

**§ 5364. Compacts****(a) In general**

The Secretary shall negotiate and enter into a written compact with each Indian Tribe participating in self-governance in a manner consistent with the trust responsibility of the Federal Government, treaty obligations, and the government-to-government relationship between Indian Tribes and the United States.

**(b) Contents**

A compact under subsection (a) shall—

(1) specify and affirm the general terms of the government-to-government relationship between the Indian Tribe and the Secretary; and

(2) include such terms as the parties intend shall control during the term of the compact.

**(c) Amendment**

A compact under subsection (a) may be amended only by agreement of the parties.

**(d) Effective date**

The effective date of a compact under subsection (a) shall be—

(1) the date of the execution of the compact by the parties; or

(2) such date as is mutually agreed upon by the parties.

**(e) Duration**

A compact under subsection (a) shall remain in effect—

(1) for so long as permitted by Federal law; or

(2) until termination by written agreement, retrocession, or reassumption.

**(f) Existing compacts**

An Indian Tribe participating in self-governance under this subchapter, as in effect on October 21, 2020, shall have the option at any time after that date—

(1) to retain its negotiated compact (in whole or in part) to the extent that the provisions of the compact are not directly contrary to any express provision of this subchapter; or

(2) to negotiate a new compact in a manner consistent with this subchapter.

(Pub. L. 93-638, title IV, §404, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 864.)

**Editorial Notes****PRIOR PROVISIONS**

A prior section 5364, Pub. L. 93-638, title IV, §404, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4275, related to identification of funds in annual budget request, prior to repeal by Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 864. See section 5371 of this title. Such section was formerly classified to section 458dd of this title prior to editorial reclassification and renumbering as section 5364.

**§ 5365. General provisions****(a) Applicability**

An Indian Tribe and the Secretary shall include in any compact or funding agreement provisions that reflect the requirements of this subchapter.

**(b) Conflicts of interest**

An Indian Tribe participating in self-governance shall ensure that internal measures are in place to address, pursuant to Tribal law and procedures, conflicts of interest in the administration of programs.

**(c) Audits****(1) Single Agency Audit Act**

Chapter 75 of title 31 shall apply to a funding agreement under this subchapter.

**(2) Cost principles**

An Indian Tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by—

(A) any provision of law, including section 5325 of this title; or

(B) any exemptions to applicable Office of Management and Budget circulars subsequently granted by the Office of Management and Budget.

**(3) Federal claims**

Any claim by the Federal Government against an Indian Tribe relating to funds received under a funding agreement based on any audit under this subsection shall be subject to section 5325(f) of this title.

**(d) Redesign and consolidation**

Except as provided in section 5367 of this title, an Indian Tribe may redesign or consolidate programs, or reallocate funds for programs, in a compact or funding agreement in any manner that the Indian Tribe determines to be in the best interest of the Indian community being served—

(1) so long as 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; and

(2) except that, with respect to the reallocation, consolidation, and redesign of programs described in subsection (b)(2) or (c) of section 5363 of this title, a joint agreement between the Secretary and the Indian Tribe shall be required.

**(e) Retrocession****(1) In general**

An Indian Tribe may fully or partially retrocede to the Secretary any program under a compact or funding agreement.

**(2) Effective date****(A) Agreement**

Unless an Indian Tribe rescinds a request for retrocession under paragraph (1), the retrocession shall become effective on the date specified by the parties in the compact or funding agreement.

**(B) No agreement**

In the absence of a specification of an effective date in the compact or funding agreement, the retrocession shall become effective on—

(i) the earlier of—

(I) 1 year after the date on which the request is submitted; and

(II) the date on which the funding agreement expires; or

(ii) such date as may be mutually agreed upon by the Secretary and the Indian Tribe.

**(f) Nonduplication**

A funding agreement shall provide that, for the period for which, and to the extent to which, funding is provided to an Indian Tribe under this subchapter, the Indian Tribe—

(1) shall not be entitled to contract with the Secretary for funds under section 5321 of this title, except that the Indian Tribe shall be eligible for new programs on the same basis as other Indian Tribes; and

(2) shall be responsible for the administration of programs in accordance with the compact or funding agreement.

**(g) Records**

**(1) In general**

Unless an Indian Tribe specifies otherwise in the compact or funding agreement, records of an Indian Tribe shall not be considered to be Federal records for purposes of chapter 5 of title 5.

**(2) Recordkeeping system**

An Indian Tribe shall—

(A) maintain a recordkeeping system; and

(B) on a notice period of not less than 30 days, provide the Secretary with reasonable access to the records to enable the Department to meet the requirements of sections 3101 through 3106 of title 44.

(Pub. L. 93-638, title IV, §405, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 865.)

**Editorial Notes**

**PRIOR PROVISIONS**

A prior section 5365, Pub. L. 93-638, title IV, §405, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4276, related to reports, prior to repeal by Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 864. See section 5372 of this title. Such section was formerly classified to section 458ee of this title prior to editorial reclassification and renumbering as section 5365.

**§ 5366. Provisions relating to the Secretary**

**(a) Trust evaluations**

A funding agreement shall include a provision to monitor the performance of trust functions by the Indian Tribe through the annual trust evaluation.

**(b) Reassumption**

**(1) In general**

A compact or funding agreement shall include provisions for the Secretary to reassume a program and associated funding if there is a specific finding relating to that program of—

(A) imminent jeopardy to a trust asset, a natural resource, or public health and safety that—

(i) is caused by an act or omission of the Indian Tribe; and

(ii) arises out of a failure to carry out the compact or funding agreement; or

(B) gross mismanagement with respect to funds transferred to an Indian Tribe under a compact or funding agreement, as determined by the Secretary in consultation with the Inspector General, as appropriate.

**(2) Prohibition**

The Secretary shall not reassume operation of a program, in whole or part, unless—

(A) the Secretary first provides written notice and a hearing on the record to the Indian Tribe; and

(B) the Indian Tribe does not take corrective action to remedy the mismanagement of the funds or programs, or the imminent jeopardy to a trust asset, natural resource, or public health and safety.

**(3) Exception**

**(A) In general**

Notwithstanding paragraph (2), the Secretary may, on written notice to the Indian Tribe, immediately reassume operation of a program if—

(i) the Secretary makes a finding of imminent and substantial jeopardy and irreparable harm to a trust asset, a natural resource, or the public health and safety caused by an act or omission of the Indian Tribe; and

(ii) the imminent and substantial jeopardy and irreparable harm to the trust asset, natural resource, or public health and safety arises out of a failure by the Indian Tribe to carry out the terms of an applicable compact or funding agreement.

**(B) Reassumption**

If the Secretary reassumes operation of a program under subparagraph (A), the Secretary shall provide the Indian Tribe with a hearing on the record not later than 10 days after the date of reassumption.

**(c) Inability to agree on compact or funding agreement**

**(1) Final offer**

If 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.

**(2) Determination**

Not more than 60 days after the date of receipt of a final offer by one or more of the officials designated pursuant to paragraph (4), the Secretary shall review and make a determination with respect to the final offer, except that the 60-day period may be extended for up to 30 days for circumstances beyond the control of the Secretary, upon written request by the Secretary to the Indian tribe.

**(3) Extensions**

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

**(4) Designated officials**

**(A) In general**

The Secretary shall designate one or more appropriate officials in the Department to