings of the survey, including updates thereof, prior to final publication of the survey or any update thereof. After Indian tribes and tribal organizations have reviewed and commented on the results of the survey, or any update thereof, the non-Federal entity shall report its findings, together with the comments and recommendations of the Indian tribes and tribal organizations, to the Secretary, the Committee on Indian Affairs of the Senate, and the Subcommittee on Native American Affairs of the Committee on Natural Resources of the House of Representatives.

(Pub. L. 103–176, title I, § 102, Dec. 3, 1993, 107 Stat. 2006.)

CHANGE OF NAME

Subcommittee on Native American Affairs changed to Subcommittee on Native American and Insular Affairs.

§ 3613. Base support funding for tribal justice systems

(a) In general

Pursuant to the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.], the Secretary is authorized (to the extent provided in advance in appropriations Acts) to enter into contracts, grants, or agreements with Indian tribes for the performance of any function of the Office and for the development, enhancement, and continuing operation of tribal justice systems and traditional tribal judicial practices by Indian tribal governments.

(b) Purposes for which financial assistance may be used

Financial assistance provided through contracts, grants, or agreements entered into pursuant to this section may be used for—

(1) planning for the development, enhancement, and operation of tribal justice systems;

(2) the employment of judicial personnel;

(3) training programs and continuing education for tribal judicial personnel;

(4) the acquisition, development, and maintenance of a law library and computer assisted legal research capacities;

(5) the development, revision, and publication of tribal codes, rules of practice, rules of procedure, and standards of judicial performance and conduct;

(6) the development and operation of records management systems;

(7) the construction or renovation of facilities for tribal justice systems;

(8) membership and related expenses for participation in national and regional organizations of tribal justice systems and other professional organizations; and

(9) the development and operation of other innovative and culturally relevant programs and projects, including (but not limited to) programs and projects for—

(A) alternative dispute resolution;

(B) tribal victims assistance or victims services;

(C) tribal probation services or diversion programs;

(D) juvenile services and multidisciplinary investigations of child abuse; and

(E) traditional tribal judicial practices, traditional tribal justice systems, and traditional methods of dispute resolution.

(c) Formula

(1) Not later than 180 days after December 3, 1993, the Secretary, with the full participation of Indian tribes, shall establish and promulgate by regulation, a formula which establishes base support funding for tribal justice systems in carrying out this section.

(2) The Secretary shall assess caseload and staffing needs for tribal justice systems that take into account unique geographic and demographic conditions. In the assessment of these needs, the Secretary shall work cooperatively with Indian tribes and tribal organizations and shall refer to any data developed as a result of the surveys conducted pursuant to section 3612 of this title and to relevant assessment standards developed by the Judicial Conference of the United States, the National Center for State Courts, the American Bar Association, and appropriate State bar associations.

(3) Factors to be considered in the development of the base support funding formula shall include, but are not limited to—

(A) the caseload and staffing needs identified under paragraph (2);

(B) the geographic area and population to be served;

(C) the volume and complexity of the caseloads;

(D) the projected number of cases per month;

(E) the projected number of persons receiving probation services or participating in diversion programs; and

(F) any special circumstances warranting additional financial assistance.

(4) In developing and administering the formula for base support funding for the tribal judicial systems under this section, the Secretary shall ensure equitable distribution of funds.

(Pub. L. 103–176, title I, § 103, Dec. 3, 1993, 107 Stat. 2007.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 3614. Tribal judicial conferences

The Secretary is authorized to provide funds to tribal judicial conferences, under section 3611 of this title, pursuant to contracts entered into under the authority of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] for the development, enhancement, and continuing operation of tribal justice systems of Indian tribes which are members of such conference. Funds provided under this section may be used for—

(1) the employment of judges, magistrates, court counselors, court clerks, court administrators, bailiffs, probation officers, officers of the court, or dispute resolution facilitators;

(2) the development, revision, and publication of tribal codes, rules of practice, rules of procedure, and standards of judicial performance and conduct;

(3) the acquisition, development, and maintenance of a law library and computer assisted legal research capacities;

(4) training programs and continuing education for tribal judicial personnel;

(5) the development and operation of records management systems;

(6) planning for the development, enhancement, and operation of tribal justice systems; and

(7) the development and operation of other innovative and culturally relevant programs and projects, including (but not limited to) programs and projects for—

(A) alternative dispute resolution;

(B) tribal victims assistance or victims services;

(C) tribal probation services or diversion programs;

(D) juvenile services and multidisciplinary investigations of child abuse; and

(E) traditional tribal judicial practices, traditional justice systems, and traditional methods of dispute resolution.

(Pub. L. 103–176, title I, § 104, Dec. 3, 1993, 107 Stat. 2008.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in text, is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

SUBCHAPTER II—AUTHORIZATIONS OF APPROPRIATIONS

§ 3621. Tribal justice systems

(a) Office

There is authorized to be appropriated to carry out the provisions of sections 3611 and 3612 of this title, $7,000,000 for each of the fiscal years 2000 through 2007. None of the funds provided under this subsection may be used for the administrative expenses of the Office.

(b) Base support funding for tribal justice systems

There is authorized to be appropriated to carry out the provisions of section 3613 of this title, $50,000,000 for each of the fiscal years 2000 through 2007.

(c) Administrative expenses for Office

There is authorized to be appropriated, for the administrative expenses of the Office, $500,000 for each of the fiscal years 2000 through 2007.

(d) Administrative expenses for tribal judicial conferences

There is authorized to be appropriated, for the administrative expenses of tribal judicial conferences, $500,000 for each of the fiscal years 2000 through 2007.

(e) Survey

For carrying out the survey under section 3612 of this title, there is authorized to be appropriated, in addition to the amount authorized under subsection (a) of this section, $400,000.

(f) Indian priority system

Funds appropriated pursuant to the authorizations provided by this section and available for a tribal justice system shall not be subject to the Indian priority system. Nothing in this chapter shall preclude a tribal government from supplementing any funds received under this chapter with funds received from any other source including the Bureau or any other Federal agency.

(g) Allocation of funds

In allocating funds appropriated pursuant to the authorization contained in subsection (a) of this section among the Bureau, Office, tribal governments and Courts of Indian Offenses, the Secretary shall take such actions as may be necessary to ensure that such allocation is carried out in a manner that is fair and equitable to all tribal governments and is proportionate to base support funding under section 3613 of this title received by the Bureau, Office, tribal governments, and Courts of Indian Offenses.

(h) No offset

No Federal agency shall offset funds made available pursuant to this chapter for tribal justice systems against other funds otherwise available for use in connection with tribal justice systems.

(Pub. L. 103–176, title II, § 201, Dec. 3, 1993, 107 Stat. 2009; Pub. L. 106–559, title II, § 202, Dec. 21, 2000, 114 Stat. 2782.)

AMENDMENTS

2000—Subsecs. (a) to (d). Pub. L. 106–559 substituted ''2000 through 2007'' for ''1994, 1995, 1996, 1997, 1998, 1999, and 2000''.

SUBCHAPTER III—DISCLAIMERS

§ 3631. Tribal authority

Nothing in this chapter shall be construed to—

(1) encroach upon or diminish in any way the inherent sovereign authority of each tribal government to determine the role of the tribal justice system within the tribal government or to enact and enforce tribal laws;

(2) diminish in any way the authority of tribal governments to appoint personnel;

(3) impair the rights of each tribal government to determine the nature of its own legal system or the appointment of authority within the tribal government;

(4) alter in any way any tribal traditional dispute resolution forum;

(5) imply that any tribal justice system is an instrumentality of the United States; or

(6) diminish the trust responsibility of the United States to Indian tribal governments and tribal justice systems of such governments.

(Pub. L. 103–176, title III, § 301, Dec. 3, 1993, 107 Stat. 2009.)

CHAPTER 38A—INDIAN TRIBAL JUSTICE TECHNICAL AND LEGAL ASSISTANCE

Sec.
3651. Findings.
3652. Purposes.
3653. Definitions.

SUBCHAPTER I—TRAINING AND TECHNICAL ASSISTANCE, CIVIL AND CRIMINAL LEGAL ASSISTANCE GRANTS

3661. Tribal justice training and technical assistance grants.
3662. Tribal civil legal assistance grants.
3663. Tribal criminal assistance grants.
3664. No offset.
3665. Tribal authority.
3666. Authorization of appropriations.

SUBCHAPTER II—INDIAN TRIBAL COURTS

3681. Grants.

§ 3651. Findings

The Congress finds and declares that—

(1) there is a government-to-government relationship between the United States and Indian tribes;

(2) Indian tribes are sovereign entities and are responsible for exercising governmental authority over Indian lands;

(3) the rate of violent crime committed in Indian country is approximately twice the rate of violent crime committed in the United States as a whole;

(4) in any community, a high rate of violent crime is a major obstacle to investment, job creation and economic growth;

(5) tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring the health and safety and the political integrity of tribal governments;

(6) Congress and the Federal courts have repeatedly recognized tribal justice systems as the most appropriate forums for the adjudication of disputes affecting personal and property rights on Native lands;

(7) enhancing tribal court systems and improving access to those systems serves the dual Federal goals of tribal political self-determination and economic self-sufficiency;

(8) there is both inadequate funding and an inadequate coordinating mechanism to meet the technical and legal assistance needs of tribal justice systems and this lack of adequate technical and legal assistance funding impairs their operation;

(9) tribal court membership organizations have served a critical role in providing training and technical assistance for development and enhancement of tribal justice systems;

(10) Indian legal services programs, as funded partially through the Legal Services Corporation, have an established record of providing cost effective legal assistance to Indian people in tribal court forums, and also contribute significantly to the development of tribal courts and tribal jurisprudence; and

(11) the provision of adequate technical assistance to tribal courts and legal assistance to both individuals and tribal courts is an essential element in the development of strong tribal court systems.

(Pub. L. 106–559, § 2, Dec. 21, 2000, 114 Stat. 2778.)

SHORT TITLE

Pub. L. 106–559, § 1, Dec. 21, 2000, 114 Stat. 2778, provided that: ''This Act [enacting this chapter and amending section 3621 of this title and sections 1629e and 1629g of Title 43, Public Lands] may be cited as the 'Indian Tribal Justice Technical and Legal Assistance Act of 2000'.''

AVAILABILITY OF FUNDS FOR COURTS OR LAW ENFORCEMENT OFFICERS OF CERTAIN TRIBES OR VILLAGES

Pub. L. 108–199, div. B, title I, § 112(a)(1), Jan. 23, 2004, 118 Stat. 62, provided that: ''None of the funds provided in this Act [div. B of Pub. L. 108–199, see Tables for classification] or hereafter may be used for courts or law enforcement officers for a tribe or village—

''(A) in which fewer than 25 Native members live in the village year round; or

''(B) that is located within the boundaries of the Fairbanks North Star Borough, the Matanuska Susitna Borough, the Municipality of Anchorage, the Kenai Peninsula Borough, the City and Borough of Juneau, the Sitka Borough, or the Ketchikan Borough.''

§ 3652. Purposes

The purposes of this chapter are as follows:

(1) to carry out the responsibility of the United States to Indian tribes and members of Indian tribes by ensuring access to quality technical and legal assistance.

(2) To strengthen and improve the capacity of tribal court systems that address civil and criminal causes of action under the jurisdiction of Indian tribes.

(3) To strengthen tribal governments and the economies of Indian tribes through the enhancement and, where appropriate, development of tribal court systems for the administration of justice in Indian country by providing technical and legal assistance services.

(4) To encourage collaborative efforts between national or regional membership organizations and associations whose membership consists of judicial system personnel within tribal justice systems; non-profit entities which provide legal assistance services for Indian tribes, members of Indian tribes, and/or tribal justice systems.

(5) To assist in the development of tribal judicial systems by supplementing prior congressional efforts such as the Indian Tribal Justice Act [25 U.S.C. 3601 et seq.] (Public Law 103–176).

(Pub. L. 106–559, § 3, Dec. 21, 2000, 114 Stat. 2779.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 106–559, Dec. 21, 2000, 114 Stat. 2778, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3651 of this title and Tables.

The Indian Tribal Justice Act, referred to in par. (5), is Pub. L. 103–176, Dec. 3, 1993, 107 Stat. 2004, as amended, which is classified generally to chapter 38 (§ 3601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

§ 3653. Definitions

For purposes of this chapter:

(1) Attorney General

The term ''Attorney General'' means the Attorney General of the United States.

(2) Indian lands

The term ''Indian lands'' shall include lands within the definition of ''Indian country'', as defined in section 1151 of title 18; or ''Indian reservations'', as defined in section 1452(d) of this title, or section 1903(10) of this title. For purposes of the preceding sentence, such section 1452(d) of this title shall be applied by treating the term ''former Indian reservations in Oklahoma'' as including only lands which are within the jurisdictional area of an Oklahoma Indian Tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on December 21, 2000).

(3) Indian tribe

The term ''Indian tribe'' means any Indian tribe, band, nation, pueblo, or other organized group or community which administers justice or plans to administer justice under its inherent authority or the authority of the United States and which is recognized as eligible for the special programs and services provided by the United States to Indian tribes because of their status as Indians.

(4) Judicial personnel

The term ''judicial personnel'' means any judge, magistrate, court counselor, court clerk, court administrator, bailiff, probation officer, officer of the court, dispute resolution facilitator, or other official, employee, or volunteer within the tribal judicial system.

(5) Non-profit entities

The term ''non-profit entity'' or ''non-profit entities'' has the meaning given that term in section 501(c)(3) of title 26.

(6) Office of Tribal Justice

The term ''Office of Tribal Justice'' means the Office of Tribal Justice in the United States Department of Justice.

(7) Tribal justice system

The term ''tribal court'', ''tribal court system'', or ''tribal justice system'' means the entire judicial branch, and employees thereof, of an Indian tribe, including, but not limited to, traditional methods and fora for dispute resolution, trial courts, appellate courts, including inter-tribal appellate courts, alternative dispute resolution systems, and circuit rider systems, established by inherent tribunal authority whether or not they constitute a court of record.

(Pub. L. 106–559, § 4, Dec. 21, 2000, 114 Stat. 2779.)

SUBCHAPTER I—TRAINING AND TECHNICAL ASSISTANCE, CIVIL AND CRIMINAL LEGAL ASSISTANCE GRANTS

§ 3661. Tribal justice training and technical assistance grants

Subject to the availability of appropriations, the Attorney General, in consultation with the Office of Tribal Justice, shall award grants to national or regional membership organizations and associations whose membership consists of judicial system personnel within tribal justice systems which submit an application to the Attorney General in such form and manner as the Attorney General may prescribe to provide training and technical assistance for the development, enrichment, enhancement of tribal justice systems, or other purposes consistent with this chapter.

(Pub. L. 106–559, title I, § 101, Dec. 21, 2000, 114 Stat. 2780.)

§ 3662. Tribal civil legal assistance grants

Subject to the availability of appropriations, the Attorney General, in consultation with the Office of Tribal Justice, shall award grants to non-profit entities, as defined under section 501(c)(3) of title 26, which provide legal assistance services for Indian tribes, members of Indian tribes, or tribal justice systems pursuant to Federal poverty guidelines that submit an application to the Attorney General in such form and manner as the Attorney General may prescribe for the provision of civil legal assistance to members of Indian tribes and tribal justice systems, and/or other purposes consistent with this chapter.

(Pub. L. 106–559, title I, § 102, Dec. 21, 2000, 114 Stat. 2780.)

§ 3663. Tribal criminal assistance grants

Subject to the availability of appropriations, the Attorney General, in consultation with the Office of Tribal Justice, shall award grants to non-profit entities, as defined by section 501(c)(3) of title 26, which provide legal assistance services for Indian tribes, members of Indian tribes, or tribal justice systems pursuant to Federal poverty guidelines that submit an application to the Attorney General in such form and manner as the Attorney General may prescribe for the provision of criminal legal assistance to members of Indian tribes and tribal justice systems, and/or other purposes consistent with this chapter. Funding under this subchapter may apply to programs, procedures, or proceedings involving adult criminal actions, juvenile delinquency actions, and/or guardian-ad-litem appointments arising out of criminal or delinquency acts.

(Pub. L. 106–559, title I, § 103, Dec. 21, 2000, 114 Stat. 2780.)

§ 3664. No offset

No Federal agency shall offset funds made available pursuant to this chapter for Indian tribal court membership organizations or Indian legal services organizations against other funds otherwise available for use in connection with technical or legal assistance to tribal justice systems or members of Indian tribes.

(Pub. L. 106–559, title I, § 104, Dec. 21, 2000, 114 Stat. 2781.)

§ 3665. Tribal authority

Nothing in this chapter shall be construed to—

(1) encroach upon or diminish in any way the inherent sovereign authority of each tribal government to determine the role of the tribal justice system within the tribal government or to enact and enforce tribal laws;

(2) diminish in any way the authority of tribal governments to appoint personnel;

(3) impair the rights of each tribal government to determine the nature of its own legal system or the appointment of authority within the tribal government;

(4) alter in any way any tribal traditional dispute resolution fora;

(5) imply that any tribal justice system is an instrumentality of the United States; or

(6) diminish the trust responsibility of the United States to Indian tribal governments and tribal justice systems of such governments.

(Pub. L. 106–559, title I, § 105, Dec. 21, 2000, 114 Stat. 2781.)

§ 3666. Authorization of appropriations

For purposes of carrying out the activities under this subchapter, there are authorized to be appropriated such sums as are necessary for fiscal years 2000 through 2004.

(Pub. L. 106–559, title I, § 106, Dec. 21, 2000, 114 Stat. 2781.)

SUBCHAPTER II—INDIAN TRIBAL COURTS

§ 3681. Grants

(a) In general

The Attorney General may award grants and provide technical assistance to Indian tribes to enable such tribes to carry out programs to support—

(1) the development, enhancement, and continuing operation of tribal justice systems; and

(2) the development and implementation of—

(A) tribal codes and sentencing guidelines;

(B) inter-tribal courts and appellate systems;

(C) tribal probation services, diversion programs, and alternative sentencing provisions;

(D) tribal juvenile services and multi-disciplinary protocols for child physical and sexual abuse; and

(E) traditional tribal judicial practices, traditional tribal justice systems, and traditional methods of dispute resolution.

(b) Consultation

In carrying out this section, the Attorney General may consult with the Office of Tribal Justice and any other appropriate tribal or Federal officials.

(c) Regulations

The Attorney General may promulgate such regulations and guidelines as may be necessary to carry out this subchapter.

(d) Authorization of appropriations

For purposes of carrying out the activities under this section, there are authorized to be appropriated such sums as are necessary for fiscal years 2000 through 2004.

(Pub. L. 106–559, title II, § 201, Dec. 21, 2000, 114 Stat. 2781.)

CHAPTER 39—AMERICAN INDIAN AGRICULTURAL RESOURCE MANAGEMENT

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§ 3701. Findings

The Congress finds and declares that—

(1) the United States and Indian tribes have a government to government relationship;

(2) the United States has a trust responsibility to protect, conserve, utilize, and manage Indian agricultural lands consistent with its fiduciary obligation and its unique relationship with Indian tribes;

(3) Indian agricultural lands are renewable and manageable natural resources which are vital to the economic, social, and cultural welfare of many Indian tribes and their members; and

(4) development and management of Indian agricultural lands in accordance with integrated resource management plans will ensure proper management of Indian agricultural lands and will produce increased economic returns, enhance Indian self-determination, promote employment opportunities, and improve the social and economic well-being of Indian and surrounding communities.

(Pub. L. 103–177, § 2, Dec. 3, 1993, 107 Stat. 2011.)

SHORT TITLE

Section 1 of Pub. L. 103–177 provided that: ''This Act [enacting this chapter] may be cited as the 'American Indian Agricultural Resource Management Act'.''

§ 3702. Purposes

The purposes of this chapter are to—

(1) carry out the trust responsibility of the United States and promote the self-determination of Indian tribes by providing for the management of Indian agricultural lands and related renewable resources in a manner consistent with identified tribal goals and priorities for conservation, multiple use, and sustained yield;

(2) authorize the Secretary to take part in the management of Indian agricultural lands, with the participation of the beneficial owners of the land, in a manner consistent with the trust responsibility of the Secretary and with the objectives of the beneficial owners;

(3) provide for the development and management of Indian agricultural lands; and

(4) increase the educational and training opportunities available to Indian people and communities in the practical, technical, and professional aspects of agriculture and land management to improve the expertise and technical abilities of Indian tribes and their members.

(Pub. L. 103–177, § 3, Dec. 3, 1993, 107 Stat. 2011.)

§ 3703. Definitions

For the purposes of this chapter:

(1) The term ''Indian agricultural lands'' means Indian land, including farmland and rangeland, but excluding Indian forest land, that is used for the production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.

(2) The term ''agricultural product'' means—

(A) crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;

(B) domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animal specifically raised and utilized for food or fiber or as beast of burden;

(C) forage, hay, fodder, feed grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and

(D) other marketable or traditionally used materials authorized for removal from Indian agricultural lands.

(3) The term ''agricultural resource'' means—

(A) all the primary means of production, including the land, soil, water, air, plant communities, watersheds, human resources, natural and physical attributes, and man-made developments, which together comprise the agricultural community; and

(B) all the benefits derived from Indian agricultural lands and enterprises, including cultivated and gathered food products, fibers, horticultural products, dyes, cultural or religious condiments, medicines, water, aesthetic, and other traditional values of agriculture.

(4) The term ''agricultural resource management plan'' means a plan developed under section 3711(b) of this title.

(5) The term ''Bureau'' means the Bureau of Indian Affairs of the Department of the Interior.

(6) The term ''farmland'' means Indian land excluding Indian forest land that is used for production of food, feed, fiber, forage and seed oil crops, or other agricultural products, and may be either dryland, irrigated, or irrigated pasture.

(7) The term ''Indian forest land'' means forest land as defined in section 3103(3) of this title.

(8) The term ''Indian'' means an individual who is a member of an Indian tribe.

(9) The term ''Indian land'' means land that is—

(A) held in trust by the United States for an Indian tribe; or

(B) owned by an Indian or Indian tribe and is subject to restrictions against alienation.

(10) The term ''Indian tribe'' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(11) The term ''integrated resource management plan'' means the plan developed pursuant to the process used by tribal governments to assess available resources and to provide identified holistic management objectives that include quality of life, production goals and landscape descriptions of all designated resources that may include (but not be limited to) water, fish, wildlife, forestry, agriculture, minerals, and recreation, as well as community and municipal resources, and may include any previously adopted tribal codes and plans related to such resources.

(12) The term ''land management activity'' means all activities, accomplished in support of the management of Indian agricultural lands, including (but not limited to)—

(A) preparation of soil and range inventories, farmland and rangeland management plans, and monitoring programs to evaluate management plans;

(B) agricultural lands and on-farm irrigation delivery system development, and the application of state of the art, soil and range conservation management techniques to restore and ensure the productive potential of Indian lands;

(C) protection against agricultural pests, including development, implementation, and evaluation of integrated pest management programs to control noxious weeds, undesirable vegetation, and vertebrate or invertebrate agricultural pests;

(D) administration and supervision of agricultural leasing and permitting activities, including determination of proper land use, carrying capacities, and proper stocking rates of livestock, appraisal, advertisement, negotiation, contract preparation, collecting, recording, and distributing lease rental receipts;

(E) technical assistance to individuals and tribes engaged in agricultural production or agribusiness; and

(F) educational assistance in agriculture, natural resources, land management and related fields of study, including direct assistance to tribally-controlled community colleges in developing and implementing curriculum for vocational, technical, and professional course work.

(13) The term ''Indian landowner'' means the Indian or Indian tribe that—

(A) owns such Indian land, or

(B) is the beneficiary of the trust under which such Indian land is held by the United States.

(14) The term ''rangeland'' means Indian land, excluding Indian forest land, on which the native vegetation is predominantly grasses, grass-like plants, forbs, half-shrubs or shrubs suitable for grazing or browsing use, and includes lands revegetated naturally or artificially to provide a forage cover that is managed as native vegetation.

(15) The term ''Secretary'' means the Secretary of the Interior.

(Pub. L. 103–177, § 4, Dec. 3, 1993, 107 Stat. 2012.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (10), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SUBCHAPTER I—RANGELAND AND FARMLAND ENHANCEMENT

§ 3711. Management of Indian rangelands and farmlands

(a) Management objectives

Consistent with the provisions of the Indian Self-Determination and Education Assistance

Act [25 U.S.C. 450 et seq.], the Secretary shall provide for the management of Indian agricultural lands to achieve the following objectives:

(1) To protect, conserve, utilize, and maintain the highest productive potential on Indian agricultural lands through the application of sound conservation practices and techniques. These practices and techniques shall be applied to planning, development, inventorying, classification, and management of agricultural resources.

(2) To increase production and expand the diversity and availability of agricultural products for subsistence, income, and employment of Indians and Alaska Natives, through the development of agricultural resources on Indian lands.

(3) To manage agricultural resources consistent with integrated resource management plans in order to protect and maintain other values such as wildlife, fisheries, cultural resources, recreation and to regulate water runoff and minimize soil erosion.

(4) To enable Indian farmers and ranchers to maximize the potential benefits available to them through their land by providing technical assistance, training, and education in conservation practices, management and economics of agribusiness, sources and use of credit and marketing of agricultural products, and other applicable subject areas.

(5) To develop Indian agricultural lands and associated value-added industries of Indians and Indian tribes to promote self-sustaining communities.

(6) To assist trust and restricted Indian landowners in leasing their agricultural lands for a reasonable annual return, consistent with prudent management and conservation practices, and community goals as expressed in the tribal management plans and appropriate tribal ordinances.

(b) Indian agricultural resource management planning program

(1) To meet the management objectives of this section, a 10-year Indian agriculture resource management and monitoring plan shall be developed and implemented as follows:

(A) Pursuant to a self-determination contract or self-governance compact, an Indian tribe may develop or implement an Indian agriculture resource plan. Subject to the provisions of subparagraph (C), the tribe shall have broad discretion in designing and carrying out the planning process.

(B) If a tribe chooses not to contract the development or implementation of the plan, the Secretary shall develop or implement, as appropriate, the plan in close consultation with the affected tribe.

(C) Whether developed directly by the tribe or by the Secretary, the plan shall—

(i) determine available agriculture resources;

(ii) identify specific tribal agricultural resource goals and objectives;

(iii) establish management objectives for the resources;

(iv) define critical values of the Indian tribe and its members and provide identified holistic management objectives;

(v) identify actions to be taken to reach established objectives;

(vi) be developed through public meetings;

(vii) use the public meeting records, existing survey documents, reports, and other research from Federal agencies, tribal community colleges, and land grant universities; and

(viii) be completed within three years of the initiation of activity to establish the plan.

(2) Indian agriculture resource management plans developed and approved under this section shall govern the management and administration of Indian agricultural resources and Indian agricultural lands by the Bureau and the Indian tribal government.

(Pub. L. 103–177, title I, § 101, Dec. 3, 1993, 107 Stat. 2014.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 3712. Indian participation in land management activities

(a) Tribal recognition

The Secretary shall conduct all land management activities on Indian agricultural land in accordance with goals and objectives set forth in the approved agricultural resource management plan, in an integrated resource management plan, and in accordance with all tribal laws and ordinances, except in specific instances where such compliance would be contrary to the trust responsibility of the United States.

(b) Tribal laws

Unless otherwise prohibited by Federal law, the Secretary shall comply with tribal laws and ordinances pertaining to Indian agricultural lands, including laws regulating the environment and historic or cultural preservation, and laws or ordinances adopted by the tribal government to regulate land use or other activities under tribal jurisdiction. The Secretary shall—

(1) provide assistance in the enforcement of such tribal laws;

(2) provide notice of such laws to persons or entities undertaking activities on Indian agricultural lands; and

(3) upon the request of an Indian tribe, require appropriate Federal officials to appear in tribal forums.

(c) Waiver of regulations

In any case in which a regulation or administrative policy of the Department of the Interior conflicts with the objectives of the agricultural resource management plan provided for in section 3711 of this title, or with a tribal law, the Secretary may waive the application of such regulation or administrative policy unless such waiver would constitute a violation of a Federal statute or judicial decision or would conflict with his general trust responsibility under Federal law.

(d) Sovereign immunity

This section does not constitute a waiver of the sovereign immunity of the United States, nor does it authorize tribal justice systems to review actions of the Secretary.

(Pub. L. 103–177, title I, § 102, Dec. 3, 1993, 107 Stat. 2015.)

§ 3713. Indian agricultural lands trespass

(a) Civil penalties; regulations

Not later than one year after December 3, 1993, the Secretary shall issue regulations that—

(1) establish civil penalties for the commission of trespass on Indian agricultural lands, which provide for—

(A) collection of the value of the products illegally used or removed plus a penalty of double their values;

(B) collection of the costs associated with damage to the Indian agricultural lands caused by the act of trespass; and

(C) collection of the costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(2) designate responsibility within the Department of the Interior for the detection and investigation of Indian agricultural lands trespass; and

(3) set forth responsibilities and procedures for the assessment and collection of civil penalties.

(b) Treatment of proceeds

The proceeds of civil penalties collected under this section shall be treated as proceeds from the sale of agricultural products from the Indian agricultural lands upon which such trespass occurred.

(c) Concurrent jurisdiction

Indian tribes which adopt the regulations promulgated by the Secretary pursuant to subsection (a) of this section shall have concurrent jurisdiction with the United States to enforce the provisions of this section and the regulations promulgated thereunder. The Bureau and other agencies of the Federal Government shall, at the request of the tribal government, defer to tribal prosecutions of Indian agricultural land trespass cases. Tribal court judgments regarding agricultural trespass shall be entitled to full faith and credit in Federal and State courts to the same extent as a Federal court judgment obtained under this section. Nothing in this chapter shall be construed to diminish the sovereign authority of Indian tribes with respect to trespass.

(Pub. L. 103–177, title I, § 103, Dec. 3, 1993, 107 Stat. 2015.)

§ 3714. Assessment of Indian agricultural management programs

(a) Assessment

Within six months after December 3, 1993, the Secretary, in consultation with affected Indian tribes, shall enter into a contract with a non-Federal entity knowledgeable in agricultural management on Federal and private lands to conduct an independent assessment of Indian agricultural land management and practices. Such assessment shall be national in scope and shall include a comparative analysis of Federal investment and management efforts for Indian trust and restricted agricultural lands as compared to federally-owned lands managed by other Federal agencies or instrumentalities and as compared to federally-served private lands.

(b) Purposes

The purposes of the assessment shall be—

(1) to establish a comprehensive assessment of the improvement, funding, and development needs for all Indian agricultural lands;

(2) to establish a comparison of management and funding provided to comparable lands owned or managed by the Federal Government through Federal agencies other than the Bureau; and

(3) to identify any obstacles to Indian access to Federal or private programs relating to agriculture or related rural development programs generally available to the public at large.

(c) Implementation

Within one year after December 3, 1993, the Secretary shall provide the Subcommittee on Native American Affairs of the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate with a status report on the development of the comparative analysis required by this section and shall file a final report with the Congress not later than 18 months after December 3, 1993.

(Pub. L. 103–177, title I, § 104, Dec. 3, 1993, 107 Stat. 2016.)

CHANGE OF NAME

Subcommittee on Native American Affairs changed to Subcommittee on Native American and Insular Affairs.

§ 3715. Leasing of Indian agricultural lands

(a) Authority of Secretary

The Secretary is authorized to—

(1) approve any agricultural lease or permit with (A) a tenure of up to 10 years, or (B) a tenure longer than 10 years but not to exceed 25 years unless authorized by other Federal law, when such longer tenure is determined by the Secretary to be in the best interest of the Indian landowners and when such lease or permit requires substantial investment in the development of the lands or crops by the lessee; and

(2) lease or permit agricultural lands to the highest responsible bidder at rates less than the Federal appraisal after satisfactorily advertising such lands for lease, when, in the opinion of the Secretary, such action would be in the best interest of the Indian landowner.

(b) Authority of tribe

When authorized by an appropriate tribal resolution establishing a general policy for leasing of Indian agricultural lands, the Secretary—

(1) shall provide a preference to Indian operators in the issuance and renewal of agricultural leases and permits so long as the lessor receives fair market value for his property;

(2) shall waive or modify the requirement that a lessee post a surety or performance bond on agricultural leases and permits issued by the Secretary;

(3) shall provide for posting of other collateral or security in lieu of surety or other bonds;

(4) when such tribal resolution sets forth a tribal definition of what constitutes ''highly fractionated undivided heirship lands'' and adopts an alternative plan for providing notice to owners, may waive or modify any general notice requirement of Federal law and proceed to negotiate and lease or permit such highly fractionated undivided interest heirship lands in conformity with tribal law in order to prevent waste, reduce idle land acreage, and ensure income; and

(5) shall approve leases and permits of tribally owned agricultural lands at rates determined by the tribal governing body.

(c) Rights of individual landowners

(1) Nothing in this section shall be construed as limiting or altering the authority or right of an individual allottee or Indian tribe in the legal or beneficial use of his, her, or its own land or to enter into an agricultural lease of the surface interest of his, her, or its allotment or land under any other provision of law.

(2)(A) The owners of a majority interest in any trust or restricted land are authorized to enter into an agricultural lease of the surface interest of a trust or restricted allotment, and such lease shall be binding upon the owners of the minority interests in such land if the terms of the lease provide such minority interests with not less than fair market value for such land.

(B) For the purposes of subparagraph (A), a majority interest in trust or restricted land is an interest greater than 50 percent of the legal or beneficial title.

(3) The provisions of subsection (b) of this section shall not apply to a parcel of trust or restricted land if the owners of at least 50 percent of the legal or beneficial interest in such land file with the Secretary a written objection to the application of all or any part of such tribal rules to the leasing of such parcel of land.

(Pub. L. 103–177, title I, § 105, Dec. 3, 1993, 107 Stat. 2017; Pub. L. 103–435, § 12(a), Nov. 2, 1994, 108 Stat. 4572.)

AMENDMENTS

1994—Subsec. (b)(5). Pub. L. 103–435, § 12(a)(1), added par. (5).

Subsec. (c)(1). Pub. L. 103–435, § 12(a)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Nothing in this section shall be construed as limiting or altering the authority or right of an individual allottee in the legal or beneficial use of his or her own land or to enter into an agricultural lease of the surface interest of his or her allotment under any other provision of law.''

SUBCHAPTER II—EDUCATION IN AGRICULTURE MANAGEMENT

§ 3731. Indian and Alaska Native agriculture management education assistance programs

(a) Agricultural resources intern program

(1) Notwithstanding the provisions of title 5 governing appointments in the competitive service, the Secretary shall establish and maintain in the Bureau or other appropriate office or bureau within the Department of the Interior at least 20 agricultural resources intern positions for Indian and Alaska Native students enrolled in an agriculture study program. Such positions shall be in addition to the forester intern positions authorized in section 3113(a) of this title.

(2) For purposes of this subsection—

(A) the term ''agricultural resources intern'' means an Indian who—

(i) is attending an approved postsecondary school in a full-time agriculture or related field, and

(ii) is appointed to one of the agricultural resources intern positions established under paragraph (1);

(B) the term ''agricultural resources intern positions'' means positions established pursuant to paragraph (1) for agricultural resources interns; and

(C) the term ''agriculture study program'' includes (but is not limited to) agricultural engineering, agricultural economics, animal husbandry, animal science, biological sciences, geographic information systems, horticulture, range management, soil science, and veterinary science.

(3) The Secretary shall pay, by reimbursement or otherwise, all costs for tuition, books, fees, and living expenses incurred by an agricultural resources intern while attending an approved postsecondary or graduate school in a full-time agricultural study program.

(4) An agricultural resources intern shall be required to enter into an obligated service agreement with the Secretary to serve as an employee in a professional agriculture or natural resources position with the Department of the Interior or other Federal agency or an Indian tribe for one year for each year of education for which the Secretary pays the intern's educational costs under paragraph (3).

(5) An agricultural resources intern shall be required to report for service with the Bureau of Indian Affairs or other bureau or agency sponsoring his internship, or to a designated work site, during any break in attendance at school of more than 3 weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service agreement under paragraph (4).

(b) Cooperative education program

(1) The Secretary shall maintain, through the Bureau, a cooperative education program for the purpose, among other things, of recruiting Indian and Alaska Native students who are enrolled in secondary schools, tribally controlled community colleges, and other postsecondary or graduate schools, for employment in professional agricultural or related positions with the

Bureau or other Federal agency providing Indian agricultural or related services.

(2) The cooperative educational program under paragraph (1) shall be modeled after, and shall have essentially the same features as, the program in effect on December 3, 1993, pursuant to chapter 308 of the Federal Personnel Manual of the Office of Personnel Management.

(3) The cooperative educational program shall include, among others, the following:

(A) The Secretary shall continue the established specific programs in agriculture and natural resources education at Southwestern Indian Polytechnic Institute (SIPI) and at Haskell Indian Junior College.

(B) The Secretary shall develop and maintain a cooperative program with the tribally controlled community colleges to coordinate course requirements, texts, and provide direct technical assistance so that a significant portion of the college credits in both the Haskell and Southwestern Indian Polytechnic Institute programs can be met through local program work at participating tribally controlled community colleges.

(C) Working through tribally controlled community colleges and in cooperation with land grant institutions, the Secretary shall implement an informational and educational program to provide practical training and assistance in creating or maintaining a successful agricultural enterprise, assessing sources of commercial credit, developing markets, and other subjects of importance in agricultural pursuits.

(D) Working through tribally controlled community colleges and in cooperation with land grant institutions, the Secretary shall implement research activities to improve the basis for determining appropriate management measures to apply to Indian agricultural management.

(4) Under the cooperative agreement program under paragraph (1), the Secretary shall pay, by reimbursement or otherwise, all costs for tuition, books, and fees of an Indian student who—

(A) is enrolled in a course of study at an education institution with which the Secretary has entered into a cooperative agreement; and

(B) is interested in a career with the Bureau, an Indian tribe or a tribal enterprise in the management of Indian rangelands, farmlands, or other natural resource assets.

(5) A recipient of assistance under the cooperative education program under this subsection shall be required to enter into an obligated service agreement with the Secretary to serve as a professional in an agricultural resource related activity with the Bureau, or other Federal agency providing agricultural or related services to Indians or Indian tribes, or an Indian tribe for one year for each year for which the Secretary pays the recipients educational costs pursuant to paragraph (3).

(c) Scholarship program

(1) The Secretary may grant scholarships to Indians enrolled in accredited agriculture related programs for postsecondary and graduate programs of study as full-time students.

(2) A recipient of a scholarship under paragraph (1) shall be required to enter into an obligated service agreement with the Secretary in which the recipient agrees to accept employment for one year for each year the recipient received a scholarship, following completion of the recipients course of study, with—

(A) the Bureau or other agency of the Federal Government providing agriculture or natural resource related services to Indians or Indian tribes;

(B) an agriculture or related program conducted under a contract, grant, or cooperative agreement entered into under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.]; or

(C) a tribal agriculture or related program.

(3) The Secretary shall not deny scholarship assistance under this subsection solely on the basis of an applicant's scholastic achievement if the applicant has been admitted to and remains in good standing in an accredited post secondary[1] or graduate institution.

(d) Educational outreach

The Secretary shall conduct, through the Bureau, and in consultation with other appropriate local, State and Federal agencies, and in consultation and coordination with Indian tribes, an agricultural resource education outreach program for Indian youth to explain and stimulate interest in all aspects of management and careers in Indian agriculture and natural resources.

(e) Adequacy of programs

The Secretary shall administer the programs described in this section until a sufficient number of Indians are trained to ensure that there is an adequate number of qualified, professional Indian agricultural resource managers to manage the Bureau agricultural resource programs and programs maintained by or for Indian tribes.

(Pub. L. 103–177, title II, § 201, Dec. 3, 1993, 107 Stat. 2018.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(2)(B), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

HASKELL INDIAN NATIONS UNIVERSITY AND SOUTHWESTERN INDIAN POLYTECHNIC INSTITUTE ADMINISTRATIVE SYSTEMS

Pub. L. 105–337, Oct. 31, 1998, 112 Stat. 3171, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Haskell Indian Nations University and Southwestern Indian Polytechnic Institute Administrative Systems Act of 1998'.

''SEC. 2. FINDINGS.

''The Congress finds that—

[1] So in original. Probably should be ''postsecondary''.

''(1) the provision of culturally sensitive curricula for higher education programs at Haskell Indian Nations University and the Southwestern Indian Polytechnic Institute is consistent with the commitment of the Federal Government to the fulfillment of treaty obligations to Indian tribes through the principle of self-determination and the use of Federal resources; and

''(2) giving a greater degree of autonomy to those institutions, while maintaining them as an integral part of the Bureau of Indian Affairs, will facilitate—

''(A) the transition of Haskell Indian Nations University to a 4-year university; and

''(B) the administration and improvement of the academic program of the Southwestern Indian Polytechnic Institute.

''SEC. 3. DEFINITIONS; APPLICABILITY.

''(a) DEFINITIONS.—For purposes of this Act:

''(1) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(2) EMPLOYEE.—The term 'employee', with respect to an institution named in subsection (b), means an individual employed in or under such institution.

''(3) ELIGIBLE.—The term 'eligible' means an individual who has qualified for appointment in the institution involved and whose name has been entered on the appropriate register or list of eligibles.

''(4) DEMONSTRATION PROJECT.—The term 'demonstration project' means a project conducted by or under the supervision of an institution named in subsection (b) to determine whether specified changes in personnel management policies or procedures would result in improved personnel management.

''(b) APPLICABILITY.—This Act applies to—

''(1) Haskell Indian Nations University, located in Lawrence, Kansas; and

''(2) Southwestern Indian Polytechnic Institute, located in Albuquerque, New Mexico.

''SEC. 4. AUTHORITY.

''(a) IN GENERAL.—Each institution named in section 3(b) may conduct a demonstration project in accordance with the provisions of this Act. The conducting of any such demonstration project shall not be limited by any lack of specific authority under title 5, United States Code, to take the action contemplated, or by any provision of such title or any rule or regulation prescribed under such title which is inconsistent with the action, including any provision of law, rule, or regulation relating to—

''(1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;

''(2) the methods of classifying positions and compensating employees;

''(3) the methods of assigning, reassigning, or promoting employees;

''(4) the methods of disciplining employees;

''(5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;

''(6) the hours of work per day or per week;

''(7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and

''(8) the methods of reducing overall staff and grade levels.

''(b) CONSULTATION AND OTHER REQUIREMENTS.—Before commencing a demonstration project under this Act, the president of the institution involved shall—

''(1) in consultation with the board of regents of the institution and such other persons or representative bodies as the president considers appropriate, develop a plan for such project which identifies—

''(A) the purposes of the project;

''(B) the types of employees or eligibles to be included (categorized by occupational series, grade, or organizational unit);

''(C) the number of employees or eligibles to be included (in the aggregate and by category);

''(D) the methodology;

''(E) the duration;

''(F) the training to be provided;

''(G) the anticipated costs;

''(H) the methodology and criteria for evaluation, consistent with subsection (f);

''(I) a specific description of any aspect of the project for which there is a lack of specific authority; and

''(J) a specific citation to any provision of law, rule, or regulation which, if not waived, would prohibit the conducting of the project, or any part of the project as proposed;

''(2) publish the plan in the Federal Register;

''(3) submit the plan so published to public hearing;

''(4) at least 180 days before the date on which the proposed project is to commence, provide notification of such project to—

''(A) employees likely to be affected by the project; and

''(B) each House of Congress;

''(5) at least 90 days before the date on which the proposed project is to commence, provide each House of Congress with a report setting forth the final version of the plan; and

''(6) at least 60 days before the date on which the proposed project is to commence, inform all employees as to the final version of the plan, including all information relevant to the making of an election under subsection (h)(2)(A).

''(c) LIMITATIONS.—No demonstration project under this Act may—

''(1) provide for a waiver of—

''(A) any provision of law, rule, or regulation providing for—

''(i) equal employment opportunity;

''(ii) Indian preference; or

''(iii) veterans' preference;

''(B) any provision of chapter 23 of title 5, United States Code, or any other provision of such title relating to merit system principles or prohibited personnel practices, or any rule or regulation prescribed under authority of any such provision; or

''(C) any provision of subchapter II or III of chapter 73 of title 5, United States Code, or any rule or regulation prescribed under authority of any such provision;

''(2) impose any duty to engage in collective bargaining with respect to—

''(A) classification of positions; or

''(B) pay, benefits, or any other form of compensation; or

''(3) provide that any employee be required to pay dues or fees of any kind to a labor organization as a condition of employment.

''(d) COMMENCEMENT AND TERMINATION DATES.—Each demonstration project under this Act—

''(1) shall commence within 2 years after the date of enactment of this Act [Oct. 31, 1998]; and

''(2) shall terminate by the end of the 5-year period beginning on the date on which such project commences, except that the project may continue beyond the end of such 5-year period—

''(A) to the extent necessary to validate the results of the project; and

''(B) to the extent provided for under subsection (h)(2)(B).

''(e) DISCRETIONARY AUTHORITY TO TERMINATE.—A demonstration project under this Act may be terminated by the Secretary or the president of the institution involved if either determines that the project creates a substantial hardship on, or is not in the best interests of, the institution and its educational goals.

''(f) EVALUATION.—

''(1) IN GENERAL.—The Secretary shall provide for an evaluation of the results of each demonstration project under this Act and its impact on improving public management.

''(2) INFORMATION.—Upon request of the Secretary, an institution named in section 3(b) shall cooperate

with and assist the Secretary, to the extent practicable, in any evaluation undertaken under this subsection and provide the Secretary with requested information and reports relating to the conducting of its demonstration project.

''(g) ROLE OF THE OFFICE OF PERSONNEL MANAGEMENT.—Upon request of the Secretary or the president of an institution named in section 3(b), the Office of Personnel Management shall furnish information or technical advice on the design, operation, or evaluation, or any other aspect of a demonstration project under this Act.

''(h) APPLICABILITY.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, all applicants for employment with, all eligibles and employees of, and all positions in or under an institution named in section 3(b) shall be subject to inclusion in a demonstration project under this Act.

''(2) PROVISIONS RELATING TO CERTAIN BENEFITS.—

''(A) OPTION FOR CERTAIN INDIVIDUALS TO REMAIN UNDER CURRENT LAW GOVERNING CERTAIN BENEFITS.—

''(i) ELIGIBLE INDIVIDUALS.—This subparagraph applies in the case of any individual who, as of the day before the date on which a demonstration project under this Act is to commence at an institution—

''(I) is an employee of such institution; and

''(II) if benefits under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, are to be affected, has completed at least 1 year of Government service (whether with such institution or otherwise), but taking into account only civilian service creditable under subchapter III of chapter 83 or chapter 84 of such title.

''(ii) OPTION.—If a demonstration project is to include changes to any benefits under subpart G of part III of title 5, United States Code, an employee described in clause (i) shall be afforded an election not to become subject to such demonstration project, to the extent those benefits are involved (and to instead remain subject to the provisions of such subpart G as if this Act had not been enacted).

''(B) CONTINUATION OF CERTAIN ALTERNATIVE BENEFIT SYSTEMS AFTER DEMONSTRATION PROJECT TERMINATES FOR PERSONS BECOMING SUBJECT THERETO UNDER THE PROJECT.—Notwithstanding any other provision of this Act, the termination of a demonstration project shall not, in the case of any employee who becomes subject to a system of alternative benefits under this Act (in lieu of benefits that would otherwise be determined under subpart G of part III of title 5, United States Code), have the effect of terminating—

''(i) any rights accrued by that individual under the system of alternative benefits involved; or

''(ii) the system under which those alternative benefits are afforded, to the extent continuation of such system beyond the termination date is provided for under the terms of the demonstration project (as in effect on the termination date).

''(3) TRANSITION PROVISIONS.—

''(A) RETENTION OF ANNUAL AND SICK LEAVE ACCRUED BEFORE BECOMING SUBJECT TO DEMONSTRATION PROJECT.—Any individual becoming subject to a demonstration project under this Act shall, in a manner consistent with the requirements of section 6308 of title 5, United States Code, be credited with any annual leave and any sick leave standing to such individual's credit immediately before becoming subject to the project.

''(B) PROVISIONS RELATING TO CREDIT FOR LEAVE UPON SEPARATING WHILE THE DEMONSTRATION PROJECT IS STILL ONGOING.—Any demonstration project under this Act shall include provisions consistent with the following:

''(i) LUMP-SUM CREDIT FOR ANNUAL LEAVE.—In the case of any individual who, at the time of becoming subject to the demonstration project, has any leave for which a lump-sum payment might be paid under subchapter VI of chapter 55 of title 5, United States Code, such individual shall, if such individual separates from service (in the circumstances described in section 5551 or 5552 of such title 5, as applicable) while the demonstration project is still ongoing, be entitled to a lump-sum payment under such section 5551 or 5552 (as applicable) based on the amount of leave standing to such individual's credit at the time such individual became subject to the demonstration project or the amount of leave standing to such individual's credit at the time of separation, whichever is less.

''(ii) RETIREMENT CREDIT FOR SICK LEAVE.—In the case of any individual who, at the time of becoming subject to the demonstration project, has any sick leave which would be creditable under section 8339(m) of title 5, United States Code (had such individual then separated from service), any sick leave standing to such individual's credit at the time of separation shall, if separation occurs while the demonstration project is still ongoing, be so creditable, but only to the extent that it does not exceed the amount of creditable sick leave that stood to such individual's credit at the time such individual became subject to the demonstration project.

''(C) TRANSFER OF LEAVE REMAINING UPON TRANSFER TO ANOTHER AGENCY.—In the case of any employee who becomes subject to the demonstration project and is subsequently transferred or otherwise appointed (without a break in service of 3 days or longer) to another position in the Federal Government or the government of the District of Columbia under a different leave system (whether while the project is still ongoing or otherwise), any leave remaining to the credit of that individual which was earned or credited under the demonstration project shall be transferred to such individual's credit in the new employing agency on an adjusted basis under regulations prescribed under section 6308 of title 5, United States Code. Any such regulations shall be prescribed taking into account the provisions of subparagraph (B).

''(D) COLLECTIVE-BARGAINING AGREEMENTS.—Any collective-bargaining agreement in effect on the day before a demonstration project under this Act commences shall continue to be recognized by the institution involved until the earlier of—

''(i) the date occurring 3 years after the commencement date of the project;

''(ii) the date as of which the agreement is scheduled to expire (disregarding any option to renew); or

''(iii) such date as may be determined by mutual agreement of the parties.

''SEC. 5. DELEGATION OF PROCUREMENT AUTHORITY.

''The Secretary shall, to the maximum extent consistent with applicable law and subject to the availability of appropriations therefor, delegate to the presidents of the respective institutions named in section 3(b) procurement and contracting authority with respect to the conduct of the administrative functions of such institution.

''SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated, for fiscal year 1999, and each fiscal year thereafter, to each of the respective institutions named in section 3(b)—

''(1) the amount of funds made available by appropriations as operations funding for the administration of such institution for fiscal year 1998; and

''(2) such additional sums as may be necessary for the operation of such institution pursuant to this Act.

''SEC. 7. REGULATIONS.

''The president of each institution named in section 3(b) may, in consultation with the appropriate entities

(referred to in section 4(b)(1)), prescribe any regulations necessary to carry out this Act.

''SEC. 8. LEGISLATION TO MAKE CHANGES PERMANENT.

''Not later than 6 months before the date on which a demonstration project under this Act is scheduled to expire, the institution conducting such demonstration project shall submit to each House of Congress—

''(1) recommendations as to whether or not the changes under such project should be continued or made permanent; and

''(2) proposed legislation for any changes in law necessary to carry out any such recommendations.''

§ 3732. Postgraduation recruitment, education and training programs

(a) Assumption of loans

The Secretary shall establish and maintain a program to attract Indian professionals who are graduates of a course of postsecondary or graduate education for employment in either the Bureau agriculture or related programs or, subject to the approval of the tribe, in tribal agriculture or related programs. According to such regulations as the Secretary may prescribe, such program shall provide for the employment of Indian professionals in exchange for the assumption by the Secretary of the outstanding student loans of the employee. The period of employment shall be determined by the amount of the loan that is assumed.

(b) Postgraduate intergovernmental internships

For the purposes of training, skill development and orientation of Indian and Federal agricultural management personnel, and the enhancement of tribal and Bureau agricultural resource programs, the Secretary shall establish and actively conduct a program for the cooperative internship of Federal and Indian agricultural resource personnel. Such program shall—

(1) for agencies within the Department of the Interior—

(A) provide for the internship of Bureau and Indian agricultural resource employees in the agricultural resource related programs of other agencies of the Department of the Interior, and

(B) provide for the internship of agricultural resource personnel from the other Department of the Interior agencies within the Bureau, and, with the consent of the tribe, within tribal agricultural resource programs;

(2) for agencies not within the Department of the Interior, provide, pursuant to an interagency agreement, internships within the Bureau and, with the consent of the tribe, within a tribal agricultural resource program of other agricultural resource personnel of such agencies who are above their sixth year of Federal service;

(3) provide for the continuation of salary and benefits for participating Federal employees by their originating agency;

(4) provide for salaries and benefits of participating Indian agricultural resource employees by the host agency; and

(5) provide for a bonus pay incentive at the conclusion of the internship for any participant.

(c) Continuing education and training

The Secretary shall maintain a program within the Trust Services Division of the Bureau for Indian agricultural resource personnel which shall provide for—

(1) orientation training for Bureau agricultural resource personnel in tribal-Federal relations and responsibilities;

(2) continuing technical agricultural resource education for Bureau and Indian agricultural resource personnel; and

(3) development training of Indian agricultural resource personnel in agricultural resource based enterprises and marketing.

(Pub. L. 103–177, title II, § 202, Dec. 3, 1993, 107 Stat. 2020.)

§ 3733. Cooperative agreement between Department of the Interior and Indian tribes

(a) Cooperative agreements

(1)(A) To facilitate the administration of the programs and activities of the Department of the Interior, the Secretary may negotiate and enter into cooperative agreements with Indian tribes to—

(i) engage in cooperative manpower and job training,

(ii) develop and publish cooperative agricultural education and resource planning materials, and

(iii) perform land and facility improvements and other activities related to land and natural resource management and development.

(B) The Secretary may enter into these agreements when the Secretary determines the interest of Indians and Indian tribes will be benefited.

(2) In cooperative agreements entered into under paragraph (1), the Secretary may advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities, or equipment without regard to the provisions of section 3324 of title 31 relating to the advance of public moneys.

(b) Supervision

In any agreement authorized by this section, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise as mutually agreed to, but shall not be deemed to be Federal employees other than for the purposes of sections 2671 through 2680 of title 28 and sections 8101 through 8193 of title 5.

(c) Savings clause

Nothing in this chapter shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law.

(Pub. L. 103–177, title II, § 203, Dec. 3, 1993, 107 Stat. 2021.)

§ 3734. Obligated service; breach of contract

(a) Obligated service

Where an individual enters into an agreement for obligated service in return for financial assistance under any provision of this subchapter,

the Secretary shall adopt such regulations as are necessary to provide for the offer of employment to the recipient of such assistance as required by such provision. Where an offer of employment is not reasonably made, the regulations shall provide that such service shall no longer be required.

(b) Breach of contract; repayment

Where an individual fails to accept a reasonable offer of employment in fulfillment of such obligated service or unreasonably terminates or fails to perform the duties of such employment, the Secretary shall require a repayment of the financial assistance provided, prorated for the amount of time of obligated service that was performed, together with interest on such amount which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Secretary of the Treasury.

(Pub. L. 103–177, title II, § 204, Dec. 3, 1993, 107 Stat. 2022.)

SUBCHAPTER III—GENERAL PROVISIONS

§ 3741. Regulations

Except as otherwise provided by this chapter, the Secretary shall promulgate final regulations for the implementation of this chapter within 24 months after December 3, 1993. All regulations promulgated pursuant to this chapter shall be developed by the Secretary with the participation of the affected Indian tribes.

(Pub. L. 103–177, title III, § 301, Dec. 3, 1993, 107 Stat. 2022.)

§ 3742. Trust responsibility

Nothing in this chapter shall be construed to diminish or expand the trust responsibility of the United States toward Indian trust lands or natural resources, or any legal obligation or remedy resulting therefrom.

(Pub. L. 103–177, title III, § 302, Dec. 3, 1993, 107 Stat. 2022.)

§ 3743. Severability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision or circumstance and the remainder of this chapter shall not be affected thereby.

(Pub. L. 103–177, title III, § 303, Dec. 3, 1993, 107 Stat. 2022.)

§ 3744. Federal, State and local authority

(a) Disclaimer

Nothing in this chapter shall be construed to supersede or limit the authority of Federal, State or local agencies otherwise authorized by law to provide services to Indians.

(b) Duplication of services

The Secretary shall work with all appropriate Federal departments and agencies to avoid duplication of programs and services currently available to Indian tribes and landowners from other sources.

(Pub. L. 103–177, title III, § 304, Dec. 3, 1993, 107 Stat. 2022.)

§ 3745. Authorization of appropriations

(a) General authorization

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this chapter.

(b) Funding source

The activities required under subchapter II of this chapter may only be funded from appropriations made pursuant to this chapter. To the greatest extent possible, such activities shall be coordinated with activities funded from other sources.

(Pub. L. 103–177, title III, § 305, Dec. 3, 1993, 107 Stat. 2023.)

§ 3746. Tribal immunity

Nothing in this chapter shall be construed to affect, modify, diminish, or otherwise impair the sovereign immunity from suit enjoyed by Indian tribes.

(Pub. L. 103–177, title III, § 306, as added Pub. L. 103–435, § 12(b), Nov. 2, 1994, 108 Stat. 4572.)

CHAPTER 40—INDIAN DAMS SAFETY

Sec.
3801. Findings.
3802. Definitions.
3803. Dam Safety Maintenance and Repair Program.
3804. Authorization of appropriations.

§ 3801. Findings

The Congress finds that—

(1) the Secretary of the Interior has identified 53 dams on Indian lands that present a threat to human life in the event of a failure;

(2) because of inadequate attention in the past to problems stemming from structural deficiencies and regular maintenance requirements for dams operated by the Bureau of Indian Affairs, unsafe Bureau dams continue to pose an imminent threat to people and property;

(3) many Bureau dams have maintenance deficiencies regardless of their current safety condition classification and the deficiencies must be corrected to avoid future threats to human life and property;

(4) safe working dams on Indian lands are necessary to supply irrigation water, to provide flood control, to provide water for municipal, industrial, domestic, livestock, and recreation uses, and for fish and wildlife habitats; and

(5) it is necessary to institute a regular dam maintenance and repair program, utilizing the expertise in the Bureau, Indian tribes, and other Federal agencies.

(Pub. L. 103–302, § 2, Aug. 23, 1994, 108 Stat. 1560.)

SHORT TITLE

Section 1 of Pub. L. 103–302 provided that: ''This Act [enacting this chapter] may be cited as the 'Indian Dams Safety Act of 1994'.''

§ 3802. Definitions

As used in this chapter:

(1) The term ''Bureau'' means the Bureau of Indian Affairs.

(2) The term ''dam'' has the same meaning given such term by section 467 of title 33.

(3) The term ''Secretary'' means the Secretary of the Interior.

(4) The term ''Indian tribe'' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indian tribes because of their status as Indians.

(Pub. L. 103–302, § 3, Aug. 23, 1994, 108 Stat. 1560; Pub. L. 104–303, title II, § 215(d), Oct. 12, 1996, 110 Stat. 3694.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (4), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

1996—Par. (2). Pub. L. 104–303 made technical amendment to reference in original act which appears in text as reference to section 467 of title 33.

§ 3803. Dam Safety Maintenance and Repair Program

(a) Establishment

The Secretary shall establish a dam safety maintenance and repair program within the Bureau to ensure maintenance and monitoring of the condition of each dam identified pursuant to subsection (e) of this section necessary to maintain the dam in a satisfactory condition on a long-term basis.

(b) Transfer of existing functions and personnel

All functions performed before August 23, 1994, pursuant to the Dam Safety Program established by the Secretary of the Interior by order dated February 28, 1980, and all Bureau of Indian Affairs personnel assigned to such program as of August 23, 1994, are hereby transferred to the Dam Safety Maintenance and Repair Program. Any reference in any law, regulation, executive order, reorganization plan, or delegation of authority to the Dam Safety Program is deemed to be a reference to the Dam Safety Maintenance and Repair Program.

(c) Rehabilitation

Under the Dam Safety Maintenance and Repair Program, the Secretary shall perform such rehabilitation work as is necessary to bring the dams identified pursuant to subsection (e) of this section to a satisfactory condition. In addition, each dam located on Indian lands shall be regularly maintained pursuant to the Dam Safety Maintenance and Repair Program established pursuant to subsection (a) of this section.

(d) Maintenance action plan

The Secretary shall develop a maintenance action plan, which shall include a prioritization of actions to be taken, for those dams with a risk hazard rating of high or significant as identified pursuant to subsection (e) of this section.

(e) Identification of dams

(1) Development of list

The Secretary shall develop a comprehensive list of dams located on Indian lands that describes the dam safety condition classification of each dam, as specified in paragraph (2), the risk hazard classification of each dam, as specified in paragraph (3), and the conditions resulting from maintenance deficiencies.

(2) Dam safety condition classifications

The dam safety condition classification referred to in paragraph (1) is one of the following classifications:

(A) Satisfactory

No existing or potential dam safety deficiencies are recognized. Safe performance is expected under all anticipated conditions.

(B) Fair

No existing dam safety deficiencies are recognized for normal loading conditions. Infrequent hydrologic or seismic events would probably result in a dam safety deficiency.

(C) Conditionally poor

A potential dam safety deficiency is recognized for unusual loading conditions that may realistically occur during the expected life of the structure.

(D) Poor

A potential dam safety deficiency is clearly recognized for normal loading conditions. Immediate actions to resolve the deficiency are recommended; reservoir restrictions may be necessary until resolution of the problem.

(E) Unsatisfactory

A dam safety deficiency exists for normal loading conditions. Immediate remedial action is required for resolution of the problem.

(3) Risk hazard classification

The risk hazard classification referred to in paragraph (1) is one of the following classifications:

(A) High

Six or more lives would be at risk or extensive property damage could occur if the dam failed.

(B) Significant

Between one and six lives would be at risk or significant property damage could occur if the dam failed.

(C) Low

No lives would be at risk and limited property damage would occur if the dam failed.

(f) Limitation on program authorization

Work authorized by this chapter shall be for the purpose of dam safety maintenance and structural repair. The Secretary may authorize, upon request of an Indian tribe, up to 20 percent of the cost of repairs to be used to provide additional conservation storage capacity or develop-

ing benefits beyond those provided by the original dams and reservoirs. This chapter is not intended to preclude development of increased storage or benefits under any other authority or to preclude measures to protect fish and wildlife.

(g) Technical assistance

To carry out the purposes of this chapter, the Secretary may obtain technical assistance on a nonreimbursable basis from other departments and agencies. Notwithstanding any such technical assistance, the Dam Safety Maintenance and Repair Program established under subsection (a) of this section shall be under the direction and control of the Bureau.

(h) Contract authority

In addition to any other authority established by law, the Secretary is authorized to contract with Indian tribes under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) to carry out the Dam Safety Maintenance and Repair Program established under this chapter.

(i) Annual report

The Secretary shall submit an annual report on the implementation of this chapter. The report shall include—

(1) the list of dams and their status on the maintenance action plan developed under this section; and

(2) the projected total cost and a schedule of the projected annual cost of rehabilitation or repair for each dam under this section.

The report shall be submitted at the time the budget is required to be submitted under section 1105 of title 31 to the Subcommittee on Native American Affairs of the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate.

(Pub. L. 103–302, § 4, Aug. 23, 1994, 108 Stat. 1561; Pub. L. 104–109, § 3, Feb. 12, 1996, 110 Stat. 764.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (h), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1996—Subsec. (h). Pub. L. 104–109 substituted ''under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)'' for ''(under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e))), as amended,''.

CHANGE OF NAME

Subcommittee on Native American Affairs changed to Subcommittee on Native American and Insular Affairs.

§ 3804. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary to carry out this chapter. Funds provided under this chapter are to be considered nonreimbursable.

(Pub. L. 103–302, § 5, Aug. 23, 1994, 108 Stat. 1563.)

CHAPTER 41—INDIAN LANDS OPEN DUMP CLEANUP

Sec.
3901. Findings and purposes.
3902. Definitions.
3903. Inventory of open dumps.
3904. Authority of Director of Indian Health Service.
3905. Contract authority.
3906. Tribal demonstration project.
3907. Authorization of appropriations.
3908. Disclaimers.

§ 3901. Findings and purposes

(a) Findings

The Congress finds that—

(1) there are at least 600 open dumps on Indian and Alaska Native lands;

(2) these dumps threaten the health and safety of residents of Indian and Alaska Native lands and contiguous areas;

(3) many of these dumps were established or are used by Federal agencies such as the Bureau of Indian Affairs and the Indian Health Service;

(4) these dumps threaten the environment;

(5) the United States holds most Indian lands in trust for the benefit of Indian tribes and Indian individuals; and

(6) most Indian tribal governments and Alaska Native entities lack the financial and technical resources necessary to close and maintain these dumps in compliance with applicable Federal laws.

(b) Purposes

The purposes of this chapter are to—

(1) identify the location of open dumps on Indian lands and Alaska Native lands;

(2) assess the relative health and environmental hazards posed by such dumps; and

(3) provide financial and technical assistance to Indian tribal governments and Alaska Native entities, either directly or by contract, to close such dumps in compliance with applicable Federal standards and regulations, or standards promulgated by an Indian tribal government or Alaska Native entity, if such standards are more stringent than the Federal standards.

(Pub. L. 103–399, § 2, Oct. 22, 1994, 108 Stat. 4164.)

SHORT TITLE

Section 1 of Pub. L. 103–399 provided that: ''This Act [enacting this chapter] may be cited as the 'Indian Lands Open Dump Cleanup Act of 1994'.''

§ 3902. Definitions

For the purposes of this chapter, the following definitions shall apply:

(1) Closure or close

The term ''closure or close'' means the termination of operations at open dumps on Indian land or Alaska Native land and bringing such dumps into compliance with applicable Federal standards and regulations, or standards promulgated by an Indian tribal government or Alaska Native entity, if such standards are more stringent than the Federal standards and regulations.

(2) Director

The term ''Director'' means the Director of the Indian Health Service.

(3) Indian land

The term ''Indian land'' means—

(A) land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(B) dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(C) Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

(4) Alaska Native land

The term ''Alaska Native land'' means (A) land conveyed or to be conveyed pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], including any land reconveyed under section 14(c)(3) of that Act (43 U.S.C. 1613(c)(3)), and (B) land conveyed pursuant to the Act of November 2, 1966 (16 U.S.C. 1151 et seq.; commonly known as the ''Fur Seal Act of 1966'').

(5) Indian tribal government

The term ''Indian tribal government'' means the governing body of any Indian tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(6) Alaska Native entity

The term ''Alaska Native entity'' includes native corporations established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] and any Alaska Native village or municipal entity which owns Alaska Native land.

(7) Open dump

The term ''open dump'' means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 4004 of the Solid Waste Disposal Act (42 U.S.C. 6944) and which is not a facility for disposal of hazardous waste.

(8) Postclosure maintenance

The term ''postclosure maintenance'' means any activity undertaken at a closed solid waste management facility on Indian land or on Alaska Native land to maintain the integrity of containment features, monitor compliance with applicable performance standards, or remedy any situation or occurrence that violates regulations promulgated pursuant to subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.).

(9) Service

The term ''Service'' means the Indian Health Service.

(10) Solid waste

The term ''solid waste'' has the meaning provided that term by section 1004(27) of the Solid Waste Disposal Act (42 U.S.C. 6903) and any regulations promulgated thereunder.

(Pub. L. 103–399, § 3, Oct. 22, 1994, 108 Stat. 4164; Pub. L. 104–109, § 5, Feb. 12, 1996, 110 Stat. 764.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in pars. (4) and (6), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Fur Seal Act of 1966, referred to in par. (4), is Pub. L. 89–702, Nov. 2, 1966, 80 Stat. 1091, as amended, which is classified principally to chapter 24 (§ 1151 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1151 of Title 16 and Tables.

The Solid Waste Disposal Act, referred to in par. (8), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle D of the Act is classified generally to subchapter IV (§ 6941 et seq.) of chapter 82 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

AMENDMENTS

1996—Par. (7). Pub. L. 104–109 substituted ''section 4004 of the Solid Waste Disposal Act (42 U.S.C. 6944)'' for ''section 6944 of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.)''.

§ 3903. Inventory of open dumps

(a) Study and inventory

Not later than 12 months after October 22, 1994, the Director shall conduct a study and inventory of open dumps on Indian lands and Alaska Native lands. The inventory shall list the geographic location of all open dumps, an evaluation of the contents of each dump, and an assessment of the relative severity of the threat to public health and the environment posed by each dump. Such assessment shall be carried out cooperatively with the Administrator of the Environmental Protection Agency. The Director shall obtain the concurrence of the Administrator in the determination of relative severity made by any such assessment.

(b) Annual reports

Upon completion of the study and inventory under subsection (a) of this section, the Director shall report to the Congress, and update such report annually—

(1) the current priority of Indian and Alaska Native solid waste deficiencies,

(2) the methodology of determining the priority listing,

(3) the level of funding needed to effectively close or bring into compliance all open dumps on Indian lands or Alaska Native lands, and

(4) the progress made in addressing Indian and Alaska Native solid waste deficiencies.

(c) 10-year plan

The Director shall develop and begin implementation of a 10-year plan to address solid waste disposal needs on Indian lands and Alaska Native lands. This 10-year plan shall identify—

(1) the level of funding needed to effectively close or bring into compliance with applicable Federal standards any open dumps located on Indian lands and Alaska Native lands; and

(2) the level of funding needed to develop comprehensive solid waste management plans for every Indian tribal government and Alaska Native entity.

(Pub. L. 103–399, § 4, Oct. 22, 1994, 108 Stat. 4166.)

§ 3904. Authority of Director of Indian Health Service

(a) Reservation inventory

(1) Upon request by an Indian tribal government or Alaska Native entity, the Director shall—

(A) conduct an inventory and evaluation of the contents of open dumps on the Indian lands or Alaska Native lands which are subject to the authority of the Indian tribal government or Alaska Native entity;

(B) determine the relative severity of the threat to public health and the environment posed by each dump based on information available to the Director and the Indian tribal government or Alaska Native entity unless the Director, in consultation with the Indian tribal government or Alaska Native entity, determines that additional actions such as soil testing or water monitoring would be appropriate in the circumstances; and

(C) develop cost estimates for the closure and postclosure maintenance of such dumps.

(2) The inventory and evaluation authorized under paragraph (1)(A) shall be carried out cooperatively with the Administrator of the Environmental Protection Agency. The Director shall obtain the concurrence of the Administrator in the determination of relative severity made under paragraph (1)(B).

(b) Assistance

Upon completion of the activities required to be performed pursuant to subsection (a) of this section, the Director shall, subject to subsection (c) of this section, provide financial and technical assistance to the Indian tribal government or Alaska Native entity to carry out the activities necessary to—

(1) close such dumps; and

(2) provide for postclosure maintenance of such dumps.

(c) Conditions

All assistance provided pursuant to subsection (b) of this section shall be made available on a site-specific basis in accordance with priorities developed by the Director. Priorities on specific Indian lands or Alaska Native lands shall be developed in consultation with the Indian tribal government or Alaska Native entity. The priorities shall take into account the relative severity of the threat to public health and the environment posed by each open dump and the availability of funds necessary for closure and postclosure maintenance.

(Pub. L. 103–399, § 5, Oct. 22, 1994, 108 Stat. 4166.)

§ 3905. Contract authority

(a) Authority of Director

To the maximum extent feasible, the Director shall carry out duties under this chapter through contracts, compacts, or memoranda of agreement with Indian tribal governments or Alaska Native entities pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), section 2004a of title 42, or section 1632 of this title.

(b) Cooperative agreements

The Director is authorized, for purposes of carrying out the duties of the Director under this chapter, to contract with or enter into such cooperative agreements with such other Federal agencies as is considered necessary to provide cost-sharing for closure and postclosure activities, to obtain necessary technical and financial assistance and expertise, and for such other purposes as the Director considers necessary.

(Pub. L. 103–399, § 6, Oct. 22, 1994, 108 Stat. 4167.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

§ 3906. Tribal demonstration project

(a) In general

The Director may establish and carry out a program providing for demonstration projects involving open dumps on Indian land or Alaska Native land. It shall be the purpose of such projects to determine if there are unique cost factors involved in the cleanup and maintenance of open dumps on such land, and the extent to which advanced closure planning is necessary. Under the program, the Director is authorized to select no less than three Indian tribal governments or Alaska Native entities to participate in such demonstration projects.

(b) Criteria

Criteria established by the Director for the selection and participation of an Indian tribal government or Alaska Native entity in the demonstration project shall provide that in order to be eligible to participate, an Indian tribal government or Alaska Native entity must—

(1) have one or more existing open dumps on Indian lands or Alaska Native lands which are under its authority;

(2) have developed a comprehensive solid waste management plan for such lands; and

(3) have developed a closure and postclosure maintenance plan for each dump located on such lands.

(c) Duration of funding for project

No demonstration project shall be funded for more than three fiscal years.

(Pub. L. 103–399, § 7, Oct. 22, 1994, 108 Stat. 4167.)

§ 3907. Authorization of appropriations

(a) General authorization

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

(b) Coordination

The activities required to be performed by the Director under this chapter shall be coordinated with activities related to solid waste and sanitation facilities funded pursuant to other authorizations.

(Pub. L. 103–399, § 8, Oct. 22, 1994, 108 Stat. 4168.)

§ 3908. Disclaimers

(a) Authority of Director

Nothing in this chapter shall be construed to alter, diminish, repeal, or supersede any authority conferred on the Director pursuant to section 1632 of this title, and section 2004a of title 42.

(b) Exempted lands and facilities

This chapter shall not apply to open dump sites on Indian lands or Alaska Native lands—

(1) that comprise an area of one-half acre or less and that are used by individual families on lands to which they hold legal or beneficial title;

(2) of any size that have been or are being operated for a profit; or

(3) where solid waste from an industrial process is being or has been routinely disposed of at a privately owned facility in compliance with applicable Federal laws.

(c) Rules of construction

(1) Nothing in this chapter shall be construed to amend or modify the authority or responsibility of the Administrator of the Environmental Protection Agency under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(2) Nothing in this chapter is intended to amend, repeal, or supersede any provision of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(Pub. L. 103–399, § 9, Oct. 22, 1994, 108 Stat. 4168.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

CHAPTER 42—AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM

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SUBCHAPTER IV—AUTHORIZATION OF APPROPRIATIONS

4061. Authorization of appropriations.

§ 4001. Definitions

For the purposes of this chapter:

(1) The term ''Special Trustee'' means the Special Trustee for American Indians appointed under section 4042 of this title.

(2) The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) The term ''Secretary'' means the Secretary of the Interior.

(4) The term ''Office'' means the Office of Special Trustee for American Indians established by section 4042 of this title.

(5) The term ''Bureau'' means the Bureau of Indian Affairs within the Department of the Interior.

(6) The term ''Department'' means the Department of the Interior.

(Pub. L. 103–412, § 2, Oct. 25, 1994, 108 Stat. 4239.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 103–412, Oct. 25, 1994, 108 Stat. 4239, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Alaska Native Claims Settlement Act, referred to in par. (2), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SHORT TITLE

Section 1(a) of Pub. L. 103–412 provided that: ''This Act [enacting this chapter, amending sections 161a and 162a of this title, and enacting provisions set out as a note under section 161a of this title] may be cited as the 'American Indian Trust Fund Management Reform Act of 1994'.''

SUBCHAPTER I—RECOGNITION OF TRUST RESPONSIBILITY

§ 4011. Responsibility of Secretary to account for daily and annual balances of Indian trust funds

(a) Requirement to account

The Secretary shall account for the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to section 162a of this title.

(b) Periodic statement of performance

Not later than 20 business days after the close of a calendar quarter, the Secretary shall provide a statement of performance to each Indian tribe and individual with respect to whom funds are deposited or invested pursuant to section 162a of this title. The statement, for the period concerned, shall identify—

(1) the source, type, and status of the funds;
(2) the beginning balance;
(3) the gains and losses;
(4) receipts and disbursements; and
(5) the ending balance.

(c) Annual audit

The Secretary shall cause to be conducted an annual audit on a fiscal year basis of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to section 162a of this title, and shall include a letter relating to the audit in the first statement of performance provided under subsection (b) of this section after the completion of the audit.

(Pub. L. 103–412, title I, § 102, Oct. 25, 1994, 108 Stat. 4240.)

PERFORMANCE AND ACCOUNT STATEMENTS FOR INACTIVE ACCOUNTS

Provisions stating that the Secretary was not required to provide a quarterly statement of performance for any Indian trust account that had not had activity for at least 18 months and had a balance of $1.00 or less but was required to issue an annual account statement and maintain a record of any such accounts and to permit the balance in each such account to be withdrawn upon the express written request of the account holder, were contained in Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Pub. L. 109–54, title I, Aug. 2, 2005, 119 Stat. 519, and were repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were also contained in the following prior appropriations acts:

Pub. L. 108–447, div. E, title I, Dec. 8, 2004, 118 Stat. 3061.
Pub. L. 108–108, title I, Nov. 10, 2003, 117 Stat. 1263.
Pub. L. 108–7, div. F, title I, Feb. 20, 2003, 117 Stat. 236.
Pub. L. 107–63, title I, Nov. 5, 2001, 115 Stat. 435.
Pub. L. 106–291, title I, Oct. 11, 2000, 114 Stat. 939.
Pub. L. 106–113, div. B, § 1000(a)(3) [title I], Nov. 29, 1999, 113 Stat. 1535, 1501A–153.
Pub. L. 105–277, div. A, § 101(e) [title I], Oct. 21, 1998, 112 Stat. 2681–231, 2681–251.

§ 4012. Authority for payment of claims for interest owed

The Secretary shall make payments to an individual Indian in full satisfaction of any claim of such individual for interest on amounts deposited or invested on behalf of such individual before October 25, 1994, retroactive to the date that the Secretary began investing individual Indian monies on a regular basis, to the extent that the claim is identified—

(1) by a reconciliation process of individual Indian money accounts, or
(2) by the individual and presented to the Secretary with supporting documentation, and is verified by the Secretary pursuant to the Department's policy for addressing accountholder losses.

(Pub. L. 103–412, title I, § 104, Oct. 25, 1994, 108 Stat. 4241.)

SUBCHAPTER II—INDIAN TRUST FUND MANAGEMENT PROGRAM

§ 4021. Purpose

The purpose of this subchapter is to allow tribes an opportunity to manage tribal funds currently held in trust by the United States and managed by the Secretary through the Bureau, that, consistent with the trust responsibility of the United States and the principles of self-determination, will—

(1) give Indian tribal governments greater control over the management of such trust funds; or
(2) otherwise demonstrate how the principles of self-determination can work with respect to the management of such trust funds, in a manner consistent with the trust responsibility of the United States.

(Pub. L. 103–412, title II, § 201, Oct. 25, 1994, 108 Stat. 4242.)

§ 4022. Voluntary withdrawal from trust funds program

(a) In general

An Indian tribe may, in accordance with this section, submit a plan to withdraw some or all funds held in trust for such tribe by the United States and managed by the Secretary through the Bureau.

(b) Approval of plan

The Secretary shall approve such plan within 90 days of receipt and when approving the plan, the Secretary shall obtain the advice of the Special Trustee or prior to the appointment of such Special Trustee, the Director of the Office of Trust Fund Management within the Bureau. Such plan shall meet the following conditions:

(1) Such plan has been approved by the appropriate Indian tribe and is accompanied by a resolution from the tribal governing body approving the plan.
(2) The Secretary determines such plan to be reasonable after considering all appropriate factors, including (but not limited to) the following:
  (A) The capability and experience of the individuals or institutions that will be managing the trust funds.
  (B) The protection against substantial loss of principal.

(c) Dissolution of trust responsibility

Beginning on the date funds are withdrawn pursuant to this section, any trust responsibil-

ity or liability of the United States with respect to such funds shall cease except as provided for in section 4027 of this title.

(Pub. L. 103–412, title II, § 202, Oct. 25, 1994, 108 Stat. 4242.)

§ 4023. Judgment funds

(a) In general

The Secretary is authorized to approve plans under section 4022 of this title for the withdrawal of judgment funds held by the Secretary.

(b) Limitation

Only such funds held by the Secretary under the terms of the Indian Judgment Funds Use or Distribution Act [25 U.S.C. 1401 et seq.] or an Act of Congress which provides for the secretarial management of such judgment funds shall be included in such plans.

(c) Secretarial duties

In approving such plans, the Secretary shall ensure—

(1) that the purpose and use of the judgment funds identified in the previously approved judgment fund plan will continue to be followed by the Indian tribe in the management of the judgment funds; and

(2) that only funds held for Indian tribes may be withdrawn and that any funds held for individual tribal members are not to be included in the plan.

(Pub. L. 103–412, title II, § 203, Oct. 25, 1994, 108 Stat. 4242.)

REFERENCES IN TEXT

The Indian Judgment Funds Use or Distribution Act, referred to in subsec. (b), probably means the Indian Tribal Judgment Funds Use or Distribution Act, Pub. L. 93–134, Oct. 19, 1973, 87 Stat. 466, as amended, which is classified generally to chapter 16 (§ 1401 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

§ 4024. Technical assistance

The Secretary shall—

(1) directly or by contract, provide Indian tribes with technical assistance in developing, implementing, and managing Indian trust fund investment plans; and

(2) among other things, ensure that legal, financial, and other expertise of the Department of the Interior has been made fully available in an advisory capacity to the Indian tribes to assist in the development, implementation, and management of investment plans.

(Pub. L. 103–412, title II, § 204, Oct. 25, 1994, 108 Stat. 4243.)

§ 4025. Grant program

(a) General authority

The Secretary is authorized to award grants to Indian tribes for the purpose of developing and implementing plans for the investment of Indian tribal trust funds.

(b) Use of funds

The purposes for which funds provided under this section may be used include (but are not limited to)—

(1) the training and education of employees responsible for monitoring the investment of trust funds;

(2) the building of tribal capacity for the investment and management of trust funds;

(3) the development of a comprehensive tribal investment plan;

(4) the implementation and management of tribal trust fund investment plans; and

(5) such other purposes related to this subchapter that the Secretary deems appropriate.

(Pub. L. 103–412, title II, § 205, Oct. 25, 1994, 108 Stat. 4243.)

§ 4026. Return of withdrawn funds

Subject to such conditions as the Secretary may prescribe, any Indian tribe which has withdrawn trust funds may choose to return any or all of the trust funds such tribe has withdrawn by notifying the Secretary in writing of its intention to return the funds to the control and management of the Secretary.

(Pub. L. 103–412, title II, § 206, Oct. 25, 1994, 108 Stat. 4243.)

§ 4027. Savings provision

By submitting or approving a plan under this subchapter, neither the tribe nor the Secretary shall be deemed to have accepted the account balance as accurate or to have waived any rights regarding such balance and to seek compensation.

(Pub. L. 103–412, title II, § 207, Oct. 25, 1994, 108 Stat. 4243.)

§ 4028. Report to Congress

The Secretary shall, beginning one year after October 25, 1994, submit an annual report to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate on the implementation of programs under this subchapter. Such report shall include recommendations (if any) for changes necessary to better implement the purpose of this subchapter.

(Pub. L. 103–412, title II, § 208, Oct. 25, 1994, 108 Stat. 4243.)

§ 4029. Regulations

(a) In general

Not later than 12 months after October 25, 1994, the Secretary shall promulgate final regulations for the implementation of this subchapter. All regulations promulgated pursuant to this subchapter shall be developed by the Secretary with the full and active participation of the Indian tribes with trust funds held by the Secretary and other affected Indian tribes.

(b) Effect

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

(Pub. L. 103–412, title II, § 209, Oct. 25, 1994, 108 Stat. 4243.)

SUBCHAPTER III—SPECIAL TRUSTEE FOR AMERICAN INDIANS

§ 4041. Purposes

The purposes of this subchapter are—

(1) to provide for more effective management of, and accountability for the proper discharge of, the Secretary's trust responsibilities to Indian tribes and individual Indians by establishing in the Department of the Interior an Office of Special Trustee for American Indians to oversee and coordinate reforms within the Department of practices relating to the management and discharge of such responsibilities;

(2) to ensure that reform of such practices in the Department is carried out in a unified manner and that reforms of the policies, practices, procedures and systems of the Bureau, Minerals Management Service, and Bureau of Land Management, which carry out such trust responsibilities, are effective, consistent, and integrated; and

(3) to ensure the implementation of all reforms necessary for the proper discharge of the Secretary's trust responsibilities to Indian tribes and individual Indians.

(Pub. L. 103–412, title III, § 301, Oct. 25, 1994, 108 Stat. 4244.)

§ 4042. Office of Special Trustee for American Indians

(a) Establishment

There is hereby established within the Department of the Interior the Office of Special Trustee for American Indians. The Office shall be headed by the Special Trustee who shall report directly to the Secretary.

(b) Special Trustee

(1) Appointment

The Special Trustee shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who possess demonstrated ability in general management of large governmental or business entities and particular knowledge of trust fund management, management of financial institutions, and the investment of large sums of money.

(2) Compensation

The Special Trustee shall be paid at a rate determined by the Secretary to be appropriate for the position, but not less than the rate of basic pay payable at Level II of the Executive Schedule under section 5313 of title 5.

(c) Termination of Office

(1) Conditioned upon implementation of reforms

The Special Trustee, in proposing a termination date under section 4043(a)(2)(C) of this title, shall ensure continuation of the Office until all reforms identified in the strategic plan have been implemented to the satisfaction of the Special Trustee.

(2) 30-day notice

Thirty days prior to the termination date proposed in the plan submitted under this section, the Special Trustee shall notify the Secretary and the Congress in writing of the progress in implementing the reforms identified in the plan. The Special Trustee, at that time, may recommend the continuation, or the permanent establishment, of the Office if the Special Trustee concludes that continuation or permanent establishment is necessary for the efficient discharge of the Secretary's trust responsibilities.

(3) Termination date

The Office shall terminate 180 legislative days after the date on which the notice to the Congress under paragraph (2) is provided, unless the Congress extends the authorities of the Special Trustee. For the purposes of this section, a legislative day is a day on which either House of the Congress is in session.

(Pub. L. 103–412, title III, § 302, Oct. 25, 1994, 108 Stat. 4244.)

§ 4043. Authorities and functions of Special Trustee

(a) Comprehensive strategic plan

(1) In general

The Special Trustee shall prepare and, after consultation with Indian tribes and appropriate Indian organizations, submit to the Secretary and the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate, within one year after the initial appointment is made under section 4042(b) of this title, a comprehensive strategic plan for all phases of the trust management business cycle that will ensure proper and efficient discharge of the Secretary's trust responsibilities to Indian tribes and individual Indians in compliance with this chapter.

(2) Plan requirements

The plan prepared under paragraph (1) shall include the following:

(A) Identification of all reforms to the policies, procedures, practices and systems of the Department, the Bureau, the Bureau of Land Management, and the Minerals Management Service necessary to ensure the proper and efficient discharge of the Secretary's trust responsibilities in compliance with this chapter.

(B) Provisions for opportunities for Indian tribes to assist in the management of their trust accounts and to identify for the Secretary options for the investment of their trust accounts, in a manner consistent with the trust responsibilities of the Secretary, in ways that will help promote economic development in their communities.

(C) A timetable for implementing the reforms identified in the plan, including a date for the proposed termination of the Office.

(b) Duties

(1) General oversight of reform efforts

The Special Trustee shall oversee all reform efforts within the Bureau, the Bureau of Land Management, and the Minerals Management Service relating to the trust responsibilities of the Secretary to ensure the establishment of policies, procedures, systems and practices to allow the Secretary to discharge his trust responsibilities in compliance with this chapter.

(2) Bureau of Indian Affairs

(A) Monitor reconciliation of trust accounts

The Special Trustee shall monitor the reconciliation of tribal and Individual Indian Money trust accounts to ensure that the Bureau provides the account holders, with a fair and accurate accounting of all trust accounts.

(B) Investments

The Special Trustee shall ensure that the Bureau establishes appropriate policies and procedures, and develops necessary systems, that will allow it—

(i) properly to account for and invest, as well as maximize, in a manner consistent with the statutory restrictions imposed on the Secretary's investment options, the return on the investment of all trust fund monies, and

(ii) to prepare accurate and timely reports to account holders (and others, as required) on a periodic basis regarding all collections, disbursements, investments, and return on investments related to their accounts.

(C) Ownership and lease data

The Special Trustee shall ensure that the Bureau establishes policies and practices to maintain complete, accurate, and timely data regarding the ownership and lease of Indian lands.

(3) Bureau of Land Management

The Special Trustee shall ensure that the Bureau of Land Management establishes policies and practices adequate to enforce compliance with Federal requirements for drilling, production, accountability, environmental protection, and safety with respect to the lease of Indian lands.

(4) Minerals Management Service

The Special Trustee shall ensure that the Minerals Management Service establishes policies and practices to enforce compliance by lessees of Indian lands with all requirements for timely and accurate reporting of production and payment of lease royalties and other revenues, including the audit of leases to ensure that lessees are accurately reporting production levels and calculating royalty payments.

(c) Coordination of policies

(1) In general

The Special Trustee shall ensure that—

(A) the policies, procedures, practices, and systems of the Bureau, the Bureau of Land Management, and the Minerals Management Service related to the discharge of the Secretary's trust responsibilities are coordinated, consistent, and integrated, and

(B) the Department prepares comprehensive and coordinated written policies and procedures for each phase of the trust management business cycle.

(2) Standardized procedures

The Special Trustee shall ensure that the Bureau imposes standardized trust fund accounting procedures throughout the Bureau.

(3) Integration of ledger with investment system

The Special Trustee shall ensure that the trust fund investment, general ledger, and subsidiary accounting systems of the Bureau are integrated and that they are adequate to support the trust fund investment needs of the Bureau.

(4) Integration of land records, trust funds accounting, and asset management systems among agencies

The Special Trustee shall ensure that—

(A) the land records system of the Bureau interfaces with the trust fund accounting system, and

(B) the asset management systems of the Minerals Management Service and the Bureau of Land Management interface with the appropriate asset management and accounting systems of the Bureau, including ensuring that—

(i) the Minerals Management Service establishes policies and procedures that will allow it to properly collect, account for, and disburse to the Bureau all royalties and other revenues generated by production from leases on Indian lands; and

(ii) the Bureau of Land Management and the Bureau provide Indian landholders with accurate and timely reports on a periodic basis that cover all transactions related to leases of Indian resources.

(5) Trust Management program budget

(A) Development and submission

The Special Trustee shall develop for each fiscal year, with the advice of program managers of each office within the Bureau of Indian Affairs, Bureau of Land Management and Minerals Management Service that participates in trust management, including the management of trust funds or natural resources, or which is charged with any responsibility under the comprehensive strategic plan prepared under subsection (a) of this section, a consolidated Trust Management program budget proposal that would enable the Secretary to efficiently and effectively discharge his trust responsibilities and to implement the comprehensive strategic plan, and shall submit such budget proposal to the Secretary, the Director of the Office of Management and Budget, and to the Congress.

(B) Duty of certain program managers

Each program manager participating in trust management or charged with responsibilities under the comprehensive strategic plans shall transmit his office's budget request to the Special Trustee at the same time as such request is submitted to his superiors (and before submission to the Office of Management and Budget) in the preparation of the budget of the President submitted to the Congress under section 1105(a) of title 31.

(C) Certification of adequacy of budget request

The Special Trustee shall—

(i) review each budget request submitted under subparagraph (B);

(ii) certify in writing as to the adequacy of such request to discharge, effectively and efficiently, the Secretary's trust responsibilities and to implement the comprehensive strategic plan; and

(iii) notify the program manager of the Special Trustee's certification under clause (ii).

(D) Maintenance of records

The Special Trustee shall maintain records of certifications made under subparagraph (C).

(E) Limitation on reprogramming or transfer

No program manager shall submit, and no official of the Department of the Interior may approve or otherwise authorize, a reprogramming or transfer request with respect to any funds appropriated for trust management which is included in the Trust Management Program Budget unless such request has been approved by the Special Trustee.

(d) Problem resolution

The Special Trustee shall provide such guidance as necessary to assist Department personnel in identifying problems and options for resolving problems, and in implementing reforms to Department, Bureau, Bureau of Land Management, and Minerals Management Service policies, procedures, systems and practices.

(e) Special Trustee access

The Special Trustee, and his staff, shall have access to all records, reports, audits, reviews, documents, papers, recommendations, files and other material, as well as to any officer and employee, of the Department and any office or bureau thereof, as the Special Trustee deems necessary for the accomplishment of his duties under this chapter.

(f) Annual report

The Special Trustee shall report to the Secretary and the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate each year on the progress of the Department, the Bureau, the Bureau of Land Management, and the Minerals Management Service in implementing the reforms identified in the comprehensive strategic plan under subsection (a)(1) of this section and in meeting the timetable established in the strategic plan under subsection (a)(2)(C) of this section.

(Pub. L. 103–412, title III, § 303, Oct. 25, 1994, 108 Stat. 4245; Pub. L. 104–109, § 6(a), Feb. 12, 1996, 110 Stat. 764.)

AMENDMENTS

1996—Subsec. (c)(5)(D). Pub. L. 104–109 substituted ''subparagraph (C)'' for ''paragraph (3)(B)''.

LANDS TITLE REPORT COMMISSION

Pub. L. 106–569, title V, § 501, Dec. 27, 2000, 114 Stat. 2959, provided that:

''(a) ESTABLISHMENT.—Subject to sums being provided in advance in appropriations Acts, there is established a Commission to be known as the Lands Title Report Commission (hereafter in this section referred to as the 'Commission') to facilitate home loan mortgages on Indian trust lands. The Commission will be subject to oversight by the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

''(b) MEMBERSHIP.—

''(1) APPOINTMENT.—The Commission shall be composed of 12 members, appointed not later than 90 days after the date of the enactment of this Act [Dec. 27, 2000] as follows:

''(A) Four members shall be appointed by the President.

''(B) Four members shall be appointed by the Chairperson of the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives.

''(C) Four members shall be appointed by the Chairperson of the Committee on Banking, Housing, and Urban Affairs of the Senate.

''(2) QUALIFICATIONS.—

''(A) MEMBERS OF TRIBES.—At all times, not less than eight of the members of the Commission shall be members of federally recognized Indian tribes.

''(B) EXPERIENCE IN LAND TITLE MATTERS.—All members of the Commission shall have experience in and knowledge of land title matters relating to Indian trust lands.

''(3) CHAIRPERSON.—The Chairperson of the Commission shall be one of the members of the Commission appointed under paragraph (1)(C), as elected by the members of the Commission.

''(4) VACANCIES.—Any vacancy on the Commission shall not affect its powers, but shall be filled in the manner in which the original appointment was made.

''(5) TRAVEL EXPENSES.—Members of the Commission shall serve without pay, but each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(c) INITIAL MEETING.—The Chairperson of the Commission shall call the initial meeting of the Commission. Such meeting shall be held within 30 days after the Chairperson of the Commission determines that sums sufficient for the Commission to carry out its duties under this Act [probably should be ''section''] have been appropriated for such purpose.

''(d) DUTIES.—The Commission shall analyze the system of the Bureau of Indian Affairs of the Department of the Interior for maintaining land ownership records and title documents and issuing certified title status reports relating to Indian trust lands and, pursuant to such analysis, determine how best to improve or replace the system—

''(1) to ensure prompt and accurate responses to requests for title status reports;

''(2) to eliminate any backlog of requests for title status reports; and

''(3) to ensure that the administration of the system will not in any way impair or restrict the ability of Native Americans to obtain conventional loans for purchase of residences located on Indian trust lands, including any actions necessary to ensure that the system will promptly be able to meet future demands for certified title status reports, taking into account the anticipated complexity and volume of such requests.

''(e) REPORT.—Not later than the date of the termination of the Commission under subsection (h), the Commission shall submit a report to the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing the analysis and determinations made pursuant to subsection (d).

''(f) POWERS.—

''(1) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take

testimony, and receive evidence as the Commission considers appropriate.

''(2) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this section.

''(3) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairperson of the Commission, the head of that department or agency shall furnish that information to the Commission.

''(4) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

''(5) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its duties under this section.

''(6) STAFF.—The Commission may appoint personnel as it considers appropriate, subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall pay such personnel in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section such sums as may be necessary, and any amounts appropriated pursuant to this subsection shall remain available until expended.

''(h) TERMINATION.—The Commission shall terminate 1 year after the date of the initial meeting of the Commission.''

Substantially identical provisions were contained in Pub. L. 106–568, title X, § 1001, Dec. 27, 2000, 114 Stat. 2923.

§ 4044. Reconciliation report

The Secretary shall transmit to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate, by May 31, 1996, a report identifying for each tribal trust fund account for which the Secretary is responsible a balance reconciled as of September 30, 1995. In carrying out this section, the Secretary shall consult with the Special Trustee. The report shall include—

(1) a description of the Secretary's methodology in reconciling trust fund accounts;

(2) attestations by each account holder that—

(A) the Secretary has provided the account holder with as full and complete accounting as possible of the account holder's funds to the earliest possible date, and that the account holder accepts the balance as reconciled by the Secretary; or

(B) the account holder disputes the balance of the account holder's account as reconciled by the Secretary and statement explaining why the account holder disputes the Secretary's reconciled balance; and

(3) a statement by the Secretary with regard to each account balance disputed by the account holder outlining efforts the Secretary will undertake to resolve the dispute.

(Pub. L. 103–412, title III, § 304, Oct. 25, 1994, 108 Stat. 4248.)

SETTLEMENT OF TRIBAL CLAIMS

Pub. L. 107–153, § 1, Mar. 19, 2002, 116 Stat. 79, as amended by Pub. L. 109–158, § 1, Dec. 30, 2005, 119 Stat. 2954, provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, for purposes of determining the date on which an Indian tribe received a reconciliation report for purposes of applying a statute of limitations, any such report provided to or received by an Indian tribe in response to section 304 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4044) shall be deemed to have been received by the Indian tribe on December 31, 2000.

''(b) STATEMENT OF PURPOSE.—Subsection (a) is solely intended to provide recipients of reconciliation reports with the opportunity to postpone the filing of claims, or to facilitate the voluntary dismissal of claims, to encourage settlement negotiations with the United States.''

§ 4045. Staff and consultants

(a) Staff

The Special Trustee may employ such staff as the Special Trustee deems necessary. The Special Trustee may request staff assistance from within the Department and any office or Bureau thereof as the Special Trustee deems necessary.

(b) Contracts

To the extent and in such amounts as may be provided in advance by appropriations Acts, the Special Trustee may enter into contracts and other arrangements with public agencies and with private persons and organizations for consulting services and make such payments as necessary to carry out the provisions of this subchapter.

(Pub. L. 103–412, title III, § 305, Oct. 25, 1994, 108 Stat. 4248.)

§ 4046. Advisory board

(a) Establishment and membership

Notwithstanding any other provision of law, the Special Trustee shall establish an advisory board to provide advice on all matters within the jurisdiction of the Special Trustee. The advisory board shall consist of nine members, appointed by the Special Trustee after consultation with Indian tribes and appropriate Indian organizations, of which—

(1) five members shall represent trust fund account holders, including both tribal and Individual Indian Money accounts;

(2) two members shall have practical experience in trust fund and financial management;

(3) one member shall have practical experience in fiduciary investment management; and

(4) one member, from academia, shall have knowledge of general management of large organizations.

(b) Term

Each member shall serve a term of two years.

(c) FACA

The advisory board shall not be subject to the Federal Advisory Committee Act.

(d) Termination

The advisory board shall terminate upon termination of the Office of Special Trustee.

(Pub. L. 103–412, title III, § 306, Oct. 25, 1994, 108 Stat. 4249; Pub. L. 104–109, § 6(b), Feb. 12, 1996, 110 Stat. 764.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–109 substituted ''advisory board'' for ''Advisory Board''.

APPOINTMENT OF NEW MEMBERS

Pub. L. 108–7, div. F, title I, § 133, Feb. 20, 2003, 117 Stat. 243, provided that: ''Within 90 days of enactment of this Act [Feb. 20, 2003] the Special Trustee for American Indians, in consultation with the Secretary of the Interior and the Tribes, shall appoint new members to the Special Trustee Advisory Board.''

SUBCHAPTER IV—AUTHORIZATION OF APPROPRIATIONS

§ 4061. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

(Pub. L. 103–412, title IV, § 401, Oct. 25, 1994, 108 Stat. 4249.)

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§ 4101. Congressional findings

The Congress finds that—

(1) the Federal Government has a responsibility to promote the general welfare of the Nation—

(A) by using Federal resources to aid families and individuals seeking affordable homes in safe and healthy environments and, in particular, assisting responsible, deserving citizens who cannot provide fully for themselves because of temporary circumstances or factors beyond their control;

(B) by working to ensure a thriving national economy and a strong private housing market; and

(C) by developing effective partnerships among the Federal Government, State, tribal, and local governments, and private entities that allow government to accept responsibility for fostering the development of a healthy marketplace and allow families to prosper without government involvement in their day-to-day activities;

(2) there exists a unique relationship between the Government of the United States and the governments of Indian tribes and a unique Federal responsibility to Indian people;

(3) the Constitution of the United States invests the Congress with plenary power over the field of Indian affairs, and through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people;

(4) the Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition;

(5) providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping tribes and their members to improve their housing conditions and socioeconomic status;

(6) the need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal Government shall work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for tribes and their members; and

(7) Federal assistance to meet these responsibilities shall be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in Public Law 93–638 (25 U.S.C. 450 et seq.).

(Pub. L. 104–330, §2, Oct. 26, 1996, 110 Stat. 4017; Pub. L. 110–411, §2, Oct. 14, 2008, 122 Stat. 4320.)

REFERENCES IN TEXT

Public Law 93–638, referred to in par. (7), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

2008—Pars. (6), (7). Pub. L. 110–411 substituted ''shall'' for ''should''.

EFFECTIVE DATE

Section 107 of Pub. L. 104–330 provided that: ''Except as otherwise expressly provided in this Act [see Short Title note below], this Act and the amendments made by this Act shall take effect on October 1, 1997.''

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–411, §1(a), Oct. 14, 2008, 122 Stat. 4319, provided that: ''This Act [enacting part B of subchapter II and sections 4184 and 4196 of this title and amending this section and sections 4103, 4111 to 4114, 4116, 4117, 4131 to 4133, 4135, 4138, 4152, 4161, 4163, 4164, 4195, and 4212 of this title] may be cited as the 'Native American Housing Assistance and Self-Determination Reauthorization Act of 2008'.''

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–136, §1, Dec. 22, 2005, 119 Stat. 2643, provided that: ''This Act [enacting section 1490t of Title 42, The Public Health and Welfare, amending section 4114 of this title and sections 12899f and 12899h–1 of Title 42, and enacting provisions set out as a note under this section] may be cited as the 'Native American Housing Enhancement Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–393, §1, Oct. 30, 2004, 118 Stat. 2246, provided that: ''This Act [amending section 4191 of this title] may be cited as the 'Homeownership Opportunities for Native Americans Act of 2004'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–292, §1, Nov. 13, 2002, 116 Stat. 2053, provided that: ''This Act [amending sections 4103, 4111, 4114, 4116, 4117, 4132, 4191, 4195, and 4212 of this title and section 1715z–13a of Title 12, Banks and Banking] may be cited as the 'Native American Housing Assistance and Self-Determination Reauthorization Act of 2002'.''

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–569, title V, §511, Dec. 27, 2000, 114 Stat. 2966, provided that: ''This subtitle [subtitle B (§§511–514) of title V of Pub. L. 106–569, enacting subchapter VIII of this chapter, section 1715z–13b of Title 12, Banks and Banking, and provisions set out as notes under section 4221 of this title] may be cited as the 'Hawaiian Homelands Homeownership Act of 2000'.''

Pub. L. 106–568, §1, Dec. 27, 2000, 114 Stat. 2868, provided that: ''This Act [see Tables for classification] may be cited as the 'Omnibus Indian Advancement Act'.''

Pub. L. 106–568, title II, §201, Dec. 27, 2000, 114 Stat. 2872, provided that: ''This title [enacting subchapter VIII of this chapter, section 1715z–13b of Title 12, Banks and Banking, and provisions set out as notes under section 4221 of this title] may be cited as the 'Hawaiian Homelands Homeownership Act of 2000'.''

SHORT TITLE

Section 1(a) of Pub. L. 104–330 provided that: ''This Act [enacting this chapter and section 12899h–1 of Title 42, The Public Health and Welfare, amending sections 1715z–13a and 1721 of Title 12, Banks and Banking, and sections 1437a, 1437c to 1437e, 1437g, 1437*l*, 1437n, 1437u to

1437x, 1437aaa–5, 1437aaa–6, 1439, 11371 to 11376, 11382, 11401, 11403g, 11408, 11902 to 11905, 12747, and 12838 of Title 42, repealing sections 1437aa to 1437ee of Title 42, enacting provisions set out as notes under this section and sections 4181 and 4211 of this title and sections 11371, 12747, and 12899h–1 of Title 42, amending provisions set out as a note under section 11301 of Title 42, and repealing provisions set out as a note under section 1701z–6 of Title 12] may be cited as the 'Native American Housing Assistance and Self-Determination Act of 1996'.''

FINDINGS OF 2005 AMENDMENT

Pub. L. 109–136, § 2, Dec. 22, 2005, 119 Stat. 2643, provided that: ''Congress finds that—

''(1) there exist—

''(A) a unique relationship between the Government of the United States and the governments of Indian tribes; and

''(B) a unique Federal trust responsibility to Indian people;

''(2) Native Americans experience some of the worst housing conditions in the country, with—

''(A) 32.6 percent of Native homes being overcrowded;

''(B) 33 percent lacking adequate solid waste management systems;

''(C) 8 percent lacking a safe indoor water supply; and

''(D) approximately 90,000 Native families who are homeless or underhoused;

''(3) the poverty rate for Native Americans is twice that of the rest of the population of the United States;

''(4) the population growth of Native Americans that began in the latter part of the 20th century increased the need for Federal housing services;

''(5)(A) under the requirements of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.), members of Indian tribes are given preference for housing programs;

''(B) a primary purpose of the Act is to allow Indian tribes to leverage funds with other Federal and private funds;

''(C) the Department of Agriculture has been a significant funding source for housing for Indian tribes;

''(D) to allow assistance provided under the Act and assistance provided by the Secretary of Agriculture under other law to be combined to meet the severe housing needs of Indian tribes, the Housing Act of 1949 (42 U.S.C. 1471 [1441] et seq.) should be amended to allow for the preference referred to in subparagraph (A) by granting an exemption from title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.); and

''(E) federally recognized Indian tribes exercising powers of self-government are governed by the Indian Civil Rights Act (25 U.S.C. 1301 et seq.); and

''(6) section 457 of the Cranston-Gonzales [Cranston-Gonzalez] National Affordable Housing Act (42 U.S.C. 12899f) should be amended to include Indian tribes, tribally designated housing entities, or other agencies that primarily serve Indians as eligible applicants for YouthBuild grants.''

§ 4102. Administration through Office of Native American Programs

The Secretary of Housing and Urban Development shall carry out this chapter through the Office of Native American Programs of the Department of Housing and Urban Development.

(Pub. L. 104–330, § 3, Oct. 26, 1996, 110 Stat. 4018.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4103. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Adjusted income

The term ''adjusted income'' means the annual income that remains after excluding the following amounts:

(A) Youths, students, and persons with disabilities

$480 for each member of the family residing in the household (other than the head of the household or the spouse of the head of the household)—

(i) who is under 18 years of age; or

(ii) who is—

(I) 18 years of age or older; and

(II) a person with disabilities or a full-time student.

(B) Elderly and disabled families

$400 for an elderly or disabled family.

(C) Medical and attendant expenses

The amount by which 3 percent of the annual income of the family is exceeded by the aggregate of—

(i) medical expenses, in the case of an elderly or disabled family; and

(ii) reasonable attendant care and auxiliary apparatus expenses for each family member who is a person with disabilities, to the extent necessary to enable any member of the family (including a member who is a person with disabilities) to be employed.

(D) Child care expenses

Child care expenses, to the extent necessary to enable another member of the family to be employed or to further his or her education.

(E) Earned income of minors

The amount of any earned income of any member of the family who is less than 18 years of age.

(F) Travel expenses

Excessive travel expenses, not to exceed $25 per family per week, for employment- or education-related travel.

(G) Other amounts

Such other amounts as may be provided in the Indian housing plan for an Indian tribe.

(2) Affordable housing

The term ''affordable housing'' means housing that complies with the requirements for affordable housing under subchapter II of this chapter. The term includes permanent housing for homeless persons who are persons with dis-

abilities, transitional housing, and single room occupancy housing.

(3) Drug-related criminal activity

The term ''drug-related criminal activity'' means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as such term is defined in section 802 of title 21).

(4) Elderly families and near-elderly families

The terms ''elderly family'' and ''near-elderly family'' mean a family whose head (or his or her spouse), or whose sole member, is an elderly person or a near-elderly person, respectively. Such terms include 2 or more elderly persons or near-elderly persons living together, and 1 or more such persons living with 1 or more persons determined under the Indian housing plan for the agency to be essential to their care or well-being.

(5) Elderly person

The term ''elderly person'' means a person who is at least 62 years of age.

(6) Family

The term ''family'' includes a family with or without children, an elderly family, a near-elderly family, a disabled family, and a single person.

(7) Grant beneficiary

The term ''grant beneficiary'' means the Indian tribe or tribes on behalf of which a grant is made under this chapter to a recipient.

(8) Housing related community development

(A) In general

The term ''housing related community development'' means any facility, community building, business, activity, or infrastructure that—

(i) is owned by an Indian tribe or a tribally designated housing entity;

(ii) is necessary to the provision of housing in an Indian area; and

(iii)(I) would help an Indian tribe or tribally designated housing entity to reduce the cost of construction of Indian housing;

(II) would make housing more affordable, accessible, or practicable in an Indian area; or

(III) would otherwise advance the purposes of this chapter.

(B) Exclusion

The term ''housing and community development'' does not include any activity conducted by any Indian tribe under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(9) Income

The term ''income'' means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, except that the following amounts may not be considered as income under this paragraph:

(A) Any amounts not actually received by the family.

(B) Any amounts that would be eligible for exclusion under section 1382b(a)(7) of title 42.

(10) Indian

The term ''Indian'' means any person who is a member of an Indian tribe.

(11) Indian area

The term ''Indian area'' means the area within which an Indian tribe or a tribally designated housing entity, as authorized by 1 or more Indian tribes, provides assistance under this chapter for affordable housing.

(12) Indian housing plan

The term ''Indian housing plan'' means a plan under section 4112 of this title.

(13) Indian tribe

(A) In general

The term ''Indian tribe'' means a tribe that is a federally recognized tribe or a State recognized tribe.

(B) Federally recognized tribe

The term ''federally recognized tribe'' means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(C) State recognized tribe

(i) In general

The term ''State recognized tribe'' means any tribe, band, nation, pueblo, village, or community—

(I) that has been recognized as an Indian tribe by any State; and

(II) for which an Indian Housing Authority has, before the effective date under section 705, entered into a contract with the Secretary pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] for housing for Indian families and has received funding pursuant to such contract within the 5-year period ending upon such effective date.

(ii) Conditions

Notwithstanding clause (i)—

(I) the allocation formula under section 4152 of this title shall be determined for a State recognized tribe under tribal membership eligibility criteria in existence on October 26, 1996; and

(II) nothing in this paragraph shall be construed to confer upon a State recognized tribe any rights, privileges, responsibilities, or obligations otherwise accorded groups recognized as Indian tribes by the United States for other purposes.

(14) Low-income family

The term ''low-income family'' means a family whose income does not exceed 80 percent of

the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may, for purposes of this paragraph, establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the findings of the Secretary or the agency that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

(15) Median income

The term ''median income'' means, with respect to an area that is an Indian area, the greater of—

(A) the median income for the Indian area, which the Secretary shall determine; or

(B) the median income for the United States.

(16) Near-elderly person

The term ''near-elderly person'' means a person who is at least 55 years of age and less than 62 years of age.

(17) Nonprofit

The term ''nonprofit'' means, with respect to an organization, association, corporation, or other entity, that no part of the net earnings of the entity inures to the benefit of any member, founder, contributor, or individual.

(18) Person with disabilities

The term ''person with disabilities'' means a person who—

(A) has a disability as defined in section 423 of title 42;

(B) is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which—

(i) is expected to be of long-continued and indefinite duration;

(ii) substantially impedes his or her ability to live independently; and

(iii) is of such a nature that such ability could be improved by more suitable housing conditions; or

(C) has a developmental disability as defined in section 15002 of title 42.

Such term shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for housing assisted under this chapter, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with other appropriate Federal agencies to implement the preceding sentence.

(19) Recipient

The term ''recipient'' means an Indian tribe or the entity for one or more Indian tribes that is authorized to receive grant amounts under this chapter on behalf of the tribe or tribes.

(20) Secretary

Except as otherwise specifically provided in this chapter, the term ''Secretary'' means the Secretary of Housing and Urban Development.

(21) State

The term ''State'' means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States and Indian tribes.

(22) Tribally designated housing entity

The terms ''tribally designated housing entity'' and ''housing entity'' have the following meaning:

(A) Existing IHA's

With respect to any Indian tribe that has not taken action under subparagraph (B), and for which an Indian housing authority—

(i) was established for purposes of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] before October 26, 1996, that meets the requirements under the United States Housing Act of 1937,

(ii) is acting on October 26, 1996, as the Indian housing authority for the tribe, and

(iii) is not an Indian tribe for purposes of this chapter,

the terms mean such Indian housing authority.

(B) Other entities

With respect to any Indian tribe that, pursuant to this chapter, authorizes an entity other than the tribal government to receive grant amounts and provide assistance under this chapter for affordable housing for Indians, which entity is established—

(i) by exercise of the power of self-government of one or more Indian tribes independent of State law, or

(ii) by operation of State law providing specifically for housing authorities or housing entities for Indians, including regional housing authorities in the State of Alaska,

the terms mean such entity.

(C) Establishment

A tribally designated housing entity may be authorized or established by one or more Indian tribes to act on behalf of each such tribe authorizing or establishing the housing entity.

(Pub. L. 104–330, § 4, Oct. 26, 1996, 110 Stat. 4018; Pub. L. 105–256, § 13(b), Oct. 14, 1998, 112 Stat. 1900; Pub. L. 105–276, title V, § 595(e)(1), (2), Oct. 21, 1998, 112 Stat. 2656; Pub. L. 106–402, title IV, § 401(b)(2), Oct. 30, 2000, 114 Stat. 1737; Pub. L. 107–292, § 3, Nov. 13, 2002, 116 Stat. 2053; Pub. L. 110–411, § 3, Oct. 14, 2008, 122 Stat. 4320.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Indian Gaming Regulatory Act, referred to in par. (8)(B), is Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, which is classified principally to chapter 29 (§ 2701 et

seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in par. (13)(B), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in par. (13)(B), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

For the effective date under section 705, referred to in par. (13)(C)(i)(II), as Oct. 26, 1996, see section 705 of Pub. L. 104–330, set out as an Effective Date note under section 4211 of this title.

The United States Housing Act of 1937, referred to in pars. (13)(C)(i)(II) and (22)(A)(i), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

AMENDMENTS

2008—Pars. (8) to (22). Pub. L. 110–411 added par. (8), redesignated former pars. (8) to (21) as (9) to (22), respectively, and struck out former par. (22) which defined ''housing related community development''.

2002—Par. (22). Pub. L. 107–292 added par. (22).

2000—Par. (17)(C). Pub. L. 106–402 substituted ''as defined in section 15002 of title 42'' for ''as defined in section 6001 of title 42''.

1998—Par. (10). Pub. L. 105–276, § 595(e)(1), amended heading and text of par. (10) generally. Prior to amendment, text read as follows: ''The term 'Indian area' means the area within which a tribally designated housing entity is authorized by one or more Indian tribes to provide assistance under this chapter for affordable housing.''

Par. (12)(B). Pub. L. 105–256 substituted ''Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)'' for ''Indian Self-Determination and Education Assistance Act of 1975''.

Par. (12)(C)(i)(II). Pub. L. 105–276, § 595(e)(2), substituted ''705'' for ''107''.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4104. Waiver of matching funds requirements in Indian housing programs

(a) Authorization of waiver

For any housing program that provides assistance through any Indian housing authority, the Secretary of Housing and Urban Development may provide assistance under such program in any fiscal year notwithstanding any other provision of law that requires the Indian housing authority to provide amounts to match or supplement the amounts provided under such program, if the Indian housing authority has not received amounts for such fiscal year under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(b) Extent of waiver

The authority under subsection (a) of this section to provide assistance notwithstanding requirements regarding matching or supplemental amounts shall be effective only to the extent provided by the Secretary, which shall not extend beyond the fiscal year in which the waiver is made or beyond the receipt of any amounts by an Indian housing authority under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(c) Definition of housing program

For purposes of this section, the term ''housing program'' means a program under the administration of the Secretary of Housing and Urban Development or the Secretary of Agriculture (through the Administrator of the Farmers Home Administration) that provides assistance in the form of contracts, grants, loans, cooperative agreements, or any other form of assistance (including the insurance or guarantee of a loan, mortgage, or pool of mortgages) for housing.

(Pub. L. 101–625, title IX, § 959, Nov. 28, 1990, 104 Stat. 4423.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsecs. (a) and (b), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Act is classified principally to chapter 69 (§ 5301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Native American Housing Assistance and Self-Determination Act of 1996 which comprises this chapter.

Section was formerly classified to section 1437ff of Title 42, The Public Health and Welfare.

SUBCHAPTER I—BLOCK GRANTS AND GRANT REQUIREMENTS

§ 4111. Block grants

(a) Authority

(1) In general

For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this chapter) make grants under this section on behalf of Indian tribes—

(A) to carry out affordable housing activities under part A of subchapter II; and

(B) to carry out self-determined housing activities for tribal communities programs under part B of that subchapter.

(2) Provision of amounts

Under such a grant on behalf of an Indian tribe, the Secretary shall provide the grant amounts for the tribe directly to the recipient for the tribe.

(b) Plan requirement

(1) In general

The Secretary may make a grant under this chapter on behalf of an Indian tribe for a fiscal year only if—

(A) the Indian tribe has submitted to the Secretary an Indian housing plan for such fiscal year under section 4112 of this title; and

(B) the plan has been determined under section 4113 of this title to comply with the requirements of section 4112 of this title.

(2) Waiver

The Secretary may waive the applicability of the requirements under paragraph (1), in whole or in part, for a period of not more than 90 days, if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the Indian tribe.

(c) Local cooperation agreement

Notwithstanding any other provision of this chapter, grant amounts provided under this chapter on behalf of an Indian tribe may not be used for rental or lease-purchase homeownership units that are owned by the recipient for the tribe unless the governing body of the locality within which the property subject to the development activities to be assisted with the grant amounts is or will be situated has entered into an agreement with the recipient for the tribe providing for local cooperation required by the Secretary pursuant to this chapter. The Secretary may waive the requirements of this subsection and subsection (d) of this section if the recipient has made a good faith effort to fulfill the requirements of this subsection and subsection (d) of this section and agrees to make payments in lieu of taxes to the appropriate taxing authority in an amount consistent with the requirements of subsection (d)(2) of this section until such time as the matter of making such payments has been resolved in accordance with subsection (d) of this section.

(d) Exemption from taxation

Notwithstanding any other provision of this chapter, grant amounts provided under this chapter on behalf of an Indian tribe may not be used for affordable housing activities under this chapter for rental or lease-purchase dwelling units developed under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or with amounts provided under this chapter that are owned by the recipient for the tribe unless—

(1) such dwelling units (which, in the case of units in a multi-unit project, shall be exclusive of any portions of the project not developed under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] or with amounts provided under this chapter) are exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision; and

(2) the recipient for the tribe makes annual payments of user fees to compensate such governments for the costs of providing governmental services, including police and fire protection, roads, water and sewerage systems, utilities systems and related facilities, or payments in lieu of taxes to such taxing authority, in an amount equal to the greater of $150 per dwelling unit or 10 percent of the difference between the shelter rent and the utility cost, or such lesser amount as—

(A) is prescribed by State, tribal, or local law;

(B) is agreed to by the local governing body in the agreement under subsection (c) of this section; or

(C) the recipient and the local governing body agree that such user fees or payments in lieu of taxes shall not be made.

(e) Effect of failure to exempt from taxation

Notwithstanding subsection (d) of this section, a grant recipient that does not comply with the requirements under such subsection may receive a block grant under this chapter, but only if the tribe, State, city, county, or other political subdivision in which the affordable housing development is located contributes, in the form of cash or tax remission, the amount by which the taxes paid with respect to the development exceed the amounts prescribed in subsection (d)(2) of this section.

(f) Amount

Except as otherwise provided under this chapter, the amount of a grant under this section to a recipient for a fiscal year shall be—

(1) in the case of a recipient whose grant beneficiary is a single Indian tribe, the amount of the allocation under section 4151 of this title for the Indian tribe; and

(2) in the case of a recipient whose grant beneficiary is more than 1 Indian tribe, the sum of the amounts of the allocations under section 4151 of this title for each such Indian tribe.

(g) Use for affordable housing activities under plan

Except as provided in subsection (h) of this section and part B of subchapter II, amounts provided under a grant under this section may be used only for affordable housing activities under subchapter II of this chapter that are consistent with an Indian housing plan approved under section 4113 of this title.

(h) Administrative and planning expenses

The Secretary shall, by regulation, authorize each recipient to use a percentage of any grant amounts received under this chapter for comprehensive housing and community development planning activities and for any reasonable administrative and planning expenses of the recipient relating to carrying out this chapter and activities assisted with such amounts, which may include costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts provided under this chapter and expenses of preparing an Indian housing plan under section 4112 of this title.

(i) Public-private partnerships

Each recipient shall make all reasonable efforts, consistent with the purposes of this chapter, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing the approved Indian housing plan.

(j) Federal supply sources

For purposes of section 501 of title 40, on election by the applicable Indian tribe—

(1) each Indian tribe or tribally designated housing entity shall be considered to be an Executive agency in carrying out any program, service, or other activity under this chapter; and

(2) each Indian tribe or tribally designated housing entity and each employee of the Indian tribe or tribally designated housing entity shall have access to sources of supply on the same basis as employees of an Executive agency.

(k) Tribal preference in employment and contracting

Notwithstanding any other provision of law, with respect to any grant (or portion of a grant) made on behalf of an Indian tribe under this chapter that is intended to benefit 1 Indian tribe, the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives the benefit shall apply with respect to the administration of the grant (or portion of a grant).

(Pub. L. 104–330, title I, § 101, Oct. 26, 1996, 110 Stat. 4022; Pub. L. 105–276, title V, § 595(e)(3), (4), Oct. 21, 1998, 112 Stat. 2656, 2657; Pub. L. 106–568, title X, § 1003(a), Dec. 27, 2000, 114 Stat. 2925; Pub. L. 106–569, title V, § 503(a), Dec. 27, 2000, 114 Stat. 2961; Pub. L. 107–292, § 4, Nov. 13, 2002, 116 Stat. 2054; Pub. L. 110–411, title I, § 101, Oct. 14, 2008, 122 Stat. 4320.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (d), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–411, § 101(1), designated first sentence as par. (1) and inserted heading, substituted ''tribes—'' for ''tribes to carry out affordable housing activities.'', added subpars. (A) and (B), and designated second sentence as par. (2) and inserted heading.

Subsec. (g). Pub. L. 110–411, § 101(2), inserted ''of this section and part B of subchapter II'' after ''subsection (h)''.

Subsecs. (j), (k). Pub. L. 110–411, § 101(3), added subsecs. (j) and (k).

2002—Subsec. (h). Pub. L. 107–292 inserted ''and planning'' after ''Administrative'' in heading and ''for comprehensive housing and community development planning activities and'' after ''received under this chapter'' in text.

2000—Subsec. (b)(2). Pub. L. 106–568, § 1003(a)(1), and Pub. L. 106–569, § 503(a)(1), amended par. (2) identically, substituting ''for a period of not more than 90 days, if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the Indian tribe.'' for ''if the Secretary finds that an Indian tribe has not complied or cannot comply with such requirements due to circumstances beyond the control of the tribe.''

Subsec. (c). Pub. L. 106–568, § 1003(a)(2), and Pub. L. 106–569, § 503(a)(2), amended subsec. (c) identically, inserting at end ''The Secretary may waive the requirements of this subsection and subsection (d) of this section if the recipient has made a good faith effort to fulfill the requirements of this subsection and subsection (d) of this section and agrees to make payments in lieu of taxes to the appropriate taxing authority in an amount consistent with the requirements of subsection (d)(2) of this section until such time as the matter of making such payments has been resolved in accordance with subsection (d) of this section.''

1998—Subsec. (c). Pub. L. 105–276, § 595(e)(3), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Secretary may not make any grant under this chapter on behalf of an Indian tribe unless the governing body of the locality within which any affordable housing to be assisted with the grant amounts will be situated has entered into an agreement with the recipient for the tribe providing for local cooperation required by the Secretary pursuant to this chapter.''

Subsec. (d). Pub. L. 105–276, § 595(e)(4)(A), added subsec. (d) heading, introductory provisions, and par. (1), and struck out former subsec. (d) heading, introductory provisions, and par. (1). Text read as follows: ''A grant recipient for an Indian tribe may receive a block grant under this chapter only if—

''(1) the affordable housing assisted with grant amounts received by the recipient (exclusive of any portions not assisted with amounts provided under this chapter) is exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision; and''.

Subsec. (d)(2). Pub. L. 105–276, § 595(e)(4)(B), inserted ''for the tribe'' after ''the recipient'' in introductory provisions.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4112. Indian housing plans

(a) Plan submission

The Secretary shall provide—

(1)(A) for an Indian tribe to submit to the Secretary, by not later than 75 days before the beginning of each tribal program year, a 1-year housing plan for the Indian tribe; or

(B) for the tribally designated housing entity for the tribe to submit the plan as provided in subsection (c) for the tribe; and

(2) for the review of such plans.

(b) 1-year plan requirement

(1) In general

A housing plan of an Indian tribe under this section shall—

(A) be in such form as the Secretary may prescribe; and

(B) contain the information described in paragraph (2).

(2) Required information

A housing plan shall include the following information with respect to the tribal program year for which assistance under this chapter is made available:

(A) Description of planned activities

A statement of planned activities, including—

(i) the types of household to receive assistance;

(ii) the types and levels of assistance to be provided;

(iii) the number of units planned to be produced;

(iv)(I) a description of any housing to be demolished or disposed of;

(II) a timetable for the demolition or disposition; and

(III) any other information required by the Secretary with respect to the demolition or disposition;

(v) a description of the manner in which the recipient will protect and maintain the viability of housing owned and operated by the recipient that was developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); and

(vi) outcomes anticipated to be achieved by the recipient.

(B) Statement of needs

A statement of the housing needs of the low-income Indian families residing in the jurisdiction of the Indian tribe, and the means by which those needs will be addressed during the applicable period, including—

(i) a description of the estimated housing needs and the need for assistance for the low-income Indian families in the jurisdiction, including a description of the manner in which the geographical distribution of assistance is consistent with the geographical needs and needs for various categories of housing assistance; and

(ii) a description of the estimated housing needs for all Indian families in the jurisdiction.

(C) Financial resources

An operating budget for the recipient, in such form as the Secretary may prescribe, that includes—

(i) an identification and description of the financial resources reasonably available to the recipient to carry out the purposes of this chapter, including an explanation of the manner in which amounts made available will leverage additional resources; and

(ii) the uses to which those resources will be committed, including eligible and required affordable housing activities under subchapter II and administrative expenses.

(D) Certification of compliance

Evidence of compliance with the requirements of this chapter, including, as appropriate—

(i) a certification that, in carrying out this chapter, the recipient will comply with the applicable provisions of title II of the Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.) and other applicable Federal laws and regulations;

(ii) a certification that the recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this chapter, in compliance with such requirements as the Secretary may establish;

(iii) a certification that policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this chapter;

(iv) a certification that policies are in effect and are available for review by the Secretary and the public governing rents and homebuyer payments charged, including the methods by which the rents or homebuyer payments are determined, for housing assisted with grant amounts provided under this chapter;

(v) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this chapter; and

(vi) a certification that the recipient will comply with section 4114(b) of this title.

(c) Participation of tribally designated housing entity

A plan under this section for an Indian tribe may be prepared and submitted on behalf of the tribe by the tribally designated housing entity for the tribe, but only if such plan contains a certification by the recognized tribal government of the grant beneficiary that such tribe—

(1) has had an opportunity to review the plan and has authorized the submission of the plan by the housing entity; or

(2) has delegated to such tribally designated housing entity the authority to submit a plan on behalf of the tribe without prior review by the tribe.

(d) Coordination of plans

A plan under this section may cover more than 1 Indian tribe, but only if the certification requirements under subsection (c) are complied with by each such grant beneficiary covered.

(e) Regulations

The requirements relating to the contents of plans under this section shall be established by regulation, pursuant to section 4116 of this title.

(Pub. L. 104–330, title I, § 102, Oct. 26, 1996, 110 Stat. 4023; Pub. L. 105–276, title V, § 595(e)(5), Oct. 21, 1998, 112 Stat. 2657; Pub. L. 106–568, title X, § 1003(b), (c), Dec. 27, 2000, 114 Stat. 2926; Pub. L. 106–569, title V, § 503(b), (c), Dec. 27, 2000, 114 Stat. 2962; Pub. L. 110–411, title I, § 102, Oct. 14, 2008, 122 Stat. 4321.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(2), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b)(2)(A)(v), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Civil Rights Act of 1968, referred to in subsec. (b)(2)(D)(i), is Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 73.

Title II of the Act, popularly known as the Indian Civil Rights Act of 1968, is classified generally to subchapter I (§ 1301 et seq.) of chapter 15 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42, The Public Health and Welfare, and Tables.

AMENDMENTS

2008—Subsec. (a)(1)(A). Pub. L. 110–411, § 102(1)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''for an Indian tribe to submit to the Secretary, for each fiscal year, a housing plan under this section for the tribe; or''.

Subsec. (a)(1)(B). Pub. L. 110–411, § 102(1)(B), substituted ''subsection (c)'' for ''subsection (d)''.

Subsecs. (b), (c). Pub. L. 110–411, § 102(2), (3), added subsec. (b), redesignated subsec. (d) as (c), and struck out former subsecs. (b) and (c) which required housing plans to contain certain information relating to a 5-year period and a 1-year period, respectively.

Subsec. (d). Pub. L. 110–411, § 102(3), (4), redesignated subsec. (e) as (d) and substituted ''subsection (c)'' for ''subsection (d)''. Former subsec. (d) redesignated (c).

Subsecs. (e), (f). Pub. L. 110–411, § 102(3), redesignated subsecs. (e) and (f) as (d) and (e), respectively.

2000—Subsec. (c)(6). Pub. L. 106–568, § 1003(b), and Pub. L. 106–569, § 503(b), amended subsec. (c) identically, adding par. (6).

Subsecs. (f), (g). Pub. L. 106–568, § 1003(c), and Pub. L. 106–569, § 503(c), amended section identically, redesignating subsec. (g) as (f) and striking out heading and text of former subsec. (f). Text read as follows:

''(1) SEPARATE REQUIREMENTS.—The Secretary may—

''(A) establish requirements for submission of plans under this section and the information to be included in such plans applicable to small Indian tribes and small tribally designated housing entities; and

''(B) waive any requirements under this section that the Secretary determines are burdensome or unnecessary for such tribes and housing entities.

''(2) SMALL TRIBES.—The Secretary may define small Indian tribes and small tribally designated housing entities based on the number of dwelling units assisted under this subchapter by the tribe or housing entity or owned or operated pursuant to a contract under the United States Housing Act of 1937 between the Secretary and the Indian housing authority for the tribe.''

1998—Subsec. (a). Pub. L. 105–276 redesignated par. (1) as (1)(A), par. (2) as (1)(B), and par. (3) as (2), and inserted ''or'' at end of par. (1)(A).

EFFECTIVE DATE

Section effective on the date provided by the Secretary of Housing and Urban Development pursuant to section 4116(a) of this title to provide for timely submission and review of Indian housing plans as necessary for the provision of assistance under this chapter in fiscal year 1998, see section 4113(e) of this title.

§ 4113. Review of plans

(a) Review and notice

(1) Review

The Secretary shall conduct a limited review of each Indian housing plan submitted to the Secretary to ensure that the plan complies with the requirements of section 4112 of this title. The Secretary shall have the discretion to review a plan only to the extent that the Secretary considers review is necessary.

(2) Notice

The Secretary shall notify each Indian tribe for which a plan is submitted and any tribally designated housing entity for the tribe whether the plan complies with such requirements not later than 60 days after receiving the plan. If the Secretary does not notify the Indian tribe, as required under this subsection and subsection (b) of this section, the plan shall be considered, for purposes of this chapter, to have been determined to comply with the requirements under section 4112 of this title and the tribe shall be considered to have been notified of compliance upon the expiration of such 60-day period.

(b) Notice of reasons for determination of noncompliance

If the Secretary determines that a plan, as submitted, does not comply with the requirements under section 4112 of this title, the Secretary shall specify in the notice under subsection (a) of this section the reasons for the noncompliance and any modifications necessary for the plan to meet the requirements under section 4112 of this title.

(c) Review

After submission of the Indian housing plan or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make determinations under this subsection, the Secretary shall review the plan (including any amendments or modifications thereto) to determine whether the contents of the plan—

(1) set forth the information required by section 4112 of this title to be contained in an Indian housing plan;

(2) are consistent with information and data available to the Secretary; and

(3) are not prohibited by or inconsistent with any provision of this chapter or other applicable law.

If the Secretary determines that any of the appropriate certifications required under section 4112(c)(5)[1] of this title are not included in the plan, the plan shall be deemed to be incomplete.

(d) Updates to plan

After a plan under section 4112 of this title has been submitted for an Indian tribe for any tribal program year, the tribe may comply with the provisions of such section for any succeeding tribal program year by submitting only such information regarding such changes as may be necessary to update the plan previously submitted.

(e) Self-determined activities program

Notwithstanding any other provision of this section, the Secretary—

(1) shall review the information included in an Indian housing plan pursuant to subsections (b)(4)[2] and (c)(7)[3] only to determine whether the information is included for purposes of compliance with the requirement under section 4145a(b)(2)[4] of this title; and

(2) may not approve or disapprove an Indian housing plan based on the content of the particular benefits, activities, or results included pursuant to subsections (b)(4)[2] and (c)(7).[3]

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[1] See References in Text note below.

[2] So in original. Subsec. (b) of this section does not contain a par. (4).

[3] So in original. Subsec. (c) of this section does not contain a par. (7).

[4] So in original. Section 4145a(b) of this title does not contain a par. (2).

(Pub. L. 104–330, title I, § 103, Oct. 26, 1996, 110 Stat. 4026; Pub. L. 105–276, title V, § 595(e)(6), Oct. 21, 1998, 112 Stat. 2657; Pub. L. 110–411, title I, § 103, Oct. 14, 2008, 122 Stat. 4323.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2) and (c)(3), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 4112(c)(5) of this title, referred to in subsec. (c), was repealed by Pub. L. 110–411, title I, § 102(2), Oct. 14, 2008, 122 Stat. 4321.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–411, § 103(1), substituted ''tribal program'' for ''fiscal'' in two places, struck out ''(with respect to information included for the 5-year period under section 4112(b) of this title or the 1-year period under section 4112(c) of this title)'' before ''by submitting only such information'', and struck out at end ''Not less than once every 5 years, the tribe shall submit a complete plan.''

Subsec. (e). Pub. L. 110–411, § 103(2), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: ''This section and section 4112 of this title shall take effect on the date provided by the Secretary pursuant to section 4116(a) of this title to provide for timely submission and review of Indian housing plans as necessary for the provision of assistance under this chapter in fiscal year 1998.''

1998—Subsec. (c)(3). Pub. L. 105–276 inserted ''not'' before ''prohibited''.

§ 4114. Treatment of program income and labor standards

(a) Program income

(1) Authority to retain

Notwithstanding any other provision of this chapter, a recipient may retain any program income that is realized from any grant amounts under this chapter if—

(A) such income was realized after the initial disbursement of the grant amounts received by the recipient; and

(B) the recipient has agreed that it will utilize such income for housing related activities in accordance with this chapter.

(2) Prohibition of restricted access or reduction of grant

The Secretary may not restrict access to or reduce the grant amount for any Indian tribe based solely on—

(A) whether the recipient for the tribe retains program income under paragraph (1);

(B) the amount of any such program income retained;

(C) whether the recipient retains reserve amounts described in section 4140 of this title; or

(D) whether the recipient has expended retained program income for housing-related activities.

(3) Exclusion of amounts

The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the recipient.

(4) Exclusion from program income of regular developer's fees for low-income housing tax credit projects

Notwithstanding any other provision of this chapter, any income derived from a regular and customary developer's fee for any project that receives a low-income housing tax credit under section 42 of title 26, and that is initially funded using a grant provided under this chapter, shall not be considered to be program income if the developer's fee is approved by the State housing credit agency.

(b) Labor standards

(1) In general

Any contract or agreement for assistance, sale, or lease pursuant to this chapter shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the affordable housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to sections 3141–3144, 3146, and 3147 of title 40, shall be paid to all laborers and mechanics employed in the development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.

(2) Exceptions

Paragraph (1) and the provisions relating to wages (pursuant to paragraph (1)) in any contract or agreement for assistance, sale, or lease pursuant to this chapter, shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

(3) Application of tribal laws

Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this chapter, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.

(Pub. L. 104–330, title I, § 104, Oct. 26, 1996, 110 Stat. 4027; Pub. L. 106–568, title X, § 1003(j), Dec. 27, 2000, 114 Stat. 2930; Pub. L. 106–569, title V, § 503(i), Dec. 27, 2000, 114 Stat. 2965; Pub. L. 107–292, § 5, Nov. 13, 2002, 116 Stat. 2054; Pub. L. 109–136, § 3, Dec. 22, 2005, 119 Stat. 2644; Pub. L. 110–411, title I, § 104, Oct. 14, 2008, 122 Stat. 4323.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing As-

sistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

CODIFICATION

''Sections 3141–3144, 3146, and 3147 of title 40'' substituted in subsec. (b)(1) for ''the Act of March 3, 1931 (commonly known as the Davis-Bacon Act; chapter 411; 46 Stat. 1494; 40 U.S.C. 276a et seq.)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2008—Subsec. (a)(4). Pub. L. 110–411 added par. (4).

2005—Subsec. (a)(2). Pub. L. 109–136 inserted ''restrict access to or'' after ''not'' in introductory provisions.

2002—Subsec. (a)(1). Pub. L. 107–292, § 5(1)(A), substituted ''Notwithstanding any other provision of this chapter, a recipient'' for ''A recipient'' in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 107–292, § 5(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the recipient has agreed that it will utilize the program income for affordable housing activities in accordance with the provisions of this chapter.''

Subsec. (a)(2). Pub. L. 107–292, § 5(2)(A), inserted ''restricted access or'' before ''reduction'' in heading.

Subsec. (a)(2)(D). Pub. L. 107–292, § 5(2)(B)–(D), added subpar. (D).

2000—Subsec. (b)(1). Pub. L. 106–568, § 1003(j)(1), and Pub. L. 106–569, § 503(i)(1), amended par. (1) identically, substituting ''Act of March 3, 1931 (commonly known as the Davis-Bacon Act; chapter 411; 46 Stat. 1494; 40 U.S.C. 276a et seq.)'' for ''Davis-Bacon Act (40 U.S.C. 276a–276a–5)''.

Subsec. (b)(3). Pub. L. 106–568, § 1003(j)(2), and Pub. L. 106–569, § 503(i)(2), amended subsec. (b) identically, adding par. (3).

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4115. Environmental review

(a) In general

(1) Release of funds

In order to ensure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of grant amounts provided under this chapter, and to ensure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may by regulation provide for the release of amounts for particular projects to tribes which assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake such projects as Federal projects.

(2) Regulations

(A) In general

The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality.

(B) Contents

The regulations issued under this paragraph shall—

(i) provide for the monitoring of the environmental reviews performed under this section;

(ii) in the discretion of the Secretary, facilitate training for the performance of such reviews; and

(iii) provide for the suspension or termination of the assumption of responsibilities under this section.

(3) Effect on assumed responsibility

The duty of the Secretary under paragraph (2)(B) shall not be construed to limit or reduce any responsibility assumed by a recipient of grant amounts with respect to any particular release of funds.

(b) Procedure

The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects, the tribe has submitted to the Secretary a request for such release accompanied by a certification that meets the requirements of subsection (c) of this section. The approval of the Secretary of any such certification shall be deemed to satisfy the responsibilities of the Secretary under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto that are covered by such certification.

(c) Certification

A certification under the procedures authorized by this section shall—

(1) be in a form acceptable to the Secretary;

(2) be executed by the chief executive officer or other officer of the tribe under this chapter qualified under regulations of the Secretary;

(3) specify that the tribe has fully carried out its responsibilities as described under subsection (a) of this section; and

(4) specify that the certifying officer—

(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or such other provisions of law apply pursuant to subsection (a) of this section; and

(B) is authorized and consents on behalf of the tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as such an official.

(d) Environmental compliance

The Secretary may waive the requirements under this section if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section—

(1) will not frustrate the goals of the National Environmental Policy Act of 1969 [42

U.S.C. 4321 et seq.] or any other provision of law that furthers the goals of that Act;

(2) does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;

(3) is a result of inadvertent error, including an incorrect or incomplete certification provided under subsection (c)(1) of this section; and

(4) may be corrected through the sole action of the recipient.

(Pub. L. 104–330, title I, § 105, Oct. 26, 1996, 110 Stat. 4028; Pub. L. 106–568, title X, § 1003(d), Dec. 27, 2000, 114 Stat. 2926; Pub. L. 106–569, title V, § 503(d), Dec. 27, 2000, 114 Stat. 2962.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in text, is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

This chapter, referred to in subsecs. (a)(1) and (c)(2), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–568 and Pub. L. 106–569 amended section identically, adding subsec. (d).

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4116. Regulations

(a) Transition requirements

(1) In general

Not later than 90 days after October 26, 1996, the Secretary shall, by notice issued in the Federal Register, establish any requirements necessary to provide for the transition (upon the effectiveness of this chapter and the amendments made by this chapter) from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] and other related provisions of law to the provision of assistance in accordance with this chapter and the amendments made by this chapter.

(2) Public comments; general notice of proposed rulemaking

The notice issued under paragraph (1) shall—

(A) invite public comments regarding such transition requirements and final regulations to carry out this chapter; and

(B) include a general notice of proposed rulemaking (for purposes of section 564(a) of title 5) of the final regulations under subsection (b) of this section.

(b) Final regulations

(1) Timing

The Secretary shall issue final regulations necessary to carry out this chapter not later than September 1, 1997, and such regulations shall take effect not later than the effective date of this chapter.

(2) Negotiated rulemaking procedure

(A) In general

Notwithstanding sections 563(a) and 565(a) of title 5, all regulations required under this chapter, including any regulations that may be required pursuant to amendments made to this chapter after October 26, 1996, shall be issued according to a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

(B) Committee

(i) In general

Not later than 180 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this chapter, the Secretary shall establish a negotiated rulemaking committee, in accordance with the procedures under that subchapter, for the development of proposed regulations under subparagraph (A).

(ii) Adaptation

In establishing the negotiated rulemaking committee, the Secretary shall—

(I) adapt the procedures under the subchapter described in clause (i) to the unique government-to-government relationship between the Indian tribes and the United States, and shall ensure that the membership of the committee include only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes; and

(II) shall not preclude the participation of tribally designated housing entities should tribes elect to be represented by such entities.

(C) Subsequent negotiated rulemaking

The Secretary shall—

(i) initiate a negotiated rulemaking in accordance with this section by not later than 90 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this chapter; and

(ii) promulgate regulations pursuant to this section by not later than 2 years after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this chapter.

(D) Review

Not less frequently than once every 7 years, the Secretary, in consultation with Indian tribes, shall review the regulations promulgated pursuant to this section in effect on the date on which the review is conducted.

(c) Effective date

This section shall take effect on October 26, 1996.

(Pub. L. 104–330, title I, § 106, Oct. 26, 1996, 110 Stat. 4029; Pub. L. 107–292, § 6, Nov. 13, 2002, 116 Stat. 2054; Pub. L. 110–411, title I, § 105, Oct. 14, 2008, 122 Stat. 4324.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

For the effective date of this chapter, referred to in subsecs. (a)(1) and (b)(1), as Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of this title.

The United States Housing Act of 1937, referred to in subsec. (a)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008, referred to in subsec. (b)(2)(B)(i), (C), is the date of enactment of Pub. L. 110–411, which was approved Oct. 14, 2008.

AMENDMENTS

2008—Subsec. (b)(2)(B)(i). Pub. L. 110–411, § 105(1), substituted ''Not later than 180 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this chapter, the Secretary'' for ''The Secretary''.

Subsec. (b)(2)(C), (D). Pub. L. 110–411, § 105(2), added subpars. (C) and (D).

2002—Subsec. (b)(2)(A). Pub. L. 107–292 inserted '', including any regulations that may be required pursuant to amendments made to this chapter after October 26, 1996,'' after ''required under this chapter''.

§ 4117. Authorization of appropriations

There are authorized to be appropriated for grants under this subchapter such sums as may be necessary for each of fiscal years 2009 through 2013. This section shall take effect on October 26, 1996.

(Pub. L. 104–330, title I, § 108, Oct. 26, 1996, 110 Stat. 4030; Pub. L. 107–292, § 2(a), Nov. 13, 2002, 116 Stat. 2053; Pub. L. 110–411, title VII, § 701(a), Oct. 14, 2008, 122 Stat. 4334.)

AMENDMENTS

2008—Pub. L. 110–411 substituted ''2009 through 2013'' for ''1998 through 2007''.

2002—Pub. L. 107–292 substituted ''1998 through 2007'' for ''1998, 1999, 2000, and 2001''.

SUBCHAPTER II—AFFORDABLE HOUSING ACTIVITIES

PART A—GENERAL BLOCK GRANT PROGRAM

§ 4131. National objectives and eligible families

(a) Primary objective

The national objectives of this chapter are—

(1) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families;

(2) to ensure better access to private mortgage markets for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members;

(3) to coordinate activities to provide housing for Indian tribes and their members with Federal, State, and local activities to further economic and community development for Indian tribes and their members;

(4) to plan for and integrate infrastructure resources for Indian tribes with housing development for tribes; and

(5) to promote the development of private capital markets in Indian country and to allow such markets to operate and grow, thereby benefiting Indian communities.

(b) Eligible families

(1) In general

Except as provided under paragraphs (2) and (4), and except with respect to loan guarantees under the demonstration program under subchapter VI, assistance under eligible housing activities under this chapter shall be limited to low-income Indian families on Indian reservations and other Indian areas.

(2) Exception to low-income requirement

(A) Exception to requirement

Notwithstanding paragraph (1), a recipient may provide housing or housing assistance through affordable housing activities for which a grant is provided under this chapter to any family that is not a low-income family, to the extent that the Secretary approves the activities due to a need for housing for those families that cannot reasonably be met without that assistance.

(B) Limits

The Secretary shall establish limits on the amount of assistance that may be provided under this chapter for activities for families who are not low-income families.

(3) Essential families

Notwithstanding paragraph (1), a recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this chapter for a family on an Indian reservation or other Indian area if the recipient determines that the presence of the family on the Indian reservation or other Indian area is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met without such assistance.

(4) Law enforcement officers

A recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this chapter for a law enforcement officer on an Indian reservation or other Indian area, if—

(A) the officer—

(i) is employed on a full-time basis by the Federal Government or a State, county, or other unit of local government, or lawfully recognized tribal government; and

(ii) in implementing such full-time employment, is sworn to uphold, and make arrests for, violations of Federal, State, county, or tribal law; and

(B) the recipient determines that the presence of the law enforcement officer on the Indian reservation or other Indian area may deter crime.

(5) Law enforcement officers

Notwithstanding paragraph (1), a recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this chapter to a law enforcement officer on the reservation or other Indian area, who is employed full-time by a Federal, State, county or tribal government, and in implementing such full-time employment is sworn to uphold, and make arrests for violations of Federal, State, county or tribal law, if the recipient determines that the presence of the law enforcement officer on the Indian reservation or other Indian area may deter crime.

(6)[1] Preference for tribal members and other Indian families

The Indian housing plan for an Indian tribe may require preference, for housing or housing assistance provided through affordable housing activities assisted with grant amounts provided under this chapter on behalf of such tribe, to be given (to the extent practicable) to Indian families who are members of such tribe, or to other Indian families. In any case in which the applicable Indian housing plan for an Indian tribe provides for preference under this paragraph, the recipient for the tribe shall ensure that housing activities that are assisted with grant amounts under this chapter for such tribe are subject to such preference.

(6)[1] Exemption

Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.] shall not apply to actions by federally recognized tribes and the tribally designated housing entities of those tribes under this chapter.

(Pub. L. 104–330, title II, § 201, Oct. 26, 1996, 110 Stat. 4031; Pub. L. 105–276, title V, § 595(e)(7), Oct. 21, 1998, 112 Stat. 2657; Pub. L. 106–377, § 1(a)(1) [title II, § 210], Oct. 27, 2000, 114 Stat. 1441, 1441A–26; Pub. L. 106–568, title X, § 1003(e), Dec. 27, 2000, 114 Stat. 2926; Pub. L. 110–411, title II, § 201, Oct. 14, 2008, 122 Stat. 4324.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (b)(6), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

The Civil Rights Act of 1968, referred to in subsec. (b)(6), is Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 73, as amended. Title VIII of the Act, known as the Fair Housing Act, is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (b)(1). Pub. L. 110–411, § 201(1), inserted ''and except with respect to loan guarantees under the demonstration program under subchapter VI,'' after ''paragraphs (2) and (4),''.

Subsec. (b)(2). Pub. L. 110–411, § 201(2), added subpar. (A), designated second sentence as subpar. (B) and inserted heading, and struck out former first sentence which read as follows: ''A recipient may provide assistance for homeownership activities under section 4132(2) of this title, model activities under section 4132(6) of this title, or loan guarantee activities under subchapter VI of this chapter to Indian families who are not low-income families, to the extent that the Secretary approves the activities pursuant to such section or subchapter because there is a need for housing for such families that cannot reasonably be met without such assistance.''

Subsec. (b)(3). Pub. L. 110–411, § 201(3), substituted ''Essential'' for ''Non-Indian'' in heading and ''for a family'' for ''for a non-Indian family'' in text.

Subsec. (b)(4)(A)(i). Pub. L. 110–411, § 201(4), inserted ''or other unit of local government,'' after ''county,''.

2000—Subsec. (b)(1). Pub. L. 106–568, § 1003(e)(1), substituted ''paragraphs (2) and (4)'' for ''paragraph (2)''.

Subsec. (b)(4). Pub. L. 106–568, § 1003(e)(3), added par. (4). Former par. (4) redesignated (5).

Pub. L. 106–377, § 1(a)(1) [title II, § 210(2)], added par. (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 106–568, § 1003(e)(2), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 106–377, § 1(a)(1) [title II, § 210(1)], redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 106–568, § 1003(e)(2), redesignated par. (5), relating to preference for tribal members and other Indian families, as (6).

Pub. L. 106–377, § 1(a)(1) [title II, § 210(1)], redesignated par. (5), relating to exemption, as (6).

1998—Subsec. (b)(5). Pub. L. 105–276 substituted ''federally recognized tribes and the tribally designated housing entities of those tribes'' for ''Indian tribes'' and ''chapter'' for ''subsection''.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4132. Eligible affordable housing activities

Affordable housing activities under this subchapter are activities, in accordance with the requirements of this subchapter, to develop, operate, maintain, or support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, through the following activities:

(1) Indian housing assistance

The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority.

(2) Development

The acquisition, new construction, reconstruction, or moderate or substantial rehabili-

[1] So in original. Two pars. (6) have been enacted.

tation of affordable housing, which may include real property acquisition, site improvement, development and rehabilitation of utilities, necessary infrastructure, and utility services, conversion, demolition, financing, administration and planning, improvement to achieve greater energy efficiency, mold remediation, and other related activities.

(3) Housing services

The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or homeownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted pursuant to this section.

(4) Housing management services

The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, the costs of operation and maintenance of units developed with funds provided under this chapter, and management of affordable housing projects.

(5) Crime prevention and safety activities

The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(6) Model activities

Housing activities under model programs that are designed to carry out the purposes of this chapter and are specifically approved by the Secretary as appropriate for such purpose.

(7) Community development demonstration project

(A) In general

Consistent with principles of Indian self-determination and the findings of this chapter, the Secretary shall conduct and submit to Congress a study of the feasibility of establishing a demonstration project in which Indian tribes, tribal organizations, or tribal consortia are authorized to expend amounts received pursuant to the Native American Housing Assistance and Self-Determination Reauthorization Act of 2002 in order to design, implement, and operate community development demonstration projects.

(B) Study

Not later than 1 year after November 13, 2002, the Secretary shall submit the study conducted under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs and the Committee on Indian Affairs of the Senate, and the Committee on Financial Services and the Committee on Resources of the House of Representatives.

(8) Self-Determination Act demonstration project

(A) In general

Consistent with the provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Secretary shall conduct and submit to Congress a study of the feasibility of establishing a demonstration project in which Indian tribes and tribal organizations are authorized to receive assistance in a manner that maximizes tribal authority and decision-making in the design and implementation of Federal housing and related activity funding.

(B) Study

Not later than 1 year after November 13, 2002, the Secretary shall submit the study conducted under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs and the Committee on Indian Affairs of the Senate, and the Committee on Financial Services and the Committee on Resources of the House of Representatives.

(9) Reserve accounts

(A) In general

Subject to subparagraph (B), the deposit of amounts, including grant amounts under section 4111 of this title, in a reserve account established for an Indian tribe only for the purpose of accumulating amounts for administration and planning relating to affordable housing activities under this section, in accordance with the Indian housing plan of the Indian tribe.

(B) Maximum amount

A reserve account established under subparagraph (A) shall consist of not more than an amount equal to ¼ of the 5-year average of the annual amount used by a recipient for administration and planning under paragraph (2).

(Pub. L. 104–330, title II, § 202, Oct. 26, 1996, 110 Stat. 4032; Pub. L. 107–292, § 8, Nov. 13, 2002, 116 Stat. 2055; Pub. L. 109–58, title V, § 506(b), Aug. 8, 2005, 119 Stat. 779; Pub. L. 110–411, title II, § 202, Oct. 14, 2008, 122 Stat. 4325.)

REFERENCES IN TEXT

This chapter, referred to in pars. (4), (6), and (7)(A), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Native American Housing Assistance and Self-Determination Reauthorization Act of 2002, referred to in par. (7)(A), is Pub. L. 107–292, Nov. 13, 2002, 116 Stat. 2053. For complete classification of this Act to the Code, see Short Title of 2002 Amendment note set out under section 4101 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in par. (8)(A), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–411, § 202(1), substituted ''to develop, operate, maintain, or support'' for ''to develop or to support'' in introductory provisions.

Par. (2). Pub. L. 110–411, § 202(2), substituted ''development and rehabilitation of utilities, necessary infrastructure,'' for ''development of utilities'' and inserted ''mold remediation,'' after ''energy efficiency,''.

Par. (4). Pub. L. 110–411, § 202(3), inserted ''the costs of operation and maintenance of units developed with funds provided under this chapter,'' after ''rental assistance,''.

Par. (9). Pub. L. 110–411, § 202(4), added par. (9).

2005—Par. (2). Pub. L. 109–58, which directed amendment of section 202 of the Native American Housing and Self-Determination Act of 1996 by inserting ''improvement to achieve greater energy efficiency,'' after ''planning,'' in par. (2), was executed by making the insertion in par. (2) of this section, which is section 202 of the Native American Housing Assistance and Self-Determination Act of 1996, to reflect the probable intent of Congress.

2002—Pars. (7), (8). Pub. L. 107–292 added pars. (7) and (8).

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.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4133. Program requirements

(a) Rents

(1) Establishment

Subject to paragraph (2), each recipient shall develop written policies governing rents and homebuyer payments charged for dwelling units assisted under this chapter, including the methods by which such rents and homebuyer payments are determined.

(2) Maximum rent

In the case of any low-income family residing in a dwelling unit assisted with grant amounts under this chapter, the monthly rent or homebuyer payment (as applicable) for such dwelling unit may not exceed 30 percent of the monthly adjusted income of such family.

(b) Maintenance and efficient operation

Each recipient who owns or operates (or is responsible for funding any entity that owns or operates) housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] shall, using amounts of any grants received under this chapter, reserve and use for operating assistance under section 4132(1) of this title such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing. This subsection may not be construed to prevent any recipient (or entity funded by a recipient) from demolishing or disposing of Indian housing referred to in this subsection, pursuant to regulations established by the Secretary.

(c) Insurance coverage

Each recipient shall maintain adequate insurance coverage for housing units that are owned or operated or assisted with grant amounts provided under this chapter.

(d) Eligibility for admission

Each recipient shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this chapter.

(e) Management and maintenance

Each recipient shall develop policies governing the management and maintenance of housing assisted with grant amounts under this chapter.

(f) Use of grant amounts over extended periods

(1) In general

To the extent that the Indian housing plan for an Indian tribe provides for the use of amounts of a grant under section 4111 of this title for a period of more than 1 fiscal year, or for affordable housing activities for which the amounts will be committed for use or expended during a subsequent fiscal year, the Secretary shall not require those amounts to be used or committed for use at any time earlier than otherwise provided for in the Indian housing plan.

(2) Carryover

Any amount of a grant provided to an Indian tribe under section 4111 of this title for a fiscal year that is not used by the Indian tribe during that fiscal year may be used by the Indian tribe during any subsequent fiscal year.

(g) De minimis exemption for procurement of goods and services

Notwithstanding any other provision of law, a recipient shall not be required to act in accordance with any otherwise applicable competitive procurement rule or procedure with respect to the procurement, using a grant provided under this chapter, of goods and services the value of which is less than $5,000.

(Pub. L. 104–330, title II, § 203, Oct. 26, 1996, 110 Stat. 4032; Pub. L. 110–411, title II, § 203, Oct. 14, 2008, 122 Stat. 4325.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

AMENDMENTS

2008—Subsecs. (f), (g). Pub. L. 110–411 added subsecs. (f) and (g).

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4134. Types of investments

(a) In general

Subject to section 4133 of this title and the Indian housing plan for an Indian tribe, the recipient for that tribe shall have—

(1) the discretion to use grant amounts for affordable housing activities through equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies, leveraging of private investments, or any other form of assistance that the Secretary has determined to be consistent with the purposes of this chapter; and

(2) the right to establish the terms of assistance.

(b) Investments

A recipient may invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by the Secretary.

(Pub. L. 104–330, title II, § 204, Oct. 26, 1996, 110 Stat. 4033.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4135. Low-income requirement and income targeting

(a) In general

Housing shall qualify as affordable housing for purposes of this chapter only if—

(1) each dwelling unit in the housing—

(A) in the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of their initial occupancy of such unit;

(B) in the case of a contract to purchase existing housing, is made available for purchase only by a family that is a low-income family at the time of purchase;

(C) in the case of a lease-purchase agreement for existing housing or for housing to be constructed, is made available for lease-purchase only by a family that is a low-income family at the time the agreement is entered into; and

(D) in the case of a contract to purchase housing to be constructed, is made available for purchase only by a family that is a low-income family at the time the contract is entered into; and

(2) except for housing assisted under section 1437bb of title 42 (as in effect before the date of the effectiveness of this chapter), each dwelling unit in the housing will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property (as determined by the Secretary) without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this chapter, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action—

(A) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure; and

(B) is not for the purpose of avoiding low-income affordability restrictions, as determined by the Secretary.

(b) Exception

Notwithstanding subsection (a) of this section, housing assisted pursuant to section 4131(b)(2) of this title shall be considered affordable housing for purposes of this chapter.

(c) Applicability

The provisions of paragraph (2) of subsection (a) regarding binding commitments for the remaining useful life of property shall not apply to a family or household member who subsequently takes ownership of a homeownership unit.

(Pub. L. 104–330, title II, § 205, Oct. 26, 1996, 110 Stat. 4033; Pub. L. 105–276, title V, § 595(e)(8), Oct. 21, 1998, 112 Stat. 2657; Pub. L. 110–411, title II, § 204, Oct. 14, 2008, 122 Stat. 4326.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 1437bb of title 42, referred to in subsec. (a)(2), was repealed by Pub. L. 104–330, title V, § 501(a), Oct. 26, 1996, 110 Stat. 4041, effective Oct. 1, 1997.

For the date of the effectiveness of this chapter, referred to in subsec. (a)(2), as Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of this title.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–411 added subsec. (c).

1998—Subsec. (a)(1)(B) to (D). Pub. L. 105–276 added subpars. (B) to (D) and struck out former subpar. (B) which read as follows: ''in the case of housing for homeownership, is made available for purchase only by a family that is a low-income family at the time of purchase; and''.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4136. Repealed. Pub. L. 106–568, title X, § 1003(k)(2), Dec. 27, 2000, 114 Stat. 2930; Pub. L. 106–569, title V, § 503(j)(2), Dec. 27, 2000, 114 Stat. 2966

Section, Pub. L. 104–330, title II, § 206, Oct. 26, 1996, 110 Stat. 4034; Pub. L. 105–276, title V, § 595(a), Oct. 21, 1998, 112 Stat. 2656, related to certification of compliance with subsidy layering requirements.

§ 4137. Lease requirements and tenant selection

(a) Leases

Except to the extent otherwise provided by or inconsistent with tribal law, in renting dwelling units in affordable housing assisted with grant amounts provided under this chapter, the owner or manager of the housing shall utilize leases that—

(1) do not contain unreasonable terms and conditions;

(2) require the owner or manager to maintain the housing in compliance with applicable housing codes and quality standards;

(3) require the owner or manager to give adequate written notice of termination of the lease, which shall be the period of time required under State, tribal, or local law;

(4) specify that, with respect to any notice of eviction or termination, notwithstanding any State, tribal, or local law, a resident shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination;

(5) require that the owner or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms or conditions of the lease, violation of applicable Federal, State, tribal, or local law, or for other good cause; and

(6) provide that the owner or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that—

(A) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the owner or manager of the housing;

(B) threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or

(C) is criminal activity (including drug-related criminal activity) on or off the premises.

(b) Tenant and homebuyer selection

The owner or manager of affordable rental housing assisted with grant amounts provided under this chapter shall adopt and utilize written tenant and homebuyer selection policies and criteria that—

(1) are consistent with the purpose of providing housing for low-income families;

(2) are reasonably related to program eligibility and the ability of the applicant to perform the obligations of the lease; and

(3) provide for—

(A) the selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in the Indian housing plan for the tribe that is the grant beneficiary of such grant amounts; and

(B) the prompt notification in writing to any rejected applicant of that rejection and the grounds for that rejection.

(Pub. L. 104–330, title II, § 207, Oct. 26, 1996, 110 Stat. 4034; Pub. L. 105–276, title V, § 595(b), (e)(9), Oct. 21, 1998, 112 Stat. 2656, 2658.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–276, § 595(b)(1), (2), in heading substituted ''Tenant and homebuyer selection'' for ''Tenant selection'' and, in introductory provisions, inserted ''and homebuyer'' after ''tenant''.

Subsec. (b)(3)(A). Pub. L. 105–276, § 595(b)(3), inserted ''and homebuyers'' after ''tenants''.

Subsec. (b)(3)(B). Pub. L. 105–276, § 595(e)(9), substituted ''to any rejected applicant of that rejection and the grounds for that rejection'' for ''of any rejected applicant of the grounds for any rejection''.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4138. Availability of records

(a) Provision of information

Notwithstanding any other provision of law, except as provided in subsection (b) of this section, the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to Indian tribes or tribally designated housing entities regarding the criminal conviction records of applicants for employment, and of adult applicants for, or tenants of, housing assisted with grant amounts provided to such tribe or entity under this chapter for purposes of applicant screening, lease enforcement, and eviction.

(b) Exception

A law enforcement agency described in subsection (a) of this section shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.

(c) Confidentiality

An Indian tribe or tribally designated housing entity receiving information under this section may use such information only for the purposes provided in this section and such information may not be disclosed to any person who is not an officer, employee, or authorized representative of the tribe or entity or the owner of housing assisted under this chapter, and who has a job-related need to have access to the information for the purposes under this section. For judicial eviction proceedings, disclosures may be made to the extent necessary. The Secretary shall, by regulation, establish procedures necessary to ensure that information provided under this section to any tribe or entity is used, and confidentiality is maintained, as required under this section.

(Pub. L. 104–330, title II, § 208, Oct. 26, 1996, 110 Stat. 4035; Pub. L. 105–276, title V, § 595(e)(10), Oct. 21, 1998, 112 Stat. 2658; Pub. L. 110–411, title II, § 205, Oct. 14, 2008, 122 Stat. 4326.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–411 inserted ''applicants for employment, and of'' after ''records of''.

1998—Subsec. (a). Pub. L. 105–276, § 595(e)(10)(A), substituted ''subsection (b) of this section'' for ''paragraph (2)''.

Subsec. (b). Pub. L. 105–276, § 595(e)(10)(B), substituted ''subsection (a) of this section'' for ''paragraph (1)''.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4139. Noncompliance with affordable housing requirement

If a recipient uses grant amounts to provide affordable housing under this subchapter, and at any time during the useful life of the housing the recipient does not comply with the requirement under section 4135(a)(2) of this title, the Secretary shall take appropriate action under section 4161(a) of this title.

(Pub. L. 104–330, title II, § 209, Oct. 26, 1996, 110 Stat. 4035; Pub. L. 105–276, title V, § 595(c), Oct. 21, 1998, 112 Stat. 2656; Pub. L. 106–568, title X, § 1003(f)(1), Dec. 27, 2000, 114 Stat. 2927; Pub. L. 106–569, title V, § 503(e)(1), Dec. 27, 2000, 114 Stat. 2962.)

AMENDMENTS

2000—Pub. L. 106–568 and Pub. L. 106–569 generally amended section catchline and text identically. Prior to amendment, text read as follows: ''If a recipient uses grant amounts to provide affordable housing under activities under this subchapter and, at any time during the useful life of the housing the housing does not comply with the requirement under section 4135(a)(2) of this title, the Secretary shall reduce future grant payments on behalf of the grant beneficiary by an amount equal to the grant amounts used for such housing (under the authority under section 4161(a)(2) of this title) or require repayment to the Secretary of an amount equal to such grant amounts.''

1998—Pub. L. 105–276 made technical amendment to reference in original act which appears in text as reference to section 4135(a)(2) of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4140. Continued use of amounts for affordable housing

Any funds for programs for low-income housing under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] that, on the date of the applicability of this chapter to an Indian tribe, are owned by, or in the possession or under the control of, the Indian housing authority for the tribe, including all reserves not otherwise obligated, shall be considered assistance under this chapter and subject to the provisions of this chapter relating to use of such assistance.

(Pub. L. 104–330, title II, § 210, Oct. 26, 1996, 110 Stat. 4036.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The date of the applicability of this chapter, referred to in text, probably means the effective date of Pub. L. 104–330, which is Oct. 1, 1997, except as otherwise expressly provided. See section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of this title.

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

PART B—SELF-DETERMINED HOUSING ACTIVITIES FOR TRIBAL COMMUNITIES

§ 4145. Purpose

The purpose of this part is to establish a program for self-determined housing activities for the tribal communities to provide Indian tribes with the flexibility to use a portion of the grant amounts under section 4111 of this title for the Indian tribe in manners that are wholly self-determined by the Indian tribe for housing activities involving construction, acquisition, rehabilitation, or infrastructure relating to housing activities or housing that will benefit the community served by the Indian tribe.

(Pub. L. 104–330, title II, § 231, as added Pub. L. 110–411, title II, § 206(a)(2), Oct. 14, 2008, 122 Stat. 4326.)

§ 4145a. Program authority

(a) Definition of qualifying Indian tribe

In this section, the term ''qualifying Indian tribe'' means, with respect to a fiscal year, an Indian tribe or tribally designated housing entity—

(1) to or on behalf of which a grant is made under section 4111 of this title;

(2) that has complied with the requirements of section 4112(b)(6)[1] of this title; and

(3) that, during the preceding 3-fiscal-year period, has no unresolved significant and material audit findings or exceptions, as demonstrated in—

(A) the annual audits of that period completed under chapter 75 of title 31 (commonly known as the ''Single Audit Act''); or

(B) an independent financial audit prepared in accordance with generally accepted auditing principles.

[1] So in original. Section 4112(b) of this title does not contain a par. (6).

(b) Authority

Under the program under this part, for each of fiscal years 2009 through 2013, the recipient for each qualifying Indian tribe may use the amounts specified in subsection (c) in accordance with this part.

(c) Amounts

With respect to a fiscal year and a recipient, the amounts referred to in subsection (b) are amounts from any grant provided under section 4111 of this title to the recipient for the fiscal year, as determined by the recipient, but in no case exceeding the lesser of—

(1) an amount equal to 20 percent of the total grant amount for the recipient for that fiscal year; and

(2) $2,000,000.

(Pub. L. 104–330, title II, § 232, as added Pub. L. 110–411, title II, § 206(a)(2), Oct. 14, 2008, 122 Stat. 4326.)

§ 4145b. Use of amounts for housing activities

(a) Eligible housing activities

Any amounts made available for use under this part by a recipient for an Indian tribe shall be used only for housing activities, as selected at the discretion of the recipient and described in the Indian housing plan for the Indian tribe pursuant to section 4112(b)(6)[1] of this title, for the construction, acquisition, or rehabilitation of housing or infrastructure in accordance with section 4132 of this title to provide a benefit to families described in section 4131(b)(1) of this title.

(b) Prohibition on certain activities

Amounts made available for use under this part may not be used for commercial or economic development.

(Pub. L. 104–330, title II, § 233, as added Pub. L. 110–411, title II, § 206(a)(2), Oct. 14, 2008, 122 Stat. 4327.)

§ 4145c. Inapplicability of other provisions

(a) In general

Except as otherwise specifically provided in this chapter, subchapter I, part A of subchapter II, and subchapters III through VIII shall not apply to—

(1) the program under this part; or

(2) amounts made available in accordance with this part.

(b) Applicable provisions

The following provisions of subchapters I through VIII shall apply to the program under this part and amounts made available in accordance with this part:

(1) Section 4111(c) of this title (relating to local cooperation agreements).

(2) Subsections (d) and (e) of section 4111 of this title (relating to tax exemption).

(3) Section 4111(j) of this title (relating to Federal supply sources).

(4) Section 4111(k) of this title (relating to tribal preference in employment and contracting).

(5) Section 4112(b)(4)[1] of this title (relating to certification of compliance).

(6) Section 4114 of this title (relating to treatment of program income and labor standards).

(7) Section 4115 of this title (relating to environmental review).

(8) Section 4131(b) of this title (relating to eligible families).

(9) Section 4133(c) of this title (relating to insurance coverage).

(10) Section 4133(g) of this title (relating to a de minimis exemption for procurement of goods and services).

(11) Section 4136[2] of this title (relating to treatment of funds).

(12) Section 4139 of this title (relating to noncompliance with affordable housing requirement).

(13) Section 4161 of this title (relating to remedies for noncompliance).

(14) Section 4168 of this title (relating to public availability of information).

(15) Section 4211 of this title (relating to 50-year leasehold interests in trust or restricted lands for housing purposes).

(Pub. L. 104–330, title II, § 234, as added Pub. L. 110–411, title II, § 206(a)(2), Oct. 14, 2008, 122 Stat. 4327.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Subchapters I through VIII, referred to in subsecs. (a) and (b), were in the original references to titles I through VIII of Pub. L. 104–330, which enacted subchapters I through VIII of this chapter. In addition to enacting subchapter V, title V enacted section 12899h–1 of Title 42, The Public Health and Welfare, amended sections 1437a, 1437c to 1437e, 1437g, 1437*l*, 1437n, 1437u to 1437x, 1437aaa–5, 1437aaa–6, 1439, 11371 to 11376, 11382, 11401, 11403g, 11408, 11903a, 12747, and 12838 of Title 42, repealed sections 1437aa to 1437ee of Title 42, enacted provisions set out as notes under sections 11371, 12747, and 12899h–1 of Title 42, amended provisions set out as a note under section 11301 of Title 42, and repealed provisions set out as a note under section 1701z–6 of Title 12, Banks and Banking. In addition to enacting subchapter VII, title VII amended sections 1715z–13a and 1721 of Title 12 and sections 11902 to 11905 of Title 42. For complete classification of titles I to VIII to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 4136 of this title, referred to in subsec. (b)(11), related to certification of compliance with subsidy layering requirements and was repealed by Pub. L. 106–568, title X, § 1003(k)(2), Dec. 27, 2000, 114 Stat. 2930 and Pub. L. 106–569, title V, § 503(j)(2), Dec. 27, 2000, 114 Stat. 2966.

§ 4145d. Review and report

(a) Review

During calendar year 2011, the Secretary shall conduct a review of the results achieved by the program under this part to determine—

[1] So in original. Section 4112(b) of this title does not contain a par. (6).

[1] So in original. Section 4112(b) of this title does not contain a par. (4).

[2] See References in Text note below.

(1) the housing constructed, acquired, or rehabilitated under the program;

(2) the effects of the housing described in paragraph (1) on costs to low-income families of affordable housing;

(3) the effectiveness of each recipient in achieving the results intended to be achieved, as described in the Indian housing plan for the Indian tribe; and

(4) the need for, and effectiveness of, extending the duration of the program and increasing the amount of grants under section 4111 of this title that may be used under the program.

(b) Report

Not later than December 31, 2011, the Secretary shall submit to Congress a report describing the information obtained pursuant to the review under subsection (a) (including any conclusions and recommendations of the Secretary with respect to the program under this part), including—

(1) recommendations regarding extension of the program for subsequent fiscal years and increasing the amounts under section 4145a(c) of this title that may be used under the program; and

(2) recommendations for—

(A)(i) specific Indian tribes or recipients that should be prohibited from participating in the program for failure to achieve results; and

(ii) the period for which such a prohibition should remain in effect; or

(B) standards and procedures by which Indian tribes or recipients may be prohibited from participating in the program for failure to achieve results.

(c) Provision of information to Secretary

Notwithstanding any other provision of this chapter, recipients participating in the program under this part shall provide such information to the Secretary as the Secretary may request, in sufficient detail and in a timely manner sufficient to ensure that the review and report required by this section is accomplished in a timely manner.

(Pub. L. 104–330, title II, § 235, as added Pub. L. 110–411, title II, § 206(a)(2), Oct. 14, 2008, 122 Stat. 4328.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

SUBCHAPTER III—ALLOCATION OF GRANT AMOUNTS

§ 4151. Annual allocation

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this chapter for the fiscal year, in accordance with the formula established pursuant to section 4152 of this title, among Indian tribes that comply with the requirements under this chapter for a grant under this chapter.

(Pub. L. 104–330, title III, § 301, Oct. 26, 1996, 110 Stat. 4036.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4152. Allocation formula

(a) Establishment

(1) In general

The Secretary shall, by regulations issued not later than the expiration of the 12-month period beginning on October 26, 1996, in the manner provided under section 4116 of this title, establish a formula to provide for allocating amounts available for a fiscal year for block grants under this chapter among Indian tribes in accordance with the requirements of this section.

(2) Study of need data

(A) In general

The Secretary shall enter into a contract with an organization with expertise in housing and other demographic data collection methodologies under which the organization, in consultation with Indian tribes and Indian organizations, shall—

(i) assess existing data sources, including alternatives to the decennial census, for use in evaluating the factors for determination of need described in subsection (b); and

(ii) develop and recommend methodologies for collecting data on any of those factors, including formula area, in any case in which existing data is determined to be insufficient or inadequate, or fails to satisfy the requirements of this chapter.

(B) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.

(b) Factors for determination of need

The formula shall be based on factors that reflect the need of the Indian tribes and the Indian areas of the tribes for assistance for affordable housing activities, including the following factors:

(1)(A) The number of low-income housing dwelling units developed under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), pursuant to a contract between an Indian housing authority for the tribe and the Secretary, that are owned or operated by a recipient on the October 1 of the calendar year immediately preceding the year for which funds are provided, subject to the condition that such a unit shall not be considered to be a low-income housing dwelling unit for purposes of this section if—

(i) the recipient ceases to possess the legal right to own, operate, or maintain the unit; or

(ii) the unit is lost to the recipient by conveyance, demolition, or other means.

(B) If the unit is a homeownership unit not conveyed within 25 years from the date of full availability, the recipient shall not be considered to have lost the legal right to own, operate, or maintain the unit if the unit has not been conveyed to the homebuyer for reasons beyond the control of the recipient.

(C) If the unit is demolished and the recipient rebuilds the unit within 1 year of demolition of the unit, the unit may continue to be considered a low-income housing dwelling unit for the purpose of this paragraph.

(D) In this paragraph, the term ''reasons beyond the control of the recipient'' means, after making reasonable efforts, there remain—

(i) delays in obtaining or the absence of title status reports;

(ii) incorrect or inadequate legal descriptions or other legal documentation necessary for conveyance;

(iii) clouds on title due to probate or intestacy or other court proceedings; or

(iv) any other legal impediment.

(E) Subparagraphs (A) through (D) shall not apply to any claim arising from a formula current assisted stock calculation or count involving an Indian housing block grant allocation for any fiscal year through fiscal year 2008, if a civil action relating to the claim is filed by not later than 45 days after October 14, 2008.

(2) The extent of poverty and economic distress and the number of Indian families within Indian areas of the tribe.

(3) Other objectively measurable conditions as the Secretary and the Indian tribes may specify.

(c) Other factors for consideration

In establishing the formula, the Secretary shall consider—

(1) the relative administrative capacities and other challenges faced by the recipient, including, but not limited to geographic distribution within the Indian area and technical capacity; and

(2) the extent to which terminations of assistance under subchapter V of this chapter will affect funding available to State recognized tribes.

(d) Funding for public housing operation and modernization

(1) Full funding

(A) In general

Except with respect to an Indian tribe described in subparagraph (B), the formula shall provide that, if, in any fiscal year, the total amount made available for assistance under this chapter is equal to or greater than the total amount made available for fiscal year 1996 for assistance for the operation and modernization of public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the amount provided for such fiscal year for each Indian tribe for which such operating or modernization assistance was provided for fiscal year 1996 shall not be less than the total amount of such operating and modernization assistance provided for fiscal year 1996 for such tribe.

(B) Certain Indian tribes

With respect to fiscal year 2001 and each fiscal year thereafter, for any Indian tribe with an Indian housing authority that owns or operates fewer than 250 public housing units, the formula shall provide that if the amount provided for a fiscal year in which the total amount made available for assistance under this chapter is equal to or greater than the amount made available for fiscal year 1996 for assistance for the operation and modernization of the public housing referred to in subparagraph (A), then the amount provided to that Indian tribe as modernization assistance shall be equal to the average annual amount of funds provided to the Indian tribe (other than funds provided as emergency assistance) under the assistance program under section 14 of the United States Housing Act of 1937 (42 U.S.C. 1437*l*) for the period beginning with fiscal year 1992 and ending with fiscal year 1997.

(2) Partial funding

The formula shall provide that, if, in any fiscal year, the total amount made available for assistance under this chapter is less than the total amount made available for fiscal year 1996 for assistance for the operation and modernization of public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the amount provided for such fiscal year for each Indian tribe for which such operating or modernization assistance was provided for fiscal year 1996 shall not be less than the amount that bears the same ratio to the total amount available for assistance under this chapter for such fiscal year that the amount of operating and modernization assistance provided for the tribe for fiscal year 1996 bears to the total amount made available for fiscal year 1996 for assistance for the operation and modernization of such public housing.

(e) Effective date

This section shall take effect on October 26, 1996.

(Pub. L. 104–330, title III, § 302, Oct. 26, 1996, 110 Stat. 4036; Pub. L. 106–568, title X, § 1003(g), Dec. 27, 2000, 114 Stat. 2928; Pub. L. 106–569, title V, § 503(f), Dec. 27, 2000, 114 Stat. 2964; Pub. L. 110–411, title III, § 301, Oct. 14, 2008, 122 Stat. 4329.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native Amer-

ican Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The United States Housing Act of 1937, referred to in subsecs. (b)(1)(A) and (d), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. Section 14 of the Act, which was classified to section 1437*l* of Title 42, was repealed by Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

Subchapter V of this chapter, referred to in subsec. (c)(2), was in the original ''title V'', meaning title V of Pub. L. 104–330, which enacted subchapter V of this chapter and section 12899h–1 of Title 42, The Public Health and Welfare, amended sections 1437a, 1437c to 1437e, 1437g, 1437*l*, 1437n, 1437u to 1437x, 1437aaa–5, 1437aaa–6, 1439, 11371 to 11376, 11382, 11401, 11403g, 11408, 11903a, 12747, and 12838 of Title 42, repealed sections 1437aa to 1437ee of Title 42, enacted provisions set out as notes under sections 11371, 12747, and 12899h–1 of Title 42, amended provisions set out as a note under section 11301 of Title 42, and repealed provisions set out as a note under section 1701z–6 of Title 12, Banks and Banking. For complete classification of title V to the Code, see Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–411, § 301(1), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (b)(1). Pub. L. 110–411, § 301(2), added par. (1) and struck out former par. (1) which read as follows: ''The number of low-income housing dwelling units owned or operated at the time pursuant to a contract between an Indian housing authority for the tribe and the Secretary.''

2000—Subsec. (d)(1). Pub. L. 106–568, § 1003(g)(1), and Pub. L. 106–569, § 503(f)(1), which directed identical amendment of par. (1) by substituting subpar. (A) designation, heading, and ''Except with respect to an Indian tribe described in subparagraph (B), the formula'' for ''The formula,'', were executed by making the substitution for ''The formula'' to reflect the probable intent of Congress.

Subsec. (d)(1)(B). Pub. L. 106–568, § 1003(g)(2), and Pub. L. 106–569, § 503(f)(2), amended par. (1) identically, adding subpar. (B).

SUBCHAPTER IV—COMPLIANCE, AUDITS, AND REPORTS

§ 4161. Remedies for noncompliance

(a) Actions by Secretary affecting grant amounts

(1) In general

Except as provided in subsection (b) of this section, if the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this chapter has failed to comply substantially with any provision of this chapter, the Secretary shall—

(A) terminate payments under this chapter to the recipient;

(B) reduce payments under this chapter to the recipient by an amount equal to the amount of such payments that were not expended in accordance with this chapter;

(C) limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply; or

(D) in the case of noncompliance described in section 4162(b) of this title, provide a replacement tribally designated housing entity for the recipient, under section 4162 of this title.

(2) Substantial noncompliance

The failure of a recipient to comply with the requirements of section 4152(b)(1) of this title regarding the reporting of low-income dwelling units shall not, in itself, be considered to be substantial noncompliance for purposes of this subchapter.

(3) Continuance of actions

If the Secretary takes an action under subparagraph (A), (B), or (C) of paragraph (1), the Secretary shall continue such action until the Secretary determines that the failure to comply has ceased.

(4) Exception for certain actions

(A) In general

Notwithstanding any other provision of this subsection, if the Secretary makes a determination that the failure of a recipient of assistance under this chapter to comply substantially with any material provision (as that term is defined by the Secretary) of this chapter is resulting, and would continue to result, in a continuing expenditure of Federal funds in a manner that is not authorized by law, the Secretary may take an action described in paragraph (1)(C) before conducting a hearing.

(B) Procedural requirement

If the Secretary takes an action described in subparagraph (A), the Secretary shall—

(i) provide notice to the recipient at the time that the Secretary takes that action; and

(ii) conduct a hearing not later than 60 days after the date on which the Secretary provides notice under clause (i).

(C) Determination

Upon completion of a hearing under this paragraph, the Secretary shall make a determination regarding whether to continue taking the action that is the subject of the hearing, or take another action under this subsection.

(b) Noncompliance because of technical incapacity

(1) In general

If the Secretary makes a finding under subsection (a) of this section, but determines that the failure to comply substantially with the provisions of this chapter—

(A) is not a pattern or practice of activities constituting willful noncompliance, and

(B) is a result of the limited capability or capacity of the recipient,

the Secretary may provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability and capacity of the recipient to administer assistance provided under this chapter in compliance with the requirements under this chapter, if the recipient enters into a performance agreement with the Secretary that specifies the compliance objectives that the recipient

will be required to achieve by the termination date of the performance agreement.

(2) Performance agreement

The period of a performance agreement described in paragraph (1) shall be for 1 year.

(3) Review

Upon the termination of a performance agreement entered into under paragraph (1), the Secretary shall review the performance of the recipient that is a party to the agreement.

(4) Effect of review

If, on the basis of a review under paragraph (3), the Secretary determines that the recipient—

(A) has made a good faith effort to meet the compliance objectives specified in the agreement, the Secretary may enter into an additional performance agreement for the period specified in paragraph (2); and

(B) has failed to make a good faith effort to meet applicable compliance objectives, the Secretary shall determine the recipient to have failed to comply substantially with this chapter, and the recipient shall be subject to an action under subsection (a) of this section.

(c) Referral for civil action

(1) Authority

In lieu of, or in addition to, any action authorized by subsection (a) of this section, if the Secretary has reason to believe that a recipient has failed to comply substantially with any provision of this chapter, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) Civil action

Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this chapter that was not expended in accordance with it, or for mandatory or injunctive relief.

(d) Review

(1) In general

Any recipient who receives notice under subsection (a) of this section of the termination, reduction, or limitation of payments under this chapter—

(A) may, not later than 60 days after receiving such notice, file with the United States Court of Appeals for the circuit in which such State is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action of the Secretary; and

(B) upon the filing of any petition under subparagraph (A), shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(2) Procedure

The Secretary shall file in the court a record of the proceeding on which the Secretary based the action, as provided in section 2112 of title 28. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(3) Disposition

(A) Court proceedings

The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record.

(B) Secretary

The Secretary—

(i) may modify the findings of fact of the Secretary, or make new findings, by reason of the new evidence so taken and filed with the court; and

(ii) shall file—

(I) such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole; and

(II) the recommendation of the Secretary, if any, for the modification or setting aside of the original action of the Secretary.

(4) Finality

Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 104–330, title IV, § 401, Oct. 26, 1996, 110 Stat. 4037; Pub. L. 106–568, title X, § 1003(h), (i), Dec. 27, 2000, 114 Stat. 2928, 2929; Pub. L. 106–569, title V, § 503(g), (h), Dec. 27, 2000, 114 Stat. 2964, 2965; Pub. L. 110–411, title IV, § 401, Oct. 14, 2008, 122 Stat. 4330.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

2008—Subsec. (a)(2) to (4). Pub. L. 110–411 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

2000—Subsec. (a). Pub. L. 106–568, § 1003(h), and Pub. L. 106–569, § 503(g), amended subsec. (a) identically, designating existing provisions as par. (1), inserting heading, redesignating former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), realigning margins, designating concluding provisions as par. (2), inserting heading, substituting ''If the Secretary takes an action under subparagraph (A), (B), or (C) of paragraph (1)'' for ''If the Secretary takes an action under paragraph (1), (2), or (3)'', and adding par. (3).

Subsec. (b). Pub. L. 106–568, § 1003(i), and Pub. L. 106–569, § 503(h), amended subsec. (b) identically, des-

ignating existing provisions as par. (1), inserting heading, redesignating former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigning margins of concluding provisions, inserting ", if the recipient enters into a performance agreement with the Secretary that specifies the compliance objectives that the recipient will be required to achieve by the termination date of the performance agreement" before period at end of concluding provisions, and adding pars. (2) to (4).

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4162. Replacement of recipient

(a) Authority

As a condition of the Secretary making a grant under this chapter on behalf of an Indian tribe, the tribe shall agree that, notwithstanding any other provision of law, the Secretary may, only in the circumstances set forth in subsection (b) of this section, require that a replacement tribally designated housing entity serve as the recipient for the tribe, in accordance with subsection (c) of this section.

(b) Conditions of removal

The Secretary may require such replacement tribally designated housing entity for a tribe only upon a determination by the Secretary on the record after opportunity for a hearing that the recipient for the tribe has engaged in a pattern or practice of activities that constitutes substantial or willful noncompliance with the requirements under this chapter.

(c) Choice and term of replacement

If the Secretary requires that a replacement tribally designated housing entity serve as the recipient for a tribe (or tribes)—

(1) the replacement entity shall be an entity mutually agreed upon by the Secretary and the tribe (or tribes) for which the recipient was authorized to act, except that if no such entity is agreed upon before the expiration of the 60-day period beginning upon the date that the Secretary makes the determination under subsection (b) of this section, the Secretary shall act as the replacement entity until agreement is reached upon a replacement entity; and

(2) the replacement entity (or the Secretary, as provided in paragraph (1)) shall act as the tribally designated housing entity for the tribe (or tribes) for a period that expires upon—

(A) a date certain, which shall be specified by the Secretary upon making the determination under subsection (b) of this section; or

(B) the occurrence of specific conditions, which conditions shall be specified in written notice provided by the Secretary to the tribe upon making the determination under subsection (b) of this section.

(Pub. L. 104–330, title IV, § 402, Oct. 26, 1996, 110 Stat. 4039.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4163. Monitoring of compliance

(a) Enforceable agreements

Each recipient, through binding contractual agreements with owners and otherwise, shall ensure long-term compliance with the provisions of this chapter. Such measures shall provide for (1) enforcement of the provisions of this chapter by the grant beneficiary or by recipients and other intended beneficiaries, and (2) remedies for the breach of such provisions.

(b) Periodic monitoring

Not less frequently than annually, each recipient shall review the activities conducted and housing assisted under this chapter to assess compliance with the requirements of this chapter. Such review shall include an appropriate level of onsite inspection of housing to determine compliance with applicable requirements. The results of each review shall be included in the performance report of the recipient submitted to the Secretary under section 4164 of this title and made available to the public.

(c) Performance measures

The Secretary shall establish such performance measures as may be necessary to assess compliance with the requirements of this chapter.

(Pub. L. 104–330, title IV, § 403, Oct. 26, 1996, 110 Stat. 4039; Pub. L. 110–411, title IV, § 402, Oct. 14, 2008, 122 Stat. 4330.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–411 inserted "an appropriate level of" after "shall include".

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4164. Performance reports

(a) Requirement

For each fiscal year, each recipient shall—

(1) review the progress it has made during such fiscal year in carrying out the Indian housing plan (or plans) for the Indian tribes for which it administers grant amounts; and

(2) submit a report to the Secretary (in a form acceptable to the Secretary) describing the conclusions of the review.

(b) Content

Each report under this section for a fiscal year shall—

(1) describe the use of grant amounts provided to the recipient for such fiscal year;

(2) assess the relationship of such use to the planned activities identified in the Indian housing plan of the grant beneficiary; and

(3) indicate the programmatic accomplishments of the recipient.

(c) Submission

The Secretary shall establish dates for submission of reports under this section, and review such reports and make such recommendations as the Secretary considers appropriate to carry out the purposes of this chapter.

(d) Public availability

A recipient preparing a report under this section shall make the report publicly available to the citizens in the jurisdiction of the recipient in sufficient time to permit such citizens to comment on such report prior to its submission to the Secretary, and in such manner and at such times as the recipient may determine. The report shall include a summary of any comments received by the grant beneficiary or recipient from citizens in its jurisdiction regarding its program.

(Pub. L. 104–330, title IV, § 404, Oct. 26, 1996, 110 Stat. 4040; Pub. L. 110–411, title IV, § 403, Oct. 14, 2008, 122 Stat. 4330.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

2008—Subsec. (b)(2). Pub. L. 110–411, § 403(1), substituted ''planned activities'' for ''goals'' and inserted ''and'' after semicolon at end.

Subsec. (b)(3), (4). Pub. L. 110–411, § 403(2), (3), substituted period for ''; and'' at end of par. (3) and struck out par. (4) which read as follows: ''describe the manner in which the recipient would change its programs as a result of its experiences.''

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4165. Review and audit by Secretary

(a) Requirements under chapter 75 of title 31

An entity designated by an Indian tribe as a housing entity shall be treated, for purposes of chapter 75 of title 31, as a non-Federal entity that is subject to the audit requirements that apply to non-Federal entities under that chapter.

(b) Additional reviews and audits

(1) In general

In addition to any audit or review under subsection (a) of this section, to the extent the Secretary determines such action to be appropriate, the Secretary may conduct an audit or review of a recipient in order to—

(A) determine whether the recipient—

(i) has carried out—

(I) eligible activities in a timely manner; and

(II) eligible activities and certification in accordance with this chapter and other applicable law;

(ii) has a continuing capacity to carry out eligible activities in a timely manner; and

(iii) is in compliance with the Indian housing plan of the recipient; and

(B) verify the accuracy of information contained in any performance report submitted by the recipient under section 4164 of this title.

(2) On-site visits

To the extent practicable, the reviews and audits conducted under this subsection shall include on-site visits by the appropriate official of the Department of Housing and Urban Development.

(c) Review of reports

(1) In general

The Secretary shall provide each recipient that is the subject of a report made by the Secretary under this section notice that the recipient may review and comment on the report during a period of not less than 30 days after the date on which notice is issued under this paragraph.

(2) Public availability

After taking into consideration any comments of the recipient under paragraph (1), the Secretary—

(A) may revise the report; and

(B) not later than 30 days after the date on which those comments are received, shall make the comments and the report (with any revisions made under subparagraph (A)) readily available to the public.

(d) Effect of reviews

Subject to section 4161(a) of this title, after reviewing the reports and audits relating to a recipient that are submitted to the Secretary under this section, the Secretary may adjust the amount of a grant made to a recipient under this chapter in accordance with the findings of the Secretary with respect to those reports and audits.

(Pub. L. 104–330, title IV, § 405, Oct. 26, 1996, 110 Stat. 4040; Pub. L. 106–568, title X, § 1003(f)(2), Dec. 27, 2000, 114 Stat. 2927; Pub. L. 106–569, title V, § 503(e)(2), Dec. 27, 2000, 114 Stat. 2963.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1)(A)(i)(II) and (d), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106–568 and Pub. L. 106–569 amended section identically, reenacting section catchline without

change and amending text generally. Prior to amendment, section required the Secretary to make reviews and audits of recipients' activities and performance, to prepare reports, and to make adjustments in amounts of annual grants under this chapter based on the reviews and audits.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4166. GAO audits

To the extent that the financial transactions of Indian tribes and recipients of grant amounts under this chapter relate to amounts provided under this chapter, such transactions may be audited by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the Government Accountability Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such tribes and recipients pertaining to such financial transactions and necessary to facilitate the audit.

(Pub. L. 104–330, title IV, § 406, Oct. 26, 1996, 110 Stat. 4041; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

2004—Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4167. Reports to Congress

(a) In general

Not later than 90 days after the conclusion of each fiscal year in which assistance under this chapter is made available, the Secretary shall submit to the Congress a report that contains—

(1) a description of the progress made in accomplishing the objectives of this chapter;

(2) a summary of the use of funds available under this chapter during the preceding fiscal year; and

(3) a description of the aggregate outstanding loan guarantees under subchapter VI of this chapter.

(b) Related reports

The Secretary may require recipients of grant amounts under this chapter to submit to the Secretary such reports and other information as may be necessary in order for the Secretary to make the report required by subsection (a) of this section.

(Pub. L. 104–330, title IV, § 407, Oct. 26, 1996, 110 Stat. 4041.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as a note under section 4101 of this title.

§ 4168. Public availability of information

Each recipient shall make any housing plan, policy, or annual report prepared by the recipient available to the general public.

(Pub. L. 104–330, title IV, § 408, as added Pub. L. 105–276, title V, § 595(e)(14)(A), Oct. 21, 1998, 112 Stat. 2658.)

SUBCHAPTER V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

§ 4181. Termination of Indian housing assistance under United States Housing Act of 1937

(a) Termination of assistance

After September 30, 1997, financial assistance may not be provided under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] or pursuant to any commitment entered into under such Act, for Indian housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority, unless such assistance is provided from amounts made available for fiscal year 1997 and pursuant to a commitment entered into before September 30, 1997. Any housing that is the subject of a contract for tenant-based assistance between the Secretary and an Indian housing authority that is terminated under this section shall, for the following fiscal year and each fiscal year thereafter, be considered to be a dwelling unit under section 4152(b)(1) of this title.

(b) Termination of restrictions on use of Indian housing

After September 30, 1997, any housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] shall not be subject to any provision of such Act or any annual contributions contract or other agreement pursuant to such Act, but shall be considered and maintained as affordable housing for purposes of this chapter.

(Pub. L. 104–330, title V, § 502, Oct. 26, 1996, 110 Stat. 4043; Pub. L. 106–568, title X, § 1003(k)(3), Dec. 27, 2000, 114 Stat. 2930; Pub. L. 106–569, title V, § 503(j)(3), Dec. 27, 2000, 114 Stat. 2966.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short

Title note set out under section 1437 of Title 42 and Tables.

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–568 and Pub. L. 106–569 amended subsec. (a) identically, inserting at end ''Any housing that is the subject of a contract for tenant-based assistance between the Secretary and an Indian housing authority that is terminated under this section shall, for the following fiscal year and each fiscal year thereafter, be considered to be a dwelling unit under section 4152(b)(1) of this title.''

EFFECTIVE DATE

Section 508 of Pub. L. 104–330 provided that: ''Sections 502, 503, and 507 [25 U.S.C. 4181, 4182, 4183] shall take effect on the date of the enactment of this Act [Oct. 26, 1996].''

§ 4182. Termination of new commitments for rental assistance

After September 30, 1997, financial assistance for rental housing assistance under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] may not be provided to any Indian housing authority or tribally designated housing entity, unless such assistance is provided pursuant to a contract for such assistance entered into by the Secretary and the Indian housing authority before such date. Any such assistance provided pursuant to such a contract shall be governed by the provisions of the United States Housing Act of 1937 (as in effect before the date of the effectiveness of this chapter) and the provisions of such contract.

(Pub. L. 104–330, title V, § 503, Oct. 26, 1996, 110 Stat. 4043.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

For the date of the effectiveness of this chapter, referred to in text, as Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of this title.

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 508 of Pub. L. 104–330, set out as a note under section 4181 of this title.

§ 4183. Savings provision

(a) Existing rights and duties

Except as provided in sections 4181 and 4182 of this title, this chapter may not be construed to affect the validity of any right, duty, or obligation of the United States or other person arising under or pursuant to any commitment or agreement lawfully entered into before October 1, 1997, under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12899 et seq.],[1] title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11360 et seq.], or section 2 of the HUD Demonstration Act of 1993.

(b) Obligations under repealed provisions

Notwithstanding the amendments made by this subchapter, any obligation of the Secretary made under or pursuant to title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11360 et seq.], or section 2 of the HUD Demonstration Act of 1993 shall continue to be governed by the provisions of such Acts (as in effect before the date of the effectiveness of the amendments made by this subchapter).

(Pub. L. 104–330, title V, § 507, Oct. 26, 1996, 110 Stat. 4045; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 109–281, § 2(d)(2), Sept. 22, 2006, 120 Stat. 1181.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (a), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in text, is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the HOME Investment Partnerships Act, is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of Title 42, The Public Health and Welfare. Subtitle D of title IV of the Act was classified generally to part C (§ 12899 et seq.) of subchapter IV of chapter 130 of Title 42 prior to repeal by Pub. L. 109–281, § 2(e), Sept. 22, 2006, 120 Stat. 1181. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in text, is Pub. L. 100–77, July 22, 1987, 101 Stat. 482. Title IV of the Act is classified principally to subchapter IV (§ 11360 et seq.) of chapter 119 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

Section 2 of the HUD Demonstration Act of 1993, referred to in text, is section 2 of Pub. L. 103–120, Oct. 27, 1993, 107 Stat. 1144, which was set out as a note under section 11301 of Title 42, The Public Health and Welfare, prior to repeal by Pub. L. 103–120, § 2(g).

This subchapter, referred to in subsec. (b), was in the original ''this title'', meaning title V of Pub. L. 104–330, which enacted this subchapter and section 12899h–1 of Title 42, The Public Health and Welfare, amended sections 1437a, 1437c to 1437e, 1437g, 1437*l*, 1437n, 1437u to 1437x, 1437aaa–5, 1437aaa–6, 1439, 11371 to 11376, 11382, 11401, 11403g, 11408, 11903a, 12747, and 12838 of Title 42, repealed sections 1437aa to 1437ee of Title 42, enacted pro-

[1] See References in Text note below.

visions set out as notes under sections 11371, 12747, and 12899h–1 of Title 42, amended provisions set out as a note under section 11301 of Title 42, and repealed provisions set out as a note under section 1701z–6 of Title 12, Banks and Banking. For complete classification of title V to the Code, see Tables.

The date of the effectiveness of the amendments made by this subchapter, referred to in subsec. (b), means the effective date of the amendments made by title V of Pub. L. 104–330, which is Oct. 1, 1997, except as otherwise expressly provided. See section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of this title.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–281 struck out ''subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act,'' after ''pursuant to''.

2000—Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act'' in subsecs. (a) and (b).

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 508 of Pub. L. 104–330, set out as a note under section 4181 of this title.

§ 4184. Effect on HOME Investment Partnerships Act

Nothing in this chapter or an amendment made by this chapter prohibits or prevents any participating jurisdiction (within the meaning of the HOME Investment Partnerships Act (42 U.S.C. 12721 et seq.)) from providing any amounts made available to the participating jurisdiction under that Act (42 U.S.C. 12721 et seq.) to an Indian tribe or a tribally designated housing entity for use in accordance with that Act (42 U.S.C. 12721 et seq.).

(Pub. L. 104–330, title V, § 509, as added Pub. L. 110–411, title V, § 501(a), Oct. 14, 2008, 122 Stat. 4331.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The HOME Investment Partnerships Act, referred to in text, is title II of Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4094, which enacted subchapter II of chapter 130 of Title 42, The Public Health and Welfare, amended section 1437f of Title 42, and repealed section 1706e of Title 12, Banks and Banking, sections 1437*o* and 1452b of Title 42, and provisions set out as a note under section 1715*l* of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

SUBCHAPTER VI—FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES

§ 4191. Authority and requirements

(a) Authority

To such extent or in such amounts as provided in appropriations Acts, the Secretary may, subject to the limitations of this subchapter (including limitations designed to protect and maintain the viability of rental housing units owned or operated by the recipient that were developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]), and upon such terms and conditions as the Secretary may prescribe, guarantee and make commitments to guarantee, the notes or other obligations issued by Indian tribes or tribally designated housing entities with tribal approval, for the purposes of financing affordable housing activities described in section 4132 of this title and housing related community development activity as consistent with the purposes of this chapter.

(b) Terms of loans

Notes or other obligations guaranteed pursuant to this subchapter shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary. The Secretary may not deny a guarantee under this subchapter on the basis of the proposed repayment period for the note or other obligation, unless the period is more than 20 years or the Secretary determines that the period causes the guarantee to constitute an unacceptable financial risk.

(c) Limitation on outstanding guarantees

No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the total outstanding notes or obligations of the issuer guaranteed under this subchapter (excluding any amount defeased under the contract entered into under section 4192(a)(1) of this title) would thereby exceed an amount equal to 5 times the amount of the grant approval for the issuer pursuant to subchapter III of this chapter.

(d) Limitation on percentage

A guarantee made under this subchapter shall guarantee repayment of 95 percent of the unpaid principal and interest due on the notes or other obligations guaranteed.

(Pub. L. 104–330, title VI, § 601, Oct. 26, 1996, 110 Stat. 4046; Pub. L. 107–292, § 7, Nov. 13, 2002, 116 Stat. 2054; Pub. L. 108–393, § 2, Oct. 30, 2004, 118 Stat. 2246.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–393 added subsec. (d).

2002—Subsec. (a). Pub. L. 107–292, § 7(1), inserted ''and housing related community development activity as consistent with the purposes of this chapter'' after ''section 4132 of this title''.

Subsecs. (b) to (d). Pub. L. 107–292, § 7(2), (3), redesignated subsecs. (c) and (d) as (b) and (c), respectively,

and struck out heading and text of former subsec. (b). Text read as follows: ''A guarantee under this subchapter may be used to assist an Indian tribe or housing entity in obtaining financing only if the Indian tribe or housing entity has made efforts to obtain such financing without the use of such guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee.''

EFFECTIVE DATE

Pub. L. 104–330, title VI, § 606, Oct. 26, 1996, 110 Stat. 4048, provided that: ''This title [enacting this subchapter] shall take effect on the date of the enactment of this Act [Oct. 26, 1996].''

[Another section 606 of Pub. L. 104–330 is classified to section 4196 of this title.]

§ 4192. Security and repayment

(a) Requirements on issuer

To assure the repayment of notes or other obligations and charges incurred under this subchapter and as a condition for receiving such guarantees, the Secretary shall require the Indian tribe or housing entity issuing such notes or obligations to—

(1) enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed under this subchapter;

(2) pledge any grant for which the issuer may become eligible under this chapter;

(3) demonstrate that the extent of such issuance and guarantee under this subchapter is within the financial capacity of the tribe and is not likely to impair the ability to use grant amounts under subchapter I of this chapter, taking into consideration the requirements under section 4133(b) of this title; and

(4) furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this chapter or disposition proceeds from the sale of land or rehabilitated property.

(b) Repayment from grant amounts

Notwithstanding any other provision of this chapter—

(1) the Secretary may apply grants pledged pursuant to subsection (a)(2) of this section to any repayments due the United States as a result of such guarantees; and

(2) grants allocated under this chapter for an Indian tribe or housing entity (including program income derived therefrom) may be used to pay principal and interest due (including such servicing, underwriting, and other costs as may be specified in regulations issued by the Secretary) on notes or other obligations guaranteed pursuant to this subchapter.

(c) Full faith and credit

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subchapter. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

(Pub. L. 104–330, title VI, § 602, Oct. 26, 1996, 110 Stat. 4046.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 606 of Pub. L. 104–330, set out as a note under section 4191 of this title.

§ 4193. Payment of interest

The Secretary may make, and contract to make, grants, in such amounts as may be approved in appropriations Acts, to or on behalf of an Indian tribe or housing entity issuing notes or other obligations guaranteed under this subchapter, to cover not to exceed 30 percent of the net interest cost (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) to the borrowing entity or agency of such obligations. The Secretary may also, to the extent approved in appropriations Acts, assist the issuer of a note or other obligation guaranteed under this subchapter in the payment of all or a portion of the principal and interest amount due under the note or other obligation, if the Secretary determines that the issuer is unable to pay the amount because of circumstances of extreme hardship beyond the control of the issuer.

(Pub. L. 104–330, title VI, § 603, Oct. 26, 1996, 110 Stat. 4047.)

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 606 of Pub. L. 104–330, set out as a note under section 4191 of this title.

§ 4194. Training and information

The Secretary, in cooperation with eligible public entities, shall carry out training and information activities with respect to the guarantee program under this subchapter.

(Pub. L. 104–330, title VI, § 604, Oct. 26, 1996, 110 Stat. 4047.)

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 606 of Pub. L. 104–330, set out as a note under section 4191 of this title.

§ 4195. Limitations on amount of guarantees

(a) Aggregate fiscal year limitation

Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities and to the authority provided in this subchapter, to the extent approved or provided in appropriations Acts, the Secretary may enter into commitments to guarantee notes and obligations under this subchapter with an aggregate principal amount not to exceed $400,000,000 for each of fiscal years 2009 through 2013.

(b) Authorization of appropriations for credit subsidy

There are authorized to be appropriated to cover the costs (as such term is defined in section 661a of title 2) of guarantees under this subchapter such sums as may be necessary for each of fiscal years 2009 through 2013.

(c) Aggregate outstanding limitation

The total amount of outstanding obligations guaranteed on a cumulative basis by the Secretary pursuant to this subchapter shall not at any time exceed $2,000,000,000 or such higher amount as may be authorized to be appropriated for this subchapter for any fiscal year.

(d) Fiscal year limitations on tribes

The Secretary shall monitor the use of guarantees under this subchapter by Indian tribes. If the Secretary finds that 50 percent of the aggregate guarantee authority under subsection (c) of this section has been committed, the Secretary may—

(1) impose limitations on the amount of guarantees any one Indian tribe may receive in any fiscal year of $50,000,000; or

(2) request the enactment of legislation increasing the aggregate outstanding limitation on guarantees under this subchapter.

(Pub. L. 104–330, title VI, § 605, Oct. 26, 1996, 110 Stat. 4047; Pub. L. 107–292, § 2(b), Nov. 13, 2002, 116 Stat. 2053; Pub. L. 110–411, title VII, § 701(b), Oct. 14, 2008, 122 Stat. 4334.)

AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110–411 substituted ''2009 through 2013'' for ''1997 through 2007''.

2002—Subsecs. (a), (b). Pub. L. 107–292 substituted ''1997 through 2007'' for ''1997, 1998, 1999, 2000, and 2001''.

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 606 of Pub. L. 104–330, set out as a note under section 4191 of this title.

§ 4196. Demonstration program for guaranteed loans to finance tribal community and economic development activities

(a) Authority

(1) In general

Subject to paragraph (2), to the extent and in such amounts as are provided in appropriation Acts, subject to the requirements of this section, and in accordance with such terms and conditions as the Secretary may prescribe, the Secretary may guarantee and make commitments to guarantee the notes and obligations issued by Indian tribes or tribally designated housing entities with tribal approval, for the purposes of financing activities carried out on Indian reservations and in other Indian areas that, under the first sentence of section 5308(a) of title 42, are eligible for financing with notes and other obligations guaranteed pursuant to that section.

(2) Limitation

The Secretary may guarantee, or make commitments to guarantee, under paragraph (1) the notes or obligations of not more than 4 Indian tribes or tribally designated housing entities located in each Department of Housing and Urban Development Office of Native American Programs region.

(b) Low-income benefit requirement

Not less than 70 percent of the aggregate amount received by an Indian tribe or tribally designated housing entity as a result of a guarantee under this section shall be used for the support of activities that benefit low-income families on Indian reservations and other Indian areas.

(c) Financial soundness

(1) In general

The Secretary shall establish underwriting criteria for guarantees under this section, including fees for the guarantees, as the Secretary determines to be necessary to ensure that the program under this section is financially sound.

(2) Amounts of fees

Fees for guarantees established under paragraph (1) shall be established in amounts that are sufficient, but do not exceed the minimum amounts necessary, to maintain a negative credit subsidy for the program under this section, as determined based on the risk to the Federal Government under the underwriting requirements established under paragraph (1).

(d) Terms of obligations

(1) In general

Each note or other obligation guaranteed pursuant to this section shall be in such form and denomination, have such maturity, and be subject to such conditions as the Secretary may prescribe, by regulation.

(2) Limitation

The Secretary may not deny a guarantee under this section on the basis of the proposed repayment period for the note or other obligation, unless—

(A) the period is more than 20 years; or

(B) the Secretary determines that the period would cause the guarantee to constitute an unacceptable financial risk.

(e) Limitation on percentage

A guarantee made under this section shall guarantee repayment of 95 percent of the unpaid principal and interest due on the note or other obligation guaranteed.

(f) Security and repayment

(1) Requirements on issuer

To ensure the repayment of notes and other obligations and charges incurred under this section and as a condition for receiving the guarantees, the Secretary shall require the Indian tribe or housing entity issuing the notes or obligations—

(A) to enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed under this section;

(B) to demonstrate that the extent of each issuance and guarantee under this section is within the financial capacity of the Indian tribe; and

(C) to furnish, at the discretion of the Secretary, such security as the Secretary determines to be appropriate in making the guarantees, including increments in local tax receipts generated by the activities assisted by a guarantee under this section or disposition proceeds from the sale of land or rehabilitated property, except that the security may not include any grant amounts received or for which the issuer may be eligible under subchapter I.

(2) Full faith and credit

(A) In general

The full faith and credit of the United States is pledged to the payment of all guarantees made under this section.

(B) Treatment of guarantees

(i) In general

Any guarantee made by the Secretary under this section shall be conclusive evidence of the eligibility of the obligations for the guarantee with respect to principal and interest.

(ii) Incontestable nature

The validity of any such a guarantee shall be incontestable in the hands of a holder of the guaranteed obligations.

(g) Training and information

The Secretary, in cooperation with Indian tribes and tribally designated housing entities, may carry out training and information activities with respect to the guarantee program under this section.

(h) Limitations on amount of guarantees

(1) Aggregate fiscal year limitation

Notwithstanding any other provision of law, subject only to the absence of qualified applicants or proposed activities and to the authority provided in this section, and to the extent approved or provided for in appropriations Acts, the Secretary may enter into commitments to guarantee notes and obligations under this section with an aggregate principal amount not to exceed $200,000,000 for each of fiscal years 2009 through 2013.

(2) Authorization of appropriations for credit subsidy

There are authorized to be appropriated to cover the costs (as defined in section 661a of title 2) of guarantees under this section $1,000,000 for each of fiscal years 2009 through 2013.

(3) Aggregate outstanding limitation

The total amount of outstanding obligations guaranteed on a cumulative basis by the Secretary pursuant to this section shall not at any time exceed $1,000,000,000 or such higher amount as may be authorized to be appropriated for this section for any fiscal year.

(4) Fiscal year limitations on Indian tribes

(A) In general

The Secretary shall monitor the use of guarantees under this section by Indian tribes.

(B) Modifications

If the Secretary determines that 50 percent of the aggregate guarantee authority under paragraph (3) has been committed, the Secretary may—

(i) impose limitations on the amount of guarantees pursuant to this section that any single Indian tribe may receive in any fiscal year of $25,000,000; or

(ii) request the enactment of legislation increasing the aggregate outstanding limitation on guarantees under this section.

(i) Report

Not later than 4 years after October 14, 2008, the Secretary shall submit to Congress a report describing the use of the authority under this section by Indian tribes and tribally designated housing entities, including—

(1) an identification of the extent of the use and the types of projects and activities financed using that authority; and

(2) an analysis of the effectiveness of the use in carrying out the purposes of this section.

(j) Termination

The authority of the Secretary under this section to make new guarantees for notes and obligations shall terminate on October 1, 2013.

(Pub. L. 104–330, title VI, § 606, as added Pub. L. 110–411, title VI, § 601(a), Oct. 14, 2008, 122 Stat. 4331.)

CODIFICATION

Another section 606 of Pub. L. 104–330 is set out as an Effective Date note under section 4191 of this title.

SUBCHAPTER VII—OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS

§ 4211. 50-year leasehold interest in trust or restricted lands for housing purposes

(a) Authority to lease

Notwithstanding any other provision of law, any trust or restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, subject to the approval of the affected Indian tribe and the Secretary of the Interior, for housing development and residential purposes.

(b) Term

Each lease pursuant to subsection (a) of this section shall be for a term not exceeding 50 years.

(c) Rule of construction

This section may not be construed to repeal, limit, or affect any authority to lease any trust or restricted Indian lands that—

(1) is conferred by or pursuant to any other provision of law; or

(2) provides for leases for any period exceeding 50 years.

(d) Self-implementation

This section is intended to be self-implementing and shall not require the issuance of any rule, regulation, or order to take effect as provided in section 705.

(Pub. L. 104–330, title VII, § 702, Oct. 26, 1996, 110 Stat. 4050.)

REFERENCES IN TEXT

Section 705, referred to in subsec. (d), is section 705 of Pub. L. 104–330, which is set out as an Effective Date note below.

EFFECTIVE DATE

Section 705 of title VII of Pub. L. 104–330 provided that: ''This title [enacting this subchapter and amending sections 1715z–13a and 1721 of Title 12, Banks and Banking, and sections 11902 to 11905 of Title 42, The Public Health and Welfare] and the amendments made by this title (but not including the amendments made by section 704 [amending sections 11902 to 11905 of Title 42]) shall take effect on the date of the enactment of this Act [Oct. 26, 1996].''

§ 4212. Training and technical assistance

There are authorized to be appropriated for assistance for a national organization representing Native American housing interests for providing training and technical assistance to Indian housing authorities and tribally designated housing entities such sums as may be necessary for each of fiscal years 2009 through 2013.

(Pub. L. 104–330, title VII, § 703, Oct. 26, 1996, 110 Stat. 4051; Pub. L. 107–292, § 2(c), Nov. 13, 2002, 116 Stat. 2053; Pub. L. 110–411, title VII, § 701(c), Oct. 14, 2008, 122 Stat. 4334.)

AMENDMENTS

2008—Pub. L. 110–411 substituted ''2009 through 2013'' for ''1997 through 2007''.

2002—Pub. L. 107–292 substituted ''1997 through 2007'' for ''1997, 1998, 1999, 2000, and 2001''.

EFFECTIVE DATE

Section effective Oct. 26, 1996, see section 705 of Pub. L. 104–330, set out as a note under section 4211 of this title.

SUBCHAPTER VIII—HOUSING ASSISTANCE FOR NATIVE HAWAIIANS

§ 4221. Definitions

In this subchapter:

(1) Department of Hawaiian Home Lands; Department

The term ''Department of Hawaiian Home Lands'' or ''Department'' means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

(2) Director

The term ''Director'' means the Director of the Department of Hawaiian Home Lands.

(3) Elderly families; near-elderly families

(A) In general

The term ''elderly family'' or ''near-elderly family'' means a family whose head (or his or her spouse), or whose sole member, is—

(i) for an elderly family, an elderly person; or

(ii) for a near-elderly family, a near-elderly person.

(B) Certain families included

The term ''elderly family'' or ''near-elderly family'' includes—

(i) two or more elderly persons or near-elderly persons, as the case may be, living together; and

(ii) one or more persons described in clause (i) living with one or more persons determined under the housing plan to be essential to their care or well-being.

(4) Hawaiian Home Lands

The term ''Hawaiian Home Lands'' means lands that—

(A) have the status as Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 110); or

(B) are acquired pursuant to that Act.

(5) Housing area

The term ''housing area'' means an area of Hawaiian Home Lands with respect to which the Department of Hawaiian Home Lands is authorized to provide assistance for affordable housing under this chapter.

(6) Housing entity

The term ''housing entity'' means the Department of Hawaiian Home Lands.

(7) Housing plan

The term ''housing plan'' means a plan developed by the Department of Hawaiian Home Lands.

(8) Median income

The term ''median income'' means, with respect to an area that is a Hawaiian housing area, the greater of—

(A) the median income for the Hawaiian housing area, which shall be determined by the Secretary; or

(B) the median income for the State of Hawaii.

(9) Native Hawaiian

The term ''Native Hawaiian'' means any individual who is—

(A) a citizen of the United States; and

(B) a descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by—

(i) genealogical records;

(ii) verification by kupuna (elders) or kama`aina (long-term community residents); or

(iii) birth records of the State of Hawaii.

(Pub. L. 104–330, title VIII, § 801, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2876, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2969.)

REFERENCES IN TEXT

The Hawaiian Homes Commission Act, 1920, referred to in pars. (1) and (4)(B), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code.

This chapter, referred to in par. (5), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted substantially identical sections 801 of Pub. L. 104–330. This section is based on the text of section 801 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

EFFECTIVE DATE

Pub. L. 104–330, title VIII, § 808, as added by Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2979, provided that: ''Except as otherwise expressly provided in this title [enacting this subchapter], this title shall take effect on the date of the enactment of the American Homeownership and Economic Opportunity Act of 2000 [Pub. L. 106–569, approved Dec. 27, 2000].''

Pub. L. 104–330, title VIII, § 808, as added by Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2885, provided that: ''Except as otherwise expressly provided in this title [enacting this subchapter], this title shall take effect on the date of the enactment of the Native American Housing Assistance and Self-Determination Amendments of 2000 [probably should be the Hawaiian Homelands Ownership Act of 2000, title II of Pub. L. 106–568, approved Dec. 27, 2000].''

FINDINGS

Pub. L. 106–569, title V, § 512, Dec. 27, 2000, 114 Stat. 2966, provided that: ''The Congress finds that—

''(1) the United States has undertaken a responsibility to promote the general welfare of the United States by—

''(A) employing its resources to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income; and

''(B) developing effective partnerships with governmental and private entities to accomplish the objectives referred to in subparagraph (A);

''(2) the United States has a special responsibility for the welfare of the Native peoples of the United States, including Native Hawaiians;

''(3) pursuant to the provisions of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.) [former 48 U.S.C. 691 et seq.], the United States set aside 200,000 acres of land in the Federal territory that later became the State of Hawaii in order to establish a homeland for the native people of Hawaii—Native Hawaiians;

''(4) despite the intent of Congress in 1920 to address the housing needs of Native Hawaiians through the enactment of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.), Native Hawaiians eligible to reside on the Hawaiian home lands have been foreclosed from participating in Federal housing assistance programs available to all other eligible families in the United States;

''(5) although Federal housing assistance programs have been administered on a racially neutral basis in the State of Hawaii, Native Hawaiians continue to have the greatest unmet need for housing and the highest rates of overcrowding in the United States;

''(6) among the Native American population of the United States, Native Hawaiians experience the highest percentage of housing problems in the United States, as the percentage—

''(A) of housing problems in the Native Hawaiian population is 49 percent, as compared to—

''(i) 44 percent for American Indian and Alaska Native households in Indian country; and

''(ii) 27 percent for all other households in the United States; and

''(B) overcrowding in the Native Hawaiian population is 36 percent as compared to 3 percent for all other households in the United States;

''(7) among the Native Hawaiian population, the needs of Native Hawaiians, as that term is defined in section 801 of the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4221] (as added by this subtitle), eligible to reside on the Hawaiian Home Lands are the most severe, as—

''(A) the percentage of overcrowding in Native Hawaiian households on the Hawaiian Home Lands is 36 percent; and

''(B) approximately 13,000 Native Hawaiians, which constitute 95 percent of the Native Hawaiians who are eligible to reside on the Hawaiian Home Lands, are in need of housing;

''(8) applying the Department of Housing and Urban Development guidelines—

''(A) 70.8 percent of Native Hawaiians who either reside or who are eligible to reside on the Hawaiian Home Lands have incomes that fall below the median family income; and

''(B) 50 percent of Native Hawaiians who either reside or who are eligible to reside on the Hawaiian Home Lands have incomes below 30 percent of the median family income;

''(9) one-third of those Native Hawaiians who are eligible to reside on the Hawaiian Home Lands pay more than 30 percent of their income for shelter, and one-half of those Native Hawaiians face overcrowding;

''(10) the extraordinarily severe housing needs of Native Hawaiians demonstrate that Native Hawaiians who either reside on, or are eligible to reside on, Hawaiian Home Lands have been denied equal access to Federal low-income housing assistance programs available to other qualified residents of the United States, and that a more effective means of addressing their housing needs must be authorized;

''(11) consistent with the recommendations of the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing, and in order to address the continuing prevalence of extraordinarily severe housing needs among Native Hawaiians who either reside or are eligible to reside on the Hawaiian Home Lands, Congress finds it necessary to extend the Federal low-income housing assistance available to American Indians and Alaska Natives under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) to those Native Hawaiians;

''(12) under the treatymaking power of the United States, Congress had the constitutional authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

''(13) the United States has recognized and reaffirmed that—

''(A) Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and that group has never relinquished its claims to sovereignty or its sovereign lands;

''(B) Congress does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once sovereign nation as to whom the United States has established a trust relationship;

''(C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii;

''(D) the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives; and

''(E) the aboriginal, indigenous people of the United States have—

''(i) a continuing right to autonomy in their internal affairs; and

''(ii) an ongoing right of self-determination and self-governance that has never been extinguished;

''(14) the political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States as evidenced by the inclusion of Native Hawaiians in—

''(A) the Native American Programs Act of 1974 (42 U.S.C. 2291 [2991] et seq.);

''(B) the American Indian Religious Freedom Act (42 U.S.C. 1996 et seq.);

''(C) the National Museum of the American Indian Act (20 U.S.C. 80q et seq.);

''(D) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.);

''(E) the National Historic Preservation Act (16 U.S.C. 470 et seq.);

''(F) the Native American Languages Act of 1992 (106 Stat. 3434 [Pub. L. 102–524, see Short Title of 1992 Amendment note set out under section 2991 of Title 42, The Public Health and Welfare]);

''(G) the American Indian, Alaska Native and Native Hawaiian Culture and Arts [Art] Development Act (20 U.S.C. 4401 et seq.);

''(H) the Job Training Partnership Act ([former] 29 U.S.C. 1501 et seq.); and

''(I) the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.); and

''(15) in the area of housing, the United States has recognized and reaffirmed the political relationship with the Native Hawaiian people through—

''(A) the enactment of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.), which set aside approximately 200,000 acres of public lands that became known as Hawaiian Home Lands in the Territory of Hawaii that had been ceded to the United States for homesteading by Native Hawaiians in order to rehabilitate a landless and dying people;

''(B) the enactment of the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (73 Stat. 4) [Pub. L. 86–3, 48 U.S.C. note prec. 491]—

''(i) by ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held in public trust, for the betterment of the conditions of Native Hawaiians, as that term is defined in section 201 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.); and

''(ii) by transferring the United States responsibility for the administration of Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.), enacted by the legislature of the State of Hawaii affecting the rights of beneficiaries under the Act;

''(C) the authorization of mortgage loans insured by the Federal Housing Administration for the purchase, construction, or refinancing of homes on Hawaiian Home Lands under the National Housing Act (Public Law 479; 73d Congress; 12 U.S.C. 1701 et seq.);

''(D) authorizing Native Hawaiian representation on the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing under Public Law 101–235 [see Tables for classification];

''(E) the inclusion of Native Hawaiians in the definition under section 3764 [now 3765] of title 38, United States Code, applicable to subchapter V of chapter 37 of title 38, United States Code (relating to a housing loan program for Native American veterans); and

''(F) the enactment of the Hawaiian Home Lands Recovery Act (109 Stat. 357; 48 U.S.C. 491, note prec.) [Pub. L. 104–42, title II] which establishes a process for the conveyance of Federal lands to the Department of Hawaiian Homes Lands that are equivalent in value to lands acquired by the United States from the Hawaiian Home Lands inventory.''

Substantially identical provisions were contained in Pub. L. 106–568, title II, § 202, Dec. 27, 2000, 114 Stat. 2872.

§ 4222. Block grants for affordable housing activities

(a) Grant authority

For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this subchapter) make a grant under this subchapter to the Department of Hawaiian Home Lands to carry out affordable housing activities for Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands.

(b) Plan requirement

(1) In general

The Secretary may make a grant under this subchapter to the Department of Hawaiian Home Lands for a fiscal year only if—

(A) the Director has submitted to the Secretary a housing plan for that fiscal year; and

(B) the Secretary has determined under section 4224 of this title that the housing plan complies with the requirements of section 4223 of this title.

(2) Waiver

The Secretary may waive the applicability of the requirements under paragraph (1), in part, if the Secretary finds that the Department of Hawaiian Home Lands has not complied or cannot comply with those requirements due to circumstances beyond the control of the Department of Hawaiian Home Lands.

(c) Use of funds for affordable housing activities under plan

Except as provided in subsection (e) of this section, amounts provided under a grant under this section may be used only for affordable housing activities under this subchapter that are consistent with a housing plan approved under section 4224 of this title.

(d) Administrative expenses

(1) In general

The Secretary shall, by regulation, authorize the Department of Hawaiian Home Lands to use a percentage of any grant amounts received under this subchapter for any reasonable administrative and planning expenses of the Department relating to carrying out this subchapter and activities assisted with those amounts.

(2) Administrative and planning expenses

The administrative and planning expenses referred to in paragraph (1) include—

(A) costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts provided under this subchapter; and

(B) expenses incurred in preparing a housing plan under section 4223 of this title.

(e) Public-private partnerships

The Director shall make all reasonable efforts, consistent with the purposes of this subchapter, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing a housing plan that has been approved by the Secretary under section 4223 of this title.

(Pub. L. 104–330, title VIII, § 802, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2877, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2971.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 802 of Pub. L. 104–330. This section is based on the text of section 802 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4223. Housing plan

(a) Plan submission

The Secretary shall—

(1) require the Director to submit a housing plan under this section for each fiscal year; and

(2) provide for the review of each plan submitted under paragraph (1).

(b) Five-year plan

Each housing plan under this section shall—

(1) be in a form prescribed by the Secretary; and

(2) contain, with respect to the 5-year period beginning with the fiscal year for which the plan is submitted, the following information:

(A) MISSION STATEMENT.—A general statement of the mission of the Department of Hawaiian Home Lands to serve the needs of the low-income families to be served by the Department.

(B) GOALS AND OBJECTIVES.—A statement of the goals and objectives of the Department of Hawaiian Home Lands to enable the Department to serve the needs identified in subparagraph (A) during the period.

(C) ACTIVITIES PLANS.—An overview of the activities planned during the period including an analysis of the manner in which the activities will enable the Department to meet its mission, goals, and objectives.

(c) One-year plan

A housing plan under this section shall—

(1) be in a form prescribed by the Secretary; and

(2) contain the following information relating to the fiscal year for which the assistance under this subchapter is to be made available:

(A) GOALS AND OBJECTIVES.—A statement of the goals and objectives to be accomplished during the period covered by the plan.

(B) STATEMENT OF NEEDS.—A statement of the housing needs of the low-income families served by the Department and the means by which those needs will be addressed during the period covered by the plan, including—

(i) a description of the estimated housing needs and the need for assistance for the low-income families to be served by the Department, including a description of the manner in which the geographical distribution of assistance is consistent with—

(I) the geographical needs of those families; and

(II) needs for various categories of housing assistance; and

(ii) a description of the estimated housing needs for all families to be served by the Department.

(C) FINANCIAL RESOURCES.—An operating budget for the Department of Hawaiian Home Lands, in a form prescribed by the Secretary, that includes—

(i) an identification and a description of the financial resources reasonably available to the Department to carry out the purposes of this subchapter, including an explanation of the manner in which amounts made available will be used to leverage additional resources; and

(ii) the uses to which the resources described in clause (i) will be committed, including—

(I) eligible and required affordable housing activities; and

(II) administrative expenses.

(D) AFFORDABLE HOUSING RESOURCES.—A statement of the affordable housing resources currently available at the time of the submittal of the plan and to be made available during the period covered by the plan, including—

(i) a description of the significant characteristics of the housing market in the State of Hawaii, including the availability of housing from other public sources, private market housing;

(ii) the manner in which the characteristics referred to in clause (i) influence the decision of the Department of Hawaiian Home Lands to use grant amounts to be provided under this subchapter for—

(I) rental assistance;

(II) the production of new units;

(III) the acquisition of existing units; or

(IV) the rehabilitation of units;

(iii) a description of the structure, coordination, and means of cooperation between the Department of Hawaiian Home Lands and any other governmental entities in the development, submission, or implementation of housing plans, including a description of—

(I) the involvement of private, public, and nonprofit organizations and institutions;

(II) the use of loan guarantees under section 1715z–13b of title 12; and

(III) other housing assistance provided by the United States, including loans, grants, and mortgage insurance;

(iv) a description of the manner in which the plan will address the needs identified pursuant to subparagraph (C);

(v) a description of—

(I) any existing or anticipated homeownership programs and rental programs to be carried out during the period covered by the plan; and

(II) the requirements and assistance available under the programs referred to in subclause (I);

(vi) a description of—

(I) any existing or anticipated housing rehabilitation programs necessary to ensure the long-term viability of the housing to be carried out during the period covered by the plan; and

(II) the requirements and assistance available under the programs referred to in subclause (I);

(vii) a description of—

(I) all other existing or anticipated housing assistance provided by the Department of Hawaiian Home Lands during the period covered by the plan, including—

(aa) transitional housing;

(bb) homeless housing;

(cc) college housing; and

(dd) supportive services housing; and

(II) the requirements and assistance available under such programs;

(viii)(I) a description of any housing to be demolished or disposed of;

(II) a timetable for that demolition or disposition; and

(III) any other information required by the Secretary with respect to that demolition or disposition;

(ix) a description of the manner in which the Department of Hawaiian Home Lands will coordinate with welfare agencies in the State of Hawaii to ensure that residents of the affordable housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

(x) a description of the requirements established by the Department of Hawaiian Home Lands to—

(I) promote the safety of residents of the affordable housing;

(II) facilitate the undertaking of crime prevention measures;

(III) allow resident input and involvement, including the establishment of resident organizations; and

(IV) allow for the coordination of crime prevention activities between the Department and local law enforcement officials; and

(xi) a description of the entities that will carry out the activities under the plan, including the organizational capacity and key personnel of the entities.

(E) CERTIFICATION OF COMPLIANCE.—Evidence of compliance that shall include, as appropriate—

(i) a certification that the Department of Hawaiian Home Lands will comply with—

(I) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) or with the Fair Housing Act (42 U.S.C. 3601 et seq.) in carrying out this subchapter, to the extent that such title[1] is applicable; and

(II) other applicable Federal statutes;

(ii) a certification that the Department will require adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this subchapter, in compliance with such requirements as may be established by the Secretary;

(iii) a certification that policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this subchapter;

(iv) a certification that policies are in effect and are available for review by the Secretary and the public governing rents charged, including the methods by which such rents or homebuyer payments are determined, for housing assisted with grant amounts provided under this subchapter; and

(v) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this subchapter.

(d) Applicability of civil rights statutes

(1) In general

To the extent that the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) or of the Fair Housing Act (42 U.S.C. 3601 et seq.) apply to assistance provided under this subchapter, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of assistance under this subchapter—

(A) to the Department of Hawaiian Home Lands on the basis that the Department served Native Hawaiians; or

(B) to an eligible family on the basis that the family is a Native Hawaiian family.

(2) Civil rights

Program eligibility under this subchapter may be restricted to Native Hawaiians. Subject to the preceding sentence, no person may be discriminated against on the basis of race, color, national origin, religion, sex, familial status, or disability.

(e) Use of nonprofit organizations

As a condition of receiving grant amounts under this subchapter, the Department of Hawaiian Home Lands shall, to the extent practicable, provide for private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with those grant amounts.

(Pub. L. 104–330, title VIII, § 803, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2878, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2971.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsecs. (c)(2)(E)(i)(I) and (d)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

The Fair Housing Act, referred to in subsecs. (c)(2)(E)(i)(I) and (d)(1), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of Title 42, The Public Health and Welfare. For com-

[1] See Codification note below.

plete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted substantially identical sections 803 of Pub. L. 104–330. This section is based on the text of section 803 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513. Section 803 of Pub. L. 104–330, as added by Pub. L. 106–568, referred to title VIII of the Act popularly known as the Civil Rights Act of 1968 instead of the Fair Housing Act in subsecs. (c)(2)(E)(i)(I) and (d)(1). Title VIII of the Civil Rights Act of 1968 is title VIII of Pub. L. 90–284 which is known as the Fair Housing Act, see References in Text note above. The reference to ''such title'' in subsec. (c)(2)(E)(i)(I) probably refers to title VI of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968 (the Fair Housing Act).

§ 4224. Review of plans

(a) Review and notice

(1) Review

(A) In general

The Secretary shall conduct a review of a housing plan submitted to the Secretary under section 4223 of this title to ensure that the plan complies with the requirements of that section.

(B) Limitation

The Secretary shall have the discretion to review a plan referred to in subparagraph (A) only to the extent that the Secretary considers that the review is necessary.

(2) Notice

(A) In general

Not later than 60 days after receiving a plan under section 4223 of this title, the Secretary shall notify the Director of the Department of Hawaiian Home Lands whether the plan complies with the requirements under that section.

(B) Effect of failure of Secretary to take action

For purposes of this subchapter, if the Secretary does not notify the Director, as required under this subsection and subsection (b) of this section, upon the expiration of the 60-day period described in subparagraph (A)—

(i) the plan shall be considered to have been determined to comply with the requirements under section 4223 of this title; and

(ii) the Director shall be considered to have been notified of compliance.

(b) Notice of reasons for determination of noncompliance

If the Secretary determines that a plan submitted under section 4223 of this title does not comply with the requirements of that section, the Secretary shall specify in the notice under subsection (a) of this section—

(1) the reasons for noncompliance; and

(2) any modifications necessary for the plan to meet the requirements of section 4223 of this title.

(c) Review

(1) In general

After the Director of the Department of Hawaiian Home Lands submits a housing plan under section 4223 of this title, or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make a determination under this subsection, the Secretary shall review the plan (including any amendments or modifications thereto) to determine whether the contents of the plan—

(A) set forth the information required by section 4223 of this title to be contained in the housing plan;

(B) are consistent with information and data available to the Secretary; and

(C) are not prohibited by or inconsistent with any provision of this chapter or any other applicable law.

(2) Incomplete plans

If the Secretary determines under this subsection that any of the appropriate certifications required under section 4223(c)(2)(E) of this title are not included in a plan, the plan shall be considered to be incomplete.

(d) Updates to plan

(1) In general

Subject to paragraph (2), after a plan under section 4223 of this title has been submitted for a fiscal year, the Director of the Department of Hawaiian Home Lands may comply with the provisions of that section for any succeeding fiscal year (with respect to information included for the 5-year period under section 4223(b) of this title or for the 1-year period under section 4223(c) of this title) by submitting only such information regarding such changes as may be necessary to update the plan previously submitted.

(2) Complete plans

The Director shall submit a complete plan under section 4223 of this title not later than 4 years after submitting an initial plan under that section, and not less frequently than every 4 years thereafter.

(e) Effective date

This section and section 4223 of this title shall take effect on the date provided by the Secretary pursuant to section 4227(a)[1] of this title to provide for timely submission and review of the housing plan as necessary for the provision of assistance under this subchapter for fiscal year 2001.

(Pub. L. 104–330, title VIII, § 804, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2881, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2975.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1)(C), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted substantially identical sections 804 of Pub. L. 104–330.

[1] So in original. Probably should be section ''4227''.

This section is based on the text of section 804 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4225. Treatment of program income and labor standards

(a) Program income

(1) Authority to retain

The Department of Hawaiian Home Lands may retain any program income that is realized from any grant amounts received by the Department under this subchapter if—

(A) that income was realized after the initial disbursement of the grant amounts received by the Department; and

(B) the Director agrees to use the program income for affordable housing activities in accordance with the provisions of this subchapter.

(2) Prohibition of reduction of grant

The Secretary may not reduce the grant amount for the Department of Hawaiian Home Lands based solely on—

(A) whether the Department retains program income under paragraph (1); or

(B) the amount of any such program income retained.

(3) Exclusion of amounts

The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the Department.

(b) Labor standards

(1) In general

Any contract or agreement for assistance, sale, or lease pursuant to this subchapter shall contain—

(A) a provision requiring that an amount not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, technicians employed in the development and all maintenance, and laborers and mechanics employed in the operation, of the affordable housing project involved; and

(B) a provision that an amount not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to sections 3141–3144, 3146, and 3147 of title 40 shall be paid to all laborers and mechanics employed in the development of the affordable housing involved.

(2) Exceptions

Paragraph (1) and provisions relating to wages required under paragraph (1) in any contract or agreement for assistance, sale, or lease under this subchapter, shall not apply to any individual who performs the services for which the individual volunteered and who is not otherwise employed at any time in the construction work and received no compensation or is paid expenses, reasonable benefits, or a nominal fee for those services.

(Pub. L. 104–330, title VIII, § 805, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2883, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2976.)

CODIFICATION

''Sections 3141–3144, 3146, and 3147 of title 40'' substituted in subsec. (b)(1)(B) for ''the Act commonly known as the 'Davis-Bacon Act' (46 Stat. 1494; chapter 411; 40 U.S.C. 276a et seq.)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted substantially identical sections 805 of Pub. L. 104–330. This section is based on the text of section 805 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4226. Environmental review

(a) In general

(1) Release of funds

(A) In general

The Secretary may carry out the alternative environmental protection procedures described in subparagraph (B) in order to ensure—

(i) that the policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of grant amounts provided under this subchapter; and

(ii) to the public undiminished protection of the environment.

(B) Alternative environmental protection procedure

In lieu of applying environmental protection procedures otherwise applicable, the Secretary may by regulation provide for the release of funds for specific projects to the Department of Hawaiian Home Lands if the Director of the Department assumes all of the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake those projects as Federal projects.

(2) Regulations

(A) In general

The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality.

(B) Contents

The regulations issued under this paragraph shall—

(i) provide for the monitoring of the environmental reviews performed under this section;

(ii) in the discretion of the Secretary, facilitate training for the performance of such reviews; and

(iii) provide for the suspension or termination of the assumption of responsibilities under this section.

(3) Effect on assumed responsibility

The duty of the Secretary under paragraph (2)(B) shall not be construed to limit or reduce any responsibility assumed by the Department of Hawaiian Home Lands for grant amounts with respect to any specific release of funds.

(b) Procedure

(1) In general

The Secretary shall authorize the release of funds subject to the procedures under this section only if, not less than 15 days before that approval and before any commitment of funds to such projects, the Director of the Department of Hawaiian Home Lands submits to the Secretary a request for such release accompanied by a certification that meets the requirements of subsection (c) of this section.

(2) Effect of approval

The approval of the Secretary of a certification described in paragraph (1) shall be deemed to satisfy the responsibilities of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and such other provisions of law as the regulations of the Secretary specify to the extent that those responsibilities relate to the releases of funds for projects that are covered by that certification.

(c) Certification

A certification under the procedures under this section shall—

(1) be in a form acceptable to the Secretary;

(2) be executed by the Director of the Department of Hawaiian Home Lands;

(3) specify that the Department of Hawaiian Home Lands has fully carried out its responsibilities as described under subsection (a) of this section; and

(4) specify that the Director—

(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and each provision of law specified in regulations issued by the Secretary to the extent that those laws apply by reason of subsection (a) of this section; and

(B) is authorized and consents on behalf of the Department of Hawaiian Home Lands and the Director to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the Director of the Department of Hawaiian Home Lands as such an official.

(Pub. L. 104–330, title VIII, § 806, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2883, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2977.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a)(1), (b)(2), and (c)(4)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted substantially identical sections 806 of Pub. L. 104–330. This section is based on the text of section 806 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4227. Regulations

The Secretary shall issue final regulations necessary to carry out this subchapter not later than October 1, 2001.

(Pub. L. 104–330, title VIII, § 807, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2885, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2979.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted substantially identical sections 807 of Pub. L. 104–330. This section is based on the text of section 807 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513. Section 807 of Pub. L. 104–330, as added by Pub. L. 106–568, § 203, required the issuance of final regulations not later than October 1, 2000, instead of October 1, 2001.

§ 4228. Affordable housing activities

(a)[1] National objectives and eligible families

(1) Primary objective

The national objectives of this subchapter are—

(A) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments for occupancy by low-income Native Hawaiian families;

(B) to ensure better access to private mortgage markets and to promote self-sufficiency of low-income Native Hawaiian families;

(C) to coordinate activities to provide housing for low-income Native Hawaiian families with Federal, State, and local activities to further economic and community development;

(D) to plan for and integrate infrastructure resources on the Hawaiian Home Lands with housing development; and

(E) to—

(i) promote the development of private capital markets; and

(ii) allow the markets referred to in clause (i) to operate and grow, thereby benefiting Native Hawaiian communities.

(2) Eligible families

(A) In general

Except as provided under subparagraph (B), assistance for eligible housing activities under this subchapter shall be limited to low-income Native Hawaiian families.

(B) Exception to low-income requirement

(i) In general

The Director may provide assistance for homeownership activities under—

(I) section 4229(b) of this title;

(II) model activities under section 4229(f) of this title; or

(III) loan guarantee activities under section 1715z–13b of title 12 to Native Hawaiian families who are not low-income families, to the extent that the Sec-

[1] So in original. No subsec. (b) has been enacted.

retary approves the activities under that section to address a need for housing for those families that cannot be reasonably met without that assistance.

(ii) Limitations

The Secretary shall establish limitations on the amount of assistance that may be provided under this subchapter for activities for families that are not low-income families.

(C) Other families

Notwithstanding paragraph (1), the Director may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this subchapter to a family that is not composed of Native Hawaiians if—

(i) the Department determines that the presence of the family in the housing involved is essential to the well-being of Native Hawaiian families; and

(ii) the need for housing for the family cannot be reasonably met without the assistance.

(D) Preference

(i) In general

A housing plan submitted under section 4223 of this title may authorize a preference, for housing or housing assistance provided through affordable housing activities assisted with grant amounts provided under this subchapter to be provided, to the extent practicable, to families that are eligible to reside on the Hawaiian Home Lands.

(ii) Application

In any case in which a housing plan provides for preference described in clause (i), the Director shall ensure that housing activities that are assisted with grant amounts under this subchapter are subject to that preference.

(E) Use of nonprofit organizations

As a condition of receiving grant amounts under this subchapter, the Department of Hawaiian Home Lands, shall to the extent practicable, provide for private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with those grant amounts.

(Pub. L. 104–330, title VIII, § 809, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2885, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2979.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 809 of Pub. L. 104–330. This section is based on the text of section 809 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4229. Eligible affordable housing activities

(a) In general

Affordable housing activities under this section are activities conducted in accordance with the requirements of section 4230 of this title to—

(1) develop or to support affordable housing for rental or homeownership; or

(2) provide housing services with respect to affordable housing, through the activities described in subsection (b) of this section.

(b) Activities

The activities described in this subsection are the following:

(1) Development

The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include—

(A) real property acquisition;

(B) site improvement;

(C) the development of utilities and utility services;

(D) conversion;

(E) demolition;

(F) financing;

(G) administration and planning; and

(H) other related activities.

(2) Housing services

The provision of housing-related services for affordable housing, including—

(A) housing counseling in connection with rental or homeownership assistance;

(B) the establishment and support of resident organizations and resident management corporations;

(C) energy auditing;

(D) activities related to the provisions of self-sufficiency and other services; and

(E) other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in other housing activities assisted pursuant to this section.

(3) Housing management services

The provision of management services for affordable housing, including—

(A) the preparation of work specifications;

(B) loan processing;

(C) inspections;

(D) tenant selection;

(E) management of tenant-based rental assistance; and

(F) management of affordable housing projects.

(4) Crime prevention and safety activities

The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(5) Model activities

Housing activities under model programs that are—

(A) designed to carry out the purposes of this subchapter; and

(B) specifically approved by the Secretary as appropriate for the purpose referred to in subparagraph (A).

(Pub. L. 104–330, title VIII, § 810, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2886, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2980.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 810 of Pub. L. 104–330. This section is

based on the text of section 810 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4230. Program requirements

(a) Rents

(1) Establishment

Subject to paragraph (2), as a condition to receiving grant amounts under this subchapter, the Director shall develop written policies governing rents and homebuyer payments charged for dwelling units assisted under this subchapter, including methods by which such rents and homebuyer payments are determined.

(2) Maximum rent

In the case of any low-income family residing in a dwelling unit assisted with grant amounts under this subchapter, the monthly rent or homebuyer payment (as applicable) for that dwelling unit may not exceed 30 percent of the monthly adjusted income of that family.

(b) Maintenance and efficient operation

(1) In general

The Director shall, using amounts of any grants received under this subchapter, reserve and use for operating under section 4229 of this title such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing.

(2) Disposal of certain housing

This subsection may not be construed to prevent the Director, or any entity funded by the Department, from demolishing or disposing of housing, pursuant to regulations established by the Secretary.

(c) Insurance coverage

As a condition to receiving grant amounts under this subchapter, the Director shall require adequate insurance coverage for housing units that are owned or operated or assisted with grant amounts provided under this subchapter.

(d) Eligibility for admission

As a condition to receiving grant amounts under this subchapter, the Director shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this subchapter.

(e) Management and maintenance

As a condition to receiving grant amounts under this subchapter, the Director shall develop policies governing the management and maintenance of housing assisted with grant amounts under this subchapter.

(Pub. L. 104–330, title VIII, § 811, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2887, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2981.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 811 of Pub. L. 104–330. This section is based on the text of section 811 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4231. Types of investments

(a) In general

Subject to section 4230 of this title and an applicable housing plan approved under section 4223 of this title, the Director shall have—

(1) the discretion to use grant amounts for affordable housing activities through the use of—

(A) equity investments;

(B) interest-bearing loans or advances;

(C) noninterest-bearing loans or advances;

(D) interest subsidies;

(E) the leveraging of private investments; or

(F) any other form of assistance that the Secretary determines to be consistent with the purposes of this subchapter; and

(2) the right to establish the terms of assistance provided with funds referred to in paragraph (1).

(b) Investments

The Director may invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations, as approved by the Secretary.

(Pub. L. 104–330, title VIII, § 812, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2888, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2982.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 812 of Pub. L. 104–330. This section is based on the text of section 812 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4232. Low-income requirement and income targeting

(a) In general

Housing shall qualify for affordable housing for purposes of this subchapter only if—

(1) each dwelling unit in the housing—

(A) in the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of the initial occupancy of that family of that unit; and

(B) in the case of housing for homeownership, is made available for purchase only by a family that is a low-income family at the time of purchase; and

(2) each dwelling unit in the housing will remain affordable, according to binding commitments satisfactory to the Secretary, for—

(A) the remaining useful life of the property (as determined by the Secretary) without regard to the term of the mortgage or to transfer of ownership; or

(B) such other period as the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this subchapter, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if that action—

(i) recognizes any contractual or legal rights of any public agency, nonprofit sponsor, or other person or entity to take an action that would—

(I) avoid termination of low-income affordability, in the case of foreclosure; or

(II) transfer ownership in lieu of foreclosure; and

(ii) is not for the purpose of avoiding low-income affordability restrictions, as determined by the Secretary.

(b) Exception

Notwithstanding subsection (a) of this section, housing assistance pursuant to section 4228(a)(2)(B) of this title shall be considered affordable housing for purposes of this subchapter.

(Pub. L. 104–330, title VIII, § 813, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2888, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2982.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 813 of Pub. L. 104–330. This section is based on the text of section 813 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4233. Lease requirements and tenant selection

(a) Leases

Except to the extent otherwise provided by or inconsistent with the laws of the State of Hawaii, in renting dwelling units in affordable housing assisted with grant amounts provided under this subchapter, the Director, owner, or manager shall use leases that—

(1) do not contain unreasonable terms and conditions;

(2) require the Director, owner, or manager to maintain the housing in compliance with applicable housing codes and quality standards;

(3) require the Director, owner, or manager to give adequate written notice of termination of the lease, which shall be the period of time required under applicable State or local law;

(4) specify that, with respect to any notice of eviction or termination, notwithstanding any State or local law, a resident shall be informed of the opportunity, before any hearing or trial, to examine any relevant documents, record, or regulations directly related to the eviction or termination;

(5) require that the Director, owner, or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms and conditions of the lease, violation of applicable Federal, State, or local law, or for other good cause; and

(6) provide that the Director, owner, or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that—

(A) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the Department, owner, or manager;

(B) threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or

(C) is criminal activity (including drug-related criminal activity) on or off the premises.

(b) Tenant or homebuyer selection

As a condition to receiving grant amounts under this subchapter, the Director shall adopt and use written tenant and homebuyer selection policies and criteria that—

(1) are consistent with the purpose of providing housing for low-income families;

(2) are reasonably related to program eligibility and the ability of the applicant to perform the obligations of the lease; and

(3) provide for—

(A) the selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in an applicable housing plan approved under section 4223 of this title; and

(B) the prompt notification in writing of any rejected applicant of the grounds for that rejection.

(Pub. L. 104–330, title VIII, § 814, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2889, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2983.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 814 of Pub. L. 104–330. This section is based on the text of section 814 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4234. Repayment

If the Department of Hawaiian Home Lands uses grant amounts to provide affordable housing under activities under this subchapter and, at any time during the useful life of the housing, the housing does not comply with the requirement under section 4232(a)(2) of this title, the Secretary shall—

(1) reduce future grant payments on behalf of the Department by an amount equal to the grant amounts used for that housing (under the authority of section 4238(a)(2) of this title); or

(2) require repayment to the Secretary of any amount equal to those grant amounts.

(Pub. L. 104–330, title VIII, § 815, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2890, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2984.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 815 of Pub. L. 104–330. This section is based on the text of section 815 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4235. Annual allocation

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this subchapter for the fiscal year, in accordance with the formula established pursuant to section 4236 of this title to the Department of Hawaiian Home Lands if the Department complies with the requirements under this subchapter for a grant under this subchapter.

(Pub. L. 104–330, title VIII, § 816, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2890,

and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2984.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 816 of Pub. L. 104–330. This section is based on the text of section 816 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4236. Allocation formula

(a) Establishment

The Secretary shall, by regulation issued not later than the expiration of the 6-month period beginning on December 27, 2000, in the manner provided under section 4227 of this title, establish a formula to provide for the allocation of amounts available for a fiscal year for block grants under this subchapter in accordance with the requirements of this section.

(b) Factors for determination of need

The formula under subsection (a) of this section shall be based on factors that reflect the needs for assistance for affordable housing activities, including—

(1) the number of low-income dwelling units owned or operated at the time pursuant to a contract between the Director and the Secretary;

(2) the extent of poverty and economic distress and the number of Native Hawaiian families eligible to reside on the Hawaiian Home Lands; and

(3) any other objectively measurable conditions that the Secretary and the Director may specify.

(c) Other factors for consideration

In establishing the formula under subsection (a) of this section, the Secretary shall consider the relative administrative capacities of the Department of Hawaiian Home Lands and other challenges faced by the Department, including—

(1) geographic distribution within Hawaiian Home Lands; and

(2) technical capacity.

(d) Effective date

This section shall take effect on December 27, 2000.

(Pub. L. 104–330, title VIII, § 817, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2890, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2984.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted substantially identical sections 817 of Pub. L. 104–330. This section is based on the text of section 817 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4237. Remedies for noncompliance

(a) Actions by Secretary affecting grant amounts

(1) In general

Except as provided in subsection (b) of this section, if the Secretary finds after reasonable notice and opportunity for a hearing that the Department of Hawaiian Home Lands has failed to comply substantially with any provision of this subchapter, the Secretary shall—

(A) terminate payments under this subchapter to the Department;

(B) reduce payments under this subchapter to the Department by an amount equal to the amount of such payments that were not expended in accordance with this subchapter; or

(C) limit the availability of payments under this subchapter to programs, projects, or activities not affected by such failure to comply.

(2) Actions

If the Secretary takes an action under subparagraph (A), (B), or (C) of paragraph (1), the Secretary shall continue that action until the Secretary determines that the failure by the Department to comply with the provision has been remedied by the Department and the Department is in compliance with that provision.

(b) Noncompliance because of a technical incapacity

The Secretary may provide technical assistance for the Department, either directly or indirectly, that is designed to increase the capability and capacity of the Director of the Department to administer assistance provided under this subchapter in compliance with the requirements under this subchapter if the Secretary makes a finding under subsection (a) of this section, but determines that the failure of the Department to comply substantially with the provisions of this subchapter—

(1) is not a pattern or practice of activities constituting willful noncompliance; and

(2) is a result of the limited capability or capacity of the Department of Hawaiian Home Lands.

(c) Referral for civil action

(1) Authority

In lieu of, or in addition to, any action that the Secretary may take under subsection (a) of this section, if the Secretary has reason to believe that the Department of Hawaiian Home Lands has failed to comply substantially with any provision of this subchapter, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) Civil action

Upon receiving a referral under paragraph (1), the Attorney General may bring a civil action in any United States district court of appropriate jurisdiction for such relief as may be appropriate, including an action—

(A) to recover the amount of the assistance furnished under this subchapter that was not expended in accordance with this subchapter; or

(B) for mandatory or injunctive relief.

(d) Review

(1) In general

If the Director receives notice under subsection (a) of this section of the termination, reduction, or limitation of payments under this chapter, the Director—

(A) may, not later than 60 days after receiving such notice, file with the United States Court of Appeals for the Ninth Cir-

cuit, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action of the Secretary; and

(B) upon the filing of any petition under subparagraph (A), shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(2) Procedure

(A) In general

The Secretary shall file in the court a record of the proceeding on which the Secretary based the action, as provided in section 2112 of title 28.

(B) Objections

No objection to the action of the Secretary shall be considered by the court unless the Department has registered the objection before the Secretary.

(3) Disposition

(A) Court proceedings

(i) Jurisdiction of court

The court shall have jurisdiction to affirm or modify the action of the Secretary or to set the action aside in whole or in part.

(ii) Findings of fact

If supported by substantial evidence on the record considered as a whole, the findings of fact by the Secretary shall be conclusive.

(iii) Addition

The court may order evidence, in addition to the evidence submitted for review under this subsection, to be taken by the Secretary, and to be made part of the record.

(B) Secretary

(i) In general

The Secretary, by reason of the additional evidence referred to in subparagraph (A) and filed with the court—

(I) may—

(aa) modify the findings of fact of the Secretary; or

(bb) make new findings; and

(II) shall file—

(aa) such modified or new findings; and

(bb) the recommendation of the Secretary, if any, for the modification or setting aside of the original action of the Secretary.

(ii) Findings

The findings referred to in clause (i)(II)(bb) shall, with respect to a question of fact, be considered to be conclusive if those findings are—

(I) supported by substantial evidence on the record; and

(II) considered as a whole.

(4) Finality

(A) In general

Except as provided in subparagraph (B), upon the filing of the record under this subsection with the court—

(i) the jurisdiction of the court shall be exclusive; and

(ii) the judgment of the court shall be final.

(B) Review by Supreme Court

A judgment under subparagraph (A) shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification, as provided in section 1254 of title 28.

(Pub. L. 104–330, title VIII, § 818, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2891, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2985.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(1), was in the original ''this Act'', meaning Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 818 of Pub. L. 104–330. This section is based on the text of section 818 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4238. Monitoring of compliance

(a) Enforceable agreements

(1) In general

The Director, through binding contractual agreements with owners or other authorized entities, shall ensure long-term compliance with the provisions of this subchapter.

(2) Measures

The measures referred to in paragraph (1) shall provide for—

(A) to the extent allowable by Federal and State law, the enforcement of the provisions of this subchapter by the Department and the Secretary; and

(B) remedies for breach of the provisions referred to in paragraph (1).

(b) Periodic monitoring

(1) In general

Not less frequently than annually, the Director shall review the activities conducted and housing assisted under this subchapter to assess compliance with the requirements of this subchapter.

(2) Review

Each review under paragraph (1) shall include onsite inspection of housing to determine compliance with applicable requirements.

(3) Results

The results of each review under paragraph (1) shall be—

(A) included in a performance report of the Director submitted to the Secretary under section 4239 of this title; and

(B) made available to the public.

(c) Performance measures

The Secretary shall establish such performance measures as may be necessary to assess compliance with the requirements of this subchapter.

(Pub. L. 104–330, title VIII, § 819, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2893, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2987.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 819 of Pub. L. 104–330. This section is based on the text of section 819 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4239. Performance reports

(a) Requirement

For each fiscal year, the Director shall—

(1) review the progress the Department has made during that fiscal year in carrying out the housing plan submitted by the Department under section 4223 of this title; and

(2) submit a report to the Secretary (in a form acceptable to the Secretary) describing the conclusions of the review.

(b) Content

Each report submitted under this section for a fiscal year shall—

(1) describe the use of grant amounts provided to the Department of Hawaiian Home Lands for that fiscal year;

(2) assess the relationship of the use referred to in paragraph (1) to the goals identified in the housing plan;

(3) indicate the programmatic accomplishments of the Department; and

(4) describe the manner in which the Department would change its housing plan submitted under section 4223 of this title as a result of its experiences.

(c) Submissions

The Secretary shall—

(1) establish a date for submission of each report under this section;

(2) review each such report; and

(3) with respect to each such report, make recommendations as the Secretary considers appropriate to carry out the purposes of this subchapter.

(d) Public availability

(1) Comments by beneficiaries

In preparing a report under this section, the Director shall make the report publicly available to the beneficiaries of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.) and give a sufficient amount of time to permit those beneficiaries to comment on that report before it is submitted to the Secretary (in such manner and at such time as the Director may determine).

(2) Summary of comments

The report shall include a summary of any comments received by the Director from beneficiaries under paragraph (1) regarding the program to carry out the housing plan.

(Pub. L. 104–330, title VIII, § 820, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2893, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2987.)

REFERENCES IN TEXT

The Hawaiian Homes Commission Act, 1920, referred to in subsec. (d)(1), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code.

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 820 of Pub. L. 104–330. This section is based on the text of section 820 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4240. Review and audit by Secretary

(a) Annual review

(1) In general

The Secretary shall, not less frequently than on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether—

(A) the Director has—

(i) carried out eligible activities under this subchapter in a timely manner;

(ii) carried out and made certifications in accordance with the requirements and the primary objectives of this subchapter and with other applicable laws; and

(iii) a continuing capacity to carry out the eligible activities in a timely manner;

(B) the Director has complied with the housing plan submitted by the Director under section 4223 of this title; and

(C) the performance reports of the Department under section 4240[1] of this title are accurate.

(2) Onsite visits

Each review conducted under this section shall, to the extent practicable, include onsite visits by employees of the Department of Housing and Urban Development.

(b) Report by Secretary

The Secretary shall give the Department of Hawaiian Home Lands not less than 30 days to review and comment on a report under this subsection. After taking into consideration the comments of the Department, the Secretary may revise the report and shall make the comments of the Department and the report with any revisions, readily available to the public not later than 30 days after receipt of the comments of the Department.

(c) Effect of reviews

The Secretary may make appropriate adjustments in the amount of annual grants under this subchapter in accordance with the findings of the Secretary pursuant to reviews and audits under this section. The Secretary may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with

[1] So in original. Probably should be section ''4239''.

the reviews and audits of the Secretary under this section, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided to the Department of Hawaiian Home Lands.

(Pub. L. 104–330, title VIII, § 821, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2894, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2988.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 821 of Pub. L. 104–330. This section is based on the text of section 821 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4241. Government Accountability Office audits

To the extent that the financial transactions of the Department of Hawaiian Home Lands involving grant amounts under this subchapter relate to amounts provided under this subchapter, those transactions may be audited by the Comptroller General of the United States under such regulations as may be prescribed by the Comptroller General. The Comptroller General of the United States shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Department of Hawaiian Home Lands pertaining to such financial transactions and necessary to facilitate the audit.

(Pub. L. 104–330, title VIII, § 822, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2895, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2989; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 822 of Pub. L. 104–330. This section is based on the text of section 822 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in section catchline.

§ 4242. Reports to Congress

(a) In general

Not later than 90 days after the conclusion of each fiscal year in which assistance under this subchapter is made available, the Secretary shall submit to Congress a report that contains—

(1) a description of the progress made in accomplishing the objectives of this subchapter;

(2) a summary of the use of funds available under this subchapter during the preceding fiscal year; and

(3) a description of the aggregate outstanding loan guarantees under section 1715z–13b of title 12.

(b) Related reports

The Secretary may require the Director to submit to the Secretary such reports and other information as may be necessary in order for the Secretary to prepare the report required under subsection (a) of this section.

(Pub. L. 104–330, title VIII, § 823, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2895, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2989.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted identical sections 823 of Pub. L. 104–330. This section is based on the text of section 823 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513.

§ 4243. Authorization of appropriations

There are authorized to be appropriated to the Department of Housing and Urban Development for grants under this subchapter such sums as may be necessary for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

(Pub. L. 104–330, title VIII, § 824, as added Pub. L. 106–568, title II, § 203, Dec. 27, 2000, 114 Stat. 2895, and Pub. L. 106–569, title V, § 513, Dec. 27, 2000, 114 Stat. 2989.)

CODIFICATION

Pub. L. 106–568, § 203, and Pub. L. 106–569, § 513, enacted substantially identical sections 824 of Pub. L. 104–330. This section is based on the text of section 824 of Pub. L. 104–330, as added by Pub. L. 106–569, § 513. Section 824 of Pub. L. 104–330, as added by Pub. L. 106–568, § 203, authorized appropriations for fiscal years 2000 to 2004, instead of fiscal years 2001 to 2005.

CHAPTER 44—NATIVE AMERICAN BUSINESS DEVELOPMENT, TRADE PROMOTION, AND TOURISM

Sec.
4301. Findings; purposes.
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§ 4301. Findings; purposes

(a) Findings

Congress finds that—

(1) clause 3 of section 8 of article I of the United States Constitution recognizes the special relationship between the United States and Indian tribes;

(2) beginning in 1970, with the inauguration by the Nixon Administration of the Indian self-determination era, each President has reaffirmed the special government-to-government relationship between Indian tribes and the United States;

(3) in 1994, President Clinton issued an Executive memorandum to the heads of departments and agencies that obligated all Federal departments and agencies, particularly those that have an impact on economic development, to evaluate the potential impacts of their actions on Indian tribes;

(4) consistent with the principles of inherent tribal sovereignty and the special relationship between Indian tribes and the United States, Indian tribes retain the right to enter into contracts and agreements to trade freely, and seek enforcement of treaty and trade rights;

(5) Congress has carried out the responsibility of the United States for the protection and

preservation of Indian tribes and the resources of Indian tribes through the endorsement of treaties, and the enactment of other laws, including laws that provide for the exercise of administrative authorities;

(6) the United States has an obligation to guard and preserve the sovereignty of Indian tribes in order to foster strong tribal governments, Indian self-determination, and economic self-sufficiency among Indian tribes;

(7) the capacity of Indian tribes to build strong tribal governments and vigorous economies is hindered by the inability of Indian tribes to engage communities that surround Indian lands and outside investors in economic activities on Indian lands;

(8) despite the availability of abundant natural resources on Indian lands and a rich cultural legacy that accords great value to self-determination, self-reliance, and independence, Native Americans suffer higher rates of unemployment, poverty, poor health, substandard housing, and associated social ills than those of any other group in the United States;

(9) the United States has an obligation to assist Indian tribes with the creation of appropriate economic and political conditions with respect to Indian lands to—

(A) encourage investment from outside sources that do not originate with the tribes; and

(B) facilitate economic ventures with outside entities that are not tribal entities;

(10) the economic success and material well-being of Native American communities depends on the combined efforts of the Federal Government, tribal governments, the private sector, and individuals;

(11) the lack of employment and entrepreneurial opportunities in the communities referred to in paragraph (7) has resulted in a multigenerational dependence on Federal assistance that is—

(A) insufficient to address the magnitude of needs; and

(B) unreliable in availability; and

(12) the twin goals of economic self-sufficiency and political self-determination for Native Americans can best be served by making available to address the challenges faced by those groups—

(A) the resources of the private market;

(B) adequate capital; and

(C) technical expertise.

(b) Purposes

The purposes of this chapter are as follows:

(1) To revitalize economically and physically distressed Native American economies by—

(A) encouraging the formation of new businesses by eligible entities, and the expansion of existing businesses; and

(B) facilitating the movement of goods to and from Indian lands and the provision of services by Indians.

(2) To promote private investment in the economies of Indian tribes and to encourage the sustainable development of resources of Indian tribes and Indian-owned businesses.

(3) To promote the long-range sustained growth of the economies of Indian tribes.

(4) To raise incomes of Indians in order to reduce the number of Indians at poverty levels and provide the means for achieving a higher standard of living on Indian reservations.

(5) To encourage intertribal, regional, and international trade and business development in order to assist in increasing productivity and the standard of living of members of Indian tribes and improving the economic self-sufficiency of the governing bodies of Indian tribes.

(6) To promote economic self-sufficiency and political self-determination for Indian tribes and members of Indian tribes.

(Pub. L. 106–464, § 2, Nov. 7, 2000, 114 Stat. 2012.)

SHORT TITLE

Pub. L. 106–464, § 1, Nov. 7, 2000, 114 Stat. 2012, provided that: ''This Act [enacting this chapter] may be cited as the 'Native American Business Development, Trade Promotion, and Tourism Act of 2000'.''

GENERAL ACCOUNTING OFFICE STUDY

Pub. L. 106–568, title IV, § 421, Dec. 27, 2000, 114 Stat. 2906, directed the Comptroller General to conduct a study and make findings and recommendations with respect to Federal programs designed to assist Indian tribes and tribal members with economic development, job creation, entrepreneurship, and business development, and to report to Congress not later than 1 year after Dec. 27, 2000.

INDIAN TRIBAL REGULATORY REFORM AND BUSINESS DEVELOPMENT

Pub. L. 106–447, Nov. 6, 2000, 114 Stat. 1934, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Indian Tribal Regulatory Reform and Business Development Act of 2000'.

''SEC. 2. FINDINGS; PURPOSES.

''(a) FINDINGS.—Congress finds that—

''(1) despite the availability of abundant natural resources on Indian lands and a rich cultural legacy that accords great value to self-determination, self-reliance, and independence, Native Americans suffer rates of unemployment, poverty, poor health, substandard housing, and associated social ills which are greater than the rates for any other group in the United States;

''(2) the capacity of Indian tribes to build strong Indian tribal governments and vigorous economies is hindered by the inability of Indian tribes to engage communities that surround Indian lands and outside investors in economic activities conducted on Indian lands;

''(3) beginning in 1970, with the issuance by the Nixon Administration of a special message to Congress on Indian Affairs, each President has reaffirmed the special government-to-government relationship between Indian tribes and the United States; and

''(4) the United States has an obligation to assist Indian tribes with the creation of appropriate economic and political conditions with respect to Indian lands to—

''(A) encourage investment from outside sources that do not originate with the Indian tribes; and

''(B) facilitate economic development on Indian lands.

''(b) PURPOSES.—The purposes of this Act are as follows:

''(1) To provide for a comprehensive review of the laws (including regulations) that affect investment and business decisions concerning activities conducted on Indian lands.

''(2) To determine the extent to which those laws unnecessarily or inappropriately impair—

''(A) investment and business development on Indian lands; or

''(B) the financial stability and management efficiency of Indian tribal governments.

''(3) To establish an authority to conduct the review under paragraph (1) and report findings and recommendations that result from the review to Congress and the President.

''SEC. 3. DEFINITIONS.

''In this Act:

''(1) AUTHORITY.—The term 'Authority' means the Regulatory Reform and Business Development on Indian Lands Authority.

''(2) FEDERAL AGENCY.—The term 'Federal agency' means an agency, as that term is defined in section 551(1) of title 5, United States Code.

''(3) INDIAN.—The term 'Indian' has the meaning given that term in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d)).

''(4) INDIAN LANDS.—

''(A) IN GENERAL.—The term 'Indian lands' includes lands under the definition of—

''(i) the term 'Indian country' under section 1151 of title 18, United States Code; or

''(ii) the term 'reservation' under—

''(I) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)); or

''(II) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

''(B) FORMER INDIAN RESERVATIONS IN OKLAHOMA.—For purposes of applying section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)) under subparagraph (A)(ii), the term 'former Indian reservations in Oklahoma' shall be construed to include lands that are—

''(i) within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

''(ii) recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on the date of enactment of this Act [Nov. 6, 2000]).

''(5) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

''(6) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

''(7) TRIBAL ORGANIZATION.—The term 'tribal organization' has the meaning given that term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(*l*)).

''SEC. 4. ESTABLISHMENT OF AUTHORITY.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act [Nov. 6, 2000], the Secretary, in consultation with the Secretary of the Interior and other officials whom the Secretary determines to be appropriate, shall establish an authority to be known as the Regulatory Reform and Business Development on Indian Lands Authority.

''(2) PURPOSE.—The Secretary shall establish the Authority under this subsection in order to facilitate the identification and subsequent removal of obstacles to investment, business development, and the creation of wealth with respect to the economies of Native American communities.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The Authority established under this section shall be composed of 21 members.

''(2) REPRESENTATIVES OF INDIAN TRIBES.—12 members of the Authority shall be representatives of the Indian tribes from the areas of the Bureau of Indian Affairs. Each such area shall be represented by such a representative.

''(3) REPRESENTATIVES OF THE PRIVATE SECTOR.—No fewer than 4 members of the Authority shall be representatives of nongovernmental economic activities carried out by private enterprises in the private sector.

''(c) INITIAL MEETING.—Not later than 90 days after the date of enactment of this Act [Nov. 6, 2000], the Authority shall hold its initial meeting.

''(d) REVIEW.—Beginning on the date of the initial meeting under subsection (c), the Authority shall conduct a review of laws (including regulations) relating to investment, business, and economic development that affect investment and business decisions concerning activities conducted on Indian lands.

''(e) MEETINGS.—The Authority shall meet at the call of the chairperson.

''(f) QUORUM.—A majority of the members of the Authority shall constitute a quorum, but a lesser number of members may hold hearings.

''(g) CHAIRPERSON.—The Authority shall select a chairperson from among its members.

''SEC. 5. REPORT.

''Not later than 1 year after the date of enactment of this Act [Nov. 6, 2000], the Authority shall prepare and submit to the Committee on Indian Affairs of the Senate, the Committee on Resources [now Committee on Natural Resources] of the House of Representatives, and to the governing body of each Indian tribe a report that includes—

''(1) the findings of the Authority concerning the review conducted under section 4(d); and

''(2) such recommendations concerning the proposed revisions to the laws that were subject to review as the Authority determines to be appropriate.

''SEC. 6. POWERS OF THE AUTHORITY.

''(a) HEARINGS.—The Authority may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Authority considers advisable to carry out the duties of the Authority.

''(b) INFORMATION FROM FEDERAL AGENCIES.—The Authority may secure directly from any Federal department or agency such information as the Authority considers necessary to carry out the duties of the Authority.

''(c) POSTAL SERVICES.—The Authority may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

''(d) GIFTS.—The Authority may accept, use, and dispose of gifts or donations of services or property.

''SEC. 7. AUTHORITY PERSONNEL MATTERS.

''(a) COMPENSATION OF MEMBERS.—

''(1) NON-FEDERAL MEMBERS.—Members of the Authority who are not officers or employees of the Federal Government shall serve without compensation, except for travel expenses as provided under subsection (b).

''(2) OFFICERS AND EMPLOYEES OF THE FEDERAL GOVERNMENT.—Members of the Authority who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

''(b) TRAVEL EXPENSES.—The members of the Authority shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Authority.

''(c) STAFF.—

''(1) IN GENERAL.—The chairperson of the Authority may, without regard to the civil service laws, appoint and terminate such personnel as may be necessary to enable the Authority to perform its duties.

''(2) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The chairperson of the Authority may procure temporary and intermittent services under

section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed under GS–13 of the General Schedule established under section 5332 of title 5, United States Code.

''SEC. 8. TERMINATION OF THE AUTHORITY.

''The Authority shall terminate 90 days after the date on which the Authority has submitted a copy of the report prepared under section 5 to the committees of Congress specified in section 5 and to the governing body of each Indian tribe.

''SEC. 9. EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.

''The activities of the Authority conducted under this Act shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

''SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated such sums as are necessary to carry out this Act, to remain available until expended.''

§ 4302. Definitions

In this chapter:

(1) Eligible entity

The term ''eligible entity'' means an Indian tribe or tribal organization, an Indian arts and crafts organization, as that term is defined in section 305a of this title, a tribal enterprise, a tribal marketing cooperative (as that term is defined by the Secretary, in consultation with the Secretary of the Interior), or any other Indian-owned business.

(2) Indian

The term ''Indian'' has the meaning given that term in section 450b(d) of this title.

(3) Indian goods and services

The term ''Indian goods and services'' means—

(A) Indian goods, within the meaning of section 305a of this title;

(B) goods produced or originated by an eligible entity; and

(C) services provided by eligible entities.

(4) Indian lands

(A) In general

The term ''Indian lands'' includes lands under the definition of—

(i) the term ''Indian country'' under section 1151 of title 18; or

(ii) the term ''reservation'' under—

(I) section 1452(d) of this title; or

(II) section 1903(10) of this title.

(B) Former Indian reservations in Oklahoma

For purposes of applying section 1452(d) of this title under subparagraph (A)(ii), the term ''former Indian reservations in Oklahoma'' shall be construed to include lands that are—

(i) within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

(ii) recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on November 7, 2000).

(5) Indian-owned business

The term ''Indian-owned business'' means an entity organized for the conduct of trade or commerce with respect to which at least 50 percent of the property interests of the entity are owned by Indians or Indian tribes (or a combination thereof).

(6) Indian tribe

The term ''Indian tribe'' has the meaning given that term in section 450b(e) of this title.

(7) Secretary

The term ''Secretary'' means the Secretary of Commerce.

(8) Tribal enterprise

The term ''tribal enterprise'' means a commercial activity or business managed or controlled by an Indian tribe.

(9) Tribal organization

The term ''tribal organization'' has the meaning given that term in section 450b(*l*) of this title.

(Pub. L. 106–464, § 3, Nov. 7, 2000, 114 Stat. 2013.)

§ 4303. Office of Native American Business Development

(a) In general

(1) Establishment

There is established within the Department of Commerce an office known as the Office of Native American Business Development (referred to in this chapter as the ''Office'').

(2) Director

The Office shall be headed by a Director, appointed by the Secretary, whose title shall be the Director of Native American Business Development (referred to in this chapter as the ''Director''). The Director shall be compensated at a rate not to exceed level V of the Executive Schedule under section 5316 of title 5.

(b) Duties of the Secretary

(1) In general

The Secretary, acting through the Director, shall ensure the coordination of Federal programs that provide assistance, including financial and technical assistance, to eligible entities for increased business, the expansion of trade by eligible entities, and economic development on Indian lands.

(2) Interagency coordination

The Secretary, acting through the Director, shall coordinate Federal programs relating to Indian economic development, including any such program of the Department of the Interior, the Small Business Administration, the Department of Labor, or any other Federal agency charged with Indian economic development responsibilities.

(3) Activities

In carrying out the duties described in paragraph (1), the Secretary, acting through the Director, shall ensure the coordination of, or, as appropriate, carry out—

(A) Federal programs designed to provide legal, accounting, or financial assistance to eligible entities;

(B) market surveys;

(C) the development of promotional materials;

(D) the financing of business development seminars;

(E) the facilitation of marketing;

(F) the participation of appropriate Federal agencies or eligible entities in trade fairs;

(G) any activity that is not described in subparagraphs (A) through (F) that is related to the development of appropriate markets; and

(H) any other activity that the Secretary, in consultation with the Director, determines to be appropriate to carry out this section.

(4) Assistance

In conjunction with the activities described in paragraph (3), the Secretary, acting through the Director, shall provide—

(A) financial assistance, technical assistance, and administrative services to eligible entities to assist those entities with—

(i) identifying and taking advantage of business development opportunities; and

(ii) compliance with appropriate laws and regulatory practices; and

(B) such other assistance as the Secretary, in consultation with the Director, determines to be necessary for the development of business opportunities for eligible entities to enhance the economies of Indian tribes.

(5) Priorities

In carrying out the duties and activities described in paragraphs (3) and (4), the Secretary, acting through the Director, shall give priority to activities that—

(A) provide the greatest degree of economic benefits to Indians; and

(B) foster long-term stable economies of Indian tribes.

(6) Prohibition

The Secretary may not provide under this section assistance for any activity related to the operation of a gaming activity on Indian lands pursuant to the Indian Gaming Regulatory Act [25 U.S.C. 2701 et seq.].

(Pub. L. 106–464, § 4, Nov. 7, 2000, 114 Stat. 2015.)

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (b)(6), is Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (§ 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 4304. Native American trade and export promotion

(a) In general

The Secretary, acting through the Director, shall carry out a Native American export and trade promotion program (referred to in this section as the ''program'').

(b) Coordination of Federal programs and services

In carrying out the program, the Secretary, acting through the Director, and in cooperation with the heads of appropriate Federal agencies, shall ensure the coordination of Federal programs and services designed to—

(1) develop the economies of Indian tribes; and

(2) stimulate the demand for Indian goods and services that are available from eligible entities.

(c) Activities

In carrying out the duties described in subsection (b) of this section, the Secretary, acting through the Director, shall ensure the coordination of, or, as appropriate, carry out—

(1) Federal programs designed to provide technical or financial assistance to eligible entities;

(2) the development of promotional materials;

(3) the financing of appropriate trade missions;

(4) the marketing of Indian goods and services;

(5) the participation of appropriate Federal agencies or eligible entities in international trade fairs; and

(6) any other activity related to the development of markets for Indian goods and services.

(d) Technical assistance

In conjunction with the activities described in subsection (c) of this section, the Secretary, acting through the Director, shall provide technical assistance and administrative services to eligible entities to assist those entities with—

(1) the identification of appropriate markets for Indian goods and services;

(2) entering the markets referred to in paragraph (1);

(3) compliance with foreign or domestic laws and practices with respect to financial institutions with respect to the export and import of Indian goods and services; and

(4) entering into financial arrangements to provide for the export and import of Indian goods and services.

(e) Priorities

In carrying out the duties and activities described in subsections (b) and (c) of this section, the Secretary, acting through the Director, shall give priority to activities that—

(1) provide the greatest degree of economic benefits to Indians; and

(2) foster long-term stable international markets for Indian goods and services.

(Pub. L. 106–464, § 5, Nov. 7, 2000, 114 Stat. 2016.)

§ 4305. Intertribal tourism demonstration projects

(a) Program to conduct tourism projects

(1) In general

The Secretary, acting through the Director, shall conduct a Native American tourism program to facilitate the development and conduct of tourism demonstration projects by Indian tribes, on a tribal, intertribal, or regional basis.

(2) Demonstration projects

(A) In general

Under the program established under this section, in order to assist in the develop-

ment and promotion of tourism on and in the vicinity of Indian lands, the Secretary, acting through the Director, shall, in coordination with the Under Secretary of Agriculture for Rural Development, assist eligible entities in the planning, development, and implementation of tourism development demonstration projects that meet the criteria described in subparagraph (B).

(B) Projects described

In selecting tourism development demonstration projects under this section, the Secretary, acting through the Director, shall select projects that have the potential to increase travel and tourism revenues by attracting visitors to Indian lands and lands in the vicinity of Indian lands, including projects that provide for—

(i) the development and distribution of educational and promotional materials pertaining to attractions located on and near Indian lands;

(ii) the development of educational resources to assist in private and public tourism development on and in the vicinity of Indian lands; and

(iii) the coordination of tourism-related joint ventures and cooperative efforts between eligible entities and appropriate State and local governments that have jurisdiction over areas in the vicinity of Indian lands.

(3) Grants

To carry out the program under this section, the Secretary, acting through the Director, may award grants or enter into other appropriate arrangements with Indian tribes, tribal organizations, intertribal consortia, or other tribal entities that the Secretary, in consultation with the Director, determines to be appropriate.

(4) Locations

In providing for tourism development demonstration projects under the program under this section, the Secretary, acting through the Director, shall provide for a demonstration project to be conducted—

(A) for Indians of the Four Corners area located in the area adjacent to the border between Arizona, Utah, Colorado, and New Mexico;

(B) for Indians of the northwestern area that is commonly known as the Great Northwest (as determined by the Secretary);

(C) for the Oklahoma Indians in Oklahoma;

(D) for the Indians of the Great Plains area (as determined by the Secretary); and

(E) for Alaska Natives in Alaska.

(b) Assistance

The Secretary, acting through the Director, shall provide financial assistance, technical assistance, and administrative services to participants that the Secretary, acting through the Director, selects to carry out a tourism development project under this section, with respect to—

(1) feasibility studies conducted as part of that project;

(2) market analyses;

(3) participation in tourism and trade missions; and

(4) any other activity that the Secretary, in consultation with the Director, determines to be appropriate to carry out this section.

(c) Infrastructure development

The demonstration projects conducted under this section shall include provisions to facilitate the development and financing of infrastructure, including the development of Indian reservation roads in a manner consistent with title 23.

(Pub. L. 106–464, § 6, Nov. 7, 2000, 114 Stat. 2016.)

§ 4306. Report to Congress

(a) In general

Not later than 1 year after November 7, 2000, and annually thereafter, the Secretary, in consultation with the Director, shall prepare and submit to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives a report on the operation of the Office.

(b) Contents of report

Each report prepared under subsection (a) of this section shall include—

(1) for the period covered by the report, a summary of the activities conducted by the Secretary, acting through the Director, in carrying out sections 4303 through 4305 of this title; and

(2) any recommendations for legislation that the Secretary, in consultation with the Director, determines to be necessary to carry out sections 4303 through 4305 of this title.

(Pub. L. 106–464, § 7, Nov. 7, 2000, 114 Stat. 2018.)

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.

§ 4307. Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this chapter, to remain available until expended.

(Pub. L. 106–464, § 8, Nov. 7, 2000, 114 Stat. 2018.)