

### § 5383. Selection of participating Indian tribes

#### (a) Continuing participation

Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project under title III<sup>1</sup> on August 18, 2000, may elect to participate in self-governance under this subchapter under existing authority as reflected in tribal resolution.

#### (b) Additional participants

##### (1) In general

In addition to those Indian tribes participating in self-governance under subsection (a) of this section, each year an additional 50 Indian tribes that meet the eligibility criteria specified in subsection (c) of this section shall be entitled to participate in self-governance.

##### (2) Treatment of certain Indian tribes

###### (A) In general

An Indian tribe that has withdrawn from participation in an inter-tribal consortium or tribal organization, in whole or in part, shall be entitled to participate in self-governance provided the Indian tribe meets the eligibility criteria specified in subsection (c) of this section.

###### (B) Effect of withdrawal

If an Indian tribe has withdrawn from participation in an inter-tribal consortium or tribal organization, that Indian tribe shall be entitled to its tribal share of funds supporting those programs, services, functions, and activities (or portions thereof) that the Indian tribe will be carrying out under the compact and funding agreement of the Indian tribe.

###### (C) Participation in self-governance

In no event shall the withdrawal of an Indian tribe from an inter-tribal consortium or tribal organization affect the eligibility of the inter-tribal consortium or tribal organization to participate in self-governance.

#### (c) Applicant pool

##### (1) In general

The qualified applicant pool for self-governance shall consist of each Indian tribe that—

(A) successfully completes the planning phase described in subsection (d) of this section;

(B) has requested participation in self-governance by resolution or other official action by the governing body of each Indian tribe to be served; and

(C) has demonstrated, for 3 fiscal years, financial stability and financial management capability.

##### (2) Criteria for determining financial stability and financial management capacity

For purposes of this subsection, evidence that, during the 3-year period referred to in paragraph (1)(C), an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or

self-governance funding agreements with any Federal agency shall be conclusive evidence of the required stability and capability.

#### (d) Planning phase

Each Indian tribe seeking participation in self-governance shall complete a planning phase. The planning phase shall be conducted to the satisfaction of the Indian tribe and shall include—

(1) legal and budgetary research; and

(2) internal tribal government planning and organizational preparation relating to the administration of health care programs.

#### (e) Grants

Subject to the availability of appropriations, any Indian tribe meeting the requirements of paragraph (1)(B) and (C) of subsection (c) of this section shall be eligible for grants—

(1) to plan for participation in self-governance; and

(2) to negotiate the terms of participation by the Indian tribe or tribal organization in self-governance, as set forth in a compact and a funding agreement.

#### (f) Receipt of grant not required

Receipt of a grant under subsection (e) of this section shall not be a requirement of participation in self-governance.

(Pub. L. 93-638, title V, §503, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 714.)

### Editorial Notes

#### REFERENCES IN TEXT

Title III, referred to in subsec. (a), means title III of Pub. L. 93-638, as added by Pub. L. 100-472, title II, §209, Oct. 5, 1988, 102 Stat. 2296, which was set out as a note under former section 450f of this title prior to repeal by Pub. L. 106-260, §10, Aug. 18, 2000, 114 Stat. 734.

#### CODIFICATION

Section was formerly classified to section 458aaa-2 of this title prior to editorial reclassification and renumbering as this section.

Another section 503 of Pub. L. 93-638 was renumbered section 803 and is classified to section 5423 of this title.

### § 5384. Compacts

#### (a) Compact required

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

#### (b) Contents

Each compact required under subsection (a) of this section shall set forth the general terms of the government-to-government relationship between the Indian tribe and the Secretary, including such terms as the parties intend shall control year after year. Such compacts may only be amended by mutual agreement of the parties.

#### (c) Existing compacts

An Indian tribe participating in the Tribal Self-Governance Demonstration Project under

<sup>1</sup> See References in Text note below.