

they have legal jurisdiction. (WIA sec. 166(c)(1).)

(b) If we decide not to designate Indian tribes or Alaska Native entities to serve their service areas, we will enter into arrangements to provide services with entities which the tribes or Alaska Native entities involved approve.

(c) In geographic areas not served by Indian tribes or Alaska Native entities, entities with a Native American-controlled governing body and which are representative of the Native American community or communities involved will have priority for designation.

**§ 668.220 What is meant by the “ability to administer funds” for designation purposes?**

An organization has the “ability to administer funds” if it:

- (a) Is in compliance with Departmental debt management procedures, if applicable;
- (b) Has not been found guilty of fraud or criminal activity which would affect the entity’s ability to safeguard Federal funds or deliver program services;
- (c) Can demonstrate that it has or can acquire the necessary program and financial management personnel to safeguard Federal funds and effectively deliver program services; and
- (d) Can demonstrate that it has successfully carried out, or has the capacity to successfully carry out activities that will strengthen the ability of the individuals served to obtain or retain unsubsidized employment.

**§ 668.230 How will we determine an entity’s “ability to administer funds”?**

(a) Before determining which entity to designate for a particular service area, we will conduct a review of the entity’s ability to administer funds.

(b) The review for an entity that has served as a grantee in either of the two designation periods before the one under consideration, also will consider the extent of compliance with the WIA regulations. Evidence of the ability to administer funds may be established by a satisfactory Federal audit record. It may also be established by a recent record showing substantial compliance with Federal record keeping, reporting, program performance standards, or

similar standards imposed on grantees by this or other public sector supported programs.

(c) For other entities, the review includes the experience of the entity’s management in administering funds for services to Native American people. This review also includes an assessment of the relationship between the entity and the Native American community or communities to be served.

[65 FR 49435, Aug. 11, 2000, as amended at 71 FR 35524, June 21, 2006]

**§ 668.240 What is the process for applying for designation as an INA grantee?**

(a) Every entity seeking designation must submit a Notice of Intent (NOI) which complies with the requirements of the Solicitation for Grant Application (SGA). An SGA will be issued every two years, covering all areas except for those for which competition is waived for the incumbent grantee under WIA section 166(c)(2).

(b) NOI’s must be submitted to the Chief of DINAP, bearing a U.S. Postal Service postmark indicating its submission no later than October 1st of the year which precedes the first year of a new designation cycle (unless the SGA provides a later date). For NOI’s received after October 1, only a timely official U.S. Postal Service postmark is acceptable as proof of timely submission. Dates indicating submission by private express delivery services or metered mail are unacceptable as proof of the timely submission of designation documents.

(c) NOI’s must include the following:

- (1) Documentation of the legal status of the entity, as described in § 668.200(a)(1);
- (2) A Standard Form (SF) 424b;
- (3) The assurances required by 29 CFR 37.20;
- (4) A specific description, by State, county, reservation or similar area, or service population, of the geographic area for which the entity requests designation;
- (5) A brief summary of the employment and training or human resource development programs serving Native Americans that the entity currently operates or has operated within the previous two-year period;

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(6) A description of the planning process used by the entity, including the involvement of the governing body and local employers;

(7) Evidence to establish an entity's ability to administer funds under §§ 668.220 through 668.230.

### § 668.250 What happens if two or more entities apply for the same area?

(a) Every two years, unless there has been a waiver of competition for the area, we issue a Solicitation for Grant Application (SGA) seeking applicants for INA program grants.

(b) If two or more entities apply for grants for the same service area, or for overlapping service areas, and a waiver of competition under WIA section 166(c)(2) is not granted to the incumbent grantee, the following additional procedures apply:

(1) The Grant Officer will follow the regulations for priority designation at § 668.210.

(2) If no applicant is entitled to priority designation, DINAP will inform each entity which submitted a NOI, including the incumbent grantee, in writing, of all the competing Notices of Intent no later than November 15 of the year the NOI's are received.

(3) Each entity will have an opportunity to describe its service plan, and may submit additional information addressing the requirements of § 668.240(c) or such other information as the applicant determines is appropriate. Revised Notices must be received or contain an official U.S. Postal Service postmark, no later than January 5th (unless a later date is provided in DINAP's information notice).

(4) The Grant Officer selects the entity that demonstrates the ability to produce the best outcomes for its customers.

### § 668.260 How are INA grantees designated?

(a) On March 1 of each designation year, we designate or conditionally designate Native American grantees for the coming two program years. The Grant Officer informs, in writing, each entity which submitted a Notice of Intent that the entity has been:

- (1) Designated;
- (2) Conditionally designated;

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(3) Designated for only a portion of its requested area or population; or

(4) Denied designation.

(b) Designated Native American entities must ensure and provide evidence to DOL that a system is in place to afford all members of the eligible population within their service area an equitable opportunity to receive employment and training activities and services.

### § 668.270 What appeal rights are available to entities that are denied designation?

Any entity that is denied designation in whole or in part for the area or population that it requested may appeal the denial to the Office of the Administrative Law Judges using the procedures at 20 CFR 667.800 or the alternative dispute resolution procedures at 20 CFR 667.840. The Grant Officer will provide an entity whose request for designation was denied, in whole or in part, with a copy of the appeal procedures.

### § 668.280 Are there any other ways in which an entity may be designated as an INA grantee?

Yes, for an area which would otherwise go unserved. The Grant Officer may designate an entity, which has not submitted an NOI, but which meets the qualifications for designation, to serve the particular geographic area. Under such circumstances, DINAP will seek the views of Native American leaders in the area involved about the decision to designate the entity to serve that community. DINAP will inform the Grant Officer of their views. The Grant Officer will accommodate their views to the extent possible.

### § 668.290 Can an INA grantee's designation be terminated?

(a) Yes, the Grant Officer can terminate a grantee's designation for cause, or the Secretary or another DOL official confirmed by the Senate can terminate a grantee's designation in emergency circumstances where termination is necessary to protect the integrity of Federal funds or ensure the proper operation of the program. (WIA sec. 184(e).)