

(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 in-

formation 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.
(2) Disagrees with the Deputy Commissioner's determination.	appeal to the Assistant Secretary—Indian Affairs.	the Assistant Secretary's determination is final for the Department.

(d) Information on residual functions may be amended if programs are added or deleted, if statutory or final judicial determinations mandate or if the Deputy Commissioner makes a determination that would alter the residual information or funding amounts. The decision may be appealed to the Assistant Secretary in accordance with subpart R of this part. The Assistant Secretary shall make a written determination within 30 days.

§ 1000.96 May a Tribe/Consortium continue to negotiate an AFA pending an appeal of residual functions or amounts?

Yes, pending appeal of a residual function or amount, any Tribe/Consortium may continue to negotiate an AFA using the residual information that is being appealed. The residual information will be subject to later adjustment based on the final determination of a Tribe's/Consortium's appeal.