



36th Annual Conference

The Roosevelt New Orleans Hotel

11th Annual Leadership Awards Eligibility Criteria & Nomination Form

1101 30th Street, NW, Suite 500 • Washington DC

NAFOA's 11th Annual Leadership Awards

NAFOA presented its first Leadership Awards in 2008 and honored a number of innovative tribal leaders, tribal nations, and financial education directors for positively impacting tribal economies. The tradition continues and in 2018, NAFOA will honor a select number of individuals with NAFOA Leadership Awards during NAFOA's 36th Annual Conference at a luncheon reception on Tuesday, April 24th in New Orleans, LA.

The NAFOA Leadership Award categories include:

Tribal Leader of the Year- To effectively lead a tribal nation, tribal leaders are tasked with the responsibility of making major financial decisions. This award honors a tribal leader who has displayed significant foresight and resolve in the financial advancement of his or her tribal nation.

Eligibility Criteria: *The tribal leader must be the primary and official leader of the tribe (Chairman/Chairwoman, Governor, Principal Chief, or President). He or she must have served in this office for a minimum of one year by December 31, 2017.*

Executive of the Year- Financially healthy tribal nations have excellent staff at the helm. This award honors an Executive, Finance Director, Chief Financial Officer, Treasurer, or other senior financial leader of a tribe or tribal subsidiary enterprise, who has demonstrated: cutting-edge thinking in developing the financial plans of the tribe, leadership in effectively sharing suggestions with the tribe, and success in implementing ideas for the overall betterment of the tribe.

Eligibility Criteria: *To be eligible, the nominee must be an Executive, Finance Director, Chief Financial Officer, Treasurer, or other senior financial leader of a tribe or tribal enterprise for at least one year by December 31, 2017.*

Education Program of the Year- This award honors a creative and effective education program that furthers knowledge and understanding of business, economic development, or related fields. The award is open to programs developed by tribes, non-profits, universities, schools, and other institutions. The program should enrich the lives of Native people and empower them to make sound financial decisions.

Eligibility Criteria: *To be eligible, the education program needs to have been in place for at least one year by December 31, 2017.*

Deal of the Year- This award recognizes a tribal deal or financial venture completed during 2016. The deal should be original in structure and its terms should be innovative for the tribe. The deal should have a lasting positive effect on the overall economic status of the tribe and its members, and be beneficial to Indian Country as a whole.

Eligibility Criteria: *To be eligible, the deal must have been complete by December 31, 2017.*

Award Timeline:

Nomination Deadline: February 23, 2018

Award Winners Notified: March 9, 2018

11th Annual Leadership Awards Nomination Form

To nominate an individual, program, or deal for any of NAFOA's Leadership Awards, please provide the information requested below and e-mail it to VaRene Martin at VaRene@nafoa.org. Please type the information and send it in a **MS Word document**.

1. **Nominator:**

Name and Title: Jeff Heimann, Managing Director

Tribe/Organization: TFA Capital Partners

Telephone/E-mail: jheimann@tfacp.com / (310) 341-2518

Physical Mailing Address:

5690 Fairview Road, Suite 400

Charlotte, NC 28210

2. **Nominee:**

Name/Program/Deal Name:

Lac du Flambeau Band of Lake Superior Chippewa Indians

Lake of the Torches \$23 Million Financing to Settle Outstanding Bond Litigation

Contact Person: [Joseph Wildcat Sr., President / Bill Guelcher, CEO]

Tribe/Organization: [Lac du Flambeau Band of Lake Superior Chippewa Indians / Lake of the Torches Federal Development Corporation]

Telephone/E-mail: [(715) 588-3303 / (715) 588-4069]

Physical Mailing Address:

418 Old Abe Rd / 510 Old Abe Rd

Lac du Flambeau, WI 54538

3. Indicate the **award category** for which you are nominating the individual or tribe.

Deal of the Year

4. Please provide a **detailed explanation** about why you believe that this individual, tribe, program, project, or deal deserves this award.

The Deal: Lac du Flambeau Tribe's \$23 Million Financing to Settle Outstanding Bond Litigation

\$102 million Settlement Reached on February 13, 2017

This transaction marks the conclusion of arguably the most high-profile litigation in the history of Native American finance.

In January 2008, the Lake of the Torches Economic Development Corporation issued \$50 million of taxable gaming revenue Bonds. The Bonds were used to repay existing debt of the Tribe and the Corporation and to provide additional capital for a casino investment in Natchez, Mississippi. The

casino investment, however, never materialized, and subsequently the Corporation was unable to fund both the Bond's debt service and necessary transfers to the Tribe to maintain its ability to provide essential government services for its membership.

In November 2009, after months of good faith attempts at restructuring the Bonds with its Bondholder, the Tribe suspended debt service payments on the Bonds. While irregularities around the bond transaction ultimately led to the Tribe's share of a \$102 million settlement to be \$27 million, the Tribe's only course of action initially was to refer to management provisions in the Bonds documentation. In January 2010, after the trustee for the Bonds filed suit against Lake of the Torches, a Wisconsin district court held that the Bond Indenture was a management contract within the meaning of IGRA, and that, because it was unapproved by the Chairman of the NIGC, it was void. This action had an immediate and dramatic impact in the Native American finance sector, with lenders and investors immediately forced to review every loan in their portfolio for language that could be interpreted as a management contract. To this day, nearly every loan to a Tribal casino operation requires a declination letter from the NIGC as a condition precedent to closing.

Ultimately, through the course of discovery, conflicts of interest that the Tribe suspected became clear to other parties, including the Bondholder, and the course of the litigation changed directions... the Tribe was no longer to "blame" for the \$50 million voided Bond deal. Rather, the transaction became yet another example of others taking advantage of a Tribe's trust and financial inexperience. Specifically, had these facts been known at the time of the Bond transaction the Tribe certainly would not have issued the Bonds.

Despite the facts being uncovered in discovery, the Bond litigation still was headed to trial – January 30th 2017 became the "drop dead" date for reaching a settlement. While the Tribe officially ran the risk of being found liable for over \$100 million, the information that came out in discovery made it clear that the Tribe wasn't simply trying to walk away from its debt obligations but that it was looking for fair treatment.

Settlement talks accelerated as the trial start date neared. A significant hurdle remained: how would the Tribe be able to fund any settlement payment? Clearly, given the history of the litigation and the fact that nearly every financial institution simply thought the Tribe was trying to walk away from its debt obligations as opposed to understanding the unfair dealings that led them to that position, obtaining financing was not an option.

On the eve of trial, Stifel indicated it would consider a loan to cover part of the Tribe's settlement with Saybrook. Only after communicating directly with Stifel's CEO, who committed to reasonable loan terms, did the Tribe and its advisors agree to consider accepting a loan from Stifel that would make the settlement possible.

The possibility of a loan to cover the Tribe's contribution toward a settlement allowed discussions to continue among the parties. Many challenges beyond compensation remained, however. Numerous

complex claims, counterclaims and legal releases needed to be resolved before reaching a settlement. Saybrook, Stifel and the Tribe negotiated virtually around the clock for weeks to reach a mutually acceptable settlement. Several times negotiations stopped before the settlement was finally reported to the Court on Friday, February 10, 2017. Three days later on Monday, February 13, 2017, Saybrook, Stifel, and law firms agreed to settle their claims with each other and reported their settlement to the Court. The bond litigation concluded with all parties agreeing to settle without ability to appeal.

Positive Effect on Tribe:

With this deal, the Tribe was able to put 8 years of litigation behind them. Instead of taking their chances in a jury trial where Saybrook was seeking a \$94 million judgement, the Tribe settled for \$27 million (\$4 million cash and \$23 million financing). Very important to note, of the original \$50 million Bond transaction, \$27.8 million of the proceeds were applied to refinance existing debt. In other words, the Tribe more than paid for the debt already outstanding (the Tribe also paid \$8.1 million of the original \$50 million Bond, so it effectively settled for over \$7 million more than its original outstanding debt). Also important to note, the Settlement negotiations reached a mutually agreeable conclusion where all parties contributed to the Settlement (including Stifel, Saybrook and the Law Firms), again “evidencing” the exposure of the other parties involved. Furthermore, Saybrook not only received 100% of the principal payable, but also received over \$35 million of additional funds for accrued interest and recovery costs.

Additionally, by resolving the Bond litigation, the Tribe put itself back on a path towards reaffirming its sound financial footing and restoring its good standing in the financial community. This ongoing ability to secure financing will be important as the Tribe looks toward the future for continued economic development opportunities.

Positive Effect on NA Finance Generally:

The capital markets’ general perception of the Lac du Flambeau case was that the Tribe was a bad actor that chose to exploit a loophole to short change investors. And, unfortunately, that perception had a ripple effect throughout the world of Native American finance, in the form of higher interest spreads and more restrictive covenants relative to comparable commercial transactions. However, both the Settlement and the facts that came out over 8 years of litigation tell a different story: a story of a Tribe pressured into a transaction by an individual with an undisclosed conflict of interest; a story of a Tribe that had to spend millions of dollars in legal fees to protect their sovereignty and ability to fund their government services; a story that will hopefully correct negative perceptions of Native American borrowers that have persisted for almost a decade.

5. Include links to any relevant news articles highlighting the individual, tribe program, project or deal.
<https://www.ldftribe.com/pages/39/Other-Pages/Tribal-News/Bond-Litigation-Documents.html>
<https://www.businesswire.com/news/home/20170215005931/en/Tribe-Settles-Bond-Litigation-Invites-Tribal-Members>
<https://medium.com/nafoa/lac-du-flambeau-tribe-and-lake-of-the-torches-settle-long-standing-bond-litigation-40c22fc95e81>

Special Instructions for the Deal of the Year Award: Please list the tribe/tribally owned enterprise as well as outside firms and contacts involved in the deal. For financings involving more than one bank, please indicate the lead bank. Finally, if a financial advisor assisted or led the financing process, please indicate that on the form as well.

Lake of the Torches Federal Development Corporation (Tribally Owned Enterprise)

Contact: Bill Guelcher, CEO
Karen Maki, CFO

TFA Capital Partners (Financial Advisor)

Contact: Jeff Heimann, Managing Director
Additional contacts:
David Howard, CEO
Braxton Sato, Associate

Hansen Reynolds LLC (Trial Attorney)

Contact: Tim Hansen, Founder

Hogen Adams (Counsel to the Tribe)

Contact: Vanya Hogen

Resolution Strategies LLP (Settlement Advisor)

Contact: Patrick O'Malley, Partner
Additional Contacts:
Eric English, Partner

Faegre Baker Daniels LLP (Finance Counsel)

Contact: Kent Richey, Partner