

## AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111-291, §831(1), substituted "\$1,602,619,000" for "\$2,000,000,000".

Subsec. (f)(2)(B). Pub. L. 111-291, §831(2), substituted "not more than \$602,619,000" for "50 percent".

**§§ 444 to 449. Repealed. Aug. 5, 1954, ch. 658, § 5, 68 Stat. 675**

Sections, act Apr. 3, 1952, ch. 129, §§1-6, 66 Stat. 35, related to Indian hospital services and facilities. See section 2001 et seq. of Title 42, The Public Health and Welfare.

## EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1959, see section 6 of act Aug. 5, 1954, set out as an Effective Date note under section 2001 of Title 42, The Public Health and Welfare.

**SUBCHAPTER II—INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE**

**§ 450. Congressional statement of findings**

**(a) Findings respecting historical and special legal relationship, and resultant responsibilities**

The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

**(b) Further findings**

The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

(Pub. L. 93-638, §2, Jan. 4, 1975, 88 Stat. 2203.)

## SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106-568, title VIII, §801, Dec. 27, 2000, 114 Stat. 2916, provided that: "This title [amending sections 450f, 458cc, 1407, and 3207 of this title and sections 5604, 5608, and 5609 of Title 20, Education, and repealing section 84 of this title and sections 438 and 439 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Native American Laws Technical Corrections Act of 2000'."

Pub. L. 106-568, title XIII, §1301, Dec. 27, 2000, 114 Stat. 2936, provided that: "This title [enacting part F

(§458bbb et seq.) of this subchapter] may be cited as the 'American Indian Education Foundation Act of 2000'."

Pub. L. 106-260, §1, Aug. 18, 2000, 114 Stat. 711, provided that: "This Act [enacting part E (§458aaa et seq.) of this subchapter, amending sections 450f, 450j, and 450j-1 of this title, enacting provisions set out as notes under sections 450f and 458aaa of this title, and repealing provisions set out as a note under section 450f of this title] may be cited as the 'Tribal Self-Governance Amendments of 2000'."

## SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-413, §1, Oct. 25, 1994, 108 Stat. 4250, provided that: "This Act [enacting part D (§458aa et seq.) of this subchapter and section 450l of this title, amending sections 450b, 450c, 450e, 450f, 450j to 450k, 450m, and 450m-1 of this title, and enacting provisions set out as notes under this section and section 458aa of this title] may be cited as the 'Indian Self-Determination Act Amendments of 1994'."

Pub. L. 103-413, title I, §101, Oct. 25, 1994, 108 Stat. 4250, provided that: "This title [enacting section 450l of this title and amending sections 450b, 450c, 450e, 450f, 450j to 450k, 450m, and 450m-1 of this title] may be cited as the 'Indian Self-Determination Contract Reform Act of 1994'."

Pub. L. 103-413, title II, §201, Oct. 25, 1994, 108 Stat. 4270, provided that: "This title [enacting part D (§458aa et seq.) of this subchapter and provisions set out as notes under section 458aa of this title] may be cited as the 'Tribal Self-Governance Act of 1994'."

## SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-644, title II, §201, Nov. 29, 1990, 104 Stat. 4665, provided that: "This title [amending sections 450b, 450c, 450f, 450h, 450j, 450j-1, and 450k of this title and enacting provisions set out as a note under section 450h of this title] may be cited as the 'Indian Self-Determination and Education Assistance Act Amendments of 1990'."

## SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-472, title I, §101, Oct. 5, 1988, 102 Stat. 2285, provided that: "This Act [enacting sections 450j-1 and 450m-1 of this title, amending sections 13a, 450a to 450c, 450f to 450j, 450k, and 450n of this title, sections 3371 and 3372 of Title 5, Government Organization and Employees, sections 2004b and 4762 of Title 42, The Public Health and Welfare, and section 456 of the Appendix to Title 50, War and National Defense, transferring section 450f of this title to section 450c(f) of this title, and enacting provisions set out as notes under this section and section 450f of this title] may be cited as the 'Indian Self-Determination and Education Assistance Act Amendments of 1988'."

## SHORT TITLE

Section 1 of Pub. L. 93-638 provided: "That this Act [enacting this subchapter, section 13a of this title, and section 2004b of Title 42, The Public Health and Welfare, amending section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 456 of Title 50, Appendix, War and National Defense, and enacting provisions set out as notes under sections 450f, 455, and 457 of this title] may be cited as the 'Indian Self-Determination and Education Assistance Act'."

Section 101 of title I of Pub. L. 93-638 provided that: "This title [enacting part A (§450f et seq.) of this subchapter and section 2004b of Title 42, The Public Health and Welfare, and amending section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 456 of the Appendix to Title 50, War and National Defense] may be cited as the 'Indian Self-Determination Act'."

Section 201 of title II of Pub. L. 93-638 provided that: "This title [enacting part C (§458 et seq.) of this subchapter, sections 455 to 457 of this title, and provisions set out as a note under section 457 of this title] may be cited as the 'Indian Education Assistance Act'."

## SAVINGS PROVISIONS

Pub. L. 100-472, title II, §210, Oct. 5, 1988, 102 Stat. 2298, provided that: "Nothing in this Act [see Short Title of 1988 Amendment note above] shall be construed as—

"(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or

"(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indian people."

## SEVERABILITY

Pub. L. 100-472, title II, §211, Oct. 5, 1988, 102 Stat. 2298, provided that: "If any provision of this Act [see Short Title of 1988 Amendment note above] or the application thereof to any Indian tribe, entity, person or circumstance is held invalid, neither the remainder of this Act, nor the application of any provisions herein to other Indian tribes, entities, persons, or circumstances, shall be affected thereby."

## CONSULTATION WITH ALASKA NATIVE CORPORATIONS

Pub. L. 108-199, div. H, §161, Jan. 23, 2004, 118 Stat. 452, as amended by Pub. L. 108-447, div. H, title V, §518, Dec. 8, 2004, 118 Stat. 3267, provided that: "The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175 [set out below]."

## EXECUTIVE ORDER NO. 13084

Ex. Ord. No. 13084, May 14, 1998, 63 F.R. 27655, which provided for agencies to establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities, to reduce the imposition of unfunded mandates upon Indian tribal governments, and to streamline the application process for and increase the availability of waivers to Indian tribal governments, was revoked, effective 60 days after Nov. 6, 2000, by Ex. Ord. No. 13175, §9(c), Nov. 6, 2000, 65 F.R. 67251, set out below.

## EX. ORD. NO. 13175. CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

Ex. Ord. No. 13175, Nov. 6, 2000, 65 F.R. 67249, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

SECTION 1. *Definitions.* For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

SEC. 2. *Fundamental Principles.* In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

SEC. 3. *Policymaking Criteria.* In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

SEC. 4. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

SEC. 5. *Consultation.* (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

**SEC. 6. Increasing Flexibility for Indian Tribal Waivers.**

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

**SEC. 7. Accountability.**

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993 [5 U.S.C. 601 note], each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

**SEC. 8. Independent Agencies.** Independent regulatory agencies are encouraged to comply with the provisions of this order.

**SEC. 9. General Provisions.** (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review) [5 U.S.C. 601 note], Executive Order 12988 (Civil Justice Reform) [28 U.S.C. 519 note], OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments [set out below].

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism) [5 U.S.C. 601 note].

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

**SEC. 10. Judicial Review.** This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

WILLIAM J. CLINTON.

GOVERNMENT-TO-GOVERNMENT RELATIONS WITH NATIVE AMERICAN TRIBAL GOVERNMENTS

Memorandum of President of the United States, Apr. 29, 1994, 59 F.R. 22951, provided:

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 (“Enhancing the Intergovernmental Partnership”) [former 5 U.S.C. 601 note] and 12866 (“Regulatory Planning and Review”) [5 U.S.C. 601 note] to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency’s bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

#### TRIBAL CONSULTATION

Memorandum of President of the United States, Nov. 5, 2009, 74 F.R. 57881, provided:

Memorandum for the Heads of Executive Departments And Agencies

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship.

My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175. Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency’s plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. The Assistant to the President for Domestic Policy and the Director of the

OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation process more effective, if any, should be included in this report.

The terms “Indian tribe,” “tribal officials,” and “policies that have tribal implications” as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

BARACK OBAMA.

#### § 450a. Congressional declaration of policy

##### (a) Recognition of obligation of United States

The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

##### (b) Declaration of commitment

The Congress declares its commitment to the maintenance of the Federal Government’s unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

##### (c) Declaration of national goal

The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

(Pub. L. 93–638, §3, Jan. 4, 1975, 88 Stat. 2203; Pub. L. 100–472, title I, §102, Oct. 5, 1988, 102 Stat. 2285.)