

House Subcommittee on Indian, Insular, and Alaska Native Affairs

Don Young, Chairman

Hearing Memo

April 10, 2015

To: Natural Resources Committee Members

From: Majority Staff, Subcommittee on Indian, Insular, and Alaska Native Affairs

Hearing: Legislative hearing on H.R. 329 (Young-AK), the *Indian Employment, Training and Related Services Consolidation Act of 2015*.

When/Where: Tuesday, April 14, 2015, at 11:00 A.M. in Room 1334 Longworth HOB

Summary of the Bill:

H.R. 329, the *Indian Employment, Training and Related Services Consolidation Act of 2015*, was introduced by Rep. Don Young on January 13, 2015 and has been referred to the Subcommittee on Indian, Insular, and Alaska Native Affairs. The bill amends several provisions in the original Indian Employment, Training, and Related Services Act of 1992¹ as amended², codified at 25 U.S.C. § 3401-15. Primarily, the bill makes permanent the authority of tribes to integrate the federal resources they receive for employment and training purposes under a single plan and budget. The bill clarifies the plan approval process and timelines, the roles of various federal agencies involved, the transfer of funds mechanism, and the reporting and audit requirements the tribes must fulfill.

Cosponsors:

None.

Background:

The Federal government has a wide range of programs to assist state, local, and tribal governments in developing the workforce of their communities. Specifically, the Departments of Interior, Health and Human Services (HHS), and Labor (DOL) have employment, training, and related service programs that provide grant funding to tribes. Tribes use that funding to provide services such as education and workforce training, resume building, on-the-job training, and childcare services to individuals attempting to enter the workforce.

The Indian Employment, Training, and Related Services Demonstration Act was enacted in 1992 to enable tribes to integrate the federal resources they received from multiple executive agencies under comprehensive plans. The integration of service was meant to reduce administrative burdens and/or costs by allowing tribes to report and audit multiple programs (up to ten) under a single plan and budget.

The ten eligible programs are: the Bureau of Indian Affairs' General Assistance program, Division of Workforce Development's (DWD) Job Placement and Training Program, Higher Education and Adult Basic

¹ See Public Law 102-477.

² See Public Law 106-568, the Omnibus Indian Advancement Act of 2000 ("477 Act").

Education programs, and the Johnson-O'Malley programs; the DOL's Workforce Investment Act Section 166 Comprehensive Services Program and Supplemental Youth Services Program; and HHS's Native Employment Works (NEW), Tribal Temporary Assistance for Needy Families (TANF), and Child Care and Development Fund (CCDF) programs.

In FY 2013, the Bureau of Indian Affairs estimated that there were 265 participating Tribes that benefited by approximately \$87 million. A majority of those funds have come from the TANF, Child Care Development Fund, and Native Employment Works programs at HHS. Funds from HHS and the Department of Labor are transferred to the Department of the Interior, which then transfers all employment, training, and related services funding to the tribes once the tribes' "477 plans" are approved.

Need for Legislation:

While tribal programs participating under P.L. 102-477 have had few, if any, negative audit findings, the Administration began in 2008 to require tribes to report and audit their programs by breaking their funds back down to the original federal source of funding. Tribes considered this requirement contrary to the original intent of the law, and after further consultation, the Administration did not enforce the new requirement. Since those consultations began in 2011, the Administration and tribes have worked together to try and reconcile their differences in interpretation of P.L.102-477. However, after three years of discussions, the interested parties still do not agree on how certain provisions of the law should be implemented by the federal agencies.

In a response to concerns, the 2012 omnibus appropriations included report language requiring the Administration and tribes to form a workgroup to resolve differences in how funds should be transferred to tribes and how tribal programs should be audited. The report language in the fiscal year 2014 consolidated appropriations act required the Bureau of Indian Affairs to submit a report summarizing the workgroup's efforts. In a response to the report the P.L. 102-477 workgroup further highlighted that congressional action would be required to provide clarity on how the program is working. H.R. 329 aims to add structure to the 477 program and ensure that the burdens the original 1992 Act intended to address are realized.

Section by Section Analysis:

Section 1. Short Title. The Act is to be cited as the "Indian Employment, Training and Related Services Consolidation Act of 2015."

Section 2. Amendment of Short Title. Indian Employment, Training, and Related Services Consolidation Act of 2015. Removes the word, "demonstration" from the title of the 1992 Act.

Section 3. Purpose. The purpose of this act is to facilitate the ability of Indian tribes to integrate the employment, training and related services they provide from diverse Federal sources in order to improve the effectiveness of those services, reduce joblessness in Indian communities, serve tribally-determined goals consistent with the policy of self-determination, while reducing administrative, reporting and accounting costs.

Section 4. Definitions. This section includes definitions of "Federal agency," "Indian," "Indian tribe," "Secretary," "program," consistent with the Indian Self Determination and Education Assistance Act. The amendment creates a new definition of "program" to clarify which federal programs and funding sources are eligible for inclusion in tribal plans, and updates the "Indian tribe" definition to include tribal organizations.

Section 5. Integration of Services Authorized. The Secretary shall, after approving a plan submitted by an Indian tribe in accordance with section 8, authorize the Indian tribe to integrate the programs and federal funds received by the Indian tribe and coordinate the employment, training and related services provided with those funds in a consolidated and comprehensive tribal plan.

Section 6. Programs Affected. The programs that may be integrated pursuant to a plan approved under section 8 shall be only programs implemented for the benefit of Indians and have the purpose of job training, welfare to work and tribal work experience, creating or enhancing employment opportunities, higher education, skill development, assisting Indian youth and adults to succeed in the workforce, encouraging self-sufficiency, familiarizing individual participants with the world of work, and facilitating the creation of job opportunities, and economic development.

This section also directs the GAO to provide a study of which programs from within the Department of Interior, Department of Health and Human Services, Department of Labor, Department of Justice, Department of Agriculture, Department of Commerce, Department of Education, Department of Homeland Security, the Department of Housing and Urban Development, Department of Transportation, and the Department of Veterans Affairs meet employment criteria listed above.

Section 7. Plan Requirements. Tribal employment plans submitted must identify a comprehensive strategy identifying the full range of potential employment opportunities on or near the service area of an Indian tribe, including projected expenditures, and any waivers of federal law or regulations needed to effectively carry out the tribal plan.

Section 8. Plan Review; Waiver Authority; and Dispute Resolution. Tribes and tribal organizations have experienced significant delays with the 477 plan review and approval process. Section 7 clarifies the authority of all covered agencies to grant waivers, and places the responsibility on the Secretary of the Interior to resolve disputes within a fixed time frame. Under the bill, if no action is made to approve or disapprove a waiver request, the waiver request is deemed approved by operation of law.

Subsection (d) provides that if a Secretary denies a plan submitted pursuant to section 6 of this Act, the Secretary shall follow a procedure for a remedy, or concurrently, a tribe may pursue a civil action against the Secretary. The Secretary must state any objections and provide assistance and a hearing on the record to overcome any stated objections. Civil action may be taken against the appropriate Secretary and the tribe is authorized to seek monetary relief damages in the applicable district court.

Subsection (e) provides the affected agency with 90 days to approve or to decline to approve a waiver. A waiver is deemed granted by operation of law if not declined within 90 days, and that any initial decision to decline a waiver must be in writing and set forth specific reasons that clearly demonstrate the validity of the grounds for declining the waiver.

Subsection (f) provides that if an agency denies a waiver request, within 30 days after the date of receipt, the Secretary shall review the denial and determine whether granting the waiver is consistent with this Act or prevents the affected agency from fulfilling any obligations of the affected agency under this Act.

Subsection (g) defines a 30 day dispute resolution process if the Secretary determines that granting the waiver will not be inconsistent with the provisions of this Act, involving the Secretary, the participating Indian tribe; and the head of the affected agency.

Subsection (h) states the head of the affected agency shall have final authority to resolve the dispute, if the dispute resolution process fails to resolve the dispute between the Indian tribe and the affected agency.

Under subsection (i), not later than 10 days after the date on which the dispute is resolved under this section, the Secretary shall provide the Indian tribe with the final decision on the waiver request; and the relevant tribe or tribal organization is then granted the right to appeal any adverse decision of the Secretary of the Interior pursuant to the provisions set forth in section 110 of the Indian Self Determination and Education Assistance Act.

Section 9. Plan approval; Secretarial authority; review of decision. Clarifies the responsibility of the Secretary of the Interior as the sole authority to approve or disapprove a plan under the Act. The amendment improves upon the original Act by addressing past delays and providing mechanisms for appeal, as well as creates a partial approval if specific sections of the plan are in the waiver appeal process. The timing, decision and appeal provisions are modeled on the declination processes already set forth under Title I of the Indian Self-Determination and Education Assistance Act for contracting proposals (including provisions for administrative and judicial review).

Section 10. Employer Training Placements. The amendment updates Section 10 of P.L 102-477 by expanding the employment placement authority enacted in 2000 to include all employers.

Section 11. Federal Responsibilities. The bill would amend Section 11 of P.L 102-477 by reaffirming that the Bureau of Indian Affairs is the lead agency for administering the Act. This section requires the Secretary of the Interior and the Secretaries of the other participating Departments to enter into an interdepartmental memorandum of agreement to expedite the implementation of the Act.

Section 12. No Reduction in Amounts. Section 12 prohibits any reduction in funds to which participating tribes or tribal organizations would otherwise be entitled to absent participation under the Act, as well as provides clarity for the this Act's interaction with the Indian Self- Determination and Education Assistance Act.

Section 13. Transfer of Funds. Section 13 authorizes the interagency transfer of funds necessary to carry out the Act, requiring that such transfers occur within 30 days of apportionment of funds to the transferring agency and also provides for the transfer of funds to the tribe through an existing self-determination or self-governance contract or funding agreement already in place with the tribe.

Section 14. Administration of Funds. Section 14 clarifies that notwithstanding any other provision of the law, all amounts transferred to a tribe pursuant to an approved plan may be consolidated, reallocated, and re-budgeted as specified in the approved plan to best meet the employment, training, and related needs of the local community served by the Indian tribe. The participating tribe or tribal organization is not required to maintain separate records that track how funds from a particular program included in a plan were spent, nor to track expenditures from such programs, and expressly exempts participating tribes and tribal organizations from any provision of OMB circular A-133 that imposes contrary requirements. Carryover funds from the previous fiscal year shall remain available for use in accordance with the approved plan of the Indian tribe.

Subsection (c) specifies that once a tribe or tribal organization has been issued an approved indirect cost rate from its cognizant federal agency, the tribe or tribal organization shall be permitted to recover its indirect costs pursuant to such rate from all programs contributing funds under a plan.

Subsection (e) specifies that any funds transferred to an Indian tribe under this Act shall be treated as non-Federal funds for purposes of meeting matching requirements under any other Federal law.

Subsection (f) provides that the Federal Tort Claims Act shall apply to approved tribal plans.

Subsection (g) provides that an Indian tribe shall be entitled to retain interest earned on any funds transferred to the tribe under an approved plan that such interest shall not diminish the amount of funds in the Indian tribe is authorized to receive under the plan in the year the interest is earned.

Section 15. Labor Market Information. This section moves the responsibility of preparing the labor market information report from the Secretary of Interior to the Secretary of Labor, directing the Secretary of Labor in consultation with the Secretary of Interior, Indian tribes, and the Director of the Bureau of Census to provide a report on labor market information on Indian work force.

Section 16. Repeals; Conforming Amendments. This section repeals two sections of P.L. 102- 477, Sections 15 and 16, which are no longer necessary due to amendments made by this Act.

Section 17. Effect of Act. The section states that no tribal plans currently in effect are affected by this Act. A tribe submits their plans every one or three years, so the new provisions will take effect for each tribe upon their plan renewal.

Support for the Legislation:

The bill is supported by the P.L. 102-477 Tribal Work Group, Rep. Young, and Senator Murkowski.

Witnesses:

Mr. Ken Selby, Director, Community Service Department, Aleutian Pribilof Islands Association, Inc., Anchorage, AK.

Ms. Margaret Zientek, Assistant Director Employment & Training, Citizen Potawatomi Nation, Co-Chair P.L. 102-477 Tribal Work Group, Shawnee, OK.

Ms. Nisha Patel, Director, Office of Family Assistance, Administration for Children and Families, Department of Health and Human Services, Washington, D.C.

25 U.S.C.

United States Code, 2011 Edition

Title 25 - INDIANS

CHAPTER 36 - INDIAN EMPLOYMENT, TRAINING AND RELATED SERVICES

PUBLIC LAW 102-477, AS AMENDED, AS FURTHER PROPOSED TO BE AMENDED BY H.R. 329

Sec.

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SECTION 1. Short Title.

This Act may be cited as the “Indian Employment, Training and Related Services ~~Demonstration~~ Act of 1992”.

SECTION 2. §3401. Statement of Purpose.

~~The purposes of this chapter are to demonstrate how Indian tribal governments can~~ The purposes of this Act is to facilitate the ability of Indian tribes and tribal organizations to integrate the employment, training and related services they provide from diverse Federal sources in order to improve the effectiveness of those services, reduce joblessness in Indian communities, and serve tribally determined and serve tribally determined goals consistent with the policy of self-determination, while reducing administrative, reporting, and accounting costs.

SECTION 3. §3402. Definitions.

For the purposes of this chapter, the following definitions apply:

(1) Federal agency

The term “federal¹ agency” has the same meaning given the term “agency” in section 551(1) of Title 5.

(2) Indian tribe

~~The terms “Indian tribe” and “tribe” shall have the meaning given the term “Indian tribe” in section 450b (e) of this title.~~

(2) Indian tribe.—

(A) In general.—The terms ‘Indian tribe’ and ‘tribe’ have the meaning given the term ‘Indian tribe’ in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(B) Inclusion.—The term ‘Indian tribe’ includes tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)).

(3) Indian—The term “Indian” shall have the meaning given such term in section 450b(d) of this title.

(4) Program.—The term ‘program’ means a program described in section 5(a).

~~(4)~~ (5) Secretary—Except where otherwise provided, the term “Secretary” means the Secretary of the Interior.

SECTION 4. §3403. Integration of services authorized.

~~The Secretary of the Interior, in cooperation with the appropriate Secretary of Labor, Secretary of Health and Human Services, or Secretary of Education, shall, upon the receipt of a plan acceptable to the Secretary of the Interior submitted by an Indian tribal government, authorize the tribal government to coordinate, in accordance with such plan, its federally funded employment, training, and related services programs in a manner that integrates the program services involved into a single, coordinated, comprehensive program and reduces administrative costs by consolidating administrative functions.~~

The Secretary shall, after approving a plan submitted by an Indian tribe in accordance with section 8, authorize the Indian tribe to, in accordance with the plan—

(1) integrate the programs and Federal funds received by the Indian tribe; and

(2) coordinate the employment, training, and related services provided with those funds in a consolidated and comprehensive tribal plan.

SECTION 5. §3404. Programs affected.

~~The programs that may be integrated in a demonstration project under any such plan referred to in section 3403 of this title shall include any program under which an Indian tribe is eligible for receipt of funds under a statutory or administrative formula for the purposes of assisting Indian youth and adults to succeed in the workforce, encouraging self sufficiency, familiarizing Indian Youth¹ and adults with the world of work, facilitating the creation of job opportunities and any services related to these activities.~~

(a) Programs affected.

(1) In General.—The programs that may be integrated pursuant to a plan approved under section 8 shall be only programs—

(A) implemented for the purpose of—

(i) job training;

(ii) welfare to work and tribal work experience;

(iii) creating or enhancing employment opportunities;

(iv) higher education;

(v) skill development;

(vi) assisting Indian youth and adults to succeed in the workforce;

- (vii) encouraging self-sufficiency;
- (viii) familiarizing individual participants with the world of work;
- (ix) facilitating the creation of job opportunities;
- (x) economic development; or
- (xi) any services related to the activities described in clauses (i) through (x); and
- (B) under which an Indian tribe or members of an Indian tribe—
 - (i) are eligible to receive funds—
 - (I) under a statutory or administrative formula making funds available to an Indian tribe; or
 - (II) due to their status as Indians under Federal law; or
 - (ii) have secured funds as a result of a competitive process, a noncompetitive process, or a specific designation.
- (2) Treatment of block grant funds.—For purposes of this section, programs funded by block grant funds provided to an Indian tribe, regardless of whether the block grant is for the benefit of the Indian tribe because of the status of the Indian tribe or the status of the beneficiaries the grant serves, shall be eligible to be integrated into the plan.
- (b) Inventory Of Affected Programs.—
 - (1) In General.—The Comptroller General of the United States shall—
 - (A) assess the programs of the Department of the Interior, the Department of Health and Human Services, the Department of Labor, the Department of Justice, the Department of Agriculture, the Department of Commerce, the Department of Education, the Department of Energy, the Department of Homeland Security, the Department of Housing and Urban Development, the Department of Transportation, and the Department of Veterans Affairs; and
 - (B) not later than 180 days after the date of enactment of this subsection, develop an inventory of all programs of the departments referred to in subparagraph (A) that meet the criteria of a program under subsection (a).
 - (2) INCLUSION OF PROGRAMS IN TRIBAL PLAN.—Notwithstanding any other provision of law, an Indian tribe may include in the plan—
 - (A) any program identified by the Comptroller General of the United States in the inventory under paragraph (1); and
 - (B) any program not identified by the Comptroller General of the United States in the inventory under paragraph (1) at the discretion of the Secretary.

SECTION 6. §3405. Plan requirements.

For a plan to be acceptable pursuant to section 3403 of this title, it shall—

- ~~(1) identify the programs to be integrated;~~
- ~~(2) be consistent with the purposes of this chapter authorizing the services to be integrated in a demonstration project;~~
- ~~(3) describe a comprehensive strategy which identifies the full range of potential employment opportunities on and near the tribal government's service area, and the education, training and related services to be provided to assist Indian workers to access those employment opportunities;~~
- ~~(4) describe the way in which services are to be integrated and delivered and the results expected from the plan;~~
- ~~(5) identify the projected expenditures under the plan in a single budget;~~
- ~~(6) identify the agency or agencies of the tribal government to be involved in the delivery of the services integrated under the plan;~~
- ~~(7) identify any statutory provisions, regulations, policies, or procedures that the tribal government~~

~~believes need to be waived in order to implement its plan; and
(8) be approved by the governing body of the affected tribe.~~

A plan submitted to the Secretary for approval under this Act shall—

- (1) identify the programs to be integrated and consolidated;
- (2) be consistent with the purposes of this Act;
- (3) describe—
 - (A) a comprehensive strategy identifying the full range of potential employment opportunities on and near the service area of the Indian tribe;
 - (B) the education, training, and related services to be provided to assist Indians to access those employment opportunities;
 - (C) the way in which services and program funds are to be integrated, consolidated, and delivered; and
 - (D) the results expected from the plan;
- (4) identify the projected expenditures under the plan in a single budget covering all consolidated funds;
- (5) identify any agency of the Indian tribe to be involved in the delivery of the services integrated under the plan;
- (6) identify any statutory provisions, regulations, policies, or procedures that the Indian tribe believes need to be waived to implement the plan; and
- (7) be approved by the governing body of the Indian tribe.

SECTION 7. §3406. Plan review.

~~Upon receipt of the plan from a tribal government, the Secretary of the Interior shall consult with the Secretary of each Federal agency providing funds to be used to implement the plan, and with the tribal government submitting the plan. The parties so consulting shall identify any waivers of statutory requirements or of Federal agency regulations, policies, or procedures necessary to enable the tribal government to implement its plan. Notwithstanding any other provision of law, the Secretary of the affected agency shall have the authority to waive any statutory requirement, regulation, policy, or procedure promulgated by that agency that has been so identified by such tribal government or agency, unless the Secretary of the affected agency determines that such a waiver is inconsistent with the purposes of this chapter or those provisions of the statute from which the program involved derives its authority which are specifically applicable to Indian programs.~~

- (a) In general.—Upon receipt of a plan from an Indian tribe, the Secretary shall consult with—
 - (1) the head of each Federal agency overseeing a program identified in the plan; and
 - (2) the Indian tribe that submitted the plan.
- (b) Identification of waivers.—The parties identified in subsection (a) shall identify any waivers of applicable statutory, regulatory, or administrative requirements, or of Federal agency policies or procedures necessary to enable the Indian tribe to efficiently implement the plan.
- (c) Tribal Waiver Request.—In consultation with the Secretary, a participating Indian tribe may request that the head of each affected agency waive any statutory, regulatory, or administrative requirement, policy, or procedure identified subsection (b).
- (d) Waiver authority.—
 - (1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, the head of each affected Federal agency shall waive any applicable statutory, regulatory, or administrative requirement, regulation, policy, or procedure promulgated by the agency that has been identified by the parties under subparagraph (b).

- (2) EXCEPTION.—The head of an affected Federal agency shall not grant a waiver under paragraph (1) if the head of the affected agency determines that a waiver will be inconsistent with—
- (A) the purposes of this Act; or
 - (B) the provision of law from which the program included in the plan derives its authority that is specifically applicable to Indians.
- (e) Decision on waiver request.—
- (1) IN GENERAL.—Not later than 90 days after the head of an affected agency receives a waiver request, the head of the affected agency shall decide whether to grant or deny the request.
 - (2) DENIAL OF REQUEST.—If the head of the affected agency denies a waiver request, not later than 30 days after the date on which the denial is made, the head of the affected agency shall provide the requesting Indian tribe and the Secretary with written notice of the denial and the reasons for the denial.
 - (3) FAILURE TO ACT ON REQUEST.—If the head of an affected agency does not make a decision under paragraph (1) by the deadline identified in that paragraph, the request shall be considered to be granted.
- (f) Secretarial review.—If the head of an affected agency denies a waiver request under subsection (e)(2), not later than 30 days after the date on which the request is denied, the Secretary shall review the denial and determine whether granting the waiver—
- (1) will be inconsistent with the provisions of this Act; or
 - (2) will prevent the affected agency from fulfilling the obligations of the affected agency under this Act.
- (g) Interagency Dispute Resolution.—
- (1) IN GENERAL.—Not later than 30 days after the date on which the Secretary determines that granting the waiver will not be inconsistent with the provisions of this Act and will not prevent the affected agency from fulfilling the obligations of the affected agency under this Act, the Secretary shall establish and initiate an interagency dispute resolution process involving—
 - (A) the Secretary;
 - (B) the participating Indian tribe; and
 - (C) the head of the affected agency.
 - (2) DURATION.—A dispute subject to paragraph (1) shall be resolved not later than 30 days after the date on which the process is initiated.
- (h) Final authority.—If the dispute resolution process fails to resolve the dispute between a participating Indian tribe and an affected agency, the head of the affected agency shall have the final authority to resolve the dispute.
- (i) Final decision.—Not later than 10 days after that date on which the dispute is resolved under this section, the Secretary shall provide the requesting Indian tribe with—
- (1) the final decision on the waiver request; and
 - (2) notice of the right to file an appeal in accordance with the applicable provisions described in section 8(d).

SECTION 8. §3407. Plan approval; Secretarial authority; Review of decision.

~~Within 90 days after the receipt of a tribal government's plan by the Secretary, the Secretary shall inform the tribal government, in writing, of the Secretary's approval or disapproval of the plan, including any request for a waiver that is made as part of the plan submitted by the tribal government. If the plan is disapproved, the tribal government shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend its plan or to petition the Secretary to reconsider such disapproval, including reconsidering the disapproval of any waiver requested by the Indian tribe.~~

- (a) In general.—The Secretary shall have exclusive authority to approve or disapprove a plan submitted by an Indian tribe in accordance with section 6.
- (b) Approval process.—
- (1) IN GENERAL.—Not later than 90 days after the date on which the Secretary receives a plan, the Secretary shall approve or deny the plan.
 - (2) APPROVAL.—If the Secretary approves a plan under paragraph (1), the Secretary shall authorize the transfer of program funds identified in the plan in accordance with section 13.
 - (3) DENIAL.—If the Secretary denies the plan under paragraph (1), the Secretary shall provide to the Indian tribe a written notification of disapproval of the plan that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that the plan does not meet the requirements described in section 6.
 - (4) PARTIAL APPROVAL.—
 - (A) IN GENERAL.—If a plan is denied under paragraph (3) solely on the basis that a request for a waiver that is part of the plan has not been approved (or is subject to dispute resolution) under section 7, the Secretary shall, upon a request from the tribe, grant partial approval for those portions of the plan not affected by the request for a waiver.
 - (B) APPROVAL AFTER RESOLUTION.—With respect to a plan described in subparagraph (A), on resolution of the request for a waiver under section 7, the Secretary shall, on a request from the tribe, approve the plan or amended plan not later than 90 days after the date on which the Secretary receives the request.
 - (5) FAILURE TO ACT.—If the Secretary does not make a decision under paragraph (1) within 90 days of the date on which the Secretary receives the plan, the plan shall be considered to be approved.
- (c) Extension of time.—Notwithstanding any other provision of law, the Secretary may extend or otherwise alter the 90-day period identified in subsection (b)(1) for not more than 90 additional days, if, before the expiration of the period, the Secretary obtains the express written consent of the Indian tribe.
- (d) Review of denial.—
- (1) PROCEDURE UPON REFUSAL TO APPROVE PLAN.—If the Secretary denies a plan under subsection (b)(3), the Secretary shall—
 - (A) state any objections in writing to the Indian tribe;
 - (B) provide assistance to the Indian tribe to overcome the stated objections; and
 - (C) unless the Indian tribe brings a civil action under paragraph (2), provide the Indian tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under such rules and regulations as the Secretary may promulgate.
 - (2) CIVIL ACTIONS; CONCURRENT JURISDICTION RELIEF.—
 - (A) IN GENERAL.—The district courts of the United States shall have original jurisdiction of a civil action or claim against the appropriate Secretary arising under this section and over any civil action or claim against the Secretary for money damages arising under contracts authorized by this section.
 - (B) ADMINISTRATIVE HEARING AND APPEAL NOT REQUIRED.—An Indian tribe may bring a civil action or claim under this paragraph without regard to whether the Indian tribe had a hearing or filed an appeal under paragraph (1).
 - (C) RELIEF.—In an action brought under this paragraph, the court may order appropriate relief, including—

- (i) money damages;
 - (ii) injunctive relief against any action by an officer or employee of the United States or any agency thereof contrary to this Act or regulations promulgated thereunder (including immediate injunctive relief to reverse a denial of a plan under this section or to compel the Secretary to approve a plan); and
 - (iii) a writ of mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a duty provided under this Act or regulations promulgated hereunder.
- (3) BURDEN OF PROOF AT HEARING OR APPEAL DECLINING CONTRACT; FINAL AGENCY ACTION.—
 - (A) IN GENERAL.—With respect to any hearing or appeal conducted under paragraph (1)(C) or any civil action brought under paragraph (2), the Secretary shall have the burden of proving by clear and convincing evidence the validity of the grounds for denying approval of a plan (or portion thereof).
 - (B) AGENCY ACTION.—Notwithstanding any other provision of law, a decision by an official of the Department of the Interior or the Department of Health and Human Services, as appropriate (collectively referred to in this paragraph as the ‘Department’) that constitutes final agency action and that relates to an appeal within the Department that is conducted under paragraph (1)(C) shall be made—
 - (i) by an official of the Department who holds a position at a higher organizational level within the Department that the level of the departmental agency (such as the Indian Health Service or the Bureau of Indian Affairs) in which the decision that is subject of the appeal was made; or
 - (ii) by an administrative judge.
- (4) APPLICATION OF LAWS TO ADMINISTRATIVE APPEALS.—Section 504 of title 5, United States Code, and section 2412 of title 28, United States Code, shall apply to any administrative appeals pending on or filed after October 5, 1988, by an Indian tribe regarding a plan under this Act.

SECTION 9. §3408. Job creation activities authorized.

(a) In general

The plan submitted by a tribal government may involve the expenditure of funds for the creation of employment opportunities and for the development of the economic resources of the tribal government or of individual Indian people if such expenditures are consistent with an overall regional economic activity which has a reasonable likelihood of success and consistent with the purposes specifically applicable to Indian programs in the statute under which the funds are authorized.

(b) Job creation opportunities

(1) In general

Notwithstanding any other provisions of law, including any requirement of a program that is integrated under a plan under this chapter, a tribal government may use a percentage of the funds made available under this chapter (as determined under paragraph (2)) for the creation of employment opportunities, including providing private sector training placement under section 3409 of this title.

(2) Determination of percentage

The percentage of funds that a tribal government may use under this subsection is the greater of--

- (A) the rate of unemployment in the service area of the tribe up to a maximum of 25 percent; or
- (B) 10 percent.

(c) Limitation

The funds used for an expenditure described in subsection (a) of this section may only include funds made available to the Indian tribe by a Federal agency under a statutory or administrative formula.

SECTION 10. §3409. Private sector Employer training placements.

~~A tribal government participating in a demonstration program under this chapter is authorized to utilize funds available under such plan to place participants in training positions with private employers and pay such participants a training allowance or wage for a period not to exceed 12 months, if the tribal government obtains a written agreement from the private employer to provide on-the-job training to such participants and, upon satisfactory completion of the training period, to guarantee permanent employment to such participants for a minimum of 12 months.~~

(a) In General.—Subject to subsection (b), an Indian tribe that has in place an approved plan under this Act may use the funds made available for the plan under this Act—

- (1) to place participants in training positions with employers; and
- (2) to pay the participants a training allowance or wage for a training period of not more than 24 months, which may be nonconsecutive.

(b) Requirements.—An Indian tribe may carry out subsection (a) only if the Indian tribe enters into a written agreement with each applicable employer under which the employer shall agree—

- (1) to provide on-the-job training to the participants; and
- (2) on satisfactory completion of the training period described in subsection (a)(2), to prioritize the provision of permanent employment to the participants.

SECTION 11. §3410. Federal responsibilities.

~~(a) Responsibilities of Department of the Interior~~

~~Within 180 days following October 23, 1992, the Secretary of the Interior, the Secretary of Labor, the Secretary of Health and Human Services and the Secretary of Education shall enter into an interdepartmental memorandum of agreement providing for the implementation of the demonstration projects authorized under this chapter. The lead agency for a demonstration program under this chapter shall be the Bureau of Indian Affairs, Department of the Interior. The responsibilities of the lead agency shall include—~~

- ~~(1) the use of a single report format related to the plan for the individual project which shall be used by a tribal government to report on the activities undertaken under the project;~~
- ~~(2) the use of a single report format related to the projected expenditures for the individual project which shall be used by a tribal government to report on all project expenditures;~~
- ~~(3) the development of a single system of Federal oversight for the project, which shall be implemented by the lead agency; and~~
- ~~(4) the provision of technical assistance to a tribal government appropriate to the project, except that a tribal government shall have the authority to accept or reject the plan for providing such technical assistance and the technical assistance provider.~~

~~(b) Report requirements~~

~~The single report format shall be developed by the Secretary, consistent with the requirements of this chapter. Such report format, together with records maintained on the consolidated program at the tribal level shall contain such information as will allow a determination that the tribe has complied with the requirements incorporated in its approved plan and will provide assurances to each Secretary that the tribe has complied with all directly applicable statutory requirements and with those directly applicable regulatory requirements which have not been waived.~~

(a) Lead Agency.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the lead agency responsible for implementation of this Act shall be the Bureau of Indian Affairs.

(2) INCLUSIONS.—The responsibilities of the Director of the Bureau of Indian Affairs in carrying out this Act shall include--

(A) the development of a single model report for each Indian tribe that has in place an approved plan under this Act to submit to the Director reports on any consolidated activities undertaken and joint expenditures made under the plan;

(B) the provision, directly or through contract, of appropriate voluntary and technical assistance to participating Indian tribes;

(C) the development and use of a single monitoring and oversight system for plans approved under this Act;

(D)(i) the receipt of all funds covered by a plan approved under this Act; and
(ii) the distribution of the funds to the respective Indian tribes by not later than 45 days after the date of receipt of the funds from the appropriate Federal department or agency; and

(E)(i) the performance of activities described in section 7 relating to agency waivers; and
(ii) the establishment of an interagency dispute resolution process.

(3) MEMORANDUM OF AGREEMENT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Indian Employment, Training and Related Services Consolidation Act of 2015, the Secretary (acting through the Director of the Bureau of Indian Affairs), in conjunction with the Secretaries of Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Labor, Transportation, and Veterans Affairs and the Attorney General, shall enter into an interdepartmental memorandum of agreement providing for this implementation of this Act.

(B) INCLUSIONS.—The memorandum of agreement under subparagraph (A) shall include provisions relating to—

(i) an annual meeting of participating Indian tribes and Federal departments and agencies, to be co-chaired by—

(I) a representative of the President; and

(II) a representative of the participating Indian tribes;

(ii) an annual review of the achievements under this Act and any statutory, regulatory, administrative, or policy obstacles that prevent participating Indian tribes from fully and efficiently carrying out the purposes of this Act; and

(iii) a forum comprised of participating Indian tribes and Federal departments and agencies to identify and resolve interagency conflicts and conflicts between the Federal Government and Indian tribes in the administration of this Act.

(b) Report Format.—

(1) IN GENERAL.—The lead agency shall develop and distribute to Indian tribes that have in place an approved plan under this Act a single report format, in accordance with the requirements of this Act.

- (2) REQUIREMENTS.—The lead agency shall ensure that the report format developed under paragraph (1), together with records maintained by each participating Indian tribe, contains information sufficient—
- (A) to determine whether the Indian tribe has complied with the requirements of the approved plan of the Indian tribe; and
 - (B) to provide assurances to the head of each applicable Federal department or agency that the Indian tribe has complied with all directly applicable statutory and regulatory requirements not waived under section 7.
- (3) LIMITATION.—The report format developed under paragraph (1) shall not require a participating Indian tribe to report on the expenditure of funds (expressed by fund source or single agency code) transferred to the Indian tribe under an approved plan under this Act.

SECTION 12. §3411. No reduction in amounts.

~~In no case shall the amount of Federal funds available to a tribal government involved in any demonstration project be reduced as a result of the enactment of this chapter.~~

- (a) In General.—In no case shall the amount of Federal funds available to an Indian tribe that has in place an approved plan under this Act be reduced as a result of—
- (1) the enactment of this Act; or
 - (2) the approval or implementation of a plan of an Indian tribe under this Act.
- (b) Interaction With Other Laws.—The inclusion of a program in a tribal plan under this Act shall not—
- (1) modify, limit, or otherwise affect the eligibility of the program for contracting under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); or
 - (2) eliminate the applicability of any provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), as the provision relates to a specific program eligible for contracting under that Act.

SECTION 13. §3412. ~~Interagency fund transfers authorized~~ Transfer of funds.

~~The Secretary of the Interior, Secretary of Labor, Secretary of Health and Human Services, or the Secretary of Education, as appropriate, is authorized to take such action as may be necessary to provide for an interagency transfer of funds otherwise available to a tribal government in order to further the purposes of this chapter.~~

- (a) In general.—Notwithstanding any other provision of law, not later than 30 days after the date of apportionment to the applicable Federal department or agency, the head of a Federal agency overseeing a program identified in a plan approved under this Act shall transfer to the Director of the Bureau of Indian Affairs for distribution to an Indian tribe any funds identified in the approved plan of the Indian tribe.
- (b) Transfer of funds.—Notwithstanding any other provision of law, at the request of the Indian tribe, all program funds transferred to an Indian tribe in accordance with the approved plan of the Indian tribe shall be transferred to the Indian tribe pursuant to an existing contract, compact, or funding agreement awarded pursuant to title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

SECTION 14. §3413. Administration of funds and overage.

- (a) Administration of funds
- (1) In general

~~Program funds shall be administered in such a manner as to allow for a determination that funds from specific programs (or an amount equal to the amount attracted from each program) are spent on allowable activities authorized under such program.~~

~~(2) Separate records not required~~

~~Nothing in this section shall be construed as requiring the tribe to maintain separate records tracing any services or activities conducted under its approved plan to the individual programs under which funds were authorized, nor shall the tribe be required to allocate expenditures among such individual programs.~~

(a) Requirements.—

(1) IN GENERAL.—

(A) CONSOLIDATION AND REALLOCATION OF FUNDS.—Notwithstanding any other provision of law, all amounts transferred to a tribe pursuant to an approved plan may be consolidated, reallocated, and rebudgeted as specified in the approved plan to best meet the employment, training, and related needs of the local community served by the Indian tribe.

(B) AUTHORIZED USE OF FUNDS.—The amounts used to carry out a plan approved under this Act shall be administered in such manner as the Secretary determines to be appropriate to ensure the amounts are spent on activities authorized under the approved plan.

(C) EFFECT.—Nothing in this section interferes with the ability of the Secretary or the lead agency to use accounting procedures that conform to generally accepted accounting principles, auditing procedures, and safeguarding of funds that conform to chapter 75 of title 31, United States Code (commonly known as the ‘Single Audit Act of 1984’).

(2) SEPARATE RECORDS AND AUDITS NOT REQUIRED.—Notwithstanding any other provision of law (including regulations and circulars of any agency (including Office of Management and Budget Circular A-133)), an Indian tribe that has in place an approved plan under this Act shall not be required—

(A) to maintain separate records that trace any service or activity conducted under the approved plan to the program for which the funds were initially authorized or transferred;

(B) to allocate expenditures among such a program; or

(C) to audit expenditures by the original source of the program.

(b) Carryover.—

(1) IN GENERAL.—Any funds transferred to an Indian tribe under this Act that are not obligated or expended prior to the beginning of the fiscal year after the fiscal year for which the funds were appropriated shall remain available for obligation or expenditure without fiscal year limitation, subject to the condition that the funds shall be obligated or expended in accordance with the approved plan of the Indian tribe.

(2) NO ADDITIONAL DOCUMENTATION.—The Indian tribe shall not be required to provide any additional justification or documentation of the purposes of the approved plan as a condition of receiving or expending the funds.

(c) Indirect Costs.—Notwithstanding any other provision of law, an Indian tribe shall be entitled to recover 100 percent of any indirect costs incurred by the Indian tribe as a result of the transfer of funds to the Indian tribe under this Act; and

~~(b)~~(d) Overage

(1) ~~All administrative~~ IN GENERAL- All administrative costs may be commingled and participating Indian tribes shall be entitled to the full amount of such costs (under each program or department’s regulations), and no overage shall be counted for Federal audit purposes, provided that the overage is used for the purposes provided for under this chapter. regulations).

(2) Treatment.—The amount equal to the difference between the amount of the commingled funds

and the actual administrative cost of the programs, as described in paragraph (1), shall be considered to be properly spent for Federal audit purposes if the amount is used to achieve the purposes of this Act.

(e) Matching Funds.—Notwithstanding any other provision of law, any funds transferred to an Indian tribe under this Act shall be treated as non-Federal funds for purposes of meeting matching requirements under any other Federal law.

(f) Claims.—The following provisions of law shall apply to plans approved under this Act:

(1) Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101-512; 104 Stat. 1959).

(2) Chapter 171 of title 28 (commonly known as the ‘Federal Tort Claims Act’).

(g) Interest Of Other Income.—

(1) IN GENERAL.—An Indian tribe shall be entitled to retain interest earned on any funds transferred to the tribe under an approved plan and such interest shall not diminish the amount of funds the Indian tribe is authorized to receive under the plan in the year the interest is earned or in any subsequent fiscal year.

(2) PRUDENT INVESTMENT.—Funds transferred under a plan shall be managed in accordance with the prudent investment standard.

~~SECTION 15. §3414. Fiscal accountability.~~

~~Nothing in this chapter shall be construed so as to interfere with the ability of the Secretary or the lead agency to fulfill the responsibilities for the safeguarding of Federal funds pursuant to the Single Audit Act of 1984 [31 U.S.C.A. § 7501 et seq.].~~

~~SECTION 16. §3415. Report on statutory obstacles to program integration.~~

~~(a) Preliminary report~~

~~Not later than two years after October 23, 1992, the Secretary shall submit a preliminary report to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives on the status of the implementation of the demonstration program authorized under this chapter.~~

~~(b) Final report~~

~~Not later than five years after October 23, 1992, the Secretary shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources and the Committee on Education and Labor of the House of Representatives on the results of the implementation of the demonstration program authorized under this chapter. Such report shall identify statutory barriers to the ability of tribal governments to integrate more effectively their employment, training, and related services in a manner consistent with the purposes of this chapter.~~

~~SECTIONS 1715. §3416. Labor market information on Indian work force.~~

~~(a) Report~~

~~The Secretary, in consultation with the Secretary of Labor, shall, in a consistent and reliable manner; The Secretary of Labor, in consultation with the Secretary, Indian tribes, and the Director of the Bureau of the Census, shall develop, maintain and publish, not less than biennially, a report on the population, by gender, eligible for the services which the Secretary provides to Indian people. The report shall include, but is not limited to, information at the national level by State, Bureau of Indian Affairs Service area, and tribal level for the—~~

~~(1) total service population;~~

~~(2) the service population under age 16 and over 64;~~

~~(3) the population available for work, including those not considered to be actively seeking work;~~

- (4) the employed population, including those employed with annual earnings below the poverty line; and
- (5) the numbers employed in private sector positions and in public sector positions.
- (6) Indian demographic information

The Secretary, in consultation with the Bureau of the Census of the Department of Commerce, and the National Center for Native American Studies and Policy Development authorized by Public Law 101-301, shall prepare a report on the need for comprehensive, accurate and periodically updated information on the size and characteristics of the Indian and Alaska Native population throughout the entire United States. This report shall include the need for information, together with the cost of acquiring such information, on the characteristics and need for education, health, housing, job training, and other basic needs of such population, and shall take into consideration the need for this information by Indian tribes and organizations serving Indians in nonreservation areas. The report shall be submitted to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources and the Committee on Education and Labor of the House of Representatives not later than 12 months after October 23, 1992.

SECTIONS ~~1816~~. §3417. Assignment of Federal personnel to State Indian economic programs.

Any State with an economic development program targeted to Indian tribes shall be eligible to receive, at no cost to the State, such Federal personnel assignments as the Secretary, in accordance with the applicable provisions of the Intergovernmental Personnel Act of 1970 [42 U.S.C.A. § 4701 et seq.], may deem appropriate to help ensure the success of such program.

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