

agreement, such provisions and regulatory requirements shall not apply.

(Pub. L. 93-638, title V, §510, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 726.)

#### Editorial Notes

##### CODIFICATION

Section was formerly classified to section 458aaa-9 of this title prior to editorial reclassification and renumbering as this section.

In text, “division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41” substituted for “the Office of Federal Procurement and Policy Act (41 U.S.C. 401 et seq.)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

#### § 5391. Civil actions

##### (a) Contract defined

For the purposes of section 5331 of this title, the term “contract” shall include compacts and funding agreements entered into under this subchapter.

##### (b) Applicability of certain laws

Section 81 of this title and section 5123 of this title, shall not apply to attorney and other professional contracts entered into by Indian tribes participating in self-governance under this subchapter.

##### (c) References

All references in this chapter to section 5201 of this title are hereby deemed to include section 82a of this title.

(Pub. L. 93-638, title V, §511, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 726.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in subsec. (c), 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.

##### CODIFICATION

Section was formerly classified to section 458aaa-10 of this title prior to editorial reclassification and renumbering as this section.

#### § 5392. Facilitation

##### (a) Secretarial interpretation

Except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive orders, and regulations in a manner that will facilitate—

(1) the inclusion of programs, services, functions, and activities (or portions thereof) and funds associated therewith, in the agreements entered into under this section;

(2) the implementation of compacts and funding agreements entered into under this subchapter; and

(3) the achievement of tribal health goals and objectives.

##### (b) Regulation waiver

###### (1) In general

An Indian tribe may submit a written request to waive application of a regulation pro-

mulgated under section 5397 of this title or the authorities specified in section 5385(b) of this title for a compact or funding agreement entered into with the Indian Health Service under this subchapter, to the Secretary identifying the applicable Federal regulation sought to be waived and the basis for the request.

##### (2) Approval

Not later than 90 days after receipt by the Secretary of a written request by an Indian tribe to waive application of a regulation for a compact or funding agreement entered into under this subchapter, the Secretary shall either approve or deny the requested waiver in writing. A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law. A failure to approve or deny a waiver request not later than 90 days after receipt shall be deemed an approval of such request. The Secretary’s decision shall be final for the Department.

##### (c) Access to Federal property

In connection with any compact or funding agreement executed pursuant to this subchapter or an agreement negotiated under the Tribal Self-Governance Demonstration Project established under title III,<sup>1</sup> as in effect before August 18, 2000, upon the request of an Indian tribe, the Secretary—

(1) shall permit an Indian tribe to use existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary’s jurisdiction under such terms and conditions as may be agreed upon by the Secretary and the Indian tribe for their use and maintenance;

(2) may donate to an Indian tribe title to any personal or real property found to be excess to the needs of any agency of the Department, or the General Services Administration, except that—

(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the compact or funding agreement or purchased with funds under any compact or funding agreement shall, unless otherwise requested by the Indian tribe, vest in the appropriate Indian tribe;

(B) if property described in subparagraph (A) has a value in excess of \$5,000 at the time of retrocession, withdrawal, or reassumption, at the option of the Secretary upon the retrocession, withdrawal, or reassumption, title to such property and equipment shall revert to the Department of Health and Human Services; and

(C) all property referred to in subparagraph (A) shall remain eligible for replacement, maintenance, and improvement on the same basis as if title to such property were vested in the United States; and

(3) shall acquire excess or surplus Government personal or real property for donation to

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

an Indian tribe if the Secretary determines the property is appropriate for use by the Indian tribe for any purpose for which a compact or funding agreement is authorized under this subchapter.

**(d) Matching or cost-participation requirement**

All funds provided under compacts, funding agreements, or grants made pursuant to this chapter, shall be treated as non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or non-Federal program.

**(e) State facilitation**

States are hereby authorized and encouraged to enact legislation, and to enter into agreements with Indian tribes to facilitate and supplement the initiatives, programs, and policies authorized by this subchapter and other Federal laws benefiting Indians and Indian tribes.

**(f) Rules of construction**

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 V, §512, as added Pub. L. 106-260, § 4, Aug. 18, 2000, 114 Stat. 726.)

**Editorial Notes**

REFERENCES IN TEXT

Title III, referred to in subsec. (c), 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.

This chapter, referred to in subsec. (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.

CODIFICATION

Section was formerly classified to section 458aaa-11 of this title prior to editorial reclassification and renumbering as this section.

**§ 5393. Budget request**

**(a) Requirement of annual budget request**

**(1) In general**

The President shall identify in the annual budget request submitted to Congress under section 1105 of title 31 all funds necessary to fully fund all funding agreements authorized under this subchapter, including funds specifically identified to fund tribal base budgets. All funds so appropriated shall be apportioned to the Indian Health Service. Such funds shall be provided to the Office of Tribal Self-Governance which shall be responsible for distribution of all funds provided under section 5385 of this title.

**(2) Rule of construction**

Nothing in this subsection shall be construed to authorize the Indian Health Service to reduce the amount of funds that a self-gov-

ernance tribe is otherwise entitled to receive under its funding agreement or other applicable law, whether or not such funds are apportioned to the Office of Tribal Self-Governance under this section.

**(b) Present funding; shortfalls**

In such budget request, the President shall identify the level of need presently funded and any shortfall in funding (including direct program and contract support costs) for each Indian tribe, either directly by the Secretary of Health and Human Services, under self-determination contracts, or under compacts and funding agreements authorized under this subchapter.

(Pub. L. 93-638, title V, §513, as added Pub. L. 106-260, § 4, Aug. 18, 2000, 114 Stat. 727.)

**Editorial Notes**

CODIFICATION

Section was formerly classified to section 458aaa-12 of this title prior to editorial reclassification and renumbering as this section.

**§ 5394. Reports**

**(a) Annual report**

**(1) In general**

Not later than January 1 of each year after August 18, 2000, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives a written report regarding the administration of this subchapter.

**(2) Analysis**

The report under paragraph (1) shall include a detailed analysis of the level of need being presently funded or unfunded for each Indian tribe, either directly by the Secretary, under self-determination contracts under subchapter I of this chapter, or under compacts and funding agreements authorized under this chapter. In compiling reports pursuant to this section, the Secretary may not impose any reporting requirements on participating Indian tribes or tribal organizations, not otherwise provided in this chapter.

**(b) Contents**

The report under subsection (a) of this section shall—

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

(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 their members;

(C) the funds transferred to each self-governance Indian tribe and the corresponding reduction in the Federal bureaucracy;

(D) the funding formula for individual tribal shares of all headquarters funds, together with the comments of affected Indian tribes or tribal organizations, developed under subsection (c) of this section; and