

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.

**(d) Timing****(1) In general**

Pursuant to the terms of any compact or funding agreement entered into under this subchapter, the Secretary shall transfer to the Indian Tribe all funds provided for in the funding agreement, pursuant to subsection (c), and provide funding for periods covered by joint resolution adopted by Congress making continuing appropriations, to the extent permitted by such resolution.

**(2) Transfers**

Not later than 1 year after October 21, 2020, in any instance in which 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.

**(e) Availability**

Funds for trust services to individual Indians shall be available under a funding agreement only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the Indian Tribe.

**(f) Multiyear funding**

A funding agreement may provide for multiyear funding.

**(g) Limitations on authority of the Secretary**

The Secretary shall not—

(1) fail 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 for programs eligible under paragraph (1) or (2) of section 5363(b) of this title, except as required by Federal law;

(2) withhold any portion of such funds for transfer over a period of years; or

(3) reduce the amount of funds required under this subchapter—

(A) to make funding available for self-governance monitoring or administration by the Secretary;

(B) in subsequent years, except as necessary as a result of—

(i) a reduction in appropriations from the previous fiscal year for the program to be included in a compact or funding agreement;

(ii) a congressional directive in legislation or an 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 an activity under a program for which the funds were provided;

(C) to pay for Federal functions, including—

(i) Federal pay costs;

(ii) Federal employee retirement benefits;

(iii) automated data processing;

(iv) technical assistance; and

(v) monitoring of activities under this subchapter; or

(D) to pay for costs of Federal personnel displaced by self-determination contracts under this chapter or self-governance under this subchapter.

**(h) Federal resources**

If 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, as soon as practicable, acquire and transfer such personnel, supplies, or resources to the Indian Tribe under this subchapter.

**(i) 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 subchapter.

**(j) Interest or other income****(1) In general**

An Indian Tribe may retain interest or income earned on any funds paid under a compact or funding agreement to carry out governmental purposes.

**(2) No effect on other amounts**

The retention of interest or income under paragraph (1) shall not diminish the amount of funds an Indian Tribe is entitled to receive under a funding agreement in the year the interest or income is earned or in any subsequent fiscal year.

**(3) Investment standard**

Funds transferred under this subchapter shall be managed by the Indian Tribe using the prudent investment standard, provided that the Secretary shall not be liable for any investment losses of funds managed by the Indian Tribe that are not otherwise guaranteed or insured by the Federal Government.

**(k) Carryover of funds****(1) In general**

Notwithstanding any provision of an appropriations Act, all funds paid to an Indian Tribe in accordance with a compact or funding agreement shall remain available until expended.

**(2) Effect of carryover**

If an Indian Tribe elects to carry over funding from one year to the next, the carryover shall not diminish the amount of funds the Indian Tribe is entitled to receive under a funding agreement in that fiscal year or any subsequent fiscal year.

**(l) Limitation of costs****(1) In general**

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.

**(2) Notice of insufficiency**

If at any time the Indian Tribe has reason to believe that the total amount provided for a specific activity under a compact or funding agreement is insufficient, the Indian Tribe shall provide reasonable notice of such insufficiency to the Secretary.

**(3) Suspension of performance**

If, after notice under paragraph (2), 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.

**(4) Savings clause**

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

**(m) Distribution of funds**

The Office of Self-Governance shall be responsible for distribution of all Bureau of Indian Affairs funds provided under this subchapter unless otherwise agreed by the parties to an applicable funding agreement.

**(n) Applicability**

Notwithstanding any other provision of this section, section 101(a) of the PROGRESS for Indian Tribes Act applies to subsections (a) through (m).

(Pub. L. 93-638, title IV, §408, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 872.)

**Editorial Notes**

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(1) and (g)(3)(D), 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.

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

## PRIOR PROVISIONS

A prior section 5368, Pub. L. 93-638, title IV, §408, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4278, authorized appropriations, prior to repeal by Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 864, 872. See section 5377 of this title. Such section was formerly classified to section 458hh of this title prior to editorial reclassification and renumbering as section 5368.

**§ 5369. Facilitation****(a) In general**

Except as otherwise provided by law (including section 101(a) of the PROGRESS for Indian

Tribes Act), the Secretary shall interpret each Federal law and regulation in a manner that facilitates—

(1) the inclusion of programs in funding agreements; and

(2) the implementation of funding agreements.

**(b) Regulation waiver****(1) Request**

An Indian Tribe may submit to the Secretary a written request for a waiver of applicability of a Federal regulation, including—

(A) an identification of the specific text in the regulation sought to be waived; and

(B) the basis for the request.

**(2) Determination by the secretary**

Not later than 120 days after receipt by the Secretary and the designated officials under paragraph (4) of a request under paragraph (1), the Secretary shall approve or deny the requested waiver in writing 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**

The Secretary shall designate one or more appropriate officials in the Department to receive a copy of the waiver request described in paragraph (1).

**(5) Grounds for denial**

The Secretary may deny a request under paragraph (1) upon a specific finding by the Secretary that the identified text in the regulation may not be waived because such a waiver is prohibited by Federal law.

**(6) Failure to make determination**

If the Secretary fails to make a determination with respect to a waiver request within the period specified in paragraph (2) (including any extension agreed to under paragraph (3)), the Secretary shall be deemed to have agreed to the request, except that for a waiver request relating to programs eligible under section 5363(b)(2) or section 5363(c) of this title, the Secretary shall be deemed to have denied the request.

**(7) Finality**

A decision of the Secretary under this section shall be final for the Department.

(Pub. L. 93-638, title IV, §409, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 874.)

**Editorial Notes**

## REFERENCES IN TEXT

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

**§ 5370. Discretionary application of other sections****(a) In general**

Except as otherwise provided in section 201(d) of the PROGRESS for Indian Tribes Act, at the