

(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Indian tribes;

(iii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;

(iv) Nonprofit Alaska Native Regional Corporations/Associations with village-specific projects;

(v) Other tribal or village organizations or consortia of Indian tribes; and

(vi) Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs. (Statutory authority: Sections 803(d) of the Native Americans Programs Act of 1974, as amended 42 U.S.C. 2991b(d).)

(b) The following is a nonexclusive list of activities that are ineligible for funding under programs authorized by the Native American Programs Act of 1974:

(1) Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations (“third party T/TA”). However, the purchase of T/TA by a grantee for its own use or for its members’ use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable;

(2) Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant’s SEDS long-range development plan;

(3) The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs;

(4) Core administration functions, or other activities, that essentially support only the applicant’s on-going administrative functions; however, for Competitive Area 2, Alaska-Specific SEDS Projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place;

(5) The conduct of activities which are not responsive to one or more of the three interrelated ANA goals (Governance Development, Economic Development, and Social Development);

(6) Proposals from consortia of tribes that are not specific with regard to support from, and roles of member tribes. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member tribes also receive funding from ANA; and

(7) The purchase of real estate. (Statutory authority: Sections 803B of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b-2)

[61 FR 42820, Aug. 19, 1996]

#### § 1336.34 Notice of ineligibility.

(a) Upon a finding by the Commissioner that an organization which has applied for funding is ineligible or that the activities proposed by an organization are ineligible, the Commissioner shall inform the applicant by certified letter of the decision.

(b) The letter must include the following:

(1) The legal and factual grounds for the Commissioner’s finding concerning eligibility;

(2) A copy of the regulations in this part; and

(3) The following statement: This is the final decision of the Commissioner, Administration for Native Americans. It shall be the final decision of the Department unless, within 30 days after receiving this decision as provided in §810(b) of the Native Americans Programs Act of 1974, as amended, and 45 CFR part 1336, you deliver or mail (you should use registered or certified mail to establish the date) a written notice of appeal to the HHS Departmental Appeals Board, 200 Independence Avenue, S.W., Washington, D.C. 20201. You shall attach to the notice a copy of this decision and note that you intend an appeal. The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant’s position on such issue(s) along with pertinent facts and reasons in support of the position. We are enclosing a copy of 45

## **§ 1336.35**

CFR part 1336 which governs the conduct of appeals under §810(b). For additional information on the appeals process see 45 CFR 1336.35. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[61 FR 42821, Aug. 19, 1996]

### **§ 1336.35 Appeal of ineligibility.**

The following steps apply when seeking an appeal on a finding of ineligibility for funding:

(a) An applicant, which has had its application rejected either because it has been found ineligible or because the activities it proposes are ineligible for funding by the Commissioner of ANA, may appeal the Commissioner's ruling to the HHS Departmental Appeals Board, in writing, within 30 days following receipt of ineligibility notification.

(b) The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position.

(c) Upon receipt of appeal for reconsideration of a rejected application or activities proposed by an applicant, the Departmental Appeals Board will notify the applicant by certified mail that the appeal has been received.

(d) The applicant's request for reconsideration will be reviewed by the Departmental Appeals Board in accordance with 45 CFR part 16, except as otherwise provided in this part.

(e) The Commissioner shall have 45 days to respond to the applicant's submission under paragraph (a) of this section.

(f) The applicant shall have 20 days to respond to the Commissioner's submission and the parties may be requested to submit additional information within a specified time period before closing the record in the appeal.

(g) The Departmental Appeals Board will review the record in the appeal and provide a final written decision within 30 days following the closing of the record, unless the Board determines for good reason that a decision cannot be issued within this time period and so notifies the parties.

## **45 CFR Ch. XIII (10–1–23 Edition)**

(h) If the Departmental Appeals Board determines that the applicant is eligible or that the activities proposed by the applicant are eligible for funding, such eligibility shall not be effective until the next cycle of grant proposals are considered by the Administration for Native Americans. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[61 FR 42822, Aug. 19, 1996]

### **Subpart D—Evaluation**

#### **§ 1336.40 General.**

Progress reports and continuation applications must contain sufficient information for ANA to determine the extent to which the recipient meets ANA project evaluation standards. Sufficient information means information adequate to enable ANA to compare the recipient's accomplishments with the goals and activities of the approved work plan and with ANA project evaluation criteria.

(Approved by the Office of Management and Budget under control numbers 0980–0155 and 0980–0144)

### **Subpart E—Financial Assistance Provisions**

#### **§ 1336.50 Financial and administrative requirements.**

(a) *General.* The following HHS regulations apply to all grants awarded under this part:

45 CFR Part 16 Department grant appeals process.

45 CFR Part 46 Protection of human subjects.

45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards

45 CFR Part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

45 CFR Part 81 Practice and procedure for hearing under part 80.

45 CFR Part 84 Nondiscrimination on the basis of handicap in federally assisted programs.