

## § 1336.35

CFR part 1336 which governs the conduct of appeals under § 810(b). For additional information on the appeals process see 45 CFR 1336.35. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[61 FR 42821, Aug. 19, 1996]

### § 1336.35 Appeal of ineligibility.

The following steps apply when seeking an appeal on a finding of ineligibility for funding:

(a) An applicant, which has had its application rejected either because it has been found ineligible or because the activities it proposes are ineligible for funding by the Commissioner of ANA, may appeal the Commissioner's ruling to the HHS Departmental Appeals Board, in writing, within 30 days following receipt of ineligibility notification.

(b) The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position.

(c) Upon receipt of appeal for reconsideration of a rejected application or activities proposed by an applicant, the Departmental Appeals Board will notify the applicant by certified mail that the appeal has been received.

(d) The applicant's request for reconsideration will be reviewed by the Departmental Appeals Board in accordance with 45 CFR part 16, except as otherwise provided in this part.

(e) The Commissioner shall have 45 days to respond to the applicant's submission under paragraph (a) of this section.

(f) The applicant shall have 20 days to respond to the Commissioner's submission and the parties may be requested to submit additional information within a specified time period before closing the record in the appeal.

(g) The Departmental Appeals Board will review the record in the appeal and provide a final written decision within 30 days following the closing of the record, unless the Board determines for good reason that a decision cannot be issued within this time period and so notifies the parties.

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(h) If the Departmental Appeals Board determines that the applicant is eligible or that the activities proposed by the applicant are eligible for funding, such eligibility shall not be effective until the next cycle of grant proposals are considered by the Administration for Native Americans. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[61 FR 42822, Aug. 19, 1996]

### Subpart D—Evaluation

#### § 1336.40 General.

Progress reports and continuation applications must contain sufficient information for ANA to determine the extent to which the recipient meets ANA project evaluation standards. Sufficient information means information adequate to enable ANA to compare the recipient's accomplishments with the goals and activities of the approved work plan and with ANA project evaluation criteria.

(Approved by the Office of Management and Budget under control numbers 0980–0155 and 0980–0144)

### Subpart E—Financial Assistance Provisions

#### § 1336.50 Financial and administrative requirements.

(a) *General.* The following HHS regulations apply to all grants awarded under this part:

45 CFR Part 16 Department grant appeals process.

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 hearing under part 80.

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

45 CFR Part 86 Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 91 Nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance from HHS.

(b) *Cost sharing or matching*—(1) *Policy*. Recipients of financial assistance under sections 803, 804, and 805 of the Act are required to provide a matching share of 20 percent of the approved cost of the assisted project.

This requirement may be waived in accordance with the criteria in § 1336.50(b)(3). The matching share requirement may be met using either cash or in-kind contributions.

(2) *Application*. If an applicant wishes to request a waiver of the requirement for a 20 percent non-Federal matching share, it must include with its application for funding a written justification that clearly explains why the applicant cannot provide the matching share and how it meets the criteria.

(3) *Criteria*. Both of the following criteria must be met for an applicant to be eligible for a waiver of the non-Federal matching requirement:

(i) Applicant lacks the available resources to meet part or all of the non-Federal matching requirement. This must be documented by an institutional audit if available, or a full disclosure of applicant's total assets and liabilities.

(ii) Applicant can document that reasonable efforts to obtain cash or in-kind contributions for the purposes of the project from third parties have been unsuccessful. Evidence of such efforts can include letters from possible sources of funding indicating that the requested resources are not available for that project. The requests must be appropriate to the source in terms of project purpose, applicant eligibility, and reasonableness of the request.

(4) *Approval*. For a waiver to be approved, ANA must determine that it will not prevent the award of other grants at levels it believes are desirable for the purposes of the program.

Waiver of all or part of the non-Federal share shall apply only to the budget period for which application was made.

(c) *Maintenance of effort*. (1) Applications for financial assistance under this Part must include either a statement of compliance with the maintenance of effort requirement contained in section 803(c) of the Act, or a request for a waiver, in accordance with criteria established in this paragraph.

(2) To be eligible for a waiver of the maintenance of effort requirement, the applicant must demonstrate to ANA that the organization whose funds previously supported the project discontinued its support:

(i) As a result of funding limitations; and

(ii) Not as a result of an adverse evaluation of the project's purpose or the manner in which it was conducted; and

(iii) Not because it was anticipated that Federal funds would replace the original source of project funding.

(3) In addition, the applicant must demonstrate in the request for a waiver that the maintenance of effort requirement would result in insurmountable hardship for the recipient or would otherwise be inconsistent with the purposes of this part.

(d) *Delegation of project operations*. (1) Each subgrant awarded to a delegate agency must have specific prior approval by ANA. Such delegation must be formalized by written agreement.

(2) The agreement must 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. The applicant must submit a budget for each delegate agency as part of its application.

(e) *Unallowable costs*. ANA funds may not be used by recipients to purchase real property.

(f) *Office of the Chief Executive*. The costs of salaries and expenses of the Office of Chief Executive of a federally recognized Indian tribal government (as defined in § 74.3 of this title) are allowable, provided that such costs exclude any portion of salaries and expenses of the Office of Chief Executive that are a cost of general government and provided they are related to a project assisted under this part.