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DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810-AB19

[Docket ID ED-2014-OESE-0050]

Indian Education Discretionary Grants Program; Professional Development Program and Demonstration Grants for Indian Children Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations that govern the Professional Development program and the Demonstration Grants for Indian Children program (Demonstration Grants program), authorized under title VII of the Elementary and Secondary Act of 1965, as amended (ESEA). The regulations govern the grant application process for new awards for each program for the next fiscal year in which competitions are conducted for that program and subsequent years. For the Professional Development program, the regulations enhance the project design and quality of services to meet the objectives of the program; establish post-award

requirements; and govern the payback process for grants in existence on the date these regulations become effective. For the Demonstration Grants program, the regulations add new priorities, including a priority for native youth community projects (NYCPs), and new application requirements.

DATES: These regulations are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: On December 3, 2014, the Secretary published a notice of proposed rulemaking (NPRM) for Indian Education Discretionary Grant Programs; Professional Development Program and Demonstration Grants for Indian Children Program in the Federal Register (79 FR 71930-71947).

In the preamble of the NPRM, we discussed on pages 71931 through 71938 the major changes proposed in that document to improve the Professional Development program

and the Demonstration Grants program. These included the following:

- Amending §263.3 to change the definitions of "Indian organization," "induction services," and "professional development;" and to remove the term, "undergraduate degree."

- Amending §263.4 to provide greater detail about the kinds of training costs that may be covered under the Professional Development program.

- Amending §263.5 to revise the competitive preference priorities for tribes, Indian organizations, and Indian institutions of higher education (IHE); to amend pre-service priorities to include project-specific goals; and to require applicants to submit a letter of support from an entity in the applicant's service area agreeing to consider program graduates for qualifying employment.

- Amending §263.6 to remove fixed points assigned to each criterion; to include in the regulations only program-specific factors and to eliminate the factors that are separately codified in 34 CFR 75.210; and to revise the selection criteria.

- Amending §263.7 to specify that participants who do not return from a leave of absence by the end of the grant

period will be considered not to have completed the program for the purposes of project performance reporting.

- Amending §263.8 to consolidate all of the regulatory provisions that govern the payback process, currently in §263.8 through §263.10, into §263.8.

- Amending §263.9 to specify the two types of deferral that are available: Education and military service; to add a provision for military deferrals; and to remove the provision stating that payback begins within six months of program completion.

- Amending §263.10 to eliminate the work-related payback plan and the requirement that eligible employment must be continuous.

- Amending §263.11 to add a requirement for grantees to conduct a payback meeting with each participant; to require that grantees report participant and payback information to the U.S. Department of Education (Department); to require the grantee to obtain a signed payback agreement from each participant and submit it to the Department; to require that grantees assist participants in finding qualifying employment after completing the program; and to clarify that the hiring preference provisions of the Indian Self-Determination and Education Assistance Act apply to this program.

- Amending §263.12 to add to the criteria we use in making continuation awards; and to clarify that we may reduce continuation awards based on a grantee's failure to meet project goals.

- Amending §263.20 to modify the definition of "Indian organization"; and to add a definition of "native youth community project."

- Amending §263.21 to remove the set number of competitive preference priority points; to revise the priority for applications submitted by Indian entities in paragraph (b), and to propose in paragraph (c) five new priorities, including one for native youth community projects.

- Adding §263.22 to include application requirements for the Demonstration Grants program.

- Adding §263.23 to clarify that the hiring preference provisions of the Indian Self-Determination and Education Act apply to this program.

These final regulations contain changes from the NPRM, which are fully explained in the Analysis of Comments and Changes section of this document.

Public Comment: In response to our invitation in the NPRM, 15 parties submitted comments on the proposed regulations. We discuss substantive issues under the section number of

the item to which they pertain. Several comments did not pertain to a specific section of the proposed regulations. We discuss these comments based on the general topic area. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

#### General Comments

Comments: Several commenters expressed strong support for the changes in the NPRM generally. One commenter requested that the Secretary issue a tribal consultation policy.

Discussion: We appreciate the support for the changes to the Professional Development program and the Demonstration Grants program. The tribal consultation policy is outside the scope of this rulemaking. However, we are in the process of developing an updated tribal consultation policy. During this process, we are consulting with tribes, in accordance with the requirements of Executive Order 13175. We expect to publish this revised policy during FY 2015.

Changes: None.

#### Professional Development Program

##### General

Comments: Several commenters expressed support for the Professional Development program, and gave examples of impressive results from past grants, which have expanded the number of American Indian teachers in tribal communities.

Discussion: We appreciate the support for this program.

Changes: None.

Comment: One commenter asked that we ensure active collaboration among grantees, tribes, and local schools to ensure that the training provided under the grants meets the educational needs of local communities.

Discussion: We expect that the competitive priority for consortia that include a tribal entity (§263.5(a)), the new priority for applicants with a letter of support from a school district or other entity that will consider hiring graduates of this project (§263.5(b)(3)), and the new selection criteria for need that relates to employment opportunities and shortages in certain fields (§263.6(a)), will all contribute to the commenter's expressed goal.

Changes: None.

#### Eligible Applicants (§263.2)

Comments: Several commenters objected to the requirement that a tribal applicant (tribe or Indian organization) be required to apply in consortium with an IHE. One commenter

asked that we allow a period of time after funding in order for a grantee to obtain a partner IHE. Another commenter asked that we define "in consortium with an institution of higher education," in terms of the level of commitment required from the IHE, and suggested we permit an Indian organization to apply as a sole applicant without an IHE. This commenter also asked whether an Indian organization can apply with more than one IHE, and if so, what is required to demonstrate the partnerships.

Discussion: The statute requires that any eligible entity that is not an IHE (other than a Department of the Interior Bureau of Indian Education (BIE)-funded school) must apply in consortium with an IHE (section 7122 of the ESEA), and we cannot change that statutory requirement. That eligibility requirement also precludes us from permitting grantees to obtain a partner IHE after grants are made; for entities required to be in a consortium with an IHE in order to be eligible for a grant, the application must be from the consortium.

With regard to the level of commitment required from the IHE, we do not believe it is necessary to prescribe the details of an arrangement with an IHE. To demonstrate an eligible consortium, the applicant must submit a consortium agreement that complies with the requirements of 34 CFR

75.127-129, including the requirement that the agreement detail the activities to be performed by each member, and bind each member to every statement and assurance in the application. The IHE is the entity that will provide the actual education and training to Indian individuals to enable those individuals to teach in or administer schools serving Indians. By receiving a federally-funded education, these individuals do not need to take on loans and other financial obligations that can be onerous and can often dissuade students from pursuing a career in education. The level of commitment required by the IHE is large; the IHE educates and trains the participants, granting them the degree needed to teach or administer in accordance with State requirements. Often the IHE is the entity that recruits the students, assists with job placement, provides support services during the first year of a participant's teaching or administrative job, and complies with the grantee reporting requirements. However, an eligible entity partner such as an Indian organization or other nonprofit could provide these required support services under the Professional Development grant. It is possible for an eligible entity to apply in consortium with more than one IHE.

Changes: None.

Comment: One commenter asked that eligibility for these grants be expanded to include national non-profit organizations.

Discussion: The eligibility requirements are statutory (see section 7122 of the ESEA) and we cannot expand eligibility beyond the statutory authority.

Changes: None.

Comment: One commenter asked whether two local educational agencies (LEAs) and a particular land grant college that does not target Native students could serve as partners for the Professional Development program under the proposed changes. The commenter also asked whether a regional education association (REA) is eligible to apply.

Discussion: Any number of eligible entities, in consortium with an eligible IHE, can join together to apply for a Professional Development grant. The IHE must be accredited to provide the coursework and level of degree required by the project, as specified in §263.2(c). The IHE does not have to target or serve primarily Native students; however, in order to receive the priority for an application submitted by an Indian entity, the IHE must be an Indian IHE that meets the definition in §263.3. A consortium applicant must submit a consortium agreement that complies with the requirements of 34 CFR 75.127-129. With regard to

the eligibility of an REA, that entity would need to meet the definition of one of the eligible entities: IHE, State educational agency (SEA), LEA, Indian tribe or Indian organization, or BIE-funded school, and would need to partner with an eligible IHE.

Changes: None.

Definitions (§263.3)

Comments: Several commenters supported the broader definition of "Indian organization" that provides eligibility to organizations that have education as one of their purposes, rather than the sole purpose. One commenter asked that we ensure that the expansion of the definition would not preclude existing grantees from receiving funds.

Discussion: We agree that the broader definition better serves the purposes of this program. The change in definition will not affect existing grantees, which will continue to be eligible for continuation awards. It also will not affect past grantees that qualified under the more narrow definition and will continue to be eligible if they apply for a new grant.

Changes: None.

Comments: A few commenters asked that the definition of "Indian institution of higher education" be expanded to

include Native American Serving Non-Tribal Institutions (NASNTIs).

Discussion: "Indian IHE" is currently defined in §263.3 of these regulations, and includes only tribal colleges and universities. NASNTIs are defined in Title III, Parts A and F, of the Higher Education Act, to mean IHEs that are not tribal colleges or universities, but that meet certain eligibility requirements, including a minimum number of enrolled students who are Native American. We decline to change the definition of "Indian IHE" for ESEA because, while the term "Indian IHE" is not defined in the ESEA, we believe that the plain meaning of the statutory term is limited to tribal colleges and universities, as reflected in our regulations.

Changes: None.

Priorities (§263.5)

Comments: Several commenters asked that the priority for Indian entities in §263.5(a) be expanded to include NASNTIs. These commenters stated that NASNTIs are often located in close proximity to tribal communities, and gave examples, including an institution that was founded in response to local tribal needs for qualified teachers in reservation schools, and another institution that educates and trains large numbers of native students to serve as

teachers on a reservation. One commenter asked that the priority include NASNTIs that partner with a tribal college, for example, when students feed from a two-year tribal college into a four-year NASNTI. Another commenter requested that the priority include all IHEs that predominantly serve Native students.

Discussion: We agree with the commenter that many NASNTIs fulfill an important role in educating Native students to serve as teachers in tribal communities. However, Congress specifically identified in section 7143 of the ESEA the group of entities to which we must give priority (Indian tribes, Indian organizations, and Indian IHEs). This group does not include NANSTIs, and we decline to expand the priority for Indian entities to include NASNTIs.

Furthermore, because non-Indian IHEs, including those designated as NASNTI, received almost half of all awards under this grant program over the past three years, we decline to add an additional priority for NASNTIs.

Changes: None.

Comments: Several commenters objected to the consolidation of the two existing priorities (in current §263.5(a) and (b)) in proposed §263.5(a)); previously, one priority was for applications from any tribal entity, and one priority

was for a consortium that includes an Indian IHE as fiscal agent.

Discussion: We agree with the comments about the difficulties caused by our proposal to combine the two existing priorities into one. The statute requires that we give priority to applications from all three types of tribal entities: tribes, Indian organizations, and Indian IHEs. As proposed, the combined priority could result in a tribal entity that is part of a consortium, but is not the fiscal agent or lead applicant, not receiving a preference. However, when an Indian IHE or other Indian entity is the lead applicant in a consortium, that entity has more influence in directing and administering the grant. Therefore we are revising the regulations to create two separate priorities rather than the proposed combined one.

The first priority, in §263.5(a)(1), gives preference to an Indian entity - tribe, organization, or IHE - either applying alone, or in a consortium for which it serves as the lead applicant. The second priority, in §263.5(a)(2), is for an Indian entity that is part of a consortium but is not the lead applicant. This will satisfy the statutory requirement to give priority to the three types of Indian entities, while enabling us to provide a competitive preference to applications for which the Indian entity is

the sole or lead applicant. An applicant cannot receive competitive preference points under both of these priorities.

Changes: We have revised §263.5(a) to create two separate competitive preference priorities. The first is for an Indian entity - tribe, organization, or IHE - either applying alone or as lead applicant in a consortium. The second is for an Indian entity that is part of a consortium but is not the lead applicant.

Comment: One commenter was concerned about the requirement that a consortium applicant would be eligible for the priority in proposed §263.5(a) only if an Indian IHE leads the consortium as fiscal agent. The commenter stated that the high overhead costs of IHEs limit the funding delivered directly to the program, and that the requirement would limit flexibility for an entity that trains teachers and administrators by working with a variety of IHEs to provide the required coursework. This commenter suggested that, alternatively, an Indian organization should be able to serve as lead applicant or fiscal agent in a consortium, and be eligible for the priority.

Discussion: Our goal was to ensure that, in order to receive competitive preference points, a consortium would be led by an Indian entity. We agree with the commenter,

however, that the proposed requirement that the lead of the consortium must be an IHE was too narrow. We agree that it is possible for an Indian organization to operate a Professional Development grant in consortium with an IHE, and for the Indian organization to be the actual lead entity for the project. The same is true for a tribe as lead applicant. The tribe or Indian organization would receive the grant and provide the funding to the IHE to pay for the cost of the participants' education. We agree that this could result in more direct funding for student training. Therefore, we are revising the priority in §263.5(a)(1) to permit a consortium to receive a competitive preference if the lead applicant is an Indian tribe, Indian organization, or Indian IHE. Before awarding priority points, we will examine the proposed project and activities to ensure that the Indian entity will in fact be serving as lead entity for the project.

Changes: We have revised §263.5(a)(1) to provide that a consortium may receive a competitive preference if the lead applicant is an Indian tribe, Indian organization, or Indian IHE.

Comment: None.

Discussion: During our internal review we reexamined the proposed requirement that the Indian entity leading a

consortium must be the fiscal agent in order to receive priority points. While not common, we recognize that it is possible to have a fiscal agent that is not the lead applicant. Accordingly, in §263.5(a)(1) we are revising the proposed requirement that an Indian entity be the "fiscal agent," to instead require that the Indian entity be the lead applicant, which is the entity that receives the grant.

Changes: We have revised §263.5(a) to change the preference for consortia in which the fiscal agent is an Indian entity, to consortia in which the lead applicant is an Indian entity.

Comments: Several commenters were generally concerned that the proposed priority in §263.5(a) would prevent entities other than tribal entities from obtaining grants.

Discussion: Due to the confusion evident in some comments, we are clarifying that the priorities in §263.5(a) for tribal entities are competitive preference priorities. We will not use those priorities as absolute priorities, but we will use them as competitive preference priorities in each year of a new competition. If they were absolute priorities, then a non-tribal IHE would not be eligible to receive a grant, which would be inconsistent with the statutory list of eligible entities.

This is different from the priorities in §263.5(b), which we can designate as absolute or competitive in any year, or can decline to use.

Changes: We have revised §263.5(a) to clarify that the priorities for tribal entities are competitive preference priorities.

Comments: One commenter objected to removing the point values from the priorities for applications submitted by Indian entities, arguing that it would cause confusion for applicants and that applicants may not have timely information about eligibility requirements. Another commenter was opposed to removing the five-point priority for tribal colleges. Another commenter suggested that we rely upon letters of support to show collaboration but not assign preference points for partnerships.

Discussion: We removed the specific number of points from the priorities for Indian entities, including the five points for tribal colleges, so that we have the flexibility to assign more (or fewer) points in a particular grant competition. This will allow us to provide additional points as needed in any application year to ensure that tribal entities, including tribal colleges, are eligible to receive a competitive preference. We do not believe this will confuse applicants. For each year in which we have a

competition for new awards, we will announce the points for the tribal entity preferences in the notice inviting applications. Typically the notice is published 60 days in advance of the application deadline.

With regard to the comment objecting to the awarding of competitive preference points for partnerships, eligible entities for this program include consortia, and we are required by statute to give priority to Indian entities; thus consortia that include such Indian entities will receive priority under revised §263.5(a). An Indian IHE, however, that applies as the lead applicant in a consortium would receive no advantage, under §263.5(a), over an Indian IHE that is the sole applicant, because both scenarios are included in §263.5(a)(1) and would receive an equal number of competitive preference points. With respect to letters of support, §263.5(b)(3) adds a new priority for applicants that include in their applications a letter of support from an entity, including a local school district, that agrees to consider program graduates for qualifying employment. We believe that such letters of support strengthen the likelihood that graduates will find employment in schools serving Indian students following their training.

Changes: None.

Comments: One commenter asked whether we are removing the absolute priority for pre-service training. Several commenters requested that we permit the use of funds to support and train Indian individuals in obtaining masters and doctoral degrees under the priorities in proposed §263.5(b) for pre-service training for teachers and administrators.

Discussion: We have not removed the priority for pre-service training, and in any grant competition in which the Department uses this priority, we retain the discretion to designate that priority an absolute priority (see §263.5(b)).

With regard to masters and doctoral degrees, funds under the Professional Development program can be used to support a student in obtaining any degree that is required by the State for the teaching or administrative position for which individuals are being trained. However, the focus of this program is on preparing teachers and administrators for elementary and secondary education. The current regulations include graduate degrees as part of the definitions of "full-time student" and "pre-service training" in §263.3, and we have not changed those definitions. However, we are providing further clarification in the priorities for pre-service training

for teachers and administrators by removing the references to bachelor's degrees for teachers and master's degrees for administrators so that a student pursuing a higher-level degree may be supported as a participant under this program if that degree is required for a specific position.

However, because we interpret the statute to support only the preparation of teachers and administrators in elementary and secondary education, we are not expanding the scope of the program to include doctoral degrees for Indian students seeking employment in higher education.

Changes: We have revised the priorities for pre-service training in proposed §§263.5(b)(1) and (2) to remove the references to a "bachelor's degree" for pre-service teacher training, and, for administrator training, changing the reference from "master's degree" to "graduate degree."

Comments: None.

Discussion: During our internal review we analyzed the existing requirements in the priorities for pre-service teacher training and administrator training (in current §263.5(c), proposed §263.5(b)) and believe it would be helpful to clarify certain provisions. We are revising the regulation to make clear that the requirement that training be provided before the end of the award period applies to all three situations: an education degree, a subject-

matter degree, and specialized training. We are removing the exception for a fifth year from the education degree provision because a review of funded projects shows that this exception is not necessary. We are also removing, in the provision on degrees in a subject area (new §263.5(b)(1)(i)(B)), the reference to the requirement that training meet the requirements for full State certification or licensure, because it is redundant with the introductory language of that paragraph.

Changes: We have revised the priority for pre-service training for teachers in proposed §263.5(b)(1) by moving the reference to earning a degree before the end of the award period from proposed §263.5(b)(1)(i)(a) to the introductory language of final §263.5(b)(1)(i), by removing the proposed exception for a fifth year from §263.5(b)(1)(i)(A), and by removing the reference to the requirement that training meets the requirements for full State certification or licensure from proposed §263.5(b)(1)(i)(B).

#### Selection Criteria (§263.6)

Comments: One commenter objected to the job market analysis element of the selection criterion for "Need for Project" in proposed §263.6, and stated that this would increase the burden for applicants to search for and

interpret market analysis data. The commenter also requested that appropriate market analysis Web site links be made available to applicants.

Discussion: Under the selection criterion "Need for Project" in §263.6, we will evaluate the extent to which the proposed project will prepare personnel in specific fields, and the extent to which employment opportunities exist in the project's service area, with both elements to be demonstrated by a job market analysis. The purpose of a job market analysis is to determine whether there is a need for qualified education personnel to fill vacancies in teacher and administrator positions within the geographic region to be served. To conduct the job market analysis, applicants can use accessible data sources at the national, State and local level to determine current and future teacher and administrator shortages in selected fields. Because job market data are now generally available online, a market analysis would not increase an applicant's burden. We also note that prior applicants under the current regulations also addressed need for personnel, documenting education personnel shortages in the region to be served and designing their proposed programs accordingly.

Accessible resources for determining teacher shortages are available at the national level; however, applicants should rely on State and local sources for more accurate and timely data. We also note that this is an element of a selection criterion, not an application requirement, so it is optional for applicants to address, although we encourage all applicants to do so.

Changes: None.

Payback requirements (§263.8)

Comments: Commenters supported the proposed regulations clarifying the payback requirements and procedures.

Discussion: We appreciate the support for these changes.

Changes: None.

Demonstration Grants Program

General

Comments: Several commenters were generally supportive of the proposed changes to the Demonstration Grants program regulations.

Discussion: We appreciate the support for the changes.

Changes: None.

Definitions (§263.20).

Comments: Several commenters addressed the proposed definition of "Indian organization" as it applies to both

this program and the Professional Development program; it is the same definition for both programs.

Discussion: We address those comments under the discussion of Definitions for the Professional Development program (§263.3).

Changes: None.

Definition of Native Youth Community Project.

Comments: Several commenters supported the proposed definition of "Native Youth Community Project," and specifically the requirement that a community come together to address the adverse experiences affecting Indian children. However, several other commenters expressed concern that the requirement for a partnership among the specified entities could adversely affect the success of some applications. For example, one commenter was concerned that some applicants do not have readily available partner organizations, which would reduce the likelihood that such applicants would receive funding.

Discussion: We appreciate the support for encouraging partnerships among entities to more effectively address the complex barriers facing native youth. We believe that greater collaboration among the organizations increases the likelihood that an NYCP will improve the college and career readiness of Indian youth. Furthermore, we believe

that proposed projects that demonstrate the existence of a partnership at the time of application are more likely to become strong, viable projects. Therefore, we disagree with the commenters who objected to the partnership requirement.

While we cannot ensure that partnerships and agreements formed in order to apply for a grant will stand the test of time, we believe that an applicant with a formal partnership agreement will have a greater chance of success than an applicant with only letters of support. We expect that in ranking applications, reviewers will judge the quality of the partnerships presented in those application, based on the selection criteria. Moreover, a partnership that fails after being awarded a grant would not be able to show substantial progress in order to receive continuation funding.

Changes: None.

Comment: One commenter asked that we not give priority to applicants simply because of their geographic proximity to locally available and willing partners.

Discussion: We agree that if a community comes together to create an NYCP, that partnership should have the flexibility to include non-local partners. A tribe and school district may wish to engage with a national

nonprofit organization that is skilled in addressing the focus of the local project, whether it is academic success, drug prevention, parental engagement in schools, or any other project focus. Therefore we are broadening part of the definition of NYCP; rather than requiring the applicant or a partner to show that it has the capacity to improve outcomes for Indian students, we are requiring the applicant or a partner to demonstrate that it has the capacity to improve outcomes that are relevant to the project focus. This allows an applicant to partner with a national organization that has demonstrated the capacity to improve outcomes that are relevant to the project focus, and not be limited to locally available and willing partners. There is a statutory application requirement that projects must be based either on scientific research or on an existing program that has been modified to be culturally appropriate for Indian students (see §263.22(a)(3)). Thus, an applicant that partners with an entity that has demonstrated success with non-Indian students, and proposes to use that entity's program model, will need to explain how it has modified that program to be culturally appropriate.

Changes: We have revised paragraph (6) of the definition of NYCP in §263.20 to provide that an applicant or a

partner must have demonstrated the capacity to improve outcomes that are relevant to the project focus.

Comment: One commenter requested that we ensure that States and local public schools actively participate and coordinate with tribal grantees.

Discussion: We are requiring that at least one tribe and at least one local school district be partners in a proposed project. We are not requiring State involvement, although States may be partners in a project. Because of the focus on local community-driven solutions, it would not be appropriate to require a State's involvement.

Changes: None.

Comments: Two commenters asked that we include tribal colleges in NYCP partnerships, and one asked that we include both tribal colleges and NASNTIs.

Discussion: Tribal colleges are eligible entities under the Demonstration Grants program, and nothing in the regulations precludes either a tribal college or a NASNTI from being a partner in an NYCP. Although we agree that a college or university could be a valuable partner in an NYCP, we decline to make tribal colleges or any other IHEs mandatory partners in NYCPs, because the focus of these projects is a local community area, and not all tribal communities have a college in the vicinity.

Changes: None.

Comments: We received several comments asking whether one NYCP can include multiple tribes. We also received additional comments expressing the concern that urban communities often include Indian youth from many different tribes, and that urban applicants might face unfair challenges in partnering with tribes or their tribal education agencies because of the distance between the tribes and the urban communities in which the Indian youth live and attend school. Another commenter expressed concern that a partnering tribe would refuse to serve youth from other tribes. Some commenters specifically requested that we eliminate the requirement that applicants form a partnership with a tribe. Another commenter asked whether one tribe can participate in more than one NYCP.

Discussion: Nothing in the definition of NYCP prohibits a project from including multiple tribes as partners. To meet the NYCP definition, applicants must identify and address significant barriers and needs within a local community. It is likely that in many areas, including urban areas, Indian youth and their families from many tribes live within a defined local community. Also, members of one tribe often live in several different

communities. The entities responsible for Indian youth in the identified local community should partner with one another. We agree that certain NYCP applicants may need to partner with multiple tribes or their tribal education agencies in order to address the identified need in the local community. We are therefore clarifying in the final regulations that partnerships can include more than one tribe.

However, we disagree with the commenters that it is unfair to urban areas to require applicants to partner with one or more tribes. The NYCPs are intended to support the involvement of tribes in the education of Indian children, which is one of the goals of title VII of the ESEA. Each project must therefore include a partnership among a school district or BIE-funded school, a tribe or its education agency, and other organizations as necessary, to address the need identified by the project. The partnering entities must agree to serve the Indian youth living in the defined local community, regardless of their tribal membership.

With regard to whether one tribe can participate in more than one NYCP, nothing in the regulations prohibits such participation.

Changes: We have revised paragraph (5)(i) of the definition of NYCP in §263.20 to include one or more tribes or their tribal education agencies.

Comment: One commenter objected to the requirement that NYCPs include a school district as a partner, arguing that this would lead to more bureaucracy and undue attention to the school district's own programs as opposed to those favored by a qualifying Indian organization.

Discussion: We believe that schools, tribes, and Indian organizations similarly value better outcomes for Indian youth, including academic achievement and readiness for postsecondary education and employment. The NYCPs are intended to leverage the resources and capacity currently spread among tribes, LEAs, BIE-funded schools, or other organizations, through a partnership to increase the likelihood of reaching these better outcomes. We believe that, especially for communities where most American Indian/Alaska Native (AI/AN) students attend the local public schools, the inclusion of the LEA in these projects is essential to the success of the projects.

Changes: None.

Comment: One commenter suggested that the Department should revise the definition of NYCP to allow for a

project to include a partnership with organizations such as the Boys and Girls Club of America.

Discussion: Paragraph (5) of the NCYP definition permits community organizations to be included in a partnership. However, we do not recommend any specific community organizations as partners in an NYCP. The applicants must determine which entities are necessary partners in order to address the identified need of the Indian youth in the local community to be served by the NYCP.

Changes: None.

#### Definition of "Rural."

Comment: One commenter requested that we add a definition of "rural" in the final regulations.

Discussion: There is no need to define "rural" because the priority for rural applicants under §263.21(c)(5) explains which entities are considered rural. We include further discussion of the rural priority under the Priorities section of the Analysis of Comments and Changes in this notice.

Changes: None.

#### Priorities (§263.21)

Comments: Several commenters supported our proposal to expand the Demonstration Grants program beyond the two absolute priorities of early childhood and college

readiness. One commenter further commended the Department for supporting complex projects to address the complex issues facing some Indian communities.

Discussion: We appreciate the support for the priorities.

Changes: None.

Comments: Several commenters generally objected to the proposed revisions to the priorities in §263.21(b), and to the parallel provision in the Professional Development regulations. One objected to removing the priority preference for consortia that include an Indian entity; another commenter objected to removing the required number of priority preference points.

Discussion: The statute for both the Professional Development and Demonstration Grants requires that we give priority to applications from all three types of tribal entities: tribes, Indian organizations, and Indian IHEs. We proposed to remove the priority for consortia that include a tribal entity because a tribal entity that is not a sole applicant or lead applicant in a consortium does not necessarily have the influence that a sole applicant, or lead applicant in a consortium, has. However, if we only give priority when the Indian entity is the lead applicant, it would result in a tribal entity receiving no preference when it is part of a consortium but not the lead applicant.

Therefore we are creating two separate priorities for the Demonstration Grants, similar to those created for the Professional Development Grants. The first priority, in §263.21(b)(1), gives preference to an Indian entity - tribe, organization, or IHE - either applying alone, or in a consortium or partnership if it serves as the lead applicant. The second priority, in §263.21(b)(2), is for an Indian entity that is part of a consortium or partnership but is not the lead applicant. This will enable us to satisfy the statutory requirement to give priority to the three types of Indian entities, while retaining the ability to provide more points to applications for which the Indian entity is the sole or lead applicant. Applicants cannot receive points under both of these priorities.

With regard to the concern about removing point values from the regulations, we have removed the five-point limitation for both priorities so that we have the flexibility to assign more (or fewer) points as needed to ensure that applicants from tribal entities have an advantage over other applicants.

Changes: We have revised §263.21(b) to create two separate competitive preference priorities. The first priority is for an Indian entity - tribe, organization, or IHE - either

applying alone or as lead applicant in a consortium or partnership. The second is for an Indian entity that is part of a consortium or partnership but is not the lead applicant.

Comments: One commenter objected to the revisions in §263.21(c) that would give the Department discretion to choose specific priorities for a competition in any given year. The commenter stated that changing the priorities would make it hard for long-term grantees to create stable programs across multiple years.

Discussion: Under §263.21(c), the Department has the discretion to choose any of the listed priorities in any year the Department conducts a grant competition for this program. This is consistent with the previous provisions in the same paragraph, which provided that the Department could choose among three different priorities in any given year, although all of those were absolute priorities. We recognize that potential applicants will need to respond to the priorities as published under each notice inviting applications. However, grantees will have the full grant period, typically 48 months, to implement their projects. We also note that there is no guarantee that a grantee under a discretionary grant program will receive another grant under the same program at the end of its grant

period. The revisions to the priorities in §263.21(c) enable the Secretary to prioritize projects that address the needs of the target communities.

Changes: None.

Priority for Native Youth Community Project (NYCP)

(§263.21(c)(1))

Comments: Several commenters supported the proposed priority for NYCP; one commenter mentioned the benefits of collaboration between tribes and schools and noted how out-of-school environments significantly affect in-classroom success. Other commenters requested that we support parent and family engagement in funding NYCPs.

Discussion: We appreciate the support for the NYCP priority. We agree that parent and family engagement both in school and in the community is a crucial component in efforts to improve the outcomes of all children, including Indian children and youth. Each applicant must include in its application a description of how parents of Indian children have been and will be involved in developing and implementing the proposed activities, as required by §263.22(a)(1). In addition, an existing AI/AN parent organization or tribal parent committee could serve as a valuable partner in an NYCP.

Changes: None.

Priority for Grantees under Other Programs (§263.21(c)(2))

Comments: Several commenters objected to the priority for applicants that have been awarded grants under other programs. One commenter stated that Indian organizations would be unfairly excluded under this priority, which would interfere with their ability to receive funding. Another commenter stated that the priority would provide undue advantage to applicants that are already receiving Federal funds.

Discussion: This priority is designed to increase the likelihood that funded projects will attain their goals. The Demonstration Grants program is intended to target the most persistent issues facing Indian children, and to provide models that others can use. Grantees with existing resources to leverage are likely to have greater opportunities to address the needs of Indian children and to provide models that can be disseminated broadly.

Although we did not receive a comment requesting clarification, the proposed regulations did not state the timeframe within which applicants must have received these other awards in order to qualify for this preference. We are clarifying that, to receive preference under this priority, the lead applicant or its partner must have received an award within the last four years. A longer

period of time would make it less likely that the grantee could build on the experience gained by that grant.

Changes: We have revised §263.21(c)(2) to provide that the applicant or one of its partners must have received an award under a selected program within the last four years in order to receive this preference.

Comment: One commenter objected to the priority for applicants that consolidate funds through a plan that complies with section 7116 of the ESEA or other authority. The commenter argued that this preference would unduly favor tribes, which manage multiple programs, as opposed to Indian organizations that have a more narrow focus.

Discussion: The purpose of the priority in §263.21(c)(3) for entities that have Department approval to consolidate funds is to encourage entities to take advantage of measures available to them to reduce duplication and bureaucracy, such as the authority under section 7116 of the ESEA for consolidation of funding designed to benefit Indian students. Even though we recognize that not every eligible entity will be able to take advantage of this priority, we seek to encourage this consolidation in order to increase the impact of Federal funding by reducing duplication of effort.

Changes: None.

Rural Priority (§263.21(c)(5))

Comments: We received several comments regarding the competitive preference priority for rural applicants. Some commenters commended our efforts to address the needs associated with rural poverty. However, other commenters stated that urban areas, like rural communities, face the challenges of poverty. Several commenters stated that projects serving urban communities and those serving rural communities should not be required to compete for funding. One commenter stated that more American Indian children live in urban than in rural areas. Several commenters argued that because the Department's Impact Aid program compensates school districts in rural areas, such districts should not receive a priority under this program. A commenter also argued that the Department should allocate more funds to Impact Aid programs in order to address rural poverty, rather than providing a priority under this program.

Discussion: Based on the Common Core of Data reported by SEAs in school year 2012-2013, nearly one-third of AI/AN children are enrolled in rural school districts, whereas fewer than one-fourth of AI/AN children live in city school districts. Therefore, we believe that giving preference to rural districts will appropriately focus on

the geographical areas with proportionately larger populations of Indian children.

Furthermore, we believe that the solutions to educational challenges may be different in rural communities than in urban communities and that there is a need for solutions that are unique to rural communities. The scarcity of services and resources available in rural communities may require additional attention to address these needs.

With regard to the argument concerning the Impact Aid program, we note that not all rural school districts receive Impact Aid funding, often because they do not meet the eligibility requirements. For example, compared to the more than 1,200 school districts that receive title VII formula grants for Indian students, fewer than 700 school districts receive Impact Aid funding for students residing on Indian lands. Moreover, Impact Aid funds are intended to replace lost tax revenues or increased expenses due to a Federal presence. The Impact Aid funds are considered general aid to the recipient school districts, and they may use the funds in whatever manner they choose in accordance with their local and State requirements. Thus a school district that receives Impact Aid may be as much in need of supplemental funding for

Indian students through the Demonstration Grants program as any other school district.

Changes: None.

Comment: None.

Discussion: During our internal review of the proposed priority for rural applicants in §263.21(c)(5), we reviewed again whether all BIE-funded schools serve rural locales and determined that not all BIE-funded schools serve those locales. Accordingly, we are revising the regulations to add a reference to the census locale codes as the indicator for BIE-funded schools that would be considered rural for purposes of this priority.

Changes: We have revised the language in §263.21(c)(5) with regard to BIE-funded schools to add that, to meet the rural priority, they must be in locale codes 42 or 43, as designated by the U.S. Census Bureau.

Application Requirements (§263.22)

Comment: One commenter objected to the requirement in §263.22(b)(2) that applicants submit a written agreement between the partners in a proposed project.

Discussion: This is an application requirement that the Department may choose to use in any year of a new competition. For a priority such as the NYCP priority, we would select this application requirement because it would

be essential for such a project to show agreement between the required partners. For other priorities, such as a priority for early learning projects, this requirement may not be appropriate. We will publish the selected application requirements in the notice inviting applications in the Federal Register.

Changes: None.

Comment: None.

Discussion: During our internal review of the proposed application requirements, we noted that the requirement to submit measureable objectives in §263.22(b)(3) insufficiently communicated the expectation for the project to use the measureable objectives in evaluating the progress toward and success in meeting its goal or goals. Accordingly, we are revising the regulations to include a project evaluation plan.

Changes: We have revised the language in §263.22(b)(3) to clarify that the applicant must submit, in response to a notice inviting applications published in the Federal Register, an evaluation plan that includes measureable objectives.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Costs and Benefits: The potential costs associated with the priorities and requirements would be minimal while the potential benefits are significant.

For Professional Development grants, applicants may anticipate costs in developing their applications and time spent reporting participant payback information in the Data Collection System (DCS). Additional costs would be associated with participant and employer information entered in the DCS, but program funds would pay for the costs of carrying out these activities.

The benefits include enhancing project design and quality of services to better meet the program objectives,

with the end result that more participants successfully complete their programs of study and obtain employment as teachers and administrators.

For the Demonstration Grants program, applicants may anticipate costs associated with developing a partnership agreement and providing evidence of a local needs assessment or data analysis. These requirements should improve the quality of projects funded and conducted under these grants, and we believe the benefits of these improvements will outweigh the costs. Elsewhere in this section, under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

Paperwork Reduction Act of 1995

Sections 263.6, 263.10, 263.11 and 263.22 Indian Education Discretionary Grant Programs; Professional Development Program and Demonstration Grants for Indian Children Program contain information collection requirements. Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C.3507(d)), the Department of Education has submitted a copy of these sections and related application forms to the Office of Management and Budget (OMB) for its review and approval. In accordance with the PRA, the OMB Control number associated with the Professional Development

final regulations, related application forms, and ICRs for section 263.6, is OMB approved 1810-0580, and for sections 263.10 and 263.11 it is OMB approved 1810-0698. The Department also submitted to OMB for its review and approval a new Information Collection Request (ICR) for control number 1810-New Application for Demonstration Grants for Indian Children Program for section 263.22. An approved OMB control number will be assigned to this new ICR at the time of publication of the final rule.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

#### Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened

federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at:

www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the Federal Register by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Numbers: 84.299A Demonstration Grants for Indian Children Program; 84.299B Professional Development Program)

List of Subjects in 34 CFR Part 263

Business and industry, Colleges and universities,  
Elementary and secondary education, Grant programs—  
education, Grant program—Indians, Indians—education,  
Reporting and recordkeeping requirements, Scholarships and  
fellowships.

Dated: April 17, 2015.

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Deborah Delisle,  
Assistant Secretary for  
Elementary and Secondary  
Education

For the reasons discussed in the preamble, the Secretary of Education amends title 34 of the Code of Federal Regulations by revising part 263 to read as follows:

PART 263--INDIAN EDUCATION DISCRETIONARY GRANT PROGRAMS

Subpart A--Professional Development Program

Sec.

- 263.1 What is the Professional Development Program?
- 263.2 Who is eligible to apply under the Professional Development program?
- 263.3 What definitions apply to the Professional Development program?
- 263.4 What costs may a Professional Development program include?
- 263.5 What priority is given to certain projects and applicants?
- 263.6 How does the Secretary evaluate applications for the Professional Development program?
- 263.7 What are the requirements for a leave of absence?
- 263.8 What are the payback requirements?
- 263.9 What are the requirements for payback deferral?
- 263.10 What are the participant payback reporting requirements?
- 263.11 What are the grantee post-award requirements?
- 263.12 What are the program-specific requirements for continuation awards?

AUTHORITY: 20 U.S.C. 7442, unless otherwise noted.

Subpart B--Demonstration Grants for Indian Children Program

Sec.

- 263.20 What definitions apply to the Demonstration Grants for Indian Children program?
- 263.21 What priority is given to certain projects and applicants?
- 263.22 What are the application requirements for these grants?
- 263.23 What is the Federal requirement for Indian hiring preference that applies to these grants?

AUTHORITY: 20 U.S.C. 7441, unless otherwise noted.

Subpart A--Professional Development Program

AUTHORITY: 20 U.S.C. 7442, unless otherwise noted.

§263.1 What is the Professional Development program?

(a) The Professional Development program provides grants to eligible entities to--

(1) Increase the number of qualified Indian individuals in professions that serve Indian people;

(2) Provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(3) Improve the skills of qualified Indian individuals who serve in the education field.

(b) The Professional Development program requires individuals who receive training to--

(1) Perform work related to the training received under the program and that benefits Indian people, or to repay all or a prorated part of the assistance received under the program; and

(2) Periodically report to the Secretary on the individual's compliance with the work requirement until work-related payback is complete or the individual has been

referred for cash payback.

§263.2 Who is eligible to apply under the Professional Development program?

(a) In order to be eligible for either pre-service or in-service training programs, an applicant must be an eligible entity which means--

(1) An institution of higher education, including an Indian institution of higher education;

(2) A State educational agency in consortium with an institution of higher education;

(3) A local educational agency (LEA) in consortium with an institution of higher education;

(4) An Indian tribe or Indian organization in consortium with an institution of higher education; or

(5) A Bureau of Indian Education (Bureau)-funded school.

(b) Bureau-funded schools are eligible applicants for--  
-

(1) An in-service training program; and

(2) A pre-service training program when the Bureau-funded school applies in consortium with an institution of higher education that is accredited to provide the coursework and level of degree required by the project.

(c) Eligibility of an applicant requiring a consortium

with any institution of higher education, including Indian institutions of higher education, requires that the institution of higher education be accredited to provide the coursework and level of degree required by the project.

§263.3 What definitions apply to the Professional Development program?

The following definitions apply to the Professional Development program:

Bureau-funded school means a Bureau of Indian Education school, a contract or grant school, or a school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

Department means the U.S. Department of Education.

Dependent allowance means costs for the care of minor children under the age of 18 who reside with the training participant and for whom the participant has responsibility. The term does not include financial obligations for payment of child support required of the participant.

Full course load means the number of credit hours that the institution requires of a full-time student.

Full-time student means a student who--

(1) Is a degree candidate for a baccalaureate or graduate degree;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

Good standing means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

Graduate degree means a post-baccalaureate degree awarded by an institution of higher education.

Indian means an individual who is--

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements of paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect on October 19, 1994.

Indian institution of higher education means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-

Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

Indian organization means an organization that--

(1) Is legally established--

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Induction services means services provided after participants complete their training program and during

their first year of teaching. Induction services support and improve participants' professional performance and promote their retention in the field of education and teaching. They include, at a minimum, these activities:

(1) High-quality mentoring, coaching, and consultation services for the participant to improve performance;

(2) Access to research materials and information on teaching and learning;

(3) Assisting new teachers with use of technology in the classroom and use of data, particularly student achievement data, for classroom instruction;

(4) Clear, timely and useful feedback on performance, provided in coordination with the participant's supervisor; and

(5) Periodic meetings or seminars for participants to enhance collaboration, feedback, and peer networking and support.

In-service training means activities and opportunities designed to enhance the skills and abilities of individuals in their current areas of employment.

Institution of higher education means an accredited college or university within the United States that awards a baccalaureate or post-baccalaureate degree.

Participant means an Indian individual who is being

trained under the Professional Development program.

Payback means work-related service or cash reimbursement to the Department of Education for the training received under the Professional Development program.

Pre-service training means training to Indian individuals to prepare them to meet the requirements for licensing or certification in a professional field requiring at least a baccalaureate degree.

Professional development activities means pre-service or in-service training offered to enhance the skills and abilities of individual participants.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Stipend means that portion of an award that is used for room, board, and personal living expenses for full-time participants who are living at or near the institution providing the training.

(Authority: 20 U.S.C. 7442 and 7491)

§263.4 What costs may a Professional Development program include?

(a) A Professional Development program may include, as training costs, assistance to--

(1) Fully finance a student's educational expenses including tuition, books, and required fees; health insurance required by the institution of higher education; stipend; dependent allowance; technology costs; program required travel; and instructional supplies; or

(2) Supplement other financial aid, including Federal funding other than loans, for meeting a student's educational expenses.

(b) The Secretary announces the expected maximum amounts for stipends and dependent allowance in the annual notice inviting applications published in the Federal Register.

(c) Other costs that a Professional Development program may include, but that must not be included as training costs, include costs for--

(1) Collaborating with prospective employers within the grantees' local service area to create a pool of potentially available qualifying employment opportunities;

(2) In-service training activities such as providing mentorships linking experienced teachers at job placement sites with program participants; and

(3) Assisting participants in identifying and securing qualifying employment opportunities in their field of study following completion of the program.

§263.5 What priority is given to certain projects and applicants?

(a) The Secretary gives competitive preference priority to--

(1) An application submitted by an Indian tribe, Indian organization, or an Indian institution of higher education that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive preference under this priority only if the lead applicant for the consortium is the Indian tribe, Indian organization, or Indian institution of higher education. In order to be considered a consortium application, the application must include the consortium agreement, signed by all parties; or

(2) A consortium application of eligible entities that--

(i) Meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education; and

(ii) Is not eligible to receive a preference under paragraph (a)(1) of this section.

(b) The Secretary may annually establish as a priority any of the priorities listed in this paragraph. When inviting applications for a competition under the Professional Development program, the Secretary designates the type of each priority as absolute, competitive preference, or invitational through a notice in the Federal Register. The effect of each type of priority is described in 34 CFR 75.105.

(1) Pre-Service training for teachers. The Secretary establishes a priority for projects that--

(i) Provide support and training to Indian individuals to complete a pre-service education program before the end of the award period that enables the individuals to meet the requirements for full State certification or licensure as a teacher through--

(A) Training that leads to a degree in education;

(B) For States allowing a degree in a specific subject area, training that leads to a degree in the subject area;  
or

(C) Training in a current or new specialized teaching assignment that requires a degree and in which a documented teacher shortage exists;

(ii) Provide one year of induction services, during the award period, to participants after graduation,

certification, or licensure, while they are completing their first year of work in schools with significant Indian student populations; and

(iii) Include goals for the--

(A) Number of participants to be recruited each year;

(B) Number of participants to continue in the project each year;

(C) Number of participants to graduate each year; and

(D) Number of participants to find qualifying jobs within twelve months of completion.

(2) Pre-service administrator training. The Secretary establishes a priority for projects that--

(i) Provide support and training to Indian individuals to complete a graduate degree in education administration that is provided before the end of the award period and that allows participants to meet the requirements for State certification or licensure as an education administrator;

(ii) Provide one year of induction services, during the award period, to participants after graduation, certification, or licensure, while they are completing their first year of work as administrators in schools with significant Indian student populations; and

(iii) Include goals for the--

(A) Number of participants to be recruited each year;

(B) Number of participants to continue in the project each year;

(C) Number of participants to graduate each year; and

(D) Number of participants to find qualifying jobs within twelve months of completion.

(3) Letter of support. The Secretary establishes a priority for applicants that include a letter of support signed by the authorized representative of an LEA or Department of the Interior Bureau of Indian Education (BIE)-funded school or other entity in the applicant's service area that agrees to consider program graduates for qualifying employment.

(Authority: 20 U.S.C. 7442 and 7473)

§263.6 How does the Secretary evaluate applications for the Professional Development program?

The Secretary uses the procedures for establishing selection criteria and factors in 34 CFR 75.200 through 75.210 to establish the criteria and factors used to evaluate applications submitted in a grant competition for the Professional Development program. The Secretary may also consider one or more of the criteria and factors listed in paragraphs (a) through (e) of this section to evaluate applications.

(a) Need for project. In determining the need for the

proposed project, the Secretary considers one or more of the following:

(1) The extent to which the proposed project will prepare personnel in specific fields in which shortages have been demonstrated through a job market analysis.

(2) The extent to which employment opportunities exist in the project's service area, as demonstrated through a job market analysis.

(b) Significance. In determining the significance of the proposed project, the Secretary considers one or more of the following:

(1) The potential of the proposed project to develop effective strategies for teaching Indian students and improving Indian student achievement, as demonstrated by a plan to share findings gained from the proposed project with parties who could benefit from such findings, such as other institutions of higher education who are training teachers and administrators who will be serving Indian students.

(2) The likelihood that the proposed project will build local capacity to provide, improve, or expand services that address the specific needs of Indian students.

(c) Quality of the project design. The Secretary

considers one or more of the following factors in determining the quality of the design of the proposed project:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are ambitious but also attainable and address--

(i) The number of participants expected to be recruited in the project each year;

(ii) The number of participants expected to continue in the project each year;

(iii) The number of participants expected to graduate; and

(iv) The number of participants expected to find qualifying jobs within twelve months of completion.

(2) The extent to which the proposed project has a plan for recruiting and selecting participants that ensures that program participants are likely to complete the program.

(3) The extent to which the proposed project will incorporate the needs of potential employers, as identified by a job market analysis, by establishing partnerships and relationships with appropriate entities (e.g., Bureau-funded schools, organizations providing educational services to Indian students, and LEAs) and developing

programs that meet their employment needs.

(d) Quality of project services. The Secretary considers one or more of the following factors in determining the quality of project services:

(1) The likelihood that the proposed project will provide participants with learning experiences that develop needed skills for successful teaching and/or administration in schools with significant Indian populations.

(2) The extent to which the proposed project prepares participants to adapt teaching and/or administrative practices to meet the breadth of Indian student needs.

(3) The extent to which the applicant will provide job placement activities that reflect the findings of a job market analysis and needs of potential employers.

(4) The extent to which the applicant will offer induction services that reflect the latest research on effective delivery of such services.

(e) Quality of project personnel. The Secretary considers one or more of the following factors when determining the quality of the personnel who will carry out the proposed project:

(1) The qualifications, including relevant training, experience, and cultural competence, of the project director and the amount of time this individual will spend

directly involved in the project.

(2) The qualifications, including relevant training, experience, and cultural competence, of key project personnel and the amount of time to be spent on the project and direct interactions with participants.

(3) The qualifications, including relevant training, experience, and cultural competence (as necessary), of project consultants or subcontractors, if any.

(Approved by the Office of Management and Budget under control number 1810-0580)

§263.7 What are the requirements for a leave of absence?

(a) A participant must submit a written request for a leave of absence to the project director not less than 30 days prior to withdrawal or completion of a grading period, unless an emergency situation has occurred and the project director chooses to waive the prior notification requirement.

(b) The project director may approve a leave of absence, for a period not longer than twelve months, provided the participant has completed at least twelve months of training in the project and is in good standing at the time of request.

(c) The project director permits a leave of absence only if the institution of higher education certifies that

the training participant is eligible to resume his or her course of study at the end of the leave of absence.

(d) A participant who is granted a leave of absence and does not return to his or her course of study by the end of the grant project period will be considered not to have completed the course of study for the purpose of project performance reporting.

§263.8 What are the payback requirements?

(a) General. All participants must--

(1) Either perform work-related payback or provide cash reimbursement to the Department for the training received. It is the preference of the Department for participants to complete a work-related payback;

(2) Sign an agreement, at the time of selection for training, that sets forth the payback requirements; and

(3) Report employment verification in a manner specified by the Department or its designee.

(b) Work-related payback. (1) Participants qualify for work-related payback if the work they are performing is in their field of study under the Professional Development program and benefits Indian people. Employment in a school that has a significant Indian student population qualifies as work that benefits Indian people.

(2) The period of time required for a work-related

payback is equivalent to the total period of time for which pre-service or in-service training was actually received on a month-for-month basis under the Professional Development program.

(3) Work-related payback is credited for the actual time the participant works, not for how the participant is paid (e.g., for work completed over 9 months but paid over 12 months, the payback credit is 9 months).

(4) For participants that initiate, but cannot complete, a work-related payback, the payback converts to a cash payback that is prorated based upon the amount of work-related payback completed.

(c) Cash payback. (1) Participants who do not submit employment verification within twelve months of program exit or completion, or have not submitted employment verification for a twelve-month period during a work-related payback, will automatically be referred for a cash payback unless the participant qualifies for a deferral as described in §263.9.

(2) The cash payback required shall be equivalent to the total amount of funds received and expended for training received under this program and may be prorated based on any approved work-related service the participant performs.

(3) Participants who are referred to cash payback may incur non-refundable penalty and administrative fees in addition to their total training costs and will incur interest charges starting the day of referral.

(4) The cash payback obligation may only be discharged through bankruptcy if repaying the loan would cause the participant undue hardship as defined in 11 U.S.C. 523(a) (8).

§263.9 What are the requirements for payback deferral?

(a) Education deferral. If a participant completes or exits the Professional Development program, but plans to continue his or her education as a full-time student without interruption, in a program leading to a degree at an accredited institution of higher education, the Secretary may defer the payback requirement until the participant has completed his or her educational program.

(1) A request for a deferral must be submitted to the Secretary within 30 days of completing or exiting the Professional Development program and must provide the following information--

(i) The name of the accredited institution the student will be attending;

(ii) A copy of the letter of admission from the institution;

- (iii) The degree being sought; and
- (iv) The projected date of completion.

(2) If the Secretary approves the deferral of the payback requirement on the basis that a participant is continuing as a full-time student, the participant must submit to the Secretary a status report from an academic advisor or other authorized representative of the institution of higher education, showing verification of enrollment and status, after every grading period.

(b) Military deferral. If a participant exits the Professional Development program because he or she is called or ordered to active duty status in connection with a war, military operation, or national emergency for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101, or as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), the Secretary may defer the payback requirement until the participant has completed his or her military service, for a period not to exceed 36 months. Requests for deferral must be submitted to the Secretary within 30 days of the earlier of receiving the call to military service or completing or exiting the Professional Development program, and must provide--

- (1) A written statement from the participant's

commanding or personnel officer certifying--

(i) That the participant is on active duty in the Armed Forces of the United States;

(ii) The date on which the participant's service began; and

(iii) The date on which the participant's service is expected to end; or

(2) (i) A true certified copy of the participant's official military orders; and

(ii) A copy of the participant's military identification.

§263.10 What are the participant payback reporting requirements?

(a) Notice of intent. Participants must submit to the Secretary, within 30 days of completion of, or exit from, as applicable, their training program, a notice of intent to complete a work-related or cash payback, or to continue in a degree program as a full-time student.

(b) Work-related payback. (1) Starting within six months after exit from or completion of the program, participants must submit to the Secretary employment information, which includes information explaining how the employment is related to the training received and benefits Indian people.

(2) Participants must submit an employment status report every six months beginning from the date the work-related service is to begin until the payback obligation has been fulfilled.

(c) Cash payback. If a cash payback is to be made, the Department contacts the participant to establish an appropriate schedule for payments.

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§263.11 What are the grantee post-award requirements?

(a) Prior to providing funds or services to a participant, the grantee must conduct a payback meeting with the participant to explain the costs of training and payback responsibilities following training.

(b) The grantee must report to the Secretary all participant training and payback information in a manner specified by the Department or its designee.

(c) (1) Grantees must obtain a signed payback agreement from each participant before the participant begins training. The agreement must include--

(i) The estimated total training costs;

(ii) The estimated length of training; and

(iii) Information documenting that the grantee held a payback meeting with the participant that meets the

requirements of this section.

(2) Grantees must submit a signed payback agreement to the Department within seven days of signing the payback agreement.

(d) Grantees must conduct activities to assist participants in identifying and securing qualifying employment opportunities following completion of the program.

(e) (1) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638). That section requires that, to the greatest extent feasible, a grantee--

(i) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(ii) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(2) For the purposes of paragraph (e), an Indian is a member of any federally recognized Indian tribe.

(Authority: 25 U.S.C. 450b, 450e(b))

(Approved by the Office of Management and Budget under control number 1810-0698)

§263.12 What are the program-specific requirements for continuation awards?

(a) In making continuation awards, in addition to applying the criteria in 34 CFR §75.253, the Secretary considers the extent to which a grantee has achieved its project goals to recruit, retain, graduate, and place in qualifying employment program participants.

(b) The Secretary may reduce continuation awards, including the portion of awards that may be used for administrative costs, as well as student training costs, based on a grantee's failure to achieve its project goals specified in paragraph (a) of this section.

**Subpart B--Demonstration Grants for Indian Children Program**

AUTHORITY: 20 U.S.C. 7441, unless otherwise noted.

§263.20 What definitions apply to the Demonstration Grants for Indian Children program?

The following definitions apply to the Demonstration Grants for Indian Children program:

Federally supported elementary or secondary school for Indian students means an elementary or secondary school that is operated or funded, through a contract or grant, by the Bureau of Indian Education.

Indian means an individual who is--

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements described in paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect on October 19, 1994.

Indian institution of higher education means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

Indian organization means an organization that--

(1) Is legally established--

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction of or by charter from the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Native youth community project means a project that is--

(1) Focused on a defined local geographic area;

(2) Centered on the goal of ensuring that Indian students are prepared for college and careers;

(3) Informed by evidence, which could be either a needs assessment conducted within the last three years or other data analysis, on--

(i) The greatest barriers, both in and out of school, to the readiness of local Indian students for college and

careers;

(ii) Opportunities in the local community to support Indian students; and

(iii) Existing local policies, programs, practices, service providers, and funding sources;

(4) Focused on one or more barriers or opportunities with a community-based strategy or strategies and measurable objectives;

(5) Designed and implemented through a partnership of various entities, which--

(i) Must include--

(A) One or more tribes or their tribal education agencies; and

(B) One or more BIE-funded schools, one or more local educational agencies, or both; and

(ii) May include other optional entities, including community-based organizations, national nonprofit organizations, and Alaska regional corporations; and

(6) Led by an entity that--

(i) Is eligible for a grant under the Demonstration Grants for Indian Children program; and

(ii) Demonstrates, or partners with an entity that demonstrates, the capacity to improve outcomes that are relevant to the project focus through experience with

programs funded through other sources.

Professional development activities means in-service training offered to enhance the skills and abilities of individuals that may be part of, but not exclusively, the activities provided in a Demonstration Grants for Indian Children program.

§263.21 What priority is given to certain projects and applicants?

(a) The Secretary gives priority to an application that presents a plan for combining two or more of the activities described in section 7121(c) of the Elementary and Secondary Education Act of 1965, as amended, over a period of more than one year.

(b) The Secretary gives a competitive preference priority to--

(1) An application submitted by an Indian tribe, Indian organization, or Indian institution of higher education that is eligible to participate in the Demonstration Grants for Indian Children program. A group application submitted by a consortium that meets the requirements of 34 CFR 75.127 through 75.129 or submitted by a partnership is eligible to receive the preference only if the lead applicant is an Indian tribe, Indian organization, or Indian institution of higher education; or

(2) A group application submitted by a consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 or submitted by a partnership if the consortium or partnership --

(i) Includes an Indian tribe, Indian organization, or Indian institution of higher education; and

(ii) Is not eligible to receive the preference in paragraph (b) (1) of this section.

(c) The Secretary may give priority to an application that meets any of the priorities listed in this paragraph. When inviting applications for a competition under the Demonstration Grants program, the Secretary designates the type of each priority as absolute, competitive preference, or invitational through a notice inviting applications published in the Federal Register. The effect of each type of priority is described in 34 CFR 75.105.

(1) Native youth community projects.

(2) Projects in which the applicant or one of its partners has received a grant in the last four years under a federal program selected by the Secretary and announced in a notice inviting applications published in the Federal Register.

(3) Projects in which the applicant has Department approval to consolidate funding through a plan that

complies with section 7116 of the ESEA or other authority designated by the Secretary.

(4) Projects that focus on a specific activity authorized in section 7121(c) of the ESEA as designated by the Secretary in the notice inviting applications.

(5) Projects that include either--

(i) An LEA that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title VI, part B of the ESEA; or

(ii) A BIE-funded school that is located in an area designated with locale code of either 42 or 43 as designated by the U.S. Census Bureau.

(Authority: 20 U.S.C. 7426, 7441, and 7473)

§263.22 What are the application requirements for these grants?

(a) Each application must contain--

(1) A description of how Indian tribes and parents of Indian children have been, and will be, involved in developing and implementing the proposed activities;

(2) Assurances that the applicant will participate, at the request of the Secretary, in any national evaluation of this program;

(3) Information demonstrating that the proposed project is based on scientific research, where applicable, or an existing program that has been modified to be culturally appropriate for Indian students;

(4) A description of how the applicant will continue the proposed activities once the grant period is over; and

(5) Other assurances and information as the Secretary may reasonably require.

(b) The Secretary may require an applicant to satisfy any of the requirements in this paragraph. When inviting applications for a competition under the Demonstration Grants program, the Secretary establishes the application requirements through a notice inviting applications published in the Federal Register. If specified in the notice inviting applications, an applicant must submit--

(1) Evidence, which could be either a needs assessment conducted within the last three years or other data analysis, of--

(i) The greatest barriers, both in and out of school, to the readiness of local Indian students for college and careers;

(ii) Opportunities in the local community to support Indian students; and

(iii) Existing local policies, programs, practices,

service providers, and funding sources.

(2) A copy of an agreement signed by the partners in the proposed project, identifying the responsibilities of each partner in the project. The agreement can be either--

(i) A consortium agreement that meets the requirements of 34 CFR 75.128, if each of the entities are eligible entities under this program; or

(ii) Another form of partnership agreement, such as a memorandum of understanding or a memorandum of agreement, if not all the partners are eligible entities under this program.

(3) A plan, which includes measurable objectives, to evaluate reaching the project goal or goals.

§263.23 What is the Federal requirement for Indian hiring preference that applies to these grants?

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638). That section requires that, to the greatest extent feasible, a grantee--

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned

economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this section, an Indian is a member of any federally recognized Indian tribe.

(Authority: 25 U.S.C. 450b, 450e(b)).

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