

§ 1000.97

§ 1000.97 What is a Tribal share?

A Tribal share is the amount determined for a particular Tribe/Consortium for a particular program at BIA regional, agency and central office levels under section 403(g)(3) and 405(d) of the Act.

§ 1000.98 How does BIA determine a Tribe's/Consortium's share of funds to be included in an AFA?

There are typically two methods for determining the amount of funds to be included in the AFA:

(a) *Formula-driven.* For formula-driven programs, a Tribe's/Consortium's amount is determined by first identifying the residual funds to be retained by BIA and second, by applying the distribution formula to the remaining eligible funding for each program involved.

(1) Distribution formulas must be reasonably related to the function or service performed by an office, and must be consistently applied to all Tribes within each regional and agency office.

(2) The process in paragraph (a) of this section for calculating a Tribe's funding under self-governance must be consistent with the process used for calculating funds available to non-self-governance Tribes.

(b) *Tribal-specific.* For programs whose funds are not distributed on a formula basis as described in paragraph (a) of this section, a Tribe's funding amount will be determined on a Tribe-by-Tribe basis and may differ between Tribes. Examples of these funds may include special project funding, awarded competitive grants, earmarked funding, and construction or other one-time or non-recurring funding for which a Tribe is eligible.

§ 1000.99 Can a Tribe/Consortium negotiate a Tribal share for programs outside its region/agency?

Yes, where BIA services for a particular Tribe/Consortium are provided from a location outside its immediate agency or region, the Tribe may negotiate its share from BIA location where the service is actually provided.

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§ 1000.100 May a Tribe/Consortium obtain discretionary or competitive funding that is distributed on a discretionary or competitive basis?

Funds provided for Indian services/programs that have not been mandated by Congress to be distributed on a competitive/discretionary basis may be distributed to a Tribe/Consortium under a formula-driven method. In order to receive such funds, a Tribe/Consortium must be eligible and qualified to receive such funds. A Tribe/Consortium that receives such funds under a formula-driven methodology would no longer be eligible to compete for these funds.

§ 1000.101 Are all funds identified as Tribal shares always paid to the Tribe/Consortium under an AFA?

No, at the discretion of the Tribe/Consortium, Tribal shares may be left, in whole or in part, with BIA for certain programs. This is referred to as a "retained Tribal share".

§ 1000.102 How are savings that result from downsizing allocated?

Funds that are saved as a result of downsizing in BIA are allocated to Tribes/Consortia in the same manner as Tribal shares as provided for in § 1000.98.

§ 1000.103 Do Tribes/Consortia need Secretarial approval to reallocate funds between programs that the Tribe/Consortium administers under the AFA?

No, unless otherwise required by law, the Secretary does not have to approve the reallocation of funds between programs that a Tribe/Consortium administers under an AFA.

§ 1000.104 Can funding amounts negotiated in an AFA be adjusted during the year it is in effect?

Yes, funding amounts negotiated in an AFA may be adjusted under the following circumstances:

(a) *Congressional action.* (1) Increases/decreases as a result of Congressional appropriations and/or a directive in the statement of managers accompanying a conference report on an appropriations bill or continuing resolution.

(2) General decreases due to Congressional action must be applied consistently to BIA, self-governance Tribes/Consortia, and Tribes/Consortia not participating in self-governance.

(3) General increases due to Congressional appropriations must be applied consistently, except where used to achieve equitable distribution among regions and Tribes.

(4) A Tribe/Consortium will be notified of any decrease and be provided an opportunity to reconcile.

(b) *Mistakes.* If the Tribe/Consortium or the Secretary can identify and document substantive errors in calculations, the parties will renegotiate the amounts and make every effort to correct such errors.

(c) *Mutual Agreement.* Both the Tribe/Consortium and the Secretary may agree to renegotiate amounts at any time.

ESTABLISHING SELF-GOVERNANCE BASE BUDGETS

§ 1000.105 What are self-governance base budgets?

(a) A Tribe/Consortium self-governance base budget is the amount of recurring funding identified in the President's annual budget request to Congress. This amount must be adjusted to reflect subsequent Congressional action. It includes amounts that are eligible to be base transferred or have been base transferred from BIA budget accounts to self-governance budget accounts. As allowed by Congress, self-governance base budgets are derived from:

- (1) A Tribe's/Consortium's Pub. L. 93-638 contract amounts;
- (2) Negotiated agency, regional, and central office amounts;
- (3) Other recurring funding;
- (4) Special projects, if applicable;
- (5) Programmatic shortfall;
- (6) Tribal priority allocation increases and decreases;
- (7) Pay costs and retirement cost adjustments; and
- (8) Any other inflationary cost adjustments.

(b) Self-governance base budgets must not include any non-recurring program funds, construction and wildland firefighting accounts, Congressional earmarks, or other funds

specifically excluded by Congress. These funds are negotiated annually and may be included in the AFA but must not be included in the self-governance base budget.

(c) Self-governance base budgets may not include other recurring type programs that are currently in Tribal priority allocations (TPA) such as general assistance, housing improvement program (HIP), road maintenance and contract support. Should these later four programs ever become base transferred to Tribes, then they may be included in a self-governance Tribe's base budget.

§ 1000.106 Once a Tribe/Consortium establishes a base budget, are funding amounts renegotiated each year?

No, unless otherwise requested by the Tribe/Consortium, these amounts are not renegotiated each year. If a Tribe/Consortium renegotiates funding levels:

(a) It must negotiate all funding levels in the AFA using the process for determining residuals and funding amounts on the same basis as other Tribes; and

(b) It is eligible for funding amounts of new programs or available programs not previously included in the AFA on the same basis as other Tribes.

§ 1000.107 Must a Tribe/Consortium with a base budget or base budget-eligible program amounts negotiated before January 16, 2001 negotiate new Tribal shares and residual amounts?

No, if a Tribe/Consortium negotiated amounts before January 16, 2001, it does not need to renegotiate new Tribal shares and residual amounts.

(a) At Tribal option, a Tribe/Consortium may retain funding amounts that:

- (1) Were either base eligible or in the Tribe's base; and
- (2) Were negotiated before this part is promulgated.

(b) If a Tribe/Consortium desires to renegotiate the amounts referred to in paragraph (a) of this section, the Tribe/Consortium must:

- (1) Negotiate all funding included in the AFA; and
- (2) Use the process for determining residuals and funding amounts on the same basis as other Tribes.