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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 41

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RIN 1076-AF08

Grants to Tribal Colleges and Universities and Diné College

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Education is updating its regulations governing grants to Tribal colleges and universities and Diné College. The Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended (TCCUA), authorizes Federal assistance to institutions of higher education that are formally controlled or have been formally sanctioned or chartered by the governing body of an Indian Tribe or Tribes. The Navajo Community College Assistance Act of 1978, as amended (NCCA) authorizes Federal assistance to the Navajo Nation in construction, maintenance, and operation of Diné College. This final rule would update implementing regulations in light of amendments to the TCCUA and the NCCA.

DATE: This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Mendoza, Acting Chief of Staff, Bureau of Indian Education (202) 208-3559.

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I. Background

The TCCUA authorizes grants for operating and improving Tribal colleges and universities to insure [sic] continued and expanded educational opportunities for Indian students and to allow for the improvement and expansion of the physical resources of such institutions. *See*, 25 U.S.C. 1801 *et seq.* The TCCUA also authorizes grants for the encouragement of endowment funds for the operation and improvement of Tribal colleges and universities. The NCCA authorizes grants to the Navajo Nation to assist in the construction, maintenance and operation of Diné College. *See* 25 U.S.C. 640a *et seq.*

In 1968, the Navajo Nation created the first Tribal college, now called Diné College—and other Tribal colleges quickly followed in California, North Dakota, and South Dakota. Today, there are 37 Tribal colleges in 17 states. The Tribally controlled institutions were chartered by one or more Tribes and are locally managed.

Tribal colleges generally serve geographically isolated populations. In a relatively brief period of time, they have become essential to educational opportunity for American Indian

students. Tribal colleges are unique institutions that combine personal attention with cultural relevance, in such a way as to encourage American Indians—especially those living on reservations—to overcome barriers to higher education.

II. The Rule’s Changes to the Current Regulations

The regulations at 25 CFR part 41 were originally published in 1979. Since the Tribally Controlled Community College Assistance Act of 1978 (P.L. 95-471, Title I) was enacted on October 17, 1978, over 30 years of amendments to the Act have been made. These include P.L. 98-192 (December 1, 1983), P.L. 99-428 (September 30, 1996), P.L. 105-244 (October 7, 1998), and P.L. 110-315 (August 14, 2008). Similarly, the Navajo Community College Assistance Act of 1978 (P.L. 95-471, Title II) was amended by P.L. 110-315 (August 14, 2008). This final rule incorporates updates required by those amendments. Specifically, the final rule:

- Makes “plain language” revisions under Executive Order 12866 and 12988 and by the Presidential Memorandum of June 1, 1998;
- Updates institutional names (e.g., changing “Director, Office of Indian Education Programs” to “Director of the Bureau of Indian Education”);
- Adds statutory authorities and makes accompanying statutory updates; and
- Combines the purpose, scope, and definitions into a new subpart A.

Significant changes the final rule makes include clarifying that: (1) the calculation of an Indian Student Count (ISC) only includes students making satisfactory progress, as defined by the Tribal college, towards a degree or certificate; (2) no credit hours earned by a high school student that will be used towards the student’s high school degree or its equivalent are included in the ISC; and (3) grantees may exclude high school students for the purpose of calculating the total number of full-time equivalent students. Changes clarify often misunderstood requirements

for an ISC and when high school students cannot be counted towards an ISC. The final rule also updates definitions per amended legislation; reorganizes and clarifies institutional grant eligibility, grant application procedures, Department of the Interior (DOI) grant reporting requirements, and essential information for determining Indian student eligibility. Presently, information is embedded in extended definitions and is difficult to find; the changes increase accessibility and correct outdated language and requirements.

The final rule makes several terminology changes throughout to reflect statutory language. These include replacing “Tribally controlled community colleges” with “Tribal colleges and universities,” replacing “Navajo Community College” with “Diné College,” and replacing “feasibility” with “eligibility” in appropriate places. A detailed table listing changes from the current rule to the final rule can be referenced in the publication of the proposed rule, 80 FR 49946 (August 18, 2015) because there have been no significant changes from the proposed to the final version of this rule.

III. Comments Received on the Proposed Rule and Responses to Comments

The BIE received one written comment and five oral comments. The following summarizes the comments received and our responses.

A. *Definitions (41.3)*

One commenter stated a concern that limiting the calculation of ISC to only include students making satisfactory progress would lead to a decrease in funding that could be used to help the very students who need it. The final rule indicates satisfactory progress is defined by the Tribal college or university. Tribal colleges and universities have accreditation requirements set by a nationally recognized accrediting agency or association determined by the U.S.

Secretary of Education. Therefore, each Tribal college or university sets the requirements to meet satisfactory progress towards a degree or certificate.

A commenter asked why the proposed rule failed to include a definition of “unused portion of received funds”. The final rule details how the Tribal college or university reports how much funds remain unspent and how the BIE will reallocate the unspent funds, incorporating the definition. *See* 25 CFR § 41.33.

B. Indian Student Count (41.5)

Three comments addressed how ISC is determined. The first comment noted there is a reduction in time for counting Full-Time Equivalents (FTEs) from the first six weeks to the first three weeks of the semester, and asked what implications this would have on Tribal colleges and universities that have an add/drop deadline after the first three-weeks. The final rule, implementing an explicit requirement at 25 U.S.C. 1801(b)(1), requires ISC to be calculated on the basis of Indian students who are registered at the conclusion of the third week.

The second comment noted there is inconsistency throughout the regulation with the use of the term “students” and requested clarification as to whether the student is Native or non-Native. The definition of “Indian student” includes a student who is a member of an Indian Tribe or a biological child of a living or deceased member of an Indian Tribe. *See* 25 U.S.C. 1801(a)(7); 25 CFR § 41.3. The final rule replaces “student” with “Indian student” where applicable to clarify that the provisions address Indian students only. *See, e.g.,* 25 CFR 41.5.

The third comment asked about whether online students are included in the ISC calculation and whether those students must also be Indian students. The final rule includes distance learning students who otherwise meet the definition of “Indian student” in the ISC count. *See* 25 CFR 41.5. The final rule’s definition of “Indian student” includes a student who

is a member of an Indian Tribe or a biological child of a living or deceased member of an Indian Tribe; documentation is required to verify eligibility. *See* 25 U.S.C. 1801(a)(7); 25 CFR 41.3.

C. Role of the Secretary of Education (41.17)

A commenter asked what the role of the U.S. Secretary of Education is, and if there will be any consultations between the Secretary of Education, Director of the BIE, and Tribes that charter Tribal colleges and universities to discuss how they can expand their joint responsibilities. The final rule establishes the role of the Secretary of Education at § 41.17. The BIE follows the Department of the Interior Tribal Consultation Policy and consults with Tribes on policies that have a substantial direct effect on one or more Tribes.

IV. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It does not have any effect on small entities because only Tribal colleges and universities are recipients of funding under the program governed by this rule. The Department provides funding to Tribal colleges and universities, which were created in response to the higher education needs of American Indians and generally serve geographically isolated populations that have no other means of accessing education beyond the high school level.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more in any one year, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises. This rule is limited to addressing grants for Tribal colleges and universities that are below the stated threshold and funding for the operation and improvement of Tribal colleges and universities comes from the Federal Government budget.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing

the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable “taking”. A takings implication assessment is not required.

F. Federalism (E.O.) 13132

Under the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule implements statutory provisions that authorize grants for operating and improving Tribal colleges or universities to ensure continued and expanded educational opportunities for Indian students by providing financial assistance to be used for the operating expenses of education programs. Because the rule does not affect the Federal government’s relationship to the States or the balance of power and responsibilities among various levels of government, it will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175)

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian Tribes that will result from this rule. This rule will further implement the grants program for Tribal colleges and universities; accordingly, we have coordinated with representatives of federally recognized Tribes throughout the development of this rule. We collaborated with the American Indian Higher Education Consortium (AIHEC), which represents Tribal colleges and universities that will be affected by the rule. Presidents of Tribal colleges and universities provided the initial comments and drafted the Preliminary Discussion Draft. The BIE held five consultation sessions in 2014 (79 FR 54936, September 15, 2014) on the Preliminary Discussion Draft. The BIE received 35 comments and those that were significant were considered into the proposed rule. Following publication of the proposed rule, BIE hosted two Tribal consultation sessions with Indian Tribes. BIE has addressed the input received during those sessions in this final rule.

I. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a Federal agency from conducting or sponsoring a collection of information that requires Office of Management and Budget (OMB) approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. This rule contains information collection requirements that already have OMB approval and are not being revised. OMB has approved the information collections and assigned two control numbers: OMB Control

Number 1076-0018, and OMB Control Number 1076-0105, each expiring on December 31, 2018, and each with an estimated annual burden of 308 hours.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. *See* 43 CFR § 46.210(i). We have also determined that this rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Drafting Information

The primary authors of this document are Juanita Mendoza, Acting Chief of Staff, Bureau of Indian Education, Dawn Baum, Office of the Solicitor – Division of Indian Affairs, and Regina Gilbert, Office of Regulatory Affairs & Collaborative Action – Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 41

Colleges or universities, Grants programs – education, Grant programs – Indians, Indians – education, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Department of the Interior amends title 25 of the Code of Federal Regulations to revise part 41 to read as follows:

PART 41—GRANTS TO TRIBAL COLLEGES AND UNIVERSITIES and DINÉ COLLEGE

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AUTHORITY: Pub. L. 95-471, Oct. 17, 1978, 92 Stat. 1325; amended Pub. L. 98-192, Dec. 1, 1983, 97 Stat. 1335; Pub. L. 99-428, Sept. 30, 1986, 100 Stat. 982; Pub. L. 105-244, Oct. 7, 1998, 112 Stat. 1619; Pub. L. 110-315, Aug. 14, 2008, 122 Stat. 3460; 25 U.S.C. 1801 *et seq.*; Pub. L. 98-192, Dec. 15, 1971, 85 Stat. 646; and Pub. L. 110-315, Aug. 14, 2008, 122 Stat. 3468; 25 U.S.C. 640a *et seq.*

Subpart A— Applicability and Definitions

§ 41.1 When does this subpart apply?

The provisions in this subpart A apply to subparts B and C.

§ 41.3 What definitions are needed?

As used in this part:

Academic facilities mean structures suitable for use as:

- (1) Classrooms, laboratories, libraries, and related facilities necessary or appropriate for instruction of students;
- (2) Research facilities;
- (3) Facilities for administration of educational or research programs;
- (4) Dormitories or student services buildings; or
- (5) Maintenance, storage, support, or utility facilities essential to the operation of the foregoing facilities.

Academic term means a semester, trimester, or other such period (not less than six weeks in duration) into which a Tribal college or university normally subdivides its academic year, but does not include a summer term.

Academic year means a twelve month period established by a Tribal college or university as the annual period for the operation of the Tribal college's or university's education programs.

Assistant Secretary means the Assistant Secretary – Indian Affairs of the Department of the Interior.

BIE means the Bureau of Indian Education.

College or university means an institution of higher education that is formally controlled, formally sanctioned, or chartered by the governing body of an Indian Tribe or Tribes. To qualify under this definition, the college or university must:

(1) Be the only institution recognized by the Department for the Tribe, excluding Diné College; and

(2) If under the control, sanction, or charter of more than one Tribe, be the only institution recognized by the Department for at least one Tribe that currently has no other formally controlled, formally sanctioned, or chartered college or university.

Department means the Department of the Interior.

Director means the Director of the Bureau of Indian Education.

Eligible continuing education units (CEUs) means non-degree credits that meet the criteria established by the International Association of Continuing Education and Training.

Full-time means registered for 12 or more credit hours for an academic term.

Indian Student Count (ISC) or Indian Full-Time Equivalent (FTE) means a number equal to the total number of Indian students enrolled at a Tribal college or university, determined according to the formula in § 41.5.

Indian student means a student who is a member of an Indian Tribe, or a biological child of a living or deceased member of an Indian Tribe. Documentation is required to verify eligibility as a biological child of a living or deceased member of an Indian Tribe, and may include birth certificate and marriage license; Tribal records of student's parent; Indian Health Service eligibility cards; other documentation necessary to authenticate a student as eligible to be counted as an *Indian student* under this definition.

Indian Tribe means an Indian Tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, to be listed in the Federal Register pursuant to 25 CFR 83.5(a) as recognized by and eligible to receive services from the Bureau of Indian Affairs.

Institution of higher education means an institution as defined by section 1001(a) of Title 20 of the United States Code, except that clause (2) of such section is not applicable and the reference to Secretary in clause (5)(A) of such section will be deemed to refer to the Secretary of the Interior.

National Indian organization means an organization which the Secretary finds to be nationally based, represents a substantial Indian constituency and has expertise in the fields of Tribal colleges and universities, and Indian higher education.

NCCA means the Navajo Community College Act of 1978, as amended (25 U.S.C. 640a *et seq.*).

Operating expenses of education programs means the obligations and expenditures of a Tribal college or university for postsecondary education, except for obligations and expenditures for acquisition or construction of academic facilities. Permissible expenditures may include:

- (1) Administration;
- (2) Instruction;
- (3) Maintenance and repair of facilities; and
- (4) Acquisition and upgrade of equipment, technological equipment, and other physical resources.

Part-time means registered for less than 12 credit hours for an academic term.

Satisfactory progress means satisfactory progress toward a degree or certificate as defined by the Tribal college or university.

Secretary, unless otherwise designated, means the Secretary of the Interior, or his/her duly authorized representative.

TCCUA means the Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended (25 U.S.C. 1801 *et seq.*).

You or your means the Tribal college or university.

§ 41.5 How is ISC/FTE calculated?

(a) ISC is calculated on the basis of eligible registrations of Indian students as of the conclusion of the third week of each academic term.

(b) To calculate ISC for an academic term, begin by adding all credit hours of full-time Indian students and all credit hours of part-time Indian students, including full-time and part-time distance education Indian students, who are registered at the conclusion of the third week of the academic term.

(c) Credit hours earned by Indian students who have not obtained a high school degree or its equivalent may be added if you have established criteria for the admission of such students on the basis of their ability to benefit from the education or training offered. You will be presumed to have established such criteria if your admission procedures include counseling or testing that measures students' aptitude to successfully complete the courses in which they enroll.

(d) No credit hours earned by an Indian student attending high school and applied towards the student's high school degree or its equivalent may be counted toward computation of ISC; and no credit hours earned by an Indian student not making satisfactory progress toward a degree or certificate may count toward the ISC.

(e) If ISC is being calculated for a fall term, add to the calculation in paragraph (b) of this section any credits earned in classes offered during the preceding summer term.

(f) Add to the calculation in paragraph (b) of this section those credits being earned in an eligible continuing education program at the conclusion of the third week of the academic term.

Determine the number of those credits as follows:

(1) For institutions on a semester system: one credit for every 15 contact hours and

(2) For institutions on a quarter system: one credit for every 10 contact hours

of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as described in the criteria established by the International Association for Continuing Education and Training. Limit the number of calculated eligible continuing education credits to 10 percent of your ISC.

(g) Divide by 12 the final calculation in paragraph (f) of this section. The formula for the full calculation is expressed mathematically as:

$$\text{ISC} = (\text{FTCR} + \text{PTCR} + \text{SCR} + \text{CECR}) / 12$$

(h) In the formula in paragraph (g) of this section, the abbreviations used have the following meanings:

(1) FTCR = the number of credit hours carried by full-time Indian students (students carrying 12 or more credit hours at the end of the third week of each academic term); and

(2) PTCR = the number of credit hours carried by part-time Indian students (students carrying fewer than 12 credit hours at the end of the third week of each academic term).

(3) SCR = in a fall term, the number of credit hours earned during the preceding summer term.

(4) CECR = the number of credit hours being earned in an eligible continuing education program at the conclusion of the third week of the academic term, in accordance with paragraph (f)(2) of this section.

§ 41.7 What happens if false information is submitted?

Persons submitting or causing to be submitted any false information in connection with any application, report, or other document under this part may be subject to criminal prosecution under provisions such as sections 371 or 1001 of Title 18, U.S. Code.

Subpart B – Tribal Colleges and Universities

§ 41.9 What is the purpose of this subpart?

This subpart prescribes procedures for providing financial and technical assistance under the TCCUA for the operation and improvement of Tribal colleges and universities and advancement of educational opportunities for Indian students. This subpart does not apply to Diné College.

§ 41.11 Who is eligible for financial assistance under this subpart?

(a) A Tribal college or university is eligible for financial assistance under this subpart only if it:

(1) Is governed by a board of directors or board of trustees, a majority of whom are Indians;

(2) Demonstrates adherence to stated goals, a philosophy, or a plan of operation directed to meet the needs of Indians;

(3) Has a student body that is more than 50 percent Indian (unless it has been in operation for less than one year);

(4) Is either:

(i) Accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education to be a reliable authority with regard to the quality of training offered; or

(ii) Is making reasonable progress toward accreditation according to such agency or association;

(5) Has received a positive determination after completion of an eligibility study;

and

(6) Complies with the requirements of §41.19.

(b) Priority in grants is given to institutions that were in operation on October 17, 1978, and that have a history of service to Indian people.

§ 41.13 For what activities can financial assistance to Tribal colleges and universities be used?

Tribal colleges and universities may use financial assistance under this subpart to defray expenditures for academic, educational, and administrative purposes and for the operation and maintenance of the college or university.

§ 41.15 What activities are prohibited?

Tribal colleges and universities must not use financial assistance awarded under this subpart in connection with religious worship or sectarian instruction. However, nothing in this subpart will be construed as barring instruction or practice in comparative religions or cultures or in languages of Indian Tribes.

§ 41.17 What is the role of the Secretary of Education?

(a) The Secretary may enter into an agreement with the Secretary of Education to obtain assistance to:

(1) Develop plans, procedures, and criteria for eligibility studies required under this subpart; and

(2) Conduct such studies.

(b) BIE must consult with the Secretary of Education to determine the reasonable number of students required to support a Tribal college or university.

§ 41.19 How can a Tribal college or university establish eligibility to receive a grant?

(a) Before a Tribal college or university can apply for an initial grant under this part, the governing body of one or more Indian Tribes must request a determination of eligibility on the college's or university's behalf.

(b) Within 30 days of receiving a resolution or other duly authorized request from the governing body of one or more Indian Tribes, BIE will initiate an eligibility study to determine whether there is justification to encourage and maintain a Tribal college or university.

(c) The eligibility study will analyze the following factors:

(1) Financial feasibility based upon reasonable potential enrollment; considering:

(i) Tribal, linguistics, or cultural differences;

(ii) Isolation;

(iii) Presence of alternate educational sources;

(iv) Proposed curriculum;

(2) Levels of Tribal matriculation in and graduation from postsecondary educational institutions; and

(3) The benefits of continued and expanded educational opportunities for Indian students.

(d) Based upon results of the study, the Director will send the Tribe a written determination of eligibility.

(e) The Secretary and the BIE, to the extent practicable, will consult with national Indian organizations and with Tribal governments chartering the colleges or universities being considered.

§ 41.21 How can a Tribe appeal the results of an eligibility study?

If a Tribe receives a negative determination under § 41.19(d), it may submit an appeal to the Assistant Secretary within 45 days.

(a) Following the timely filing of a Tribe's notice of appeal, the Tribal college or university and the Tribe have a right to a formal review of the eligibility study, including a hearing upon reasonable notice within 60 days. At the hearing, the Tribal college or university and the appealing Tribe may present additional evidence or arguments to justify eligibility.

(b) Within 45 days of the hearing, the Assistant Secretary will issue a written ruling confirming, modifying, or reversing the original determination. The ruling will be final and BIE will mail or deliver it within one week of its issuance.

(c) If the Assistant Secretary does not reverse the original negative determination, the ruling will specify the grounds for the decision and state the manner in which the determination relates to each of the factors in § 41.11.

§ 41.23 Can a Tribal college or university request a second eligibility study?

If a Tribe is not successful in its appeal under § 41.21, it can request another eligibility study 12 months or more after the date of the negative determination.

§ 41.25 How does a Tribal college or university apply for a grant?

(a) If the Tribal college or university receives a positive determination of the eligibility study under § 41.19(d), it is entitled to apply for financial assistance under this subpart.

(b) To be considered for assistance, a Tribal college or university must submit an application by or before June 1st of the year preceding the academic year for which the Tribal college or university is requesting assistance. The application must contain the following:

Required information	Required details
(1) Identifying information	(i) Name and address of the Tribal college or university. (ii) Names of the governing board members, and the number of its members who are Indian. (iii) Name and address of the Tribe or Tribes that control or have sanctioned or chartered the Tribal college or university.
(2) Eligibility verification	The date on which an eligibility determination was received
(3) Curriculum materials	(i) A statement of goals, philosophy, or plan of operation demonstrating how the education program is designed to meet the needs of Indians. (ii) A curriculum, which may be in the form of a college catalog or similar publication, or information located on the Tribal college or university Web site.
(4) Financial information	(i) A proposed budget showing total expected education program operating expenses and expected revenues from all sources for the academic year to which the information applies. (ii) A description of record-keeping procedures used to track fund expenditures and to audit and monitor funded programs.
(5) Enrollment information	(i) If the Tribal college or university has been in operation for more than one year, a statement of the total number of ISC (FTE Indian students) and the total number of all FTE students. Grantees may exclude high school students for the purpose of calculating the total number of FTE students. (ii) If the Tribal college or university has not yet begun operations, or has been in operation for less than one year, a statement of expected enrollment, including the total number of FTE students and the ISC (FTE Indian students) and may also require verification of the number of registered students after operations have started.
(6) Assurances and requests	(i) Assurance that the Tribal college or university will not deny admission to any Indian student because that student is, or is not, a member of a specific Tribe. (ii) Assurance that the Tribal college or university will comply with the requirements in §41.39 of this subpart. (iii) A request and justification for a specific waiver of any requirement of 25 CFR part 276 which a Tribal college or university believe to be inappropriate.

Required information	Required details
(7) Certification	Certification by the chief executive that the information on the application is complete and correct.

(c) Material submitted in a Tribal college's or university's initial successful grant application will be retained by the BIE. A Tribal college or university submitting a subsequent application for a grant, must either confirm the information previously submitted remains accurate or submit updated information, as necessary.

§ 41.27 When can the Tribal college or university expect a decision on its application?

Within 45 days of receiving an application, the Director will notify the Tribal college or university in writing whether or not the application has been approved.

(a) If the Director approves the application, written notice will explain when the BIE will send the Tribal college or university a grant agreement under § 41.19.

(b) If the Director disapproves the application, written notice will include:

- (1) The reasons for disapproval; and
- (2) A statement advising the Tribal college or university of the right to amend or supplement the Tribal college's or university's application within 45 days.

(c) The Tribal college or university may appeal a disapproval or a failure to act within 45 days of receipt following the procedures in § 41.21.

§ 41.29 How will a grant be awarded?

If the Director approves the Tribal college's or university's application, the BIE will send the Tribal college or university a grant agreement that incorporates the Tribal college's or university's application and the provisions required by § 41.25. The Tribal college or university grant will be for the fiscal year starting after the approval date of the application.

(a) The BIE will generally calculate the amount of the Tribal college or university grant using the following procedure:

- (1) Begin with a base amount of \$8,000 (adjusted annually for inflation);
- (2) Multiply the base amount by the number of FTE Indian students in attendance during each academic term; and
- (3) Divide the resulting sum by the number of academic terms in the academic year.

(b) All grants under this section are subject to availability of appropriations.

(c) If there are insufficient funds to pay the amount calculated under paragraph (a) of this section, BIE will reduce the grant amount awarded to each eligible Tribal college or university on a pro rata basis.

§ 41.31 When will the Tribal college or university receive funding?

(a) BIE will authorize payments equal to 95 percent of funds available for allotment by either July 1 or within 14 days after appropriations become available, with the remainder of the payment made no later than September 30.

(b) BIE will not commingle funds appropriated for grants under this subpart with other funds expended by the BIE.

§ 41.33 What if there isn't enough money to pay the full grant amount?

This section applies if BIE has to reduce payments under § 41.29(c).

(a) If additional funds have not been appropriated to pay the full amount of grants under this part on or before June 1st of the year, the BIE will notify all grant recipients in writing. The Tribal college or university must submit a written report to the BIE on or before July 1st explaining how much of the grant money remains unspent.

(b) After receiving the Tribal college's or university's report under paragraph (a) of this section, BIE will:

(1) Reallocate the unspent funds using the formula in § 41.29 in proportion to the amount of assistance to which each grant recipient is entitled but has not received;

(2) Ensure that no Tribal college or university will receive more than the total annual cost of its education programs;

(3) Collect unspent funds as necessary for redistribution to other grantees under this section; and

(4) Make reallocation payments on or before August 1st of the academic year.

§ 41.35 What will happen if the Tribal college or university doesn't receive its appropriate share?

(a) If the BIE determines the Tribal college or university has received financial assistance to which the Tribal college or university was not entitled, BIE will:

(1) Promptly notify the Tribal college or university; and

(2) Reduce the amount of the Tribal college's or university's payments under this subpart to compensate for any overpayments or otherwise attempt to recover the overpayments.

(b) If a Tribal college or university has received less financial assistance than the amount to which the Tribal college or university was entitled, the Tribal college or university should promptly notify the BIE. If the BIE confirms the miscalculation, BIE will adjust the amount of the Tribal college's or university's payments for the same or subsequent academic years to compensate for the underpayments. This adjustment will come from the Department's general funds and not from future appropriated funds.

§ 41.37 Is the Tribal college or university eligible for other grants?

Yes. Eligibility for grants under this subpart does not bar a Tribal college or university from receiving financial assistance under any other Federal program.

§ 41.39 What reports does the Tribal college or university need to provide?

(a) The Tribal college or university must provide the BIE, on or before December 1 of each year, a report that includes:

(1) An accounting of the amounts and purposes for which the Tribal college or university spent assistance received under this part during the preceding academic year;

(2) An accounting of the annual cost of the Tribal college's or university's education programs from all sources for the academic year; and

(3) A final performance report based upon the criteria the Tribal college's or university's goals, philosophy, or plan of operation.

(b) The Tribal college or university must report to the BIE their FTE Indian student enrollment for each academic term of the academic year within three (3) weeks of the date the Tribal college or university makes the FTE calculation.

§ 41.41 Can the Tribal college or university receive technical assistance?

(a) If a Tribal college or university sends the BIE a written request for technical assistance, BIE will respond within 30 days.

(b) The BIE will provide technical assistance either directly or through annual contract to a national Indian organization that the Tribal college or university designates.

(c) Technical assistance may include consulting services for developing programs, plans, and eligibility studies and accounting, and other services or technical advice.

§ 41.43 How must the Tribal college or university administer its grant?

In administering any grant provided under this subpart, a Tribal college or university must:

- (a) Provide services or assistance under this subpart in a fair and uniform manner;
- (b) Not deny admission to any Indian student because they either are, or are not, a member of a specific Indian Tribe; and
- (c) Comply with part 276 of this chapter, unless the BIE expressly waives specific inappropriate provisions of part 276 in response to a Tribal college or university request and justification for a waiver.

§ 41.45 How does the Tribal college or university apply for programming grants?

(a) Tribes and Tribal entities may submit a written request to the BIE for a grant to conduct planning activities for the purpose of developing proposals for the establishment of Tribally controlled colleges and universities, or to determine the need and potential for the establishment of such colleges and universities. BIE will provide written notice to the Tribal college or university of its determination on the grant request within 30 days.

(b) Subject to the availability of appropriations, BIE may provide such grants to up to five Tribes and Tribal entities in the amount of \$15,000 each.

§ 41.47 Are Tribal colleges or universities eligible for endowments?

Yes. Tribal colleges and universities are eligible for endowments under a signed agreement between the Tribal college and university and the Secretary as described in 25 U.S.C. 1832. Endowments must be invested in a trust fund and the Tribal college or university may only use the interest deposited for the purpose of defraying expenses associated with the operation of the Tribal college or university (25 U.S.C. 1833).

Subpart C—Diné College

§ 41.49 What is the purpose of this subpart?

The purpose of this subpart is to assist the Navajo Nation in providing education to the members of the Tribe and other qualified applicants through a community college, established by that Tribe, known as Diné College. To that end, the regulations in this subpart prescribe procedures for providing financial and technical assistance for Diné College under the NCCA.

§ 41.51 What is the scope of this subpart?

The regulations in this subpart are applicable to the provision of financial assistance to Diné College pursuant to NCCA, title II of the TCCUA.

§ 41.53 How does Diné College request financial assistance?

To request financial assistance, Diné College must submit an application. The application must be certified by the Diné College chief executive officer and include:

- (a) A statement of Indian student enrollment and total FTE enrollment for the preceding academic year;
- (b) A curriculum description, which may be in the form of a college catalog or like publication or information located on the Diné College web site; and
- (c) A proposed budget showing total expected operating expenses of educational programs and expected revenue from all sources for the grant year.

§ 41.55 How are grant funds processed?

(a) BIE will identify the budget request for Diné College separately in its annual budget justification.

(b) BIE will not commingle funds appropriated for grants under this subpart with appropriations that are historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

§ 41.57 When will the application be reviewed?

Within 45 days of receiving the application the BIE will send a grant agreement for signature by the Diné College president or his or her designee in an amount determined under § 41.29(a). The grant agreement will incorporate the grant application and include the provisions required by § 41.25.

§ 41.59 When will grant funds be paid?

(a) Initial grant funds will be paid in an advance installment of not less than 40 percent of the funds available for allotment by October 1st.

(b) The remainder of the grant funds will be paid by July 1st after the BIE adjusts the amount to reflect any overpayments or underpayments made in the first disbursement.

§ 41.61 Is Diné College eligible to receive other grants?

Yes. Eligibility for grants under this subpart does not bar Diné College from receiving financial assistance under any other Federal program.

§ 41.63 How can financial assistance be used?

(a) The Diné College must use financial assistance under this subpart only for operation and maintenance, including education programs, annual capital expenditures, major capital improvements, mandatory payments, supplemental student services, and improvement and expansion, as described in 25 U.S.C. 640c-1(b)(1);

(b) The Diné College must not use financial assistance under this subpart for religious worship or sectarian instruction. However, this subpart does not prohibit instruction about religions, cultures or Indian Tribal languages.

§ 41.65 What reports must be provided?

(a) Diné College must submit on or before December 1st of each year a report that includes:

(1) An accounting of the amounts and purposes for which Diné College spent the financial assistance during the preceding academic year;

(2) The annual cost of Diné College education programs from all sources for the academic year; and

(3) A final report of Diné College's performance based upon the criteria in its stated goals, philosophy, or plan of operation.

(b) Diné College must report its FTE Indian student enrollment for each academic term within six weeks of the date it makes the FTE calculation.

§ 41.67 Can Diné College receive technical assistance?

Technical assistance will be provided to Diné College as noted in § 41.41.

§ 41.69 How must Diné College administer its grant?

In administering any grant provided under this subpart, Diné College must:

(a) Provide all services or assistance under this subpart in a fair and uniform manner;

(b) Not deny admission to any Indian student because the student is, or is not, a member of a specific Indian Tribe; and

(c) Comply with part 276 of this chapter, unless the BIE expressly waives specific inappropriate provisions of part 276 in response to Diné College's request and its justification for a waiver.

§ 41.71 Can Diné College appeal an adverse decision under a grant agreement by the Director?

Diné College has the right to appeal to the Assistant Secretary by filing a written notice of appeal within 45 days of the adverse decision. Within 45 days after receiving notice of appeal, the Assistant Secretary will conduct a formal hearing at which time the Diné College may present evidence and argument to support its appeal. Within 45 days of the hearing, the Assistant Secretary will issue a written ruling on the appeal confirming, modifying or reversing the decision of the Director. If the ruling does not reverse the adverse decision, the Assistant Secretary will state in detail the basis of his/her ruling. The ruling of the Assistant Secretary on an appeal will be final for the Department.

Dated: May 26, 2016

Lawrence S. Roberts,
Acting Assistant Secretary – Indian Affairs.

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