

(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

option of a participating Indian Tribe or Indian Tribes, any of the provisions of subchapter I may be incorporated in any compact or funding agreement under this subchapter. The inclusion of any such provision shall be subject to, and shall not conflict with, section 101(a) of such Act.

(b) Effect

Each incorporated provision under subsection (a) shall—

- (1) have the same force and effect as if set out in full in this subchapter;
- (2) supplement or replace any related provision in this subchapter; and
- (3) apply to any agency otherwise governed by this subchapter.

(c) Effective date

If an Indian Tribe requests incorporation at the negotiation stage of a compact or funding agreement, the incorporation shall—

- (1) be effective immediately; and
- (2) control the negotiation and resulting compact and funding agreement.

(Pub. L. 93-638, title IV, §410, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 875.)

Editorial Notes

REFERENCES IN TEXT

Sections 101(a) and 201(d) of the PROGRESS for Indian Tribes Act, referred to in subsec. (a), are sections 101(a) and 201(d) of Pub. L. 116-180, which are set out as notes under section 5361 of this title.

Subchapter I, referred to in subsec. (a), 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.

§ 5371. Annual budget list

The Secretary shall list, in the annual budget request submitted to Congress under section 1105 of title 31, any funds proposed to be included in funding agreements authorized under this subchapter.

(Pub. L. 93-638, title IV, §411, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 876.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5364 of this title prior to repeal by Pub. L. 116-180.

§ 5372. Reports

(a) In general

(1) Requirement

On January 1 of each year, the Secretary shall submit to Congress a report regarding the administration of this subchapter.

(2) Analysis

Any Indian Tribe may submit to the Office of Self-Governance and to the appropriate

committees of Congress a detailed annual analysis of unmet Tribal needs for funding agreements under this subchapter.

(b) Contents

The report under subsection (a)(1) shall—

(1) be compiled from information contained in funding agreements, annual audit reports, and data of the Secretary regarding the disposition of Federal funds;

(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 members of Indian Tribes;

(C) the funds transferred to each Indian Tribe and the corresponding reduction in the Federal employees and workload; and

(D) the funding formula for individual Tribal shares of all Central Office funds, together with the comments of affected Indian Tribes, developed under subsection (d);

(3) before being submitted to Congress, be distributed to the Indian Tribes for comment (with a comment period of not less than 30 days);

(4) include the separate views and comments of each Indian Tribe or Tribal organization; and

(5) include a list of—

(A) all such programs that the Secretary determines, in consultation with Indian Tribes participating in self-governance, are eligible for negotiation to be included in a funding agreement at the request of a participating Indian Tribe; and

(B) all such programs which Indian Tribes have formally requested to include in a funding agreement under section 5363(c) of this title due to the special geographic, historical, or cultural significance of the program to the Indian Tribe, indicating whether each request was granted or denied, and stating the grounds for any denial.

(c) Report on non-BIA programs

(1) In general

In order to optimize opportunities for including non-BIA programs in agreements with Indian Tribes participating in self-governance under this subchapter, the Secretary shall review all programs administered by the Department, other than through the Bureau of Indian Affairs, the Office of the Assistant Secretary for Indian Affairs, or the Office of the Special Trustee for American Indians, without regard to the agency or office concerned.

(2) Programmatic targets

The Secretary shall establish programmatic targets, after consultation with Indian Tribes participating in self-governance, to encourage bureaus of the Department to ensure that an appropriate portion of those programs are available to be included in funding agreements.

(3) Publication

The lists under subsection (b)(5) and targets under paragraph (2) shall be published in the