

CODE OF FEDERAL REGULATIONS

TITLE 25—INDIANS

**CHAPTER VI—OFFICE OF THE ASSISTANT SECRETARY, INDIAN AFFAIRS,
DEPARTMENT OF THE INTERIOR**

**PART 1000—ANNUAL FUNDING AGREEMENTS UNDER THE TRIBAL
SELF-GOVERNMENT ACT AMENDMENTS TO THE
INDIAN SELF-DETERMINATION AND EDUCATION ACT**

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Subpart R—Appeals

§ 1000.420 What does “Title-I eligible programs” mean in this subpart?

Throughout this subpart, the phrase “Title I-eligible programs” is used to refer to all programs, functions, services, and activities that the Secretary provides for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department within which the programs, functions, services, and activities have been performed.

§ 1000.421 What is the purpose of this subpart?

This subpart prescribes the process Tribes/Consortia may use to resolve disputes with the Department arising before or after execution of an AFA or compact and certain other disputes related to self-governance. It also describes the administrative process for reviewing disputes related to compact provisions. This subpart describes the process for administrative appeals to:

- (a) The Interior Board of Indian Appeals (IBIA) for certain pre-AFA disputes;
- (b) The Civilian Board of Contract Appeals (CBCA) for certain post-AFA disputes;
- (c) The Assistant Secretary for the bureau responsible for certain disputed decisions;
- (d) The Secretary for reconsideration of decisions involving self-governance compacts;

and

- (e) The agency head for certain pre-award AFA disputes.

§ 1000.422 How must disputes be handled?

(a) The Department encourages its Bureaus to seek all means of dispute resolution before the Tribe/Consortium files a formal appeal(s).

(b) Disputes shall be addressed through government-to-government discourse. This discourse must be respectful of government-to-government relationships and relevant Federal-Tribal agreements, treaties, judicial decisions, and policies pertaining to Indian Tribes.

(c) Title I-eligible program disputes may use an informal conference as set forth in 25 CFR 900.153-157.

(d) All disputes arising under this rule, including but not limited to Title I-eligible program disputes may use non-binding informal alternative dispute resolution at the option of the Tribe/Consortium, as prescribed in § 402 of this subpart. The Tribe/Consortium may ask for this alternative dispute resolution any time before the issuance of an initial decision of a formal appeal(s). The appeals timetable will be suspended while alternative dispute resolution is pending.

§ 1000.423 Are there any decisions that are not administratively appealable under this subpart?

Yes, the following types of decisions are not administratively appealable under this subpart but may be appealable under other substantive provisions of the Code of Federal Regulations:

- (a) Decisions relating to planning and negotiation grants (subparts C and D of this part) and certain discretionary grants not awarded under Title IV (25 CFR part 2);
 - (b) Decisions involving a limitation and/or reduction of services for BIA programs (subpart H of this part)(25 CFR part 2);
 - (c) Decisions regarding requests for waivers of regulations (subpart J of this part);
 - (d) Decisions regarding construction (subpart K of this part) addressed in § 1000.251(b);
- and
- (e) Decisions under any other statute, such as the Freedom of Information Act and the Privacy Act (see 43 CFR part 2).

§ 1000.424 Does a Tribe/Consortium have a right to an informal conference to resolve any disputes?

Yes, the Tribe/Consortium may request an informal conference (a non-binding alternative dispute resolution process). An informal conference is a way to resolve both Title I-eligible program and other disputes as quickly as possible, without the need for a formal appeal.

§ 1000.425 How does a Tribe/Consortium request an informal conference?

The Tribe/Consortium shall file its request for an informal conference with the office of the person whose decision it is appealing, within 30 days of the day it receives the decision.

(a) The Tribe/Consortium may either hand-deliver the request for an informal conference to that person's office, fax the request with confirmation or mail it by certified mail, return receipt requested.

(b) If the Tribe/Consortium mails the request, it will be considered filed on the date the Tribe/Consortium mailed it by certified mail.

§ 1000.426 How is an informal conference held?

For all purposes relating to these informal conference procedures, the parties are the designated representatives of the Tribe/Consortium and the bureau.

(a) The informal conference shall be held within 30 days of the date the request was received, unless the parties agree on another date.

(b) Where practicable, at the option of the Tribe/Consortium, the informal conference will be held at the Tribe's/Consortium's office. If the meeting cannot be held at the Tribe's/Consortium's office, the parties must agree on an alternative meeting place.

(c) The informal conference shall be conducted by a designated representative of the Secretary.

(d) Only the parties may make presentations at the informal conference.

(e) The informal conference is not a hearing on the record. Nothing said during an informal conference may be used by either party in litigation.

§ 1000.427 What happens after the informal conference?

(a) Within 10 business days of the informal conference, the person who conducted the informal conference shall mail to the Tribe/Consortium a brief summary of the informal conference. The summary must include any agreements reached or changes from the initial position of the bureau or the Tribe/Consortium.

(b) If in its judgment no agreement was reached, the Tribe/Consortium may choose to appeal the initial decision, as modified by any changes made as a result of the informal conference, under § 1000.421 of this subpart to the IBIA, bureau head/Assistant Secretary, or IBCA.

§ 1000.428 How may a Tribe/Consortium appeal a decision made after the AFA or compact or amendment to an AFA or compact has been signed?

With the exception of certain decisions concerning reassumption for imminent jeopardy (see § 1000.408 of this subpart), the Tribe/Consortium may appeal post-award administrative decisions to the CBCA.

§ 1000.429 What statutes and regulations govern resolution of disputes concerning signed AFAs or compacts that are appealed to the CBCA?

Section 110 of Pub. L. 93-638 (25 U.S.C. 450m-1) and the regulations at 25 CFR 900.216 through 900.230 apply to disputes concerning signed AFAs and compacts that are appealed to the CBCA, except that any references to the Department of Health and Human Services are inapplicable. For purposes of such appeals:

(a) The terms “contract” and “self-determination contract” mean compacts and AFAs under the Tribal Self-Governance Act; and

(b) The term “Tribe” means “Tribe/Consortium.”

§ 1000.430 To whom are appeals directed regarding reassumption for imminent jeopardy?

Appeals regarding reassumption of Title I-eligible PFSAAs are handled by the IBIA under the procedures in 25 CFR 900.171 through 900.176. Appeals regarding reassumption of PFSAAs that are not Title I-eligible are handled by the CBCA under the procedures in 48 CFR part 6101.

§ 1000.431 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?

Yes. EAJA claims against the DOI will be heard under 48 CFR 6101.30, 6101.31 (CBCA) and 43 CFR 4.602, 4.604 through 4.628 (DOI) and under the Equal Access to Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412.

§ 1000.432 To whom may a Tribe appeal a decision made before the AFA or an amendment to the AFA or compact is signed?

(a) Title I-eligible PFSA pre-award disputes. For Title I-eligible PFSA disputes, appeal may only be filed with IBIA under the provisions set forth in 25 CFR 900.150(a) through (h), 900.152 through 900.169.

(b) Other pre-award disputes. For all other pre-award disputes, including those involving PFSAs that are not Title I-eligible, appeals may be filed with the bureau head/Assistant Secretary or IBIA as noted below. However, the Tribe/Consortium may not avail itself of both paths for the same dispute.

(1) Bureau head/Assistant Secretary appeal. Unless the initial decision being appealed is one that was made by the bureau head (those appeals are forwarded to the appropriate Assistant Secretary—see § 1000.433(c) of this subpart), the bureau head will decide appeals relating to these pre-award matters, that include but are not limited to disputes regarding:

- (i) PFSAs that are not Title I-eligible;
- (ii) Eligibility for the applicant pool of self-governance Tribes;
- (iii) BIA residual functions;
- (iv) Decisions declining to provide requested information as addressed in § 1000.172 of this part;

(v) Allocations of program funds when a dispute arises between a Consortium and a withdrawing Tribe; and

(vi) Inherently Federal functions.

(2) IBIA appeal. The Tribe/Consortium may choose to forego the administrative appeal through the bureau or the Assistant Secretary, as described in the paragraph (b)(1) of this section, and instead appeal directly to IBIA. The standard of review for such IBIA appeals will be an “abuse of discretion” standard.

§ 1000.433 When and how must a Tribe/Consortium appeal an adverse pre-award decision?

(a) If a Tribe/Consortium wishes to exercise its appeal rights under § 1000.432(b)(1), it must make a written request for review to the appropriate bureau head within 30 days of receiving the initial adverse decision. In addition, the Tribe/Consortium may request the opportunity to have a meeting with appropriate bureau personnel in an effort to clarify the matter under dispute before a formal decision by the bureau head.

(b) The written request for review should include a statement describing its reasons for a review, with any supporting documentation, or indicate that such a statement or documentation will be submitted within 30 days. A copy of the request must also be sent to the Director of the Office of Self-Governance.

(c) If the initial decision was made by the bureau head, any appeal shall be directed to the appropriate Assistant Secretary. If a Tribe does not request a review within 30 days of receipt of the decision, the initial decision will be final for the Department.

§ 1000.434 When must the bureau head (or appropriate Assistant Secretary) issue a final decision in the pre-award appeal?

Within 30 days of receiving the request for review and the statement of reasons described in § 1000.433, the bureau head or, where applicable, the appropriate Assistant Secretary must:

- (a) Issue a written final decision stating the reasons for the decision; and
- (b) Send the decision to the Tribe/Consortium.

§ 1000.435 When and how will the Assistant Secretary respond to an appeal by a Tribe/Consortium?

The appropriate Assistant Secretary will decide an appeal of any initial decision made by a bureau head (see § 1000.433). If the Tribe/Consortium has appealed the bureau's initial adverse decision of the bureau to the bureau head and the bureau head's decision on initial appeal is contrary to the Tribe's/Consortium's request for relief, or the bureau head fails to make a decision within 30 days of receipt by the bureau of the Tribe's/Consortium's initial request for review and any accompanying statement and documentation, the Tribe's/Consortium's appeal will be sent automatically to the appropriate Assistant Secretary for decision. The Assistant Secretary must either concur with the bureau head's decision or issue a separate decision within 60 days of receipt by the bureau of the Tribe's/Consortium's initial request for review and any accompanying statement and documentation. The decision of the Assistant Secretary is final for the Department.

§ 1000.436 How may a Tribe/Consortium seek reconsideration of the Secretary's decision involving a self-governance compact?

A Tribe/Consortium may request reconsideration of the Secretary's decision involving a self-governance compact by sending a written request for reconsideration to the Secretary within 30 days of receipt of the decision. A copy of this request must also be sent to the Director of the Office of Self-Governance.

§ 1000.437 When will the Secretary respond to a request for reconsideration of a decision involving a self-governance compact?

The Secretary must respond in writing to the Tribe/Consortium within 30 days of receipt of the Tribe's/Consortium's request for reconsideration.

§ 1000.438 May Tribes/Consortia appeal Department decisions to a Federal court?

Yes, Tribes/Consortia may appeal decisions of Department officials relating to the self-governance program to an appropriate Federal court, as authorized by section 110 of Pub. L. 93-638 (25 U.S.C. 405m-1), or any other applicable law.