

Office of Self-Governance (OSG) means the office within the Office of the Assistant Secretary-Indian Affairs responsible for the implementation and development of the Tribal Self-Governance Program.

Program means any program, service, function, or activity, or portions of programs administered by a bureau within the Department of the Interior.

Pub. L. 93-638 means sections 1-9 and Title I of the Indian Self-Determination and Education Assistance Act of 1975, as amended.

Reassumption means that the Secretary reassumes control or operation of a program under § 1000.300 *et seq.*

Retained Tribal shares means those funds that were available as a Tribal share but under the AFA were left with BIA to administer.

Retrocession means the voluntary return by a Tribe/Consortium to a bureau of a program operated under an AFA before the agreement expires.

Secretary means the Secretary of the Interior (DOI) or his or her designee authorized to act on the behalf of the Secretary as to the matter at hand.

Self-governance Tribe/Consortium means a Tribe or Consortium that participates in permanent self-governance through application and selection from the applicant pool or has participated in the Tribal self-governance demonstration project. May also be referred to as "participating Tribe/Consortium."

Successor AFA means a funding agreement negotiated after a Tribe's/Consortium's initial agreement with a bureau for continuing to perform a particular program. The parties to the AFA should generally use the terms of the existing AFA to expedite and simplify the exchange of information and the negotiation process.

Tribal share means the amount determined for that Tribe/Consortium for a particular program at BIA region, agency, and central office levels under sec. 403(g)(3) and 405(d) of the Act.

§ 1000.3 Purpose and scope.

(a) *General.* This part codifies uniform and consistent rules for the Department of the Interior (DOI) in implementing Title IV of the Indian Self-Determination and Education Assist-

ance Act (ISDEA) Public Law 93-638, 25 U.S.C. 450 *et seq.*, as amended by Title II of Pub. L. 103-413, the Tribal Self-Governance Act of 1994 (108 Stat. 4250, October 25, 1994).

(b) *Information Collection.* The information provided by the Tribes will be used by the Department for a variety of purposes. The first purpose will be to ensure that qualified applicants are admitted into the applicant pool consistent with the requirements of the Act. In addition, Tribes seeking grant assistance to meet the planning requirements for admission into the applicant pool, will provide information so that grants can be awarded to Tribes meeting basic eligibility (*i.e.* Tribal resolution indicating that the Tribe wants to plan for Self-Governance and has no material audit exceptions for the last three years of audits). There is no confidential information being solicited and confidentiality is not extended under the law. Other documentation is required to meet the reporting requirements as called for in section 405 of the Act. The information being provided by the Tribes is required to obtain a benefit, however, no person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. Comments were solicited from the Tribes and the general public with respect to this collection. No adverse comments were received. The information collection has been cleared by OMB. The number is OMB control #1076-0143. The approval expires on April 30, 2003.

§ 1000.4 Policy statement.

(a) *Congressional findings.* In the Tribal Self-Governance Act of 1994, the Congress found that:

- (1) The Tribal right of self-governance flows from the inherent sovereignty of Indian Tribes and nations;
- (2) The United States recognizes a special government-to-government relationship with Indian Tribes, including the right of the Tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian Tribes;

(3) Although progress had been made, the Federal bureaucracy, with its centralized rules and regulations, had eroded Tribal self-governance and dominated Tribal affairs;

(4) The Tribal Self-Governance Demonstration Project was designed to improve and perpetuate the government-to-government relationship between Indian Tribes and the United States and to strengthen Tribal control over Federal funding and program management; and

(5) Congress has reviewed the results of the Tribal Self-Governance demonstration project and finds that:

(i) Transferring control over funding and decision making to Tribal governments, upon Tribal request, for Federal programs is an effective way to implement the Federal policy of government-to-government relations with Indian Tribes; and

(ii) Transferring control over funding and decision making to Tribal governments, upon request, for Federal programs strengthens the Federal policy of Indian self-determination.

(b) *Congressional declaration of policy.* It is the policy of the Tribal Self-Governance Act to permanently establish and implement self-governance:

(1) To enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian Tribes;

(2) To permit each Tribe to choose the extent of its participation in self-governance;

(3) To coexist with the provisions of the Indian Self-Determination and Education Assistance Act relating to the provision of Indian services by designated Federal agencies;

(4) To ensure the continuation of the trust responsibility of the United States to Indian Tribes and Indian individuals;

(5) To permit an orderly transition from Federal domination of programs and services to provide Indian Tribes with meaningful authority to plan, conduct, redesign, and administer programs, services, functions, and activities that meet the needs of the individual Tribal communities; and

(6) To provide for an orderly transition through a planned and measurable

parallel reduction in the Federal bureaucracy.

(c) *Secretarial self-governance policies.*

(1) It is the policy of the Secretary to fully support and implement the foregoing policies to the full extent of the Secretary's authority.

(2) It is the policy of the Secretary to recognize and respect the unique government-to-government relationship between Tribes, as sovereign governments, and the United States.

(3) It is the policy of the Secretary to have all bureaus of the Department work cooperatively and pro-actively with Tribes and Tribal Consortia on a government-to-government basis within the framework of the Act and any other applicable provision of law, so as to make the ideals of self-determination and self-governance a reality.

(4) It is the policy of the Secretary to have all bureaus of the Department actively share information with Tribes and Tribal Consortia to encourage Tribes and Tribal Consortia to become knowledgeable about the Department's programs and the opportunities to include them in an annual funding agreement.

(5) It is the policy of the Secretary that all bureaus of the Department will negotiate in good faith, interpret each applicable Federal law and regulation in a manner that will facilitate the inclusion of programs in each annual funding agreement authorized, and enter into such annual funding agreements under Title IV, whenever possible.

(6) It is the policy of the Secretary to afford Tribes and Tribal Consortia the maximum flexibility and discretion necessary to meet the needs of their communities consistent with their diverse demographic, geographic, economic, cultural, health, social, religious, and institutional needs. These policies are designed to facilitate and encourage Tribes and Tribal Consortia to participate in the planning, conduct, and administration of those Federal programs, included, or eligible for inclusion in an annual funding agreement.

(7) It is the policy of the Secretary, to the extent of the Secretary's authority, to maintain active communication with Tribal governments regarding

budgetary matters applicable to programs subject to the Act, and that are included in an individual self-governance annual funding agreement.

(8) It is the policy of the Secretary to implement policies, procedures, and practices at the Department to ensure that the letter, spirit, and goals of the Tribal Self-Governance Act are fully and successfully implemented.

(9) Executive Order 13084 on Consultation and Coordination with Indian Tribal Governments and any subsequent Executive Orders regarding consultation will apply to the implementation of these regulations.

Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

PURPOSE AND DEFINITIONS

§ 1000.10 What is the purpose of this subpart?

This subpart describes the selection process and eligibility criteria that the Secretary uses to decide that Indian Tribes may participate in Tribal self-governance as authorized by section 402 of the Tribal Self-Governance Act of 1994.

§ 1000.11 What is the “applicant pool”?

The applicant pool is the pool of Tribes/Consortia that the Director of the Office of Self-Governance has determined are eligible to participate in self-governance.

§ 1000.12 What is a “signatory”?

A signatory is a Tribe or Consortium that meets the eligibility criteria in § 1000.16 and directly signs the agreements. A signatory may exercise all of the rights and responsibilities outlined in the compact and annual funding agreement and is legally responsible for all financial and administrative decisions made by the signatory.

§ 1000.13 What is a “nonsignatory Tribe”?

(a) A nonsignatory Tribe is a Tribe that either:

(1) Does not meet the eligibility criteria in § 1000.16 and, by resolution of its governing body, authorizes a Con-

sortium to participate in self-governance on its behalf.

(2) Meets the eligibility criteria in § 1000.16 but chooses to be a member of a Consortium and have a representative of the Consortium sign the compact and AFA on its behalf.

(b) A non-signatory tribe under paragraph (a)(1) of this section:

(1) May not sign the compact and AFA. A representative of the Consortium must sign both documents on behalf of the Tribe.

(2) May only become a “signatory Tribe” if it independently meets the eligibility criteria in § 1000.16.

ELIGIBILITY

§ 1000.14 Who is eligible to participate in Tribal self-governance?

Two types of entities are eligible to participate in Tribal self-governance:

- (a) Indian Tribes; and
- (b) Consortia of Indian Tribes.

§ 1000.15 How many additional Tribes/Consortia may participate in self-governance per year?

(a) Sections 402(b) and (c) of the Act authorize the Director to select up to 50 additional Indian Tribes per year from an “applicant pool”. A Consortium of Indian Tribes counts as one Tribe for purposes of calculating the 50 additional Tribes per year.

(b) Any signatory Tribe that signed a compact and AFA under the Tribal Self-Governance Demonstration project may negotiate its own compact and AFA in accordance with this subpart without being counted against the 50-Tribe limitation in any given year.

§ 1000.16 What criteria must a Tribe/Consortium satisfy to be eligible for admission to the “applicant pool”?

To be admitted into the applicant pool, a Tribe/Consortium must either be an Indian Tribe or a Consortium of Indian Tribes and comply with § 1000.17.

§ 1000.17 What documents must a Tribe/Consortium submit to OSG to apply for admission to the applicant pool?

In addition to the application required by § 1000.23, the Tribe/Consortium must submit to OSG documentation that shows all of the following: