

with the Secretary of the Interior, shall report to the President on progress toward establishing training modules regarding Tribal consultation and shall identify additional resources or other support necessary to implement this training.

SEC. 9. *Definitions.* The terms “Tribal officials,” “policies that have Tribal implications,” and “agency” as used in this memorandum are as defined in Executive Order 13175. The terms “Tribes” and “Tribal Nations” as used in this memorandum have the same definition as the term “Indian Tribe” as defined in Executive Order 13175.

SEC. 10. *Scope.* Nothing in this memorandum shall be construed to impair or otherwise affect the ability of heads of agencies to set more specific or more stringent standards, or to incorporate other best practices, for conducting Tribal consultation.

SEC. 11. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) 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.

(d) Independent agencies are strongly encouraged to comply with the provisions of this memorandum.

(e) The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

J.R. BIDEN, JR.

## § 5302. 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 quan-

tity 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.)

## Editorial Notes

### CODIFICATION

Section was formerly classified to section 450a of this title prior to editorial reclassification and renumbering as this section.

### 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.”

## § 5303. 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. 5301 et seq.].

(Pub. L. 101–644, title II, §204, as added Pub. L. 103–435, §22(b), Nov. 2, 1994, 108 Stat. 4575.)

## Editorial Notes

### 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, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

### CODIFICATION

Section was 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 chapter.

Section was formerly classified to section 450a–1 of this title prior to editorial reclassification and renumbering as this section.

## § 5304. Definitions

For purposes of this chapter, 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 facili-

ties, 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” or “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 5321(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 entered into under subchapter I (or a grant or cooperative agreement used under section 5308 of this title) between a Tribal organization and the appropriate Secretary for the planning, conduct, and administration of programs or services that are otherwise provided to Indian Tribes and members of Indian Tribes pursuant to Federal law, subject to the condition that, except as provided in section 5324(a)(3) of this title, no contract entered into under subchapter I (or grant or cooperative agreement used under section 5308 of this title) shall be—

(1) considered to be a procurement contract; or

(2) except as provided in section 5328(a)(1) of this title, subject to any Federal procurement law (including regulations);

(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” or “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

(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; Pub. L. 116-180, title II, § 201(a), Oct. 21, 2020, 134 Stat. 878.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (e), 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.

Subchapter I, referred to in subsec. (j), was in the original “title I”, meaning title I of Pub. L. 93-638, known as the Indian Self-Determination Act, which is classified principally to subchapter I (§ 5321 et seq.) of this chapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

##### CODIFICATION

Section was formerly classified to section 450b of this title prior to editorial reclassification and renumbering as this section.

## AMENDMENTS

2020—Subsec. (e). Pub. L. 116-180, §201(a)(2)(A), substituted “‘Indian tribe’ or ‘Indian Tribe’ means” for “‘Indian tribe’ means”.

Subsec. (j). Pub. L. 116-180, §201(a)(1), added subsec. (j) and struck out former subsec. (j) which defined “self-determination contract”.

Subsec. (l). Pub. L. 116-180, §201(a)(2)(B), substituted “‘Tribal organization’ or ‘tribal organization’ means” for “‘tribal organization’ means”.

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 5308 of this title) entered” for “contract entered” in two places.

Pub. L. 101-301, §2(a)(2), (3), substituted “under this chapter” for “pursuant to this Act” in two places and struck out “the” before “Secretary”.

1988—Pub. L. 100-472 amended section generally, substituting subssecs. (a) to (l) for former subssecs. (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 5321(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 5324(a) of this title, no contract” for “no contract”.

### § 5305. Reporting and audit requirements for recipients of Federal financial assistance

#### (a) Maintenance of records

(1) Each recipient of Federal financial assistance under this chapter 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<sup>1</sup> and a brief annual program report.

<sup>1</sup> So in original. Probably should be followed by a comma.

#### (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 the retention period for the report that is submitted to the Secretary under subsection (a), 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. The retention period shall be defined in regulations promulgated by the Secretary pursuant to section 5373 of this title.

#### (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 5325(a)(3)<sup>2</sup> 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.

#### (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 chapter, if the Indian Tribal organization expends \$500,000 or more in Federal awards during such fiscal year 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 5321 of this title.

<sup>2</sup> See References in Text note below.