

for the inclusion of specific provisions of the Office of Federal Procurement and Policy Act (41 U.S.C. 401 et seq.) and Federal acquisition regulations in any funding agreement entered into under this part. Absent a negotiated 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.)

REFERENCES IN TEXT

The Office of Federal Procurement and Policy Act, referred to in text, probably means the Office of Federal Procurement Policy Act, Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (§401 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 41 and Tables.

§ 458aaa-10. Civil actions

(a) Contract defined

For the purposes of section 450m-1 of this title, the term “contract” shall include compacts and funding agreements entered into under this part.

(b) Applicability of certain laws

Section 81 of this title and section 476 of this title, shall not apply to attorney and other professional contracts entered into by Indian tribes participating in self-governance under this part.

(c) References

All references in this subchapter to section 501 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.)

§ 458aaa-11. 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 part; 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 promulgated under section 458aaa-16 of this title or the authorities specified in section 458aaa-4(b) of this title for a compact or funding agreement entered into with the Indian Health Service under this part, 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 part, 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 part or an agreement negotiated under the Tribal Self-Governance Demonstration Project established under title III,¹ 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 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 part.

(d) Matching or cost-participation requirement

All funds provided under compacts, funding agreements, or grants made pursuant to this

¹ See References in Text note below.

subchapter, 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 part and other Federal laws benefiting Indians and Indian tribes.

(f) Rules of construction

Each provision of this part 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.)

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, and amended, which was set out as a note under section 450f of this title prior to repeal by Pub. L. 106-260, §10, Aug. 18, 2000, 114 Stat. 734.

§ 458aaa-12. 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 part, 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 458aaa-4 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-governance 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 part.

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

§ 458aaa-13. 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 part.

(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 part A of this subchapter, or under compacts and funding agreements authorized under this subchapter. 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 subchapter.

(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

(E) amounts expended in the preceding fiscal year to carry out inherent Federal functions, including an identification of those functions by type and location;

(3) contain a description of the method or methods (or any revisions thereof) used to determine the individual tribal share of funds controlled by all components of the Indian Health Service (including funds assessed by any other Federal agency) for inclusion in self-governance compacts or funding agreements;

(4) before being submitted to Congress, be distributed to the Indian tribes for comment (with a comment period of no less than 30 days, beginning on the date of distribution); and

(5) include the separate views and comments of the Indian tribes or tribal organizations.

(c) Report on fund distribution method

Not later than 180 days after August 18, 2000, the Secretary shall, after consultation with Indian tribes, submit a written report to the Committee on Resources of the House of Representatives and the Committee on Indian Affairs of the Senate that describes the method or methods used to determine the individual tribal share of funds controlled by all components of the Indian Health Service (including funds assessed by any