

**(g) Stable base funding**

At the option of an Indian tribe, a funding agreement may provide for a stable base budget specifying the recurring funds (including, for purposes of this provision, funds available under section 5325(a) of this title) to be transferred to such Indian tribe, for such period as may be specified in the funding agreement, subject to annual adjustment only to reflect changes in congressional appropriations by sub-sub activity excluding earmarks.

(Pub. L. 93-638, title V, § 505, as added Pub. L. 106-260, § 4, Aug. 18, 2000, 114 Stat. 716.)

**Editorial Notes****REFERENCES IN TEXT**

Act of April 16, 1934, referred to in subsec. (b)(2)(B), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, popularly known as the Johnson-O'Malley Act, which was classified generally to section 452 et seq. of this title prior to editorial reclassification as section 5342 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Act of August 5, 1954, referred to in subsec. (b)(2)(C), is act Aug. 5, 1954, ch. 658, 68 Stat. 674, which is classified generally to subchapter I (§ 2001 et seq.) of chapter 22 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

The Indian Health Care Improvement Act, referred to in subsec. (b)(2)(D), is Pub. L. 94-437, Sept. 30, 1976, 90 Stat. 1400, which is classified principally to chapter 18 (§ 1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

The Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, referred to in subsec. (b)(2)(E), is subtitle C of title IV of Pub. L. 99-570, Oct. 27, 1986, 100 Stat. 3207-137, which is classified generally to chapter 26 (§ 2401 et seq.) of this title. For complete classification of subtitle C to the Code, see Short Title note set out under section 2401 of this title and Tables.

Title III, referred to in subsec. (f), 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-4 of this title prior to editorial reclassification and renumbering as this section.

**§ 5386. General provisions****(a) Applicability**

The provisions of this section shall apply to compacts and funding agreements negotiated under this subchapter and an Indian tribe may, at its option, include provisions that reflect such requirements in a compact or funding agreement.

**(b) Conflicts of interest**

Indian tribes participating in self-governance under this subchapter shall ensure that internal measures are in place to address conflicts of interest in the administration of self-governance programs, services, functions, or activities (or portions thereof).

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

The provisions of chapter 75 of title 31 requiring a single agency audit report shall

apply to funding agreements 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 section 5325 of this title<sup>1</sup> other provisions of law, or by any exemptions to applicable Office of Management and Budget circulars subsequently granted by the Office of Management and Budget. No other audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government against the Indian tribe relating to funds received under a funding agreement based on any audit under this subsection shall be subject to the provisions of section 5325(f) of this title.

**(d) Records****(1) In general**

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

**(2) Recordkeeping system**

The Indian tribe shall maintain a recordkeeping system, and, after 30 days advance notice, provide the Secretary with reasonable access to such records to enable the Department of Health and Human Services to meet its minimum legal recordkeeping system requirements under sections 3101 through 3106 of title 44.

**(e) Redesign and consolidation**

An Indian tribe may redesign or consolidate programs, services, functions, and activities (or portions thereof) included in a funding agreement under section 5385 of this title and reallocate or redirect funds for such programs, services, functions, and activities (or portions thereof) in any manner which the Indian tribe deems to be in the best interest of the health and welfare of the Indian community being served, only if 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.

**(f) Retrocession**

An Indian tribe may retrocede, fully or partially, to the Secretary programs, services, functions, or activities (or portions thereof) included in the compact or funding agreement. Unless the Indian tribe rescinds the request for retrocession, such retrocession will become effective within the timeframe specified by the parties in the compact or funding agreement. In the absence of such a specification, such retrocession shall become effective on—

(1) the earlier of—

(A) 1 year after the date of submission of such request; or

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

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

<sup>1</sup> So in original.

**(g) Withdrawal****(1) Process****(A) In general**

An Indian tribe may fully or partially withdraw from a participating inter-tribal consortium or tribal organization its share of any program, function, service, or activity (or portions thereof) included in a compact or funding agreement.

**(B) Effective date**

The withdrawal referred to in subparagraph (A) shall become effective within the timeframe specified in the resolution which authorizes transfer to the participating tribal organization or inter-tribal consortium. In the absence of a specific timeframe set forth in the resolution, such withdrawal shall become effective on—

(i) the earlier of—

(I) 1 year after the date of submission of such request; or

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

(ii) such date as may be mutually agreed upon by the Secretary, the withdrawing Indian tribe, and the participating tribal organization or inter-tribal consortium that has signed the compact or funding agreement on behalf of the withdrawing Indian tribe, inter-tribal consortium, or tribal organization.

**(2) Distribution of funds**

When an Indian tribe or tribal organization eligible to enter into a self-determination contract under subchapter I of this chapter or a compact or funding agreement under this subchapter fully or partially withdraws from a participating inter-tribal consortium or tribal organization—

(A) the withdrawing Indian tribe or tribal organization shall be entitled to its tribal share of funds supporting those programs, services, functions, or activities (or portions thereof) that the Indian tribe will be carrying out under its own self-determination contract or compact and funding agreement (calculated on the same basis as the funds were initially allocated in the funding agreement of the inter-tribal consortium or tribal organization); and

(B) the funds referred to in subparagraph (A) shall be transferred from the funding agreement of the inter-tribal consortium or tribal organization, on the condition that the provisions of sections 5321 and 5324(i) of this title, as appropriate, shall apply to that withdrawing Indian tribe.

**(3) Regaining mature contract status**

If an Indian tribe elects to operate all or some programs, services, functions, or activities (or portions thereof) carried out under a compact or funding agreement under this subchapter through a self-determination contract under subchapter I of this chapter, at the option of the Indian tribe, the resulting self-determination contract shall be a mature self-determination contract.

**(h) Nonduplication**

For the period for which, and to the extent to which, funding is provided under this subchapter or under the compact or funding agreement, the Indian tribe shall not be entitled to contract with the Secretary for such funds under section 5321 of this title, except that such Indian tribe shall be eligible for new programs on the same basis as other Indian tribes.

(Pub. L. 93-638, title V, §506, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 717.)

**Editorial Notes****REFERENCES IN TEXT**

Subchapter I of this chapter, referred to in subsec. (g)(2), (3), 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.

**CODIFICATION**

Section was formerly classified to section 458aaa-5 of this title prior to editorial reclassification and renumbering as this section.

**§ 5387. Provisions relating to the Secretary****(a) Mandatory provisions****(1) Health status reports**

Compacts or funding agreements negotiated between the Secretary and an Indian tribe shall include a provision that requires the Indian tribe to report on health status and service delivery—

(A) to the extent such data is not otherwise available to the Secretary and specific funds for this purpose are provided by the Secretary under the funding agreement; and

(B) if such reporting shall impose minimal burdens on the participating Indian tribe and such requirements are promulgated under section 5397 of this title.

**(2) Reassumption****(A) In general**

Compacts or funding agreements negotiated between the Secretary and an Indian tribe shall include a provision authorizing the Secretary to reassume operation of a program, service, function, or activity (or portions thereof) and associated funding if there is a specific finding relative to that program, service, function, or activity (or portion thereof) of—

(i) imminent endangerment of the public health caused by an act or omission of the Indian tribe, and the imminent endangerment arises out of a failure to carry out the compact or funding agreement; or

(ii) gross mismanagement with respect to funds transferred to a tribe by a compact or funding agreement, as determined by the Secretary in consultation with the Inspector General, as appropriate.

**(B) Prohibition**

The Secretary shall not reassume operation of a program, service, function, or activity (or portions thereof) unless—