

United States with respect to Indian Tribes and individual Indians that exists under treaties, Executive orders, other laws, or court decisions.

(h) Decision maker

A decision that constitutes final agency action and relates to an appeal within the Department conducted under subsection (c)(6)(A)(iii) may be made by—

- (1) 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) an administrative law judge.

(i) Rules of construction

Subject to section 101(a) of the PROGRESS for Indian Tribes Act, each provision of this subchapter 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 IV, §406, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 866.)

REFERENCES IN TEXT

Section 101(a) of the PROGRESS for Indian Tribes Act, referred to in subsec. (i), is section 101(a) of Pub. L. 116-180, which is set out as a note under section 5361 of this title.

Editorial Notes

PRIOR PROVISIONS

A prior section 5366, 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, set out disclaimers regarding construction of provisions of this chapter and subchapter. Such section was formerly classified to section 458ff of this title prior to editorial reclassification and renumbering as section 5366.

§ 5367. Construction programs and projects

(a) In general

Indian Tribes participating in Tribal self-governance may carry out any construction project included in a compact or funding agreement under this subchapter.

(b) Tribal option to carry out certain Federal environmental activities

In carrying out a construction project under this subchapter, an Indian Tribe may, subject to the agreement of the Secretary, elect to assume some Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), division A of subtitle III of title 54, and related provisions of other law and regulations that would apply if the Secretary were to undertake a construction project, by adopting a resolution—

- (1) designating a certifying Tribal officer to represent the Indian Tribe and to assume the status of a responsible Federal official under those Acts, laws, or regulations; and
- (2) accepting the jurisdiction of the United States courts for the purpose of enforcing the responsibilities of the certifying Tribal officer

assuming the status of a responsible Federal official under those Acts, laws, or regulations.

(c) Savings clause

Notwithstanding subsection (b), nothing in this section authorizes the Secretary to include in any compact or funding agreement duties of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), division A of subtitle III of title 54, and other related provisions of law that are inherent Federal functions.

(d) Codes and standards

In carrying out a construction project under this subchapter, an Indian Tribe shall—

- (1) adhere to applicable Federal, State, local, and Tribal building codes, architectural and engineering standards, and applicable Federal guidelines regarding design, space, and operational standards, appropriate for the particular project; and
- (2) use only architects and engineers who—
 - (A) are licensed to practice in the State in which the facility will be built; and
 - (B) certify that—
 - (i) they are qualified to perform the work required by the specific construction involved; and
 - (ii) upon completion of design, the plans and specifications meet or exceed the applicable construction and safety codes.

(e) Tribal accountability

(1) In general

In carrying out a construction project under this subchapter, an Indian Tribe shall assume responsibility for the successful completion of the construction project and of a facility that is usable for the purpose for which the Indian Tribe received funding.

(2) Requirements

For each construction project carried out by an Indian Tribe under this subchapter, the Indian Tribe and the Secretary shall negotiate a provision to be included in the funding agreement that identifies—

- (A) the approximate start and completion dates for the project, which may extend over a period of one or more years;
- (B) a general description of the project, including the scope of work, references to design criteria, and other terms and conditions;
- (C) the responsibilities of the Indian Tribe and the Secretary for the project;
- (D) how project-related environmental considerations will be addressed;
- (E) the amount of funds provided for the project;
- (F) the obligations of the Indian Tribe to comply with the codes referenced in subsection (d)(1) and applicable Federal laws and regulations;
- (G) the agreement of the parties over who will bear any additional costs necessary to meet changes in scope, or errors or omissions in design and construction; and
- (H) the agreement of the Secretary to issue a certificate of occupancy, if requested by the Indian Tribe, based upon the review

and verification by the Secretary, to the satisfaction of the Secretary, that the Indian Tribe has secured upon completion the review and approval of the plans and specifications, sufficiency of design, life safety, and code compliance by qualified, licensed, and independent architects and engineers.

(f) Funding

(1) In general

Funding appropriated for construction projects carried out under this subchapter shall be included in funding agreements as annual or semiannual advance payments at the option of the Indian Tribe.

(2) Advance payments

The Secretary shall include all associated project contingency funds with each advance payment, and the Indian Tribe shall be responsible for the management of such contingency funds.

(g) Negotiations

At the option of the Indian Tribe, construction project funding proposals shall be negotiated pursuant to the statutory process in section 5324 of this title, and any resulting construction project agreement shall be incorporated into the funding agreement as addenda.

(h) Federal review and verification

(1) In general

On a schedule negotiated by the Secretary and the Indian Tribe—

(A) the Secretary shall review and verify, to the satisfaction of the Secretary, that project planning and design documents prepared by the Indian Tribe in advance of initial construction are in conformity with the obligations of the Indian Tribe under subsection (d); and

(B) before the project planning and design documents are implemented, the Secretary shall review and verify to the satisfaction of the Secretary that subsequent document amendments which result in a significant change in construction are in conformity with the obligations of the Indian Tribe under subsection (d).

(2) Reports

The Indian Tribe shall provide the Secretary with project progress and financial reports not less than semiannually.

(3) Oversight visits

The Secretary may conduct onsite project oversight visits semiannually or on an alternate schedule agreed to by the Secretary and the Indian Tribe.

(i) Application of other laws

Unless otherwise agreed to by the Indian Tribe and except as otherwise provided in this chapter, no provision of title 41, the Federal Acquisition Regulation, or any other law or regulation pertaining to Federal procurement (including Executive orders) shall apply to any construction program or project carried out under this subchapter.

(j) Future funding

Upon completion of a facility constructed under this subchapter, the Secretary shall in-

clude the facility among those eligible for annual operation and maintenance funding support comparable to that provided for similar facilities funded by the Department as annual appropriations are available and to the extent that the facility size and complexity and other factors do not exceed the funding formula criteria for comparable buildings.

(Pub. L. 93-638, title IV, §407, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 870.)

Editorial Notes

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (b) and (c), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, 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 subsec. (i), 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.

PRIOR PROVISIONS

A prior section 5367, Pub. L. 93-638, title IV, §407, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4277, related to regulations to carry out this subchapter, prior to repeal by Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 864. See section 5373 of this title. Such section was formerly classified to section 458gg of this title prior to editorial reclassification and renumbering as section 5367.

§ 5368. Payment

(a) In general

At the request of the governing body of an Indian Tribe and under the terms of an applicable funding agreement, the Secretary shall provide funding to the Indian Tribe to carry out the funding agreement.

(b) Advance annual payment

At the option of the Indian Tribe, a funding agreement shall provide for an advance annual payment to an Indian Tribe.

(c) Amount

(1) In general

Subject to subsection (e) and sections 5363 and 5365 of this title, the Secretary shall provide funds to the Indian Tribe under a funding agreement for programs in an amount that is equal to the amount that the Indian Tribe would have been entitled to receive under contracts and grants under this chapter (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 Indian Tribe or its members) without regard to the organization level within the Department at which the programs are carried out.

(2) Savings clause

Nothing in this section reduces programs, services, or funds of, or provided to, another Indian Tribe.