(ORAL ARGUMENT NOT SCHEDULED)

No. 22-5100

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NAVAJO NATION,
Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, et al.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR DEFENDANTS-APPELLEES

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

MARK B. STERN
JOHN S. KOPPEL
Attorneys, Appellate Staff
Civil Division, Room 7264
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 514-2495

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to District of Columbia Circuit Rule 28(a)(1), counsel for defendants-appellees hereby certifies the following information as to Parties, Rulings, and Related Cases:

A. Parties and Amici

Plaintiff-appellant is the Navajo Nation. Defendants-appellees are the U.S. Department of the Interior and Debra Anne Haaland, in her official capacity as Secretary, U.S. Department of the Interior. There were no additional parties and no amici in district court.

B. Rulings Under Review

The ruling of the district court (Chutkan, J.) under review is the court's Memorandum Opinion and Order of March 21, 2022, Appendix 216-38.

C. Related Cases

This case has not previously been before this Court, although plaintiff filed a petition for a writ of mandamus (*In re Navajo Nation*, No. 21-5216 (D.C. Cir.)) that was subsequently withdrawn after the district court issued the decision that is the subject of this appeal. Two related cases—*Navajo Nation v. U.S. Dep't of the Interior*, Nos. 21-cv-00013, 22-cv-01182 (D.D.C.)—are pending in district court.

/s/ John S. Koppel
JOHN S. KOPPEL
Counsel for Defendants-Appellees

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GLOSSARY

APPX – Appendix

BIA – Bureau of Indian Affairs

CY – Calendar Year

DE – Docket Entry

ISDEAA – Indian Self-Determination and Education Assistance Act

STATEMENT OF JURISDICTION

Plaintiff Navajo Nation (plaintiff or Nation) invoked the jurisdiction of the district court pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA or Act), 25 U.S.C. § 5331(a), and 28 U.S.C. § 1331. *See*, *e.g.*, Compl., No. 16-cv-00011, Docket Entry (DE) 1. On cross-motions for summary judgment, the court on March 21, 2022, granted each side's motion in part. Memorandum Opinion (Mem. Op.), DE 27, Appendix (APPX) 216-38; Order, DE 28. Plaintiff filed a timely notice of appeal on April 13, 2022. DE 29. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Under the ISDEAA, 25 U.S.C. § 5301 *et seq.*, when Indian tribes or tribal organizations assume responsibility for operating programs that the Bureau of Indian Affairs (BIA) would otherwise run, they enter into self-determination contracts with BIA for a specified or indefinite period of time, under which they must receive an amount not less than the amount that the Secretary of the Interior, through BIA, would have provided for operation of the program, commonly known as the "Secretarial amount." *See id.* § 5325(a)(1). Actual funding amounts are established annually in annual funding agreements. BIA regulations set out relevant procedures and provide that a proposed annual funding agreement will be deemed approved if BIA does not act within a specified time. BIA regulations also

address the circumstances in which the agency may decline to award a proposed agreement, including declining to provide proposed funding levels.

In *Navajo Nation v. U.S. Department of the Interior* (*Navajo Nation I*), 852 F.3d 1124, 1130 (D.C. Cir. 2017), this Court held that a proposed annual funding agreement for CY 2014 in excess of the amount BIA (in its discretion, established under 25 U.S.C. § 5325(a)(1)) would have otherwise provided for operation of the program, should be "deemed approved" under the timing deadline regulation. The four cases involved in this appeal concern the extent to which subsequent annual funding agreements, entered into under a renewal self-determination contract, were required to continue the same funding level.

The question presented is whether the district court correctly held that annual funding agreements entered into under a renewal self-determination contract are not required to maintain the same level of Secretarial amount funding as the "deemed approved" annual funding agreement, which was entered into under a previous self-determination contract whose term had expired.

RELEVANT STATUTES AND REGULATIONS

Except for 25 U.S.C. §§ 5324(c) and 5329, all applicable statutes and regulations are reproduced in the Brief for Appellant.

STATEMENT OF THE CASE

A. Statutory and Regulatory Background

Congress created the ISDEAA to effect "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." 25 U.S.C. § 5302(b); *see also id.* § 5304(j) (requiring the BIA to enter into contracts with tribes "for the planning, conduct and administration of programs or services that are otherwise provided to Indian Tribes and [their] members").

Tribes and federal agencies memorialize this transfer of authority by entering into a "self-determination contract." *See generally* 25 U.S.C. § 5321(a)(1). The contract is "entered into . . . between a Tribal organization and the appropriate Secretary for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law." *Id*. § 5304(j); *see* 25 C.F.R. § 900.6 (incorporating this definition of "contract"). Each self-determination contract defines its own duration; some extend for an indefinite period while others, such as those at issue in this case, are for a specified period. *See* 25 U.S.C. § 5304(c).

Regardless of their length, self-determination contracts are funded one year at a time, through an annual negotiation process between the tribe and the agency, which results in an annual funding agreement that is incorporated into the self-determination contract. *See* 25 U.S.C. § 5329(c) (setting forth Model Agreement at section (f)(2)(B); APPX 133-55 (proposed CY 2018 annual funding agreement). Under the statute, Secretarial amount funds must be provided at a level not less than BIA "would have otherwise provided for the operation of the program[]" at issue if the agency had continued to provide the service itself. 25 U.S.C. § 5325(a)(1). The parties may also agree to higher funding levels.

In the annual negotiation process, a tribal contractor presents BIA with a proposed agreement, which the agency may decline on grounds specified in the statute and regulations. Such declinations, however, are ineffective "if a proposal is not declined within 90 days after it is received by the Secretary," or within an extension granted by the tribal contractor. 25 C.F.R. § 900.18. In that case, the proposal "is deemed approved and the Secretary shall award the contract or any amendment or renewal within that 90-day period and add to the contract the full amount of funds pursuant to section 106(a) of the Act." *Id.*

B. Prior Proceedings

1. The six consolidated cases (known as *Navajo Nation II-VII*) addressed in the district court's ruling involve two self-determination contracts and six annual funding agreements concerning the Nation's Tribal Courts Program. The first two annual funding agreements, those for CYs 2015 and 2016, were incorporated into the parties' CY 2012 self-determination contract, which ran from January 1, 2012, through December 31, 2016. The other four agreements, those for CYs 2017, 2018, 2019 and 2020, were incorporated into the renewed CY 2017 self-determination contract, which ran from January 1, 2017, through December 31, 2021.

The issue in each of the four cases on appeal (*Navajo Nation IV-VII*) concerns the extent to which the annual funding agreement for CY 2014 controls the funding for the subsequent annual funding agreements entered into under the renewal contract. The CY 2014 annual funding agreement was the subject of this Court's decision in *Navajo I*, which involved the application of BIA's regulations that govern the agency's declination of proposed annual funding agreements. The Nation submitted a proposed agreement for CY 2014 on October 4, 2013, during a partial government shutdown that ended on October 17, 2013. The BIA treated the proposal as "received" for purposes of the statute on October 17, the day the

shutdown ended, and issued a partial declination on January 15, 2014, authorizing a Secretarial amount of $1,292,532. In the subsequent litigation, the Nation urged that the relevant date of receipt was October 4 and that BIA had missed the 90-day declination deadline, making the agency liable for $17,055,517, the full amount of the Nation's proposal. The district court rejected the Nation's position, and this Court reversed and remanded, indicating that BIA was liable for the full amount of the agreement proposed by the Nation. *See Navajo Nation I*, 852 F.3d 1124, 1130 (D.C. Cir. 2017).

On remand in the *Navajo Nation I* litigation, the district court ultimately determined that plaintiff's request was facially reasonable and awarded the Nation $15,762,985—the difference between $1,292,532, the Secretarial amount authorized by BIA, and $17,055,517, the full amount plaintiff had requested. *See* Mem. Op. 6-7, APPX 221-22. The district court further held, however, that its ruling should not be considered dispositive with respect to the Nation's claims in its pending cases for the following six years, which were the subject of separate litigation held in abeyance pending the resolution of *Navajo Nation I.* The court noted that BIA "may choose to argue that the one-off expenses included in this award should be excluded from any judgment in those cases." *See Navajo Nation v. Department of the Interior*, No. 14-cv-1909, 2020 WL 13158302, at *3 n.1

(D.D.C. June 12, 2020). The government did not appeal this order, which concluded the *Navajo Nation I* litigation.

2. After the end of the *Navajo Nation I* litigation, the parties resumed litigation in *Navajo Nation II-VII*. Plaintiff maintained that for each of the six years at issue, it was entitled to the full amount of funding it ultimately recovered in the *Navajo Nation I* litigation (with minor adjustments not at issue here), plus interest. The Nation further contended that in *Navajo Nation VI-VII,* BIA improperly removed certain language from the CY 2019 and CY 2020 annual funding agreements that had appeared in substantially similar form in the annual funding agreements for the CYs 2015-17 (but which BIA removed without challenge in the CY 2018 agreement).

The parties filed cross-motions for summary judgment.[1] By Memorandum Opinion of March 21, 2022, APPX 216-38, and accompanying Order, DE 28, the district court granted and denied each party's motion in part. The court awarded judgment to the Nation with respect to the agreements for CYs 2015 and 2016 (*Navajo Nation II-III*), which were covered by the same CY 2012 contract as the

[1] In January 2021, plaintiff filed its complaint for CY 2021 in *Navajo Nation v. U.S. Dep't of the Interior* (*Navajo Nation VIII*), No. 21-cv-00013 (D.D.C.), and in April 2022, it filed its most recent complaint, *Navajo Nation v. U.S. Dep't of the Interior* (*Navajo Nation IX*), No. 22-cv-01182 (D.D.C.), for CY 2022. Those actions have not yet been briefed and remain pending in district court.

CY 2014 annual funding agreement at issue in *Navajo Nation I*. The court held that for these two years the Nation was entitled to $15,759,069 plus interest, and $15,619,176 plus interest, respectively. *See* Mem. Op. 14-18, 22-23, APPX 229-33, 237-38; Order 2, DE 28.

The court awarded judgment to the federal government, however, with respect to the four annual funding agreements that were covered by plaintiff's next self-determination contract, which encompassed CYs 2017-20 (*Navajo Nation IV-VII*). The court held that plaintiff was not entitled to any additional funding for these agreements.

The district court first rejected the Nation's argument that its Secretarial amount increased permanently by virtue of the "deemed approv[al]" (*see* Mem. Op. 14, APPX 229) of the proposed CY 2014 annual funding agreement. The court held that the Secretarial amount required by the statute is based on the level of funding that BIA actually would have provided in CY 2014, the $1,292,732 authorized by BIA in its partial declination of January 15, 2014. *See* Mem. Op. 13-14, APPX 228-29.

But the district court next ruled that under BIA regulations, the "deemed approval" itself nonetheless remained in effect for the duration of the term of the Nation's contract, which ran through CY 2016. *See* Mem. Op. 14-18, APPX 229-

33. The court relied primarily upon 25 C.F.R. § 900.32, which states in pertinent part that if a successor annual funding agreement "is substantially the same as the prior annual funding agreement …, the Secretary shall approve and add to the contract the full amount of funds to which the contractor is entitled, and may not decline, any portion of a successor annual funding agreement." 25 C.F.R. § 900.32. The court found unpersuasive the government's argument that it should interpret § 900.32 as applying solely to annual funding agreements that are the products of consummated negotiations, instead of deemed approvals. Although the government respectfully disagrees with the district court's holding regarding the CY 2015-16 agreements, it is not appealing that ruling.[2]

The court explained that the regulation did not dictate a similar result for the annual funding agreements entered into under the renewed contract spanning CYs 2017-20, noting that § "900.32's import[] . . . extends only to 'successor funding agreements' entered into under the same 'contract.'" Mem. Op. 17, APPX 232 (first citing 25 C.F.R. § 900.32; and then citing 25 U.S.C. § 5329(c)). The Nation has appealed the judgment with respect to the agreements for CYs 2017 through 2020. That holding is the subject of plaintiff's appeal.

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[2] The district court also upheld the Nation's challenge to the removal of certain language from the annual funding agreements for CYs 2019 and 2020. *See* Mem. Op. 18-21, APPX 233-36; Order 2, DE 28. That ruling is also not at issue on this appeal.

SUMMARY OF ARGUMENT

In *Navajo Nation I*, this Court held that the Nation's proposed CY 2014 annual funding agreement—which exceeded the amount BIA "would have otherwise provided for operation of the program[]," 25 U.S.C. § 5325(a)(1)—should be deemed approved because the agency missed the deadline to respond to the Nation's proposal. The ISDEAA contract involved in *Navajo Nation I* expired at the end of CY 2016. The cases involved in this appeal (*Navajo IV-VII*) concern the extent to which subsequent annual funding agreements for CYs 2017-20 were required to continue the same funding level even though they were entered into under a subsequent ISDEAA contract. And the outcome presumably will affect all future years, for as long as plaintiff operates its Tribal Courts Program under the ISDEAA.

Neither the statute itself nor the ISDEAA regulations entitle the Nation to the relief it seeks *ad infinitum*. As the district court held, the statute does not come into play at all in the *Navajo Nation I* successor cases, because plaintiff's Secretarial amount under 25 U.S.C. § 5325(a)(1) did not increase permanently by virtue of the "deemed approval" in CY 2014. Nor does 25 C.F.R. § 900.32 entitle the Nation to relief under the annual funding agreements for CYs 2017-20, for the additional reason that § 900.32 does not apply under a separate self-determination

contract. And, for the same reason, 25 C.F.R. § 900.33 does not advance plaintiff's cause, because by its terms it only applies to renewal contracts, rather than to successor annual funding agreements under expired self-determination contracts.

STANDARD OF REVIEW

The district court's summary judgment ruling is subject to de novo review. *See, e.g.*, *Mayo v. Reynolds*, 875 F.3d 11, 19 (D.C. Cir. 2017). If the statute is ambiguous, it must be construed in favor of the Indian tribe, 25 U.S.C. § 5321(g), but the Indian canon "does not permit reliance on ambiguities that do not exist." *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 506 (1986); *see also Fort McDermitt Paiute and Shoshone Tribe v. Becerra*, 6 F.4th 6, 14 (D.C. Cir. 2021) ("As codified in ISDA, the canon only applies only when a statute is ambiguous.").

ARGUMENT

NEITHER THE ISDEAA NOR ITS IMPLEMENTING REGULATIONS ENTITLE PLAINTIFF TO AN ANNUAL WINDFALL OF MORE THAN $15,000,000 IN PERPETUITY, BASED ON A "DEEMED APPROVAL" OF A PRIOR ANNUAL FUNDING AGREEMENT UNDER AN EARLIER, EXPIRED SELF-DETERMINATION CONTRACT

This appeal is about the impact of the CY 2014 annual funding agreement on subsequent years covered by a different contract than the one at issue in *Navajo*

Nation I. The *Navajo Nation I* contract expired at the end of CY 2016. The subsequent renewed contract covers the four years at issue here, CYs 2017-20.

The district court correctly rejected the Nation's attempt to leverage its *Navajo Nation I* victory, based on the "deemed approval" of its CY 2014 annual funding agreement, into a permanent annual increase in its Secretarial amount of $15,000,000-plus each year, for as long as it remains an ISDEAA contractor responsible for its Tribal Courts Program. Although the court held that plaintiff was entitled to the increased amount in *Navajo Nation II* and *Navajo Nation III* (for CYs 2015 and 2016, respectively, which were under the same ISDEAA contract as *Navajo Nation I*)—a ruling with which the government respectfully disagrees, but from which it does not appeal—the court properly drew the line at that point and upheld BIA's declination of the Nation's proposed annual inclusion of an additional $15,000,000-plus in *Navajo Nation IV-VII* (for CYs 2017-20), which fell under a subsequent renewed contract.

In short, the CYs 2017-20 annual funding agreements were incorporated under a separate self-determination contract from the CYs 2014-16 agreements, and thus any impact of the CY 2014 "deemed approved" agreement does not extend to the CYs 2017-20 agreements. Neither the statute nor the regulations mandate the contrary result. Accordingly, the district court properly declined

plaintiff's request to award it an ISDEAA windfall of $15,000,000-plus each year, in perpetuity. A missed deadline for the CY 2014 annual funding agreement, which was entered into under an earlier, expired self-determination contract, should not be frozen or baked into the Nation's Secretarial amount forever under a renewed self-determination contract.

A. The district court correctly held that the governing statute does not require the result plaintiff seeks. The court explained that the statute permits BIA to decline a proposed annual funding agreement only in limited circumstances, one of which is when the "amount of funds proposed under the contract is in excess of" the amount the agency "would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract," as well as certain "contract support costs." 25 U.S.C. §§ 5321(a)(2)(D), 5325(a)(1). The court noted that the § 5325(a)(1) amount "is commonly referred to as the 'Secretarial amount,' which equates to a funding floor." Mem. Op. 3, APPX 218 (quoting *Navajo Nation I,* 852 F.3d 1124, 1130 (D.C. Cir. 2017)). This "Secretarial amount is not determined simply by looking to a prior year's award, but rather by considering what amount the BIA 'would have otherwise provided for the operation of the programs' at issue if the agency had continued to provide the service itself." Mem. Op. 13, APPX 228. It was evident, the court explained,

that "BIA would not have provided $17,055,517 to operate the Nation's judicial program" in CY 2014. *Id*.

The court observed that after receiving the Nation's CY 2014 proposal, BIA sent the Nation a letter "explaining its concerns with the substantial increase in proposed funds from the 2013 agreement and stating that the BIA would 'hold the approval' of the Proposal until the Nation submitted certain documents justifying the need for that substantial increase, to which the Nation did not respond." Mem. Op. 13, APPX 228 (quoting *Navajo Nation I*, 852 F.3d at 1127). Consistent with those concerns, BIA authorized $1,292,532 in funding rather than the $17,055,517 requested. The court noted that "[t]hough its partial declination was untimely, and the proposed [annual funding agreement] was 'deemed approved,' the BIA's intent was clear: it 'would have otherwise provided' $1,292,532 in annual funding had the agency retained responsibility for administering the programs itself. 25 U.S.C. § 5325(a)(1)." Mem. Op. 13-14, APPX 228-29. The court therefore held that "the Secretarial amount in 2014 was $1,292,532, and thus, the BIA's partial declinations of each of the [annual funding agreements] proposed from 2015 through 2020, which did not go below that funding floor, did not run afoul of 25 U.S.C. § 5325(a)(1)." Mem. Op. 14, APPX 229.

The statute elsewhere provides that the "amounts of [self-determination] contracts may be renegotiated annually to reflect changed circumstances and factors, including, but not limited to, cost increases beyond the control of the tribal organization." 25 U.S.C. § 5324(c)(2). Thus, the statute expressly contemplates that the amount provided under a self-determination contract is not written in stone. So long as the Secretarial amount provided under a self-determination contract does not go below the amount the agency would have otherwise provided from its appropriations to operate the program if not for the contract, § 5325's funding requirement is satisfied. *See Fort McDermitt Paiute and Shoshone Tribe v. Becerra*, 6 F.4th 6, 9-10 (D.C. Cir. 2021). The district court therefore correctly rejected plaintiff's statutory argument, inasmuch as "the BIA's partial declinations of each of the [annual funding agreements] proposed from 2015 through 2020, which did not go below th[e CY 2014] funding floor, did not run afoul of 25 U.S.C. § 5325(a)(1)." Mem. Op. 14, APPX 229.

As this Court observed in *Navajo Nation I*, 25 U.S.C. § 5325(a)(1) "'sets a floor, not a ceiling, on the amount of money that a Tribe can receive in a self-determination contract'" and the "Secretarial amount is not immutable and can be increased by the Secretary." 852 F.3d at 1130 (quoting *Yurok Tribe v. Department of the Interior*, 785 F.3d 1405, 1412 (Fed. Cir. 2015)). The question now,

however, is whether the statute required the Secretary to make greater expenditures each year than would have been the case in the absence of the contract. It plainly does not.

The legislative history cited by the Nation (Pl. Br. 18-20) does not bear on the question here. That history, which concerns 25 U.S.C. § 5325(b), consists of general statements that do not address the situation before the Court, *i.e.*, where the amount requested is not based on the amount expended by the Secretary to operate the program. Such generalities do not establish the proposition for which plaintiff contends. Moreover, Congress's statement that the purpose of 25 U.S.C. § 5325(b)'s limitation on reducing the Secretarial amount was "to prevent tribal contract funding amounts from being unilaterally reduced by the Secretary once the contract funding amount has been established," S. Rep. No. 100-274, at 17 (1987), *as reprinted in* 1988 U.S.C.C.A.N. 2620, 2636, by its terms addresses only contracts, not annual funding agreements; the fact that a contract incorporates an annual funding agreement does not elide the distinction between the two. And 25 U.S.C. § 5325(b) is inapplicable in any event, because the amount of funds requested by the Nation is not "required by [25 U.S.C. § 5325(a)(1)]" in the first place, *see id.* § 5325(b), as it is above the amount the agency would have otherwise provided from its appropriations to operate the program.

B. The district court also correctly held that the BIA regulations do not require that BIA continue the level of funding of the CY 2014 annual funding agreement in annual funding agreements entered into under a subsequent contract. 25 C.F.R. § 900.32 provides that, absent several exceptions, the Secretary may not decline "a proposed successor annual funding agreement," if the agreement "is substantially the same as the prior annual funding agreement," in which case "the Secretary shall approve and add to the contract the full amount of funds to which the contractor is entitled, and may not decline, any portion of a successor annual funding agreement." 25 C.F.R. § 900.32. The court believed (incorrectly, in the government's view) that this language compelled the Secretary to accept the proposed funding levels for the CYs 2015 and 2016 annual funding agreements. The court recognized, however, that in any case this reasoning does not apply to the annual funding agreements entered into under the renewed self-determination contract that ran from CYs 2017 through 2020. The agreements under that contract "are not 'successor funding agreements' to the 2014 [annual funding agreement]." Mem. Op. 17, APPX 232. Indeed, as the district court noted, "[t]he Nation concedes that section 900.32 does not apply to BIA's approval of the 2017 renewed contract and 2017 [annual funding agreement]." Mem. Op. 17 n.6, APPX 232 n.6.

The Federal Register publication promulgating 25 C.F.R. § 900.32 further illustrates the inaccuracy of the Nation's interpretation. In that document, the Departments of Interior and Health and Human Services explained that "as a matter of practice," BIA had not "reviewed contract renewal proposals for declination issues" in the past. 61 Fed. Reg. 32,482, 32,487 (June 24, 1996). On the basis of that practice and comments received, the Departments "agreed that [the Indian Health Service] and the BIA will not use the declination process in contract renewals where there is no material or significant change to the contract." *Id.* But the funding level the Nation seeks now was not the product of any BIA agreement after review; rather, it arose by operation of regulation, one whose operation here did indeed work a "material or significant change" to the BIA-approved Secretarial amount under the CY 2012 contract. There is nothing to suggest the drafters of this rule contemplated the scenario presented in this case, or the absurd result sought by the Nation, when § 900.32 was promulgated. *See*, *e.g.*, *Secretary of Labor v. TwentyMile Coal Co.*, 411 F.3d 256, 260 (D.C. Cir. 2005) (declining to adopt interpretation of regulation that "would lead to absurd results").

The Nation's reliance upon 25 C.F.R. § 900.33 is equally misplaced. That regulation states in pertinent part that BIA "will not review the renewal of a term contract for declination issues where no material and substantial change to the

scope or funding of a program, functions, services, or activities has been proposed by the Indian tribe or tribal organization." 25 C.F.R. § 900.33. As the district court concluded, § 900.33 "is inapposite, as it pertains only to the agency's authority to decline renewal contracts, and not to successor [annual funding agreements]." Mem. Op. 17 n.6, APPX 232 n.6. Furthermore, as in the statutory context (*see supra* at p. 16), plaintiff's argument concerning § 900.33 mistakenly conflates contracts and annual funding agreements, while also suggesting that §§ 900.32 and 900.33 are largely redundant. And plaintiff's interpretation of § 900.33 leads to the same improbable results as its analysis of § 900.32, precisely because for purposes of § 900.33 as well, there has been a "material and substantial change to the . . . funding" of the renewal contract. *Id*.

C. Finally, contrary to the Nation's assertion, the "Indian canon" (incorporated into the ISDEAA) does not support its claim. As the foregoing discussion demonstrates, neither the statute nor the regulations are ambiguous on this issue. And absent an ambiguity, the canon does not apply. *See*, *e.g.*, *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 506 (1986) (Indian canon "does not permit reliance on ambiguities that do not exist."); *Fort McDermitt Paiute and Shoshone Tribe*, 6 F.4th at 14 ("As codified in ISDA, the canon only applies only when a statute is ambiguous.").

* * * * *

In sum, as the district court held, the Nation has raised no basis to invalidate the BIA's partial declinations of the CY 2017-20 proposed annual funding agreements. The ISDEAA and its implementing regulations do not authorize the permanent, ongoing annual windfall of more than $15,000,000 that plaintiff seeks.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

MARK B. STERN

/s/ John S. Koppel
JOHN S. KOPPEL
(202) 514-2495
Attorneys, Appellate Staff
Civil Division, Room 7264
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001
Counsel for Defendants-Appellees

AUGUST 2022

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 4,312 words, excluding exempt material, according to the count of Microsoft Word.

/s/ John S. Koppel

JOHN S. KOPPEL
Counsel for Defendants-Appellees
john.koppel@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2022, I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, and that I served counsel for Appellant by the same means.

/s/ John S. Koppel

JOHN S. KOPPEL
Counsel for Defendants-Appellees
john.koppel@usdoj.gov

ADDENDUM

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25 U.S.C. § 5324. Contract or grant provisions and administration. (Excerpts)

(c) Term of self-determination contracts; annual renegotiation

(1) A self-determination contract shall be—

(A) for a term not to exceed three years in the case of other than a mature contract, unless the appropriate Secretary and the tribe agree that a longer term would be advisable, and

(B) for a definite or an indefinite term, as requested by the tribe (or, to the extent not limited by tribal resolution, by the tribal organization), in the case of a mature contract.

The amounts of such contracts shall be subject to the availability of appropriations.

(2) The amounts of such contracts may be renegotiated annually to reflect changed circumstances and factors, including, but not limited to, cost increases beyond the control of the tribal organization.

25 U.S.C. § 5329. Contract or grant specifications.

(a) Terms

Each self-determination contract entered into under this chapter shall—

(1) contain, or incorporate by reference, the provisions of the model agreement described in subsection (c) of this section (with modifications where indicated and the blanks appropriately filled in), and

(2) subject to subsections (a) and (b) of section 5321 of this title, contain such other provisions as are agreed to by the parties.

(b) Payments; Federal records

Notwithstanding any other provision of law, the Secretary may make payments pursuant to section 1(b)(6) of such model agreement. As provided in section 1(b)(7) of the model agreement, the records of the tribal government or tribal organization specified in such section shall not be considered Federal records for purposes of chapter 5 of title 5.

(c) Model agreement

The model agreement referred to in subsection (a)(1) of this section reads as follows:

"SECTION 1. AGREEMENT BETWEEN THE SECRETARY AND THE _____ TRIBAL GOVERNMENT.

"(a) AUTHORITY AND PURPOSE.—

"(1) AUTHORITY.—This agreement, denoted a Self-Determination Contract (referred to in this agreement as the 'Contract'), is entered into by the Secretary of the Interior or the Secretary of Health and Human Services (referred to in this agreement as the 'Secretary'), for and on behalf of the United States pursuant to title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)[1] and by the authority of the _____ tribal government or tribal organization (referred to in this agreement as the 'Contractor'). The provisions of title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)[1] are incorporated in this agreement.

"(2) PURPOSE.—Each provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)[1] and each provision of this Contract shall be

[1] See References in Text note below.

liberally construed for the benefit of the Contractor to transfer the funding and the following related functions, services, activities, and programs (or portions thereof), that are otherwise contractable under section 102(a) of such Act, including all related administrative functions, from the Federal Government to the Contractor: (List functions, services, activities, and programs).

"(b) TERMS, PROVISIONS, AND CONDITIONS.—

"(1) TERM.—Pursuant to section 105(c)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(1)),[1] the term of this contract shall be __ years. Pursuant to section 105(d)(1) of such Act (25 U.S.C. 450j(d))[1], upon the election by the Contractor, the period of this Contract shall be determined on the basis of a calendar year, unless the Secretary and the Contractor agree on a different period in the annual funding agreement incorporated by reference in subsection (f)(2).

"(2) EFFECTIVE DATE.—This Contract shall become effective upon the date of the approval and execution by the Contractor and the Secretary, unless the Contractor and the Secretary agree on an effective date other than the date specified in this paragraph.

"(3) PROGRAM STANDARD.—The Contractor agrees to administer the program, services, functions and activities (or portions thereof) listed in subsection (a)(2) of the Contract in conformity with the following standards: (list standards).

"(4) FUNDING AMOUNT.—Subject to the availability of appropriations, the Secretary shall make available to the Contractor the total amount specified in the annual funding agreement incorporated by reference in subsection (f)(2). Such amount shall not be less than the applicable amount determined pursuant to section 106(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j–1).[1]

"(5) LIMITATION OF COSTS.—The Contractor shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under this Contract. If, at any time, the Contractor has reason to believe that the total amount required for performance of this Contract or a specific activity conducted under this Contract would be greater than the amount of funds awarded under this Contract, the Contractor shall provide reasonable notice to the appropriate Secretary. If the appropriate Secretary does not take such action as may be necessary

to increase the amount of funds awarded under this Contract, the Contractor may suspend performance of the Contract until such time as additional funds are awarded.

"(6) PAYMENT.—

"(A) IN GENERAL.—Payments to the Contractor under this Contract shall—

"(i) be made as expeditiously as practicable; and

"(ii) include financial arrangements to cover funding during periods covered by joint resolutions adopted by Congress making continuing appropriations, to the extent permitted by such resolutions.

"(B) QUARTERLY, SEMIANNUAL, LUMP-SUM, AND OTHER METHODS OF PAYMENT.—

"(i) IN GENERAL.—Pursuant to section 108(b) of the Indian Self-Determination and Education Assistance Act, and notwithstanding any other provision of law, for each fiscal year covered by this Contract, the Secretary shall make available to the Contractor the funds specified for the fiscal year under the annual funding agreement incorporated by reference pursuant to subsection (f)(2) by paying to the Contractor, on a quarterly basis, one-quarter of the total amount provided for in the annual funding agreement for that fiscal year, in a lump-sum payment or as semiannual payments, or any other method of payment authorized by law, in accordance with such method as may be requested by the Contractor and specified in the annual funding agreement.

"(ii) METHOD OF QUARTERLY PAYMENT.—If quarterly payments are specified in the annual funding agreement incorporated by reference pursuant to subsection (f)(2), each quarterly payment made pursuant to clause (i) shall be made on the first day of each quarter of the fiscal year, except that in any case in which the Contract year coincides with the Federal fiscal year, payment for the first quarter shall be made not later than the date that is 10 calendar days after the date on which the Office of Management and Budget apportions the appropriations for the fiscal year for the programs, services, functions, and activities subject to this Contract.

"(iii) APPLICABILITY.—Chapter 39 of title 31, United States Code, shall apply to the payment of funds due under this Contract and the annual funding agreement referred to in clause (i).

"(7) RECORDS AND MONITORING.—

"(A) IN GENERAL.—Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the recordkeeping system of the Department of the Interior or the Department of Health and Human Services (or both), records of the Contractor shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

"(B) RECORDKEEPING SYSTEM.—The Contractor shall maintain a recordkeeping system and, upon reasonable advance request, provide reasonable access to such records to the Secretary.

"(C) RESPONSIBILITIES OF CONTRACTOR.— The Contractor shall be responsible for managing the day-to-day operations conducted under this Contract and for monitoring activities conducted under this Contract to ensure compliance with the Contract and applicable Federal requirements. With respect to the monitoring activities of the Secretary, the routine monitoring visits shall be limited to not more than two performance monitoring visits for this Contract by the head of each operating division, departmental bureau, or departmental agency, or duly authorized representative of such head unless—

"(i) the Contractor agrees to one or more additional visits; or

"(ii) the appropriate official determines that there is reasonable cause to believe that grounds for reassumption of the Contract, suspension of Contract payments, or other serious Contract performance deficiency may exist.

No additional visit referred to in clause (ii) shall be made until such time as reasonable advance notice that includes a description of the nature of the problem that requires the additional visit has been given to the Contractor.

"(8) PROPERTY.—

"(A) IN GENERAL.—As provided in section 105(f) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(f)),[1] at the request of the Contractor, the Secretary may make available, or transfer to the Contractor, all reasonably divisible real property, facilities, equipment, and personal property that the Secretary has used to provide or administer the programs, services, functions, and activities covered by this Contract. A mutually agreed upon list specifying the property, facilities, and equipment so furnished shall also be prepared by the Secretary, with the concurrence of the Contractor, and periodically revised by the Secretary, with the concurrence of the Contractor.

"(B) RECORDS.—The Contractor shall maintain a record of all property referred to in subparagraph (A) or other property acquired by the Contractor under section 105(f)(2)(A) of such Act for purposes of replacement.

"(C) JOINT USE AGREEMENTS.—Upon the request of the Contractor, the Secretary and the Contractor shall enter into a separate joint use agreement to address the shared use by the parties of real or personal property that is not reasonably divisible.

"(D) ACQUISITION OF PROPERTY.—The Contractor is granted the authority to acquire such excess property as the Contractor may determine to be appropriate in the judgment of the Contractor to support the programs, services, functions, and activities operated pursuant to this Contract.

"(E) CONFISCATED OR EXCESS PROPERTY.— The Secretary shall assist the Contractor in obtaining such confiscated or excess property as may become available to tribes, tribal organizations, or local governments.

"(F) SCREENER IDENTIFICATION CARD.—A screener identification card (General Services Administration form numbered 2946) shall be issued to the Contractor not later than the effective date of this Contract. The designated official shall, upon request, assist the Contractor in securing the use of the card.

"(G) CAPITAL EQUIPMENT.—The Contractor shall determine the capital equipment, leases, rentals, property, or services the Contractor requires to perform the obligations of the Contractor under this subsection, and shall acquire and maintain records of such capital equipment, property rentals, leases, property, or services through applicable procurement procedures of the Contractor.

"(9) AVAILABILITY OF FUNDS.—Notwithstanding any other provision of law, any funds provided under this Contract—

"(A) shall remain available until expended; and

"(B) with respect to such funds, no further—

"(i) approval by the Secretary, or

"(ii) justifying documentation from the Contractor,

shall be required prior to the expenditure of such funds.

"(10) TRANSPORTATION.—Beginning on the effective date of this Contract, the Secretary shall authorize the Contractor to obtain interagency motor pool vehicles and related services for performance of any activities carried out under this Contract.

"(11) FEDERAL PROGRAM GUIDELINES, MANUALS, OR POLICY DIRECTIVES.—Except as specifically provided in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)[1] the Contractor is not required to abide by program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Contractor and the Secretary, or otherwise required by law.

"(12) DISPUTES.—

"(A) THIRD-PARTY MEDIATION DEFINED.— For the purposes of this Contract, the term 'third-party mediation' means a form of mediation whereby the Secretary and the Contractor nominate a third party who is not employed by or significantly involved with the Secretary of the Interior, the Secretary of Health and Human Services, or the Contractor, to serve as a third-party mediator to mediate disputes under this Contract.

"(B) ALTERNATIVE PROCEDURES.—In addition to, or as an alternative to, remedies and procedures prescribed by section 110 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450m–1),[1] the parties to this Contract may jointly—

"(i) submit disputes under this Contract to third-party mediation;

"(ii) submit the dispute to the adjudicatory body of the Contractor, including the tribal court of the Contractor;

"(iii) submit the dispute to mediation processes provided for under the laws, policies, or procedures of the Contractor; or

"(iv) use the administrative dispute resolution processes authorized in subchapter IV of chapter 5 of title 5, United States Code.

"(C) EFFECT OF DECISIONS.—The Secretary shall be bound by decisions made pursuant to the processes set forth in subparagraph (B), except that the Secretary shall not be bound by any decision that significantly conflicts with the interests of Indians or the United States.

"(13) ADMINISTRATIVE PROCEDURES OF CONTRACTOR.—Pursuant to the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.), the laws, policies, and procedures of the Contractor shall provide for administrative due process (or the equivalent of administrative due process) with respect to programs, services, functions, and activities that are provided by the Contractor pursuant to this Contract.

"(14) SUCCESSOR ANNUAL FUNDING AGREEMENT.—

"(A) IN GENERAL.—Negotiations for a successor annual funding agreement, provided for in subsection (f)(2), shall begin not later than 120 days prior to the conclusion of the preceding annual funding agreement. Except as provided in section 105(c)(2) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(2))[1] the funding for each such successor annual funding agreement shall only be reduced pursuant to section 106(b) of such Act (25 U.S.C. 450j–1(b)).[1]

"(B) INFORMATION.—The Secretary shall prepare and supply relevant information, and promptly comply with any request by the Contractor for information that the Contractor reasonably needs to determine the amount of funds that may be available for a successor annual funding agreement, as provided for in subsection (f)(2) of this Contract.

"(15) CONTRACT REQUIREMENTS; APPROVAL BY SECRETARY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), for the term of the Contract, section 2103 of the Revised Statutes (25 U.S.C. 81), section 16 of the Act of June 18, 1934 (48 Stat. 987, chapter 576; 25 U.S.C. 476),[1] and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply to any contract entered into in connection with this Contract.

"(B) REQUIREMENTS.—Each Contract entered into by the Contractor with a third party in connection with performing the obligations of the Contractor under this Contract shall—

"(i) be in writing;

"(ii) identify the interested parties, the authorities of such parties, and purposes of the Contract;

"(iii) state the work to be performed under the Contract; and

"(iv) state the process for making any claim, the payments to be made, and the terms of the Contract, which shall be fixed.

"(c) OBLIGATION OF THE CONTRACTOR.—

"(1) CONTRACT PERFORMANCE.—Except as provided in subsection (d)(2), the Contractor shall perform the programs, services, functions, and activities as provided in the annual funding agreement under subsection (f)(2) of this Contract.

"(2) AMOUNT OF FUNDS.—The total amount of funds to be paid under this Contract pursuant to section 106(a) shall be determined in an annual funding agreement entered into between the Secretary and the Contractor, which shall be incorporated into this Contract.

"(3) CONTRACTED PROGRAMS.—Subject to the availability of appropriated funds, the Contractor shall administer the programs, services, functions, and activities identified in this Contract and funded through the annual funding agreement under subsection (f)(2).

"(4) TRUST SERVICES FOR INDIVIDUAL INDIANS.—

"(A) IN GENERAL.—To the extent that the annual funding agreement provides funding for the delivery of trust services to individual Indians that have been provided by the Secretary, the Contractor shall maintain at least the same level of service as the Secretary provided for such individual Indians, subject to the availability of appropriated funds for such services.

"(B) TRUST SERVICES TO INDIVIDUAL INDIANS.—For the purposes of this paragraph only, the term 'trust services for individual Indians' means only those services that pertain to land or financial management connected to individually held allotments.

"(5) FAIR AND UNIFORM SERVICES.—The Contractor shall provide services under this Contract in a fair and uniform manner and shall provide access to an administrative or judicial body empowered to adjudicate or otherwise resolve complaints, claims, and grievances brought by program beneficiaries against the Contractor arising out of the performance of the Contract.

"(d) OBLIGATION OF THE UNITED STATES.—

"(1) TRUST RESPONSIBILITY.—

"(A) IN GENERAL.—The United States reaffirms the trust responsibility of the United States to the _____ Indian tribe(s) to protect and conserve the trust resources of the Indian tribe(s) and the trust resources of individual Indians.

"(B) CONSTRUCTION OF CONTRACT.—Nothing in this Contract may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the tribe(s) or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility.

"(2) GOOD FAITH.—To the extent that health programs are included in this Contract, and within available funds, the Secretary shall act in good faith in cooperating with the Contractor to achieve the goals set forth in the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

"(3) PROGRAMS RETAINED.—As specified in the annual funding agreement, the United States hereby retains the programs, services, functions, and activities with respect to the tribe(s) that are not specifically assumed by the Contractor in the annual funding agreement under subsection (f)(2).

"(e) OTHER PROVISIONS.—

"(1) DESIGNATED OFFICIALS.—Not later than the effective date of this Contract, the United States shall provide to the Contractor, and the Contractor shall provide to the United States, a written designation of a senior official to serve as a representative for notices, proposed amendments to the Contract, and other purposes for this Contract.

"(2) CONTRACT MODIFICATIONS OR AMENDMENT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no modification to this Contract shall take effect unless such modification is made in the form of a written amendment to the Contract, and the Contractor and the Secretary provide written consent for the modification.

"(B) EXCEPTION.—The addition of supplemental funds for programs, functions, and activities (or portions thereof) already included in the annual funding agreement under subsection (f)(2), and the reduction of funds pursuant to section 106(b)(2), shall not be subject to subparagraph (A).

"(3) OFFICIALS NOT TO BENEFIT.—No Member of Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Contract, or to any benefit that may arise from such contract. This paragraph may not be construed to apply to any contract with a third party entered into under this Contract if such contract is made with a corporation for the general benefit of the corporation.

"(4) COVENANT AGAINST CONTINGENT FEES.— The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract

executed pursuant to this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

"(f) ATTACHMENTS.—

"(1) APPROVAL OF CONTRACT.—Unless previously furnished to the Secretary, the resolution of the _____ Indian tribe(s) authorizing the contracting of the programs, services, functions, and activities identified in this Contract is attached to this Contract as attachment 1.

"(2) ANNUAL FUNDING AGREEMENT.—

"(A) IN GENERAL.—The annual funding agreement under this Contract shall only contain—

"(i) terms that identify the programs, services, functions, and activities to be performed or administered, the general budget category assigned, the funds to be provided, and the time and method of payment; and

"(ii) subject to subsections (a) and (b) of section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5321), such other provisions, including a brief description of the programs, services, functions, and activities to be performed (including those supported by financial resources other than those provided by the Secretary), to which the parties agree.

"(B) INCORPORATION BY REFERENCE.—The annual funding agreement is hereby incorporated in its entirety in this Contract and attached to this Contract as attachment 2."

(Pub. L. 93–638, title I, §108, as added Pub. L. 103–413, title I, §103, Oct. 25, 1994, 108 Stat. 4260; amended Pub. L. 106–568, title VIII, §812(a), Dec. 27, 2000, 114 Stat. 2917; Pub. L. 116–180, title II, §205, Oct. 21, 2020, 134 Stat. 881.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and

Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in the provisions of subsec. (c) setting out the model agreement, is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of this title prior to editorial reclassification as this chapter. Title I of the Act was classified principally to part A (§450f et seq.) of chapter 14 of this title prior to editorial reclassification as this subchapter. Sections 105, 106, and 110 of the Act were classified to sections 450j, 450j–1, and 450m–1, respectively, of this title prior to editorial reclassification as sections 5324, 5325, and 5331, respectively, of this title. Section 102(a) of the Act is classified to section 5321(a) of this title. Section 108(b) of the Act is classified to subsec. (b) of this section. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Indian Civil Rights Act of 1968, referred to in section 1(b)(13) of the provisions of subsec. (c) setting out the model agreement, is title II of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 77, which is classified generally to subchapter I (§1301 et seq.) of chapter 15 of this title. For complete classification of this Act to the Code, see Tables.

Section 16 of the Act of June 18, 1934, referred to in section 1(b)(15)(A) of the provisions of subsec. (c) setting out the model agreement, is section 16 of act June 18, 1934, ch. 576, 48 Stat. 987, which was classified to section 476 of this title prior to editorial reclassification as section 5123 of this title.

The Act of July 3, 1952, referred to in section 1(b)(15)(A) of the provisions of subsec. (c) setting out the model agreement, is act July 3, 1952, ch. 549, 66 Stat. 323, which enacted section 82a of this title and provisions set out as a note under section 82a of this title.

The Indian Health Care Improvement Act, referred to in section 1(d)(2) of the provisions of subsec. (c) setting out the model agreement, is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, 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.

CODIFICATION

Section was formerly classified to section 450l of this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 108 of Pub. L. 93–638 was renumbered section 5(f) and was classified to section 450c(f) of this title prior to editorial reclassification as section 5305(f) of this title.

AMENDMENTS

2020—Subsec. (a)(2). Pub. L. 116–180, §205(1), inserted "subject to subsections (a) and (b) of section 5321 of this title," before "contain".

Subsec. (c). Pub. L. 116–180, §205(3), substituted "two performance monitoring visits" for "one performance monitoring visit" in the introductory provisions of section 1(b)(7)(C) of the provisions setting out the model agreement.

Pub. L. 116–180, §205(2), inserted "subject to subsections (a) and (b) of section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5321)," before "such other provisions" in section 1(f)(2)(A)(ii) of the provisions setting out the model agreement.

2000—Subsec. (c). Pub. L. 106–568 substituted ", section 16 of the Act of June 18, 1934" for "and section 16 of the Act of June 18, 1934" and "and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply" for "shall not apply" in section 1(b)(15)(A) of the provisions setting out the model agreement.

Statutory Notes and Related Subsidiaries

QUARTERLY PAYMENTS OF FUNDS TO TRIBES

Pub. L. 105–83, title III, §311, Nov. 14, 1997, 111 Stat. 1590, provided that: "Notwithstanding Public Law 103–413 [see Short Title of 1994 Amendment note set out under section 5301 of this title], quarterly payments of funds to tribes and tribal

organizations under annual funding agreements pursuant to section 108 of Public Law 93–638 [25 U.S.C. 5329], as amended, beginning in fiscal year 1998 and therafter [sic], may be made on the first business day following the first day of a fiscal quarter."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–208, div. A, title I, §101(d) [title III, §311], Sept. 30, 1996, 110 Stat. 3009–181, 3009–221.

Pub. L. 104–134, title I, §101(c) [title III, §311], Apr. 26, 1996, 110 Stat. 1321–156, 1321–197; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.