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–4. Funding agreements

(a) Funding agreement required

The Secretary shall negotiate and enter into a written funding agreement 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

(1) In general

Each funding agreement required under subsection (a) of this section shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding, including tribal shares of discretionary Indian Health Service competitive grants (excluding congressionally earmarked competitive grants), for all programs, services, functions, and activities (or portions thereof), that are carried out for the benefit of Indians because of their status as Indians without regard to the agency or office of the Indian Health Service within which the program, service, function, or activity (or portion thereof) is performed.

(2) Inclusion of certain programs, services, functions, and activities

Such programs, services, functions, or activities (or portions thereof) include all programs, services, functions, activities (or portions thereof), including grants (which may be added to a funding agreement after an award of such grants), with respect to which Indian tribes or Indians are primary or significant beneficiaries, administered by the Department of Health and Human Services through the Indian Health Service and all local, field, service unit, area, regional, and central headquarters or national office functions so administered under the authority of—

(A) section 13 of this title;

(B) the Act of April 16, 1934 (48 Stat. 596; chapter 147; 25 U.S.C. 452 et seq.);

(C) the Act of August 5, 1954 (68 Stat. 674; chapter 658) [42 U.S.C. 2001 et seq.];

(D) the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.);

(E) the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2401 et seq.);

(F) any other Act of Congress authorizing any agency of the Department of Health and Human Services to administer, carry out, or provide financial assistance to such a program, service, function or activity (or portions thereof) described in this section that is carried out for the benefit of Indians because of their status as Indians; or

(G) any other Act of Congress authorizing such a program, service, function, or activity (or portions thereof) carried out for the benefit of Indians under which appropriations are made available to any agency other than an agency within the Department of Health and Human Services, in any case in which the Secretary administers that program, service, function, or activity (or portion thereof).

(c) Inclusion in compact or funding agreement

It shall not be a requirement that an Indian tribe or Indians be identified in the authorizing statute for a program or element of a program to be eligible for inclusion in a compact or funding agreement under this part.

(d) Funding agreement terms

Each funding agreement under this part shall set forth—

(1) terms that generally identify the programs, services, functions, and activities (or portions thereof) to be performed or administered; and

(2) for the items identified in paragraph (1)—

(A) the general budget category assigned;

(B) the funds to be provided, including those funds to be provided on a recurring basis;

(C) the time and method of transfer of the funds;

(D) the responsibilities of the Secretary; and

(E) any other provision with respect to which the Indian tribe and the Secretary agree.

(e) Subsequent funding agreements

Absent notification from an Indian tribe that is withdrawing or retroceding the operation of one or more programs, services, functions, or activities (or portions thereof) identified in a funding agreement, or unless otherwise agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement is executed, and the terms of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.

(f) Existing funding agreements

Each Indian tribe participating in the Tribal Self-Governance Demonstration Project established under title III[1] on August 18, 2000, shall have the option at any time thereafter to—

(1) retain the Tribal Self-Governance Demonstration Project funding agreement of that Indian tribe (in whole or in part) to the extent that the provisions of that funding agreement are not directly contrary to any express provision of this part; or

(2) instead of retaining a funding agreement or portion thereof under paragraph (1), negotiate a new funding agreement in a manner consistent with the requirements of this part.

(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 450j–1(a) of this title) to be transferred to such Indian tribe, for such period as may be

[1] See References in Text note below.

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.)

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, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 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, as amended, 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, as amended, 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, as amended, 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, 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–5. General provisions

(a) Applicability

The provisions of this section shall apply to compacts and funding agreements negotiated under this part 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 part 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 part.

(2) Cost principles

An Indian tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by section 450j–1 of this title[1] 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 450j–1(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 458aaa–4 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.

(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

[1] So in original.