

subchapter III of chapter 5 of title 5 to negotiate and promulgate such regulations as are necessary to carry out this part.

(2) Publication of proposed regulations

Proposed regulations to implement this part shall be published in the Federal Register by the Secretary no later than 1 year after August 18, 2000.

(3) Expiration of authority

The authority to promulgate regulations under paragraph (1) shall expire 21 months after August 18, 2000.

(b) Committee

(1) In general

A negotiated rulemaking committee established pursuant to section 565 of title 5 to carry out this section shall have as its members only Federal and tribal government representatives, a majority of whom shall be nominated by and be representatives of Indian tribes with funding agreements under this subchapter.

(2) Requirements

The committee shall confer with, and accommodate participation by, representatives of Indian tribes, inter-tribal consortia, tribal organizations, and individual tribal members.

(c) Adaptation of procedures

The Secretary shall adapt the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian tribes.

(d) Effect

The lack of promulgated regulations shall not limit the effect of this part.

(e) Effect of circulars, policies, manuals, guidances, and rules

Unless expressly agreed to by the participating Indian tribe in the compact or funding agreement, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Indian Health Service, except for the eligibility provisions of section 450j(g) of this title and regulations promulgated under this section.

(Pub. L. 93-638, title V, §517, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 730.)

§ 458aaa-17. Appeals

In any appeal (including civil actions) involving decisions made by the Secretary under this part, the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence—

(1) the validity of the grounds for the decision made; and

(2) that the decision is fully consistent with provisions and policies of this part.

(Pub. L. 93-638, title V, §518, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 730.)

§ 458aaa-18. Authorization of appropriations

(a) In general

There are authorized to be appropriated such sums as may be necessary to carry out this part.

(b) Availability of appropriations

Notwithstanding any other provision of this subchapter, the provision of funds under this subchapter shall be subject to the availability of appropriations and the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe in order to make funds available to another tribe or tribal organization under this subchapter.

(Pub. L. 93-638, title V, §519, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 731.)

PART F—NATIONAL FUND FOR EXCELLENCE IN AMERICAN INDIAN EDUCATION

CODIFICATION

This part is comprised of title V of Pub. L. 93-638, as added by Pub. L. 106-568, title XIII, §1302, Dec. 27, 2000, 114 Stat. 2936, as amended. Another title V of Pub. L. 93-638 was added by Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 712, and is classified to part E (§458aaa et seq.) of this subchapter.

§ 458bbb. National Fund for Excellence in American Indian Education

(a) In general

As soon as practicable after December 27, 2000, the Secretary of the Interior shall establish, under the laws of the District of Columbia and in accordance with this part, a foundation to be known as the “National Fund for Excellence in American Indian Education” (hereinafter referred to as the “Foundation”).

(b) Perpetual existence

Except as otherwise provided, the Foundation shall have perpetual existence.

(c) Nature of corporation

The Foundation shall be a charitable and non-profit federally chartered corporation and shall not be an agency or instrumentality of the United States.

(d) Place of incorporation and domicile

The Foundation shall be incorporated and domiciled in the District of Columbia.

(e) Purposes

The purposes of the Foundation shall be—

(1) to encourage, accept, and administer private gifts of real and personal property or any income therefrom or other interest therein for the benefit of, or in support of, the mission of the Office of Indian Education Programs of the Bureau of Indian Affairs (or its successor office);

(2) to undertake and conduct such other activities as will further the educational opportunities of American Indians who attend a Bureau funded school; and

(3) to participate with, and otherwise assist, Federal, State, and tribal governments, agencies, entities, and individuals in undertaking and conducting activities that will further the educational opportunities of American Indians attending Bureau funded schools.

(f) Board of Directors

(1) In general

The Board of Directors shall be the governing body of the Foundation. The Board may