

SUBCHAPTER D—THE ADMINISTRATION FOR NATIVE AMERICANS, NATIVE AMERICAN PROGRAMS

PART 1336—NATIVE AMERICAN PROGRAMS

Subpart A—Definitions

Sec.
1336.1 Definitions.

Subpart B—Purpose of the Native American Program

1336.5 Program purpose.

Subpart C—Financial Assistance for Native American Projects

1336.10 Eligibility.
1336.11 Types of projects supported.
1336.12 Approval of financial assistance.

Subpart D—Training and Technical Assistance

1336.20 Eligibility.
1336.21 Types of training and technical assistance.

Subpart E—Research, Demonstration, and Pilot Projects

1336.30 Eligibility.
1336.31 Scope of research, demonstration, and pilot projects.

Subpart F—Project Evaluations

1336.40 Evaluation.

Subpart G—Financial Assistance Provisions

1336.50 General.
1336.51 Notification to State and Local Officials.
1336.52 Cost sharing and matching.
1336.53 Financial and administrative requirements.
1336.54 Appeals.

Subpart H—Indian Preference Provisions

1336.60 Indian preference.
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Subpart A—Definitions

§ 1336.1 Definitions.

For the purposes of this part, unless the context otherwise requires:

“Act” means the Native American Programs Act of 1974.

“Alaskan Native” means a person who is an Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut, or any combination thereof. The term also includes any person who is regarded as an Alaskan Native by the Alaskan Native village or group of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaskan Native by an Alaskan Native village or group. The term includes any Alaskan Native as so defined, either or both of whose adoptive parents are not Alaskan Natives.

“Alaskan Native Regional Corporation” means an Alaskan Native Regional corporation established under the laws of the State of Alaska in accordance with the provisions of the Alaska Native Claims Settlement Act (Pub. L. 92-203, December 17, 1971).

“Alaskan Native Village” means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of the Alaska Native Claims Settlement Act (Pub. L. 92-203, December 17, 1971), or which meets the requirements of that Act, and which the Secretary of the Interior determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary of the Interior, who shall make findings of fact in each instance), composed of twenty-five or more Natives.

“American Indian or Indian” means any individual who is a member or a descendant of a member of a North American tribe, band, or other organized group of native people who are indigenous to the continental United States or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian community in which he or she lives or by the Indian community of which he or she claims

to be a part. This definition also includes Alaskan Natives.

“ANA” means the Administration for Native Americans within the Office of Human Development Services.

“Budget period” means the interval of time, into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

“Community” or “Service area” means an Indian reservation, neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to provide services to a designated constituency pursuant to this part.

“Economic and social self-sufficiency” means the capacity of Native Americans to define and achieve their own economic and social goals.

“Economic development” means the process involving the achievement of specific objectives, usually through the implementation of appropriate programs and projects, which results in long-term improvements in Native American economic self-sufficiency.

“Financial assistance” means assistance advanced by ANA by grant, or cooperative agreement, but does not include the procurement of plant or equipment, or goods or services.

“Governing body of an Indian tribe or Alaskan Native village” means those duly elected or appointed representatives who have the authority to provide services to, and enter into contracts and financial assistance agreements on behalf of, their constituency.

“Hawaiian homestead” means that land which was set aside for the particular and exclusive use of Native Hawaiians by the Hawaiian Home Commission Act (42 Stat. 108, July 9, 1921).

“HDS” means the Office of Human Development Services within the Department of Health and Human Services.

“Indian organization” means a public or private nonprofit agency whose principal purpose is promoting the economic or social self-sufficiency of Indians in urban or rural non-reservation areas, the majority of whose governing board and membership is Indian.

“Indian reservation” means the reservation of any federally or State recognized Indian tribe, including any band, nation, pueblo, or rancharia, any former reservation in Oklahoma, any community or non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancharia, with allotted lands or lands subject to a restriction against alienation imposed by the United States or a State.

“Indian tribe” means a distinct political community of Indians which exercises powers of self-government.

“Major disaster” means any hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave, earthquake, drought, fire, accident, or other catastrophe which is of such severity and magnitude as to directly affect the capability of the grantee, providing services to the damaged community, to continue the program unless the Federal share of the approved costs is increased above 80 percent.

“Native American” means American Indian, Native Hawaiian, and Alaskan Native, as defined in this subpart.

“Native Hawaiian” means any individual, any of whose ancestors were, prior to 1778, natives of the area which consists of the Hawaiian Islands.

“Open and public election” means an election conducted in accordance with the election procedures as set forth in the organization's constitution and/or by-laws, providing that such procedures ensure wide community participation as well as participation from all members of the community who wish to participate in the elective process. There can be no fee or payment required for participation. This includes the payment of membership dues as a prerequisite for voting.

“Responsible HHS official” means the official of the Department of Health and Human Services authorized to award the financial assistance in question, or his designee.

“Secretary” means the Secretary of Health and Human Services or his designee.

“Urban Indian center” means a multi-purpose nonprofit private agency which provides outreach and referral services as well as a variety of

social services to an urban Indian community, and whose governing body is comprised of representatives, a majority of whom are Indian, who have been duly elected by means of an open and public election, and who have the authority to provide services to, and enter into contracts and financial assistance agreements on behalf of the urban Indian constituency.

Subpart B—Purpose of the Native American Program

§ 1336.5 Program purpose.

The purpose of this part is to promote the goal of economic and social self-sufficiency for Native Americans.

Subpart C—Financial Assistance for Native American Projects

§ 1336.10 Eligibility.

Financial assistance under this subpart may be made to public and private nonprofit agencies, including but not limited to, governing bodies of Indian tribes on Federal and States reservations, Alaskan Native Villages and regional corporations established by the Alaska Native Claims Settlement Act, and such public and nonprofit agencies serving Native Hawaiians, and Indian organizations in urban or rural non-reservation areas.

§ 1336.11 Types of projects supported.

Financial assistance will be provided to those applicants whose proposed program goals and objectives are to promote the economic and social self-sufficiency of Native Americans. Financial assistance under this subpart will include, but is not limited to, projects which:

- (a) Support community economic development;
- (b) Support locally determined human service priorities which would not otherwise be provided;
- (c) Support the operation of urban Indian centers for Native Americans living off reservations; and
- (d) Strengthen the administrative capacities of governing bodies of Native American tribes, groups, and organizations, particularly with regard to planning and management.

§ 1336.12 Approval of financial assistance.

In approving proposals for financial assistance under this subpart consideration will be given to the extent to which proposals focus on priorities consistent with the following ANA long range goals:

- (a) To develop the capacity of Native American governing bodies and organizations to use and focus on planning as the basic method to improve resource allocations and effectiveness of services in Native American communities;
- (b) To achieve the development of the necessary social and economic infrastructure in Native American communities to increase self-sufficiency; and
- (c) To eliminate, through Native American institutions, the most critical gaps in the range of human development services necessary for self-sufficiency including, but not limited to social services, training and education.

Subpart D—Training and Technical Assistance

§ 1336.20 Eligibility.

- (a) Contracts for technical assistance to aid in developing, conducting, and administering projects under this part may be made to public and private agencies.
- (b) Short-term in-service training for specialized or other personnel may be provided by contract to agencies receiving financial assistance under this part.

§ 1336.21 Types of training and technical assistance.

- (a) Contracts for training and technical assistance will be awarded for the purposes of providing management assistance and program assistance.
 - (1) Contracts to provide management assistance will have as their overall objective strengthening the capabilities of Native Americans to exercise self-government. Such capacity-building efforts will include assistance in planning, management, and organizational development.

(2) Contracts to provide program assistance will be of a general support nature and will include, but are not limited to, assistance in program evaluation, fiscal and administrative management, and resource mobilization.

(b) Management assistance and program assistance may include short-term in-service training for employees of grantees and members of Indian governing bodies, such as tribal council members and Native American organization board members.

Subpart E—Research, Demonstration, and Pilot Projects

§ 1336.30 Eligibility.

Under this subpart, financial assistance may be provided to, or contracts may be made with, public or private nonprofit agencies including, but not limited to, governing bodies of Indian tribes on Federal and State reservations, Alaskan Native villages and regional corporations established by the Alaska Native Claims Settlement Act, and such public and nonprofit private agencies serving Native Hawaiians, and Indian organizations in urban or rural non-reservation areas.

§ 1336.31 Scope of research, demonstration, and pilot projects.

(a) Financial assistance or contracts will be provided for research, demonstration, or pilot projects which are designed to test or assist in the development of new approaches or methods that will aid in overcoming special problems or otherwise furthering the purposes of this part. This may include: (1) Research activities designed to generate demographic and program impact data and to identify and resolve problems which hinder the attainment of social and economic self-sufficiency by Native Americans; and (2) pilot or demonstration efforts designed to test innovative methods to meet and solve problems related to the purposes of this part and to encourage the delivery of human development services to Native Americans.

Subpart F—Project Evaluations

§ 1336.40 Evaluation.

(a) The Secretary shall provide, directly or through financial assistance or contracts, for the evaluation of projects assisted under this part. Such evaluations shall describe and measure the impact of such projects and their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such projects.

(b) In carrying out evaluations of projects supported under this part, the specific views of persons participating in and served by such projects will be solicited, where feasible. All studies, evaluations, proposals, and data produced or developed with assistance under this part shall become the property of the United States.

(c) Interim standards for the evaluation of program and project effectiveness in achieving the objectives of this part were published on July 2, 1975, in the FEDERAL REGISTER (40 FR 27961). According to Section 810(b) of the Act, the extent to which these standards have been met shall be considered by the Secretary in deciding whether to renew or supplement financial assistance under this part. All recipients shall provide the Secretary with information deemed necessary to determine the extent to which they are complying with these standards. When final standards for the evaluation of program and project effectiveness are published in the FEDERAL REGISTER, the extent to which these final standards have been met shall be considered by the Secretary in deciding whether to renew or supplement financial assistance. All recipients shall provide the Secretary with information deemed necessary to determine the extent to which they are complying with these standards.

Subpart G—Financial Assistance Provisions

§ 1336.50 General.

(a) Except as specified in paragraph (b) of this section, the following HHS regulations shall apply to all grants awarded under this part:

45 CFR Part 16 Department grant appeals process (except as provided in § 1336.54).

45 CFR Part 46 Protection of human subjects.

45 CFR Part 74 Administration of grants.

45 CFR Part 75 Informal grant appeals procedures (indirect cost rates and other cost allocations).

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 hearings under Part 80.

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

(b) 45 CFR 74.61(h) is superseded as follows:

(1) *Audit requirements*—(i) *General*. An annual project audit shall be made by an independent auditor to determine whether the financial statements fairly present the financial position of the recipient; whether the recipient is complying with the terms and conditions of the grant, including applicable laws, regulations, and directives; and whether appropriate financial and administrative procedures and controls have been installed and are operating effectively.

(ii) *Audit coverage*. The audit shall cover the recipient's prior budget period, unless the responsible HHS official has approved in writing a different audit period.

(iii) *Submission of report*. The auditor shall submit its audit to the recipient within four months after the end of the budget period. HHS financial assistance funds may not be used to pay for more than one audit annually, except in instances when the responsible HHS official requests in writing additional audits.

(iv) *Delegate agencies*. The recipient shall include delegate agency audits as part of its annual audit or shall pro-

vide for separate independent audits for its delegate agencies.

(2) *Independent auditor*. The annual project audit shall be conducted by individuals who are sufficiently independent of those persons who authorize the expenditure of financial assistance funds in order that unbiased opinions, conclusions, or judgments may be obtained. Generally, an independent public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States, will be retained. If the recipient is a State or local government agency, or if its accounting records are maintained by a local government or public agency, the auditing official or official governmental auditing agency which customarily conducts the agency's audits may be substituted for an independent auditor.

§ 1336.51 Notification to State and local officials.

(a) Financial assistance will not be provided under Subparts C and E of this part for programs to be carried out in a State, other than on an Indian reservation or Alaskan Native village or Hawaiian Homestead, until the responsible HHS official has notified the chief executive officer of the State of his decision to provide that assistance.

(b) Financial assistance will not be provided under Subparts C and E of this part for programs to be carried out in a city, county, or other major political subdivision of a State, other than on an Indian reservation, Alaskan Native village, or Hawaiian Homestead, until the responsible HHS official has notified the local governing officials of his decision to provide that assistance.

§ 1336.52 Cost sharing and matching.

(a) Federal financial assistance shall not exceed 80 percent of the approved cost of the assisted project except as provided in § 1336.52(b).

(b) Increase in Federal financial participation.

(1) *Eligibility and application*. (i) A recipient is eligible to apply in writing to the responsible HHS official to have the Federal share increased

above 80 percent if that recipient is in a community which meets at least one of the following three conditions: (A) The community has a per capita income of less than \$1500 per year based on data from the current U.S. Census of Population or any more recent reliable source of annual per capita income data; (B) the community has been involved in a major disaster; (C) the community can document its inability to mobilize local, State, or private resources to satisfy the nonfederal share requirement.

(ii) In those cases where either paragraph (b)(1)(i)(A) or (B) of this section applies, the recipient's application to have the Federal share increased above 80 percent shall provide: (A) The annual per capita income of the community and the basis on which it was determined, or a statement of the belief that the community has been involved in a major disaster, and an explanation of the nature and extent of the major disaster; (B) a statement that the level of the annual per capita income of the community, or the major disaster, does not allow the recipient to meet the 20 percent nonfederal share; (C) a statement of the amount of the nonfederal share the recipient is able to provide; and (D) a statement that a reasonable effort to provide more nonfederal share has been unsuccessful.

(iii) In those cases where paragraph (b)(1)(i)(C) of this section applies the recipient's application to have the Federal share increased above 80 percent shall provide: (A) A statement that the community is unable to mobilize local, State, or private resources to satisfy the nonfederal share requirement; (B) a statement of the amount of the nonfederal share the recipient is able to provide; (C) a statement that a reasonable effort to provide more nonfederal share has been unsuccessful; (D) copies of file documents demonstrating attempts to generate revenue from sources such as foundations, churches, and other private organizations; and (E) to the extent they are available, records of in-kind contributions, such as furniture equipment, supplies, and volunteer help to the program.

(iv) An application based upon the annual per capita income of the community, or upon the inability of the community to mobilize local, State, or private resources to satisfy the nonfederal share requirement, shall be submitted at the same time as the application for funding or refunding and shall be with respect to the same budget period as the application. Approval shall be only for such budget period.

(v) An application based upon the involvement of the community in a major disaster shall be submitted within a reasonable time after the major disaster and may be for the remainder of the current budget period and all or part of any subsequent budget period.

(2) *Decision.* (i) The responsible HHS official, on the basis of the written application and any evidence in support of the application that he may require shall approve financial assistance in excess of 80 percent if it is determined that the annual per capita income of the community is less than \$1,500, that the community has been involved in a major disaster, or that the community is unable to mobilize local, State, or private resources to satisfy the nonfederal share requirement, and that such increase is required to enable the recipient to carry on the program.

(ii) The decision of the responsible HHS official shall be in writing and shall include a statement of the facts and reasons upon which it is based. Copies of the decision shall be furnished to the applicant and the Commissioner for Native Americans.

(3) The per capita income limitation enumerated in paragraph (b)(1)(i)(A) of this section shall be adjusted annually by multiplying the dollar limitation by the percentage change in the Consumer Price Index.

§ 1336.53 Financial and administrative requirements.

(a) *Maintenance of effort.* Applications for financial assistance awarded under this part shall include a statement that the activities provided under the program will be in addition to, and not in substitution for, compa-

rable activities provided without Federal assistance.

(b) *Personnel administration*—(1) *Personnel policies and procedures.* Recipients shall adopt personnel policies and procedures which shall include at least the following: Staff qualifications; recruitment and selection; classification of positions and basis for determination of pay; employee benefits, including leave, holidays, overtime, and fringe benefits; expenses, including travel and per diem; training, career development, and performance evaluation; employee-management relations, including grievance, termination of employment, and other adverse actions; and employee conduct including outside employment, acceptance of gifts and gratuities.

(2) *Documentation of personnel policies.* The personnel policies and procedures required by paragraph (b)(1) of this section shall be documented in writing and shall be issued to, or made available to, all the recipient's employees.

(3) *Conflict of interest.* (i) Recipients shall establish or adopt rules to assure that employees or individuals participating in a program or project funded under this part shall not use their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves, or others, particularly those with whom they have family, business, or other ties. This includes, but is not limited to, situations in which a tribal council or governing body member concurrently holds a position as a staff member paid in whole or in part with ANA financial assistance.

(ii) The responsible HHS official may waive the requirement of paragraph (b)(3)(i) of this section when there is the appearance of conflict of interest, but a recipient or delegate agency cannot otherwise adequately staff a position. Such recipient or delegate agency shall demonstrate in writing that no other individual within its community or service area is qualified and/or available for employment.

(4) *Nepotism.* (i) No recipient or delegate agency shall hire, or permit the hiring of, any individual in a position funded in whole or in part under this part if a member of the individual's

immediate family is employed by the recipient in an administrative capacity or is a member of the governing board. In addition, no person may serve on a governing board if a member of that individual's immediate family is concurrently serving in an administrative capacity in a position paid in whole or in part with ANA financial assistance. For the purpose of this part, the "term immediate family" means wife, husband, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, or other legal dependent; the term "administrative capacity" means a position having responsibilities relating to the selection, hiring, or supervising of employees.

(ii) The responsible HHS official may waive the requirement of paragraph (b)(4)(i) of this section when a recipient or delegate agency cannot adequately staff the positions without hiring more than one person from the same immediate family. Such recipients or delegate agencies shall demonstrate in writing that no other individuals within its community or service area are qualified and/or available for employment.

(5) *Labor standards.* The Act makes construction contracts and subcontracts under this program subject to the Davis-Bacon Act (40 U.S.C. 276a et seq.). Recipients must observe requirements for enforcing compliance by contractors found in Subpart P of 45 CFR Part 74.)

(c) *Delegation of program operations.* A delegation of program operations to a delegate agency shall require specific prior approval by the responsible HHS official. Such delegation shall be formalized by written agreement. The agreement shall specify the activities to be performed by the delegate agency, the time schedule, the policies and procedures to be followed, the dollar limitations, and the costs allowed. A budget for each delegate agency shall be submitted as part of the recipient's application.

[44 FR 24073, Apr. 24, 1979; 44 FR 37616, June 28, 1979]

§ 1336.54 Appeals.

Appeals, notice and hearing. Recipients that have been suspended or terminated, or whose applications for re-funding have been denied, may appeal such decisions in accordance with the provisions of Part 1303, Subparts A, C, and D, of this title except that for purposes of this part:

(a) The authority "88 Stat. 2304, (42 U.S.C. 2928h)" is eliminated and "88 Stat. 2324, (45 U.S.C. 2991h)" is substituted therefor;

(b) The citation "Section 519 of the Headstart-Follow Through Act" is eliminated and "Section 809 of the Native American Programs Act" is substituted therefor;

(c) The reference to "* * * appeals by current and prospective delegate agencies from specified adverse action by grantees * * *" in § 1303.1 is inapplicable;

(d) The term "ACYF" is eliminated and the term "ANA" is substituted therefor;

(e) The term "Commissioner" means the Commissioner for Native Americans;

(f) The term "Head Start Program" is eliminated and the term "Native American Program" is substituted therefor;

(g) The terms "current delegate agency", "prospective delegate agency", "program account", and "substantial rejection" are eliminated;

(h) The term "Headstart-Follow Through Act" is eliminated and the term "Native American Programs Act" shall be substituted therefor;

(i) The phrase "in accordance with Part 1302 of this chapter" in §§ 1303.20 and 1303.30 is eliminated; and

(j) The term "grantee" means the recipient of financial assistance from ANA under the Act and this part.

Subpart H—Indian Preference Provisions

§ 1336.60 Indian preference.

(a) As provided in section 7(b) of Pub. L. 93-638, the Indian Self-Determination and Education Assistance Act, any contract, subcontract, grant, or subgrant pursuant to the Native American Programs Act of 1974 which is for the benefit of Indians shall require that to the greatest extent feasible:

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts of grants shall be given to Indians; and

(2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

(b) Preference in the award of contracts for the benefit of Indians shall be given by ANA to Indian organizations and to Indian-owned economic enterprises.