

§ 1000.461 What must a Tribe/Consortium do if an organizational conflict of interest arises under an AFA?

This section only applies if the conflict was not addressed when the AFA was first negotiated. When a Tribe/Consortium becomes aware of an organizational conflict of interest, the Tribe/Consortium must immediately disclose the conflict to the Secretary.

§ 1000.462 When must a Tribe/Consortium regulate its employees or subcontractors to avoid a personal conflict of interest?

A Tribe/Consortium must maintain written standards of conduct to govern officers, employees, and agents (including subcontractors) engaged in functions related to the management of trust assets.

§ 1000.463 What types of personal conflicts of interest involving tribal officers, employees or subcontractors would have to be regulated by a Tribe/Consortium?

The Tribe/Consortium would need a tribally-approved mechanism to ensure that no officer, employee, or agent (including a subcontractor) of the Tribe/Consortium reviews a trust transaction in which that person has a financial or employment interest that conflicts with that of the trust beneficiary, whether the tribe/consortium or an allottee. Interests arising from membership in, or employment by, a Tribe/Consortium or rights to share in a tribal claim need not be regulated.

§ 1000.464 What personal conflicts of interest must the standards of conduct regulate?

The personal conflicts of interest standards must:

- (a) Prohibit an officer, employee, or agent (including a subcontractor) from participating in the review, analysis, or inspection of trust transactions involving an entity in which such persons have a direct financial interest or an employment relationship;
- (b) Prohibit such officers, employees, or agents from accepting any gratuity, favor, or anything of more than nominal value, from a party (other than the Tribe/Consortium) with an in the trust transactions under review; and

- (c) Provide for sanctions or remedies for violation of the standards.

§ 1000.465 May a Tribe/Consortium negotiate AFA provisions on conflicts of interest to take the place of this subpart?

(a) A Tribe/Consortium and the Secretary may agree to AFA provisions, concerning either personal or organizational conflicts, that:

- (1) Address the issues specific to the program and activities contracted; and
- (2) Provide equivalent protection against conflicts of interest to these regulations.

(b) Agreed-upon AFA provisions shall be followed, rather than the related provisions of this subpart. For example, the Tribe/Consortium and the Secretary may agree that using the Tribe's/Consortium's own written code of ethics satisfies the objectives of the personal conflicts provisions of subpart, in whole or in part.

APPENDIX A TO PART 1000—MODEL COMPACT OF SELF-GOVERNANCE BETWEEN THE TRIBE AND THE DEPARTMENT OF THE INTERIOR

ARTICLE I—AUTHORITY AND PURPOSE

Section 1—Authority

This agreement, denoted a compact of Self-Governance (hereinafter referred to as the "compact"), is entered into by the Secretary of the Interior (hereinafter referred to as the "Secretary"), for and on behalf of the United States of America under the authority granted by Title IV of the Indian Self Determination and Education Assistance Act, Pub. L. 93-638, as amended, and by the Tribe, under the authority of the Constitution and By-Laws of the Tribe (hereinafter referred to as the "Tribe").

Section 2—Purpose

This compact shall be liberally construed to achieve its purposes:

- (a) This compact is to carry out Self-Governance as authorized by Title IV of Pub. L. 93-638, as amended, that built upon the Self Governance Demonstration Project, and transfer control to Tribal governments, upon Tribal request and through negotiation with the United States government, over funding and decision-making of certain Federal programs as an effective way to implement the Federal policy of government-to-government relations with Indian Tribes.
- (b) This compact is to enable the United States to maintain and improve its unique

and continuing relationship with and responsibility to the Tribe through Tribal self-governance, so that the Tribe may take its rightful place in the family of governments; remove Federal obstacles to effective self-governance; reorganize Tribal government programs and services; achieve efficiencies in service delivery; and provide a documented example for the development of future Federal Indian policy. This policy of Tribal self-governance shall permit an orderly transition from Federal domination of Indian programs and services to allow Indian Tribes meaningful authority to plan, conduct, and administer those programs and services to meet the needs of their people. In implementing Self-Governance, the Bureau of Indian Affairs is expected to provide the same level of service to other Tribal governments and to demonstrate new policies and methods to improve service delivery and address Tribal needs. In fulfilling its responsibilities under the compact, the Secretary hereby pledges that the Department will conduct all relations with the Tribe on a government-to-government basis.

ARTICLE II—TERMS, PROVISIONS AND
CONDITIONS

Section 1—Term

This compact shall be effective when signed by the Secretary or an authorized representative and the authorized representative of the Tribe. The term of this compact shall commence [negotiated effective date] and must remain in effect as provided by Federal law or agreement of the parties.

Section 2—Funding Amount

In accordance with Section 403(g) of Title IV of Pub. L. 93-638, as amended, and subject to the availability of appropriations, the Secretary shall provide to the Tribe the total amount specified in each annual funding agreement.

Section 3—Reports to Congress

To implement Section 405 of Pub. L. 93-638, as amended, on each January 1 throughout the period of the compact, the Secretary shall make a written report to the Congress that shall include the views of the Tribe concerning the matters encompassed by Section 405(b) and (d).

Section 4—Regulatory Authority

The Tribe shall abide by all Federal regulations as published in the FEDERAL REGISTER unless waived in accordance with Section 403(i)(2) of Pub. L. 93-638, as amended.

Section 5—Tribal Administrative Procedure

The Tribe shall provide administrative due process right under the Indian Civil Rights Act of 1968, 25 U.S.C. 1301, *et seq.*, to protect

all rights and interests that Indians, or groups of Indians, may have with respect to services, activities, programs, and functions that are provided under the compact.

ARTICLE III—OBLIGATIONS OF THE TRIBE

Section 1—AFA Programs

The Tribe will perform the programs as provided in the specific AFA negotiated under the Act. The Tribe pledges to practice utmost good faith in upholding its responsibility to provide such programs, under the Act.

Section 2—Trust Services for Individual Indians

To the extent that the AFAs have provisions for trust services to individual Indians that were formerly provided by the Secretary, the Tribe will maintain at least the same level of service as was previously provided by the Secretary. The Tribe pledges to practice utmost good faith in upholding their responsibility to provide such service.

ARTICLE IV—OBLIGATIONS OF THE UNITED
STATES

Section 1—Trust Responsibility

The United States reaffirms the trust responsibility of the United States to the _____ Tribe(s) to protect and conserve the trust resources of the Tribe(s) and the trust resources of individual Indians associated with this compact and any annual funding agreement negotiated under the Tribal Self-Governance Act.

Section 2—Trust Evaluations

Under Section 403(d) of Pub. L. 93-638, as amended, annual funding agreements negotiated between the Secretary and an Indian Tribe shall include provisions to monitor the performance of trust functions by the Tribe through the annual trust evaluation.

ARTICLE V—OTHER PROVISIONS

Section 1—Facilitation

Nothing in this compact 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.

Section 2—Officials Not To Benefit

No Member of Congress, or resident commissioner, shall be admitted to any share or part of any annual funding agreement or contract thereunder executed under this compact, or to any benefit that may arise from such compact. This paragraph may not be construed to apply to any contract with a third party entered into under an annual funding agreement under this compact if

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such contract is made with a corporation for the general benefit of the corporation.

Section 3—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 under this compact 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.

Section 4—Sovereign Immunity

Nothing in this compact or any AFA shall be construed as—

- (1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by the Tribe; or
- (2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

In witness whereof, the parties have executed, delivered and formed this compact, effective the _____ day of _____, 20____. THE _____ Tribe

The Department of the Interior.

By: _____
By: _____

PART 1001—SELF-GOVERNANCE PROGRAM

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AUTHORITY: 25 U.S.C. 450 note, 458aa-458gg.

SOURCE: 60 FR 8554, Feb. 15, 1995, unless otherwise noted.

§ 1001.1 Purpose.

The purpose of this rule is to establish the process for tribes to apply for entry into the Self-Governance program and to establish the selection cri-

teria by which the Department will identify eligible tribes and select tribes to begin the negotiations process.

§ 1001.2 Applicant eligibility.

Any tribe or consortium of tribes seeking inclusion in the applicant pool must meet the following eligibility criteria:

(a) Be a federally recognized tribe or a consortium of federally recognized tribes as defined in Public Law 93-638.

(b) Document, with an official action of the tribal governing body, a formal request to enter negotiations with the Department of Interior (Department) under the Tribal Self-Governance Act authority. In the case of a consortium of tribes, the governing body of each participating tribe must authorize participation by an official action by the tribal governing body.

(c) Demonstrate financial stability and financial management capability by furnishing organization-wide single audit reports as prescribed by Public Law 96-502, the Single Audit Act of 1984, for the previous three years. These audits must not contain material audit exceptions. In the case of tribal consortiums, each signatory to the agreement must meet this requirement. Non-signatory tribes participating in the consortium do not have to meet this requirement.

(d) Successfully complete the planning phase for self-governance. A final planning report must be submitted which demonstrates that the tribe has conducted—

- (1) Legal and budgetary research; and
- (2) Internal tribal government and organizational planning.

(e) To be included in the applicant pool, tribes or tribal consortiums may submit their applications at any time. The application should state which year the tribe desires to enter negotiations.

§ 1001.3 Priority ranking for negotiations.

In addition to the eligibility criteria identified above, a tribe or consortium of tribes seeking priority ranking for negotiations must submit a description of the efforts of the tribe or consortium to seek to enter negotiations and/or prepare for operations under the self-