

§ 1000.86

AFA with a term that exceeds one year in accordance with section 105(c)(1) of Title I of Pub. L. 93-638.

DETERMINING WHAT PROGRAMS MAY BE INCLUDED IN AN AFA

§ 1000.86 What types of programs may be included in an AFA?

A Tribe/Consortium may include in its AFA programs administered by BIA, without regard to the BIA agency or office that administers the program, including any program identified in section 403(b)(1) of the Act.

§ 1000.87 How does the AFA specify the services provided, functions performed, and responsibilities assumed by the Tribe/Consortium and those retained by the Secretary?

(a) The AFA must specify in writing the services, functions, and responsibilities to be assumed by the Tribe/Consortium and the functions, services, and responsibilities to be retained by the Secretary.

(b) Any division of responsibilities between the Tribe/Consortium and BIA should be clearly stated in writing as part of the AFA. Similarly, when there is a relationship between the program and BIA's residual responsibility, the relationship should be in writing.

§ 1000.88 Do Tribes/Consortia need Secretarial approval to redesign BIA programs that the Tribe/Consortium administers under an AFA?

No, the Secretary does not have to approve a redesign of a program under the AFA, except when the redesign involves a waiver of a regulation.

(a) The Secretary must approve any waiver, in accordance with subpart J of this part, before redesign takes place.

(b) This section does not authorize redesign of programs where other prohibitions exist.

(c) Redesign shall not result in the Tribe/Consortium being entitled to receive more or less funding for the program from BIA.

(d) Redesign of construction project(s) included in an AFA must be done in accordance with subpart K of this part.

25 CFR Ch. VI (4-1-06 Edition)

§ 1000.89 Can the terms and conditions in an AFA be amended during the year it is in effect?

Yes, terms and conditions in an AFA may be amended during the year it is in effect as agreed to by both the Tribe/Consortium and the Secretary.

§ 1000.90 What happens if an AFA expires before the effective date of the successor AFA?

If the effective date of the successor AFA is not on or before the expiration of the current AFA, subject to terms mutually agreed upon by the Tribe/Consortium and the Department at the time the current AFA was negotiated or in a subsequent amendment, the Tribe/Consortium may continue to carry out the program authorized under the AFA to the extent adequate resources are available. During this extension period, the current AFA shall remain in effect, including coverage of the Tribe/Consortium under the Federal Tort Claims Act (FTCA) 28 U.S.C. 2671-2680 (1994), and the Tribe/Consortium may use any funds remaining under the AFA, savings from other programs or Tribal funds to carry out the program. Nothing in this section authorizes an AFA to be continued beyond the completion of the program authorized under the AFA or the amended AFA. This section also does not entitle a Tribe/Consortium to receive, nor does it prevent a Tribe from receiving, additional funding under any successor AFA. The successor AFA must provide funding to the Tribe/Consortium at a level necessary for the Tribe/Consortium to perform the programs, functions, services, and activities or portions thereof (PFSAs) for the full period it was or will be performed.

DETERMINING AFA AMOUNTS

§ 1000.91 What funds must be transferred to a Tribe/Consortium under an AFA?

(a) At the option of the Tribe/Consortium, the Secretary must provide the following program funds to the Tribe/Consortium through an AFA:

(1) An amount equal to the amount that the Tribe/Consortium would have been eligible to receive under contracts and grants for direct programs and

contract support under Title I of Pub. L. 93-638, as amended;

(2) Any funds that are specifically or functionally related to providing services and benefits to the Tribe/Consortium or its members by the Secretary without regard to the organizational level within BIA where such functions are carried out; and

(3) Any funds otherwise available to Indian Tribes or Indians for which appropriations are made to agencies other than the Department of the Interior;

(b) Examples of the funds referred to in paragraphs (a)(1) and (a)(2) of this section are:

(1) A Tribe's/Consortium's Pub. L. 93-638 contract amounts;

(2) Negotiated amounts of agency, regional and central office funds, including previously undistributed funds or new programs on the same basis as they are made available to other Tribes;

- (3) Other recurring funding;
- (4) Non-recurring funding;
- (5) Special projects, if applicable;
- (6) Construction;
- (7) Wildland firefighting accounts;
- (8) Competitive grants; and
- (9) Congressional earmarked funding.

(c) An example of the funds referred to in paragraph (a)(3) of this section is Federal Highway Administration funds.

§ 1000.92 What funds may not be included in an AFA?

Funds associated with programs prohibited from inclusion under section 403(b)(4) of the Act may not be included in an AFA.

§ 1000.93 May the Secretary place any requirements on programs and funds that are otherwise available to Tribes/Consortia or Indians for which appropriations are made to agencies other than DOI?

No, unless the Secretary is required to develop terms and conditions that are required by law or that are required by the agency to which the appropriation is made.

§ 1000.94 What are BIA residual funds?

BIA residual funds are the funds necessary to carry out BIA residual functions. BIA residual functions are those functions that only BIA employees could perform if all Tribes were to assume responsibilities for all BIA programs that the Act permits.

§ 1000.95 How is BIA's residual determined?

(a) Generally, residual information will be determined through a process that is consistent with the overall process used by the BIA. Residual information will consist of residual functions performed by the BIA, brief justification why the function is not compactible, and the estimated funding level for each residual function. Each regional office and the central office will compile a single document for distribution each year that contains all the residual information of that respective office. The development of the residual information will be based on the following principles. The BIA will:

- (1) Develop uniform residual information to be used to negotiate residuals;
- (2) Ensure functional consistency throughout BIA in the determination of residuals;
- (3) Make the determination of residuals based upon the functions actually being performed by BIA at the respective office;
- (4) Annually consult with Tribes on a region-by-region basis as requested by Tribes/Consortia; and
- (5) Notify Tribal leaders each year by March 1 of the availability of residual information.

(b) BIA shall use the residual information determined under subparagraph (a) as the basis for negotiating with individual Tribes.

(c) In accordance with the appeals procedures in subpart R of this part, if BIA and a participating Tribe/Consortium disagree over the content of residual functions or amounts, Tribe/Consortium can appeal as shown in the following table.

If a Tribe/Consortium . . .	the Tribe/Consortium may . . .	and . . .
(1) Disagrees with BIA's determination	appeal to the Deputy Commissioner	the Deputy Commissioner must make a written determination within 30 days of receiving the request.