

§ 1336.33 Eligible applicants and proposed activities which are ineligible.

(a) Eligibility for the listed programs is restricted to the following specified categories of organizations. In addition, applications from tribal components which are tribally-authorized divisions of a larger tribe must be approved by the governing body of the Tribe. If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served.

(1) Social and Economic Development Strategies (SEDS) and Preservation and Enhancement of Native American Languages:

- (i) Federally recognized Indian Tribes;
- (ii) Consortia of Indian Tribes;
- (iii) Incorporated non-Federally recognized Tribes;
- (iv) Incorporated nonprofit multi-purpose community-based Indian organizations;
- (v) Urban Indian Centers;
- (vi) National and regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- (vii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- (viii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- (ix) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- (x) Nonprofit Native organizations in Alaska with village specific projects;
- (xi) Public and nonprofit private agencies serving Native Hawaiians;
- (xii) Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States);
- (xiii) Tribally Controlled Community Colleges Tribally Controlled Post-Secondary Vocational Institutions, and

colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders; and

(xiv) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional councils) as recognized by the Bureau of Indian Affairs.

(Statutory authority: Sections 803(a) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991 b(a) and 42 U.S.C. 2991b-3)

(2) Alaska-Specific Social and Economic Development Strategies (SEDS) Projects:

- (i) Federally recognized Indian Tribes in Alaska;
 - (ii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
 - (iii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
 - (iv) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and
 - (v) Nonprofit Native organizations in Alaska with village specific projects.
- (3) Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities:
- (i) Federally recognized Indian Tribes;
 - (ii) Incorporated non-Federally and State recognized Tribes;
 - (iii) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act (IRA) or traditional councils) as recognized by the Bureau of Indian Affairs.
 - (iv) Nonprofit Alaska Native Regional Associations and/or Corporations with village specific projects; and
 - (v) Other tribal or village organizations or consortia of Indian Tribes. (Statutory authority: § 8094A of the Department of Defense Appropriations Act, 1994 (Public Law 103-139), § 8094A of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991h(b)).
- (4) Improvement of the capability of tribal governing bodies to regulate environmental quality:

(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Indian tribes;

(iii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;

(iv) Nonprofit Alaska Native Regional Corporations/Associations with village-specific projects;

(v) Other tribal or village organizations or consortia of Indian tribes; and

(vi) Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs. (Statutory authority: Sections 803(d) of the Native Americans Programs Act of 1974, as amended 42 U.S.C. 2991b(d).)

(b) The following is a nonexclusive list of activities that are ineligible for funding under programs authorized by the Native American Programs Act of 1974:

(1) Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable;

(2) Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS long-range development plan;

(3) The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs;

(4) Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions; however, for Competitive Area 2, Alaska-Specific SEDS Projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place;

(5) The conduct of activities which are not responsive to one or more of the three interrelated ANA goals (Governance Development, Economic Development, and Social Development);

(6) Proposals from consortia of tribes that are not specific with regard to support from, and roles of member tribes. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member tribes also receive funding from ANA; and

(7) The purchase of real estate. (Statutory authority: Sections 803B of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b-2)

[61 FR 42820, Aug. 19, 1996]

§ 1336.34 Notice of ineligibility.

(a) Upon a finding by the Commissioner that an organization which has applied for funding is ineligible or that the activities proposed by an organization are ineligible, the Commissioner shall inform the applicant by certified letter of the decision.

(b) The letter must include the following:

(1) The legal and factual grounds for the Commissioner's finding concerning eligibility;

(2) A copy of the regulations in this part; and

(3) The following statement: This is the final decision of the Commissioner, Administration for Native Americans. It shall be the final decision of the Department unless, within 30 days after receiving this decision as provided in §810(b) of the Native Americans Programs Act of 1974, as amended, and 45 CFR part 1336, you deliver or mail (you should use registered or certified mail to establish the date) a written notice of appeal to the HHS Departmental Appeals Board, 200 Independence Avenue, S.W., Washington, D.C. 20201. You shall attach to the notice a copy of this decision and note that you intend an appeal. 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. We are enclosing a copy of 45