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ABSTRACT

Federal legislation requires that the Bureau of Indian Affairs (BIA) facilitate American Indian control of Indian affairs in all matters related to education. Accordingly, the BIA schedules annual consultation meetings in which tribes, parents, schools, and other interested parties can discuss educational issues and current BIA proposals. This consultation booklet provides background information on four items discussed at regional meetings in May 1999. An introduction discusses legislative authority for consultation; lists dates, locations, and local contacts for 13 regional meetings; and outlines formats for meetings and for submitting written comments. Item 1 concerns tribal application for construction of replacement educational facilities. The BIA developed a streamlined application and instructions and specific criteria for ranking applications on the basis of need. An alternative funding scheme for facilities construction is also described, involving long-term financial partnerships with the federal government. BIA sources of technical assistance are listed. Item 2 is open for discussion of any topic, but suggested topics are the reauthorization of the Elementary and Secondary Education Act and how to obtain an appropriate tribal governing body for BIA off-reservation boarding schools that wish to convert to tribal-school status. Item 3 discusses possible expansion of the Family and Child Education Programs to include all BIA-funded schools. Item 4 concerns the revision of regulations, by writing them in "plain English," relating to grants to tribally controlled community colleges and Navajo Community College. (SV)

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ED 432 433

TRIBAL CONSULTATION

MAY 1999

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
OFFICE OF INDIAN EDUCATION PROGRAMS

RC 022044

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
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LEGISLATIVE AUTHORITY

Section 1130 of Public Law 95-561, as amended, states:

"It shall be the policy of the Secretary and the Bureau of Indian Affairs in carrying out the functions of the Bureau to facilitate Indian control of Indian affairs in all matters relating to education... with active consultation with tribes... [by] a process involving the open discussion and joint deliberation of all options with respect to potential issues or changes between the Bureau and the all interested parities...[and]

During such discussions and joint deliberations, interested parties (including, but not limited to, Tribes and school officials) shall be given an opportunity to present issues including proposals regarding changes in current practices or programs which will be considered for future action by the Bureau."

PRESIDENTIAL COMMITMENT

On April 29, 1994, President Clinton made the following commitment in his statement to all Executive Departments and Agencies concerning Government-to-Government relations with Native American Tribal Governments:

"Each Executive Department and Agency shall consult, to the greatest extent practicable and to the extent permitted by law, with Tribal governments prior to taking actions that affect Federally recognized Tribal governments. All such consultation are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals."

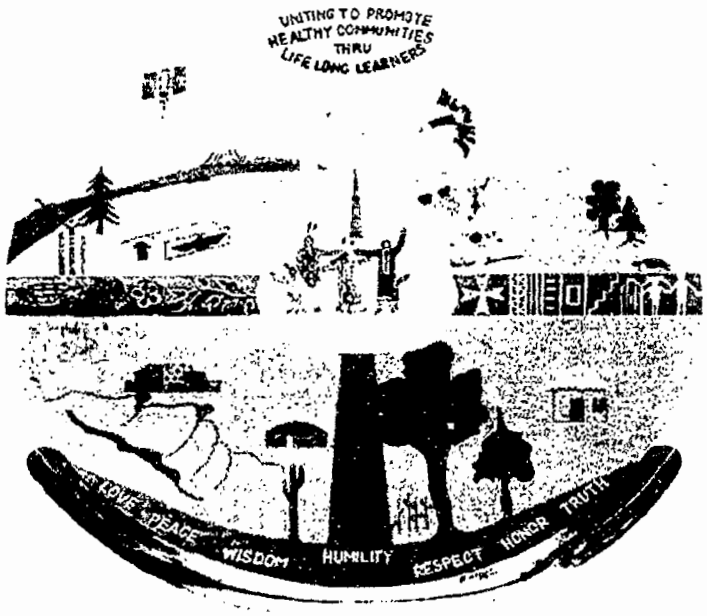
IMPLEMENTATION PROCESS

In 1991, the Bureau of Indian Affairs formally initiated a process intended to fulfill the P.L. 95-561 consultation mandates; and the Office of Indian Education Programs(OIEP), as a matter of policy, committed to regularly scheduled, yearly consultation meetings across Indian Country. It is intended that the meetings afford Indian tribes, parents, schools and interested parties the opportunity to consider, discuss and propose option(s) for the resolution of issues relating to education programs and to offer alternatives to changes which the Bureau may be considering.

OFFICE OF INDIAN EDUCATION PROGRAMS

TRIBAL CONSULTATION

MAY 1999



Branch of Planning
Phone: (202) 208-3550
Fax: (202) 273-0030
Email: OIEPCONS@IOS.DOI.GOV

LOCAL CONTACT PERSONS
Consultation meeting information may be obtained from the local education contact listed on the inside of the back cover.
WRITTEN COMMENTS
Written comments must be received by July 30, 1999, and should be mailed or hand delivered to: **Tribal Consultation** **Bureau of Indian Affairs** **Office of Indian Education Programs** **MS-3512 MIB-OIE-32** **1849 C St. NW** **Washington, D.C. 20240**
E-MAIL
OIEPCONS@IOS.DOI.GOV
FOR FURTHER INFORMATION CONTACT

Dr. James C. Martin, Chief
Planning, Oversight, and Evaluation
(202) 208-3550

Goodwin K. Cobb III, Chief
Branch of Planning
(202) 208-3550

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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:

Indian Education
OIE-30

MEMORANDUM

To: All Education Line Officers

From: Larry Holman
Acting Director, Office of Indian Education Programs

Subject: May, 1999 Tribal Consultation Meetings

The OIEP is finalizing publication of the May, 1999 Tribal Consultation Booklet. We anticipate that the booklet will be distributed soon. As with last year's regional meetings, the following process will be used for the May, 1999 Tribal Consultation meetings:

1. Booklets - Consultation booklets have been prepared by the OIEP and will soon be printed and mailed from the Department. The consultation booklet will contain the following items for discussion:

    1. Revision of the application for construction replacement of education facilities, instructions and ranking criteria.
    2. Open Item.
    3. Need for additional Family and Child Education Programs.
    4. Grants to Tribally Controlled Community Colleges and Navajo Community College.

2. Regional Consultation Meetings - Thirteen (13) regional consultation meetings will be held on the following dates with the following local contacts:

MEETING SCHEDULE

DATE	LOCATION	LOCAL CONTACTS	PHONE NUMBERS
May 26, 1999	Bismark, ND	Cherie Farlee	(605) 964-8722
May 28, 1999	Folsom, CA	Fayetta Babby	(916) 979-2560
May 19, 1999	Gallup, NM	Beverly Crawford	(520) 674-5131
May 17, 1999	New Orleans, LA	LaVonna Weller	(703) 235-3233
May 25, 1999	Oklahoma City, OK	Joy Martin	(405) 605-6051
May 18, 1999	Billings, MT	LaVonne French	(406) 247-7953
May 20, 1999	Cloquet, MN	Terry Portra	(612) 373-1000
May 27, 1999	Phoenix, AZ	Ray Interpreter	(520) 338-5441
May 20, 1999	Fairbanks, AK	Robert Pringle	(907) 271-4120
May 19, 1999	Grand Ronde, OR	John Reimer	(503) 872-2743
May 21, 1999	Anchorage, AK	Robert Pringle	(907) 271-4120
May 26, 1999	Jemez Pueblo, NM	Ben Atencio	(505) 346-2431
May 19, 1999	Bethel, AK	Robert Pringle	(907) 271-4120

3. Federal Register Notice - The Central Office will prepare and publish the notice for the Federal Register announcing the upcoming Tribal Consultation meetings.

4. Conduct of Regional Meetings - The Education Line Officers will assist each other in conducting the consultation meeting in their respective area. We encourage you to include Tribal representatives in explaining the consultation items, as well as local program experts, e.g., Facilities or Exceptional Education, to explain proposed program changes. Each local education contact should arrange for the following:

   a. A meeting room equipped with enough moveable microphones to accomodate the expected number of meeting participants, flip charts, an overhead projector and photocopying services. Meeting facilities must be accessible and appropriate for individuals with disabilities.

   b. A registration area set up and staffed no later than 8:15 A.M. for participants. Local meeting time is 9:00 A.M. to 3:00 P.M. or until all meeting participants have an opportunity to make comments. Each local education contact shall maintain copies of the participant sign-in list.

c. Sufficient copies of the consultation booklet for meeting distribution.

d. Advise Indian tribes and organizations of the exact meeting location and lodging facilities no later than three weeks before the meeting.

e. Sufficient copies of the May, 1999 Results of Tribal Consultation meetings issued by the Director, OIEP in October, 1999.

5. Report on Results of Meeting - Notes on each meeting should be taken by the local education contact, Education Line Officer(s) or staff. A final report which summarizes all comments should be submitted to the Branch of Planning from the local education contact no later than July 30, 1999. The final report shall include:

   a. A brief synopsis of the consultation meeting. Identify how many people attended the meeting, how many individuals commented on the proposals and what types of organizations were represented at the meetings.

   b. For <u>each</u> consultation item in the tribal consultation booklet, a summary of the discussion during the meeting and a recommendation from the local contact to the Director, OIEP on whether or not to proceed with the proposal(s) or other options the OIEP should consider.

   c. The local contact shall submit two copies of the final report to the Director. One copy shall be a hard copy and the second shall be on diskette and in Word Perfect. Any written comments provided by the meeting participants should be submitted to the Director along with the final report.

6. As with previous tribal consultation meetings, the contents and format of the consultation booklet should guide your presentation to the meeting participants. Again, due to budget constraints, the OIEP will not be able to reimburse you for the consultation meeting costs.

Should there be any questions, please contact Dr. James Martin, Goodwin K. Cobb, or Dalton Henry in the Branch of Planning at 202-208-3550 or fax 202-273-0030 or Georgia Braun at 202-208-3596. Comments may also be sent through the Internet to OIEPCONS@IOS.DOI.GOV.

Thank you for carrying out this important responsibility.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO

Indian Educati-
OIE-30

Dear Tribal Leader/School Board Members/Other Interested Parties:

The Office of Indian Education Programs, Bureau of Indian Affairs is pleased to announce the upcoming Tribal Consultation meetings. We encourage you to review the consultation booklet, participate in the consultation meetings, and provide comment on any or all of the consultation items.

The consultation items/topics presented in this booklet were selected from discussions in previous consultation meetings, current legislative proposals or directives from the Congress, and proposals being considered by the Department or the Bureau.

LEGISLATIVE AUTHORITY AND IMPLEMENTATION PROCESS

Legislative authority to consult with Indian country on education issues is provided by § 1130 of P.L. 95-561.

An explanation of the process used by the Bureau in implementing the consultation requirements of the law is provided on the front inside cover of this booklet. Comments and viewpoints on the consultation items are being requested from Indian country through regional consultation meetings. Written comments are also welcome.

TOPICS

The topics are as follows for May, 1999:

1. Revision of the application for construction replacement of education facilities, instructions and ranking criteria.
2. Open Item.
3. Need for additional Family and Child Education Programs.
4. Grants to Tribally Controlled Community Colleges and Navajo Community College.

FORMAT OF UPCOMING CONSULTATION MEETINGS

The following general format will be followed during each of the regional consultation meetings:

1. Each consultation item will be fully explained to the meeting participants, including the reason for proposing the item/topic and the background of the issue.

2. Time will be provided for questions, answers and discussion on each consultation item/topic.

3. Meeting participants may present verbally, or in writing, their point of view, and comments on any of the consultation items.

4. As requested by meeting participants during previous consultation sessions, consultation item number two is reserved for meeting participants to openly discuss issues/topics which are locally impacting education programs or potential future consultation items.

DATES, SITES AND LOCAL CONTACTS

The dates and sites for the regional consultation meetings are listed below. Specific meeting locations can be obtained from the local education contacts.

DATE	LOCATION	LOCAL CONTACTS	PHONE NUMBERS
May 26, 1999	Bismark, ND	Cherie Farlee	(605) 964-8722
May 28, 1999	Folsom, CA	Fayetta Babby	(916) 979-2560
May 19, 1999	Gallup, NM	Beverly Crawford	(520) 674-5131
May 17, 1999	New Orleans, LA	LaVonna Weller	(703) 235-3233
May 25, 1999	Oklahoma City, OK	Joy Martin	(405) 605-6051
May 18, 1999	Billings, MT	LaVonne French	(406) 247-7953
May 20, 1999	Cloquet, MN	Terry Portra	(612) 373-1000
May 27, 1999	Phoenix, AZ	Ray Interpreter	(520) 338-5441
May 20, 1999	Fairbanks, AK	Robert Pringle	(907) 271-4120
May 19, 1999	Grand Ronde, OR	John Reimer	(503) 872-2743
May 21, 1999	Anchorage, AK	Robert Pringle	(907) 271-4120
May 26, 1999	Jemez Pueblo, NM	Ben Atencio	(505) 346-2431
May 19, 1999	Bethel, AK	Robert Pringle	(907) 271-4120

FORMAT FOR COMMENTS AND VIEWPOINTS

Since comments from several hundred meeting participants are anticipated, it will be helpful if all comments and suggestions, written and oral, provide the following information:

1. Consultation item/topic being addressed.
2. Your comments and suggestions.
3. Name of the respondent AND name and address of the organization which the respondent represents.

Written comments should be mailed, to be received, on or before July 30, 1999, to the Bureau of Indian Affairs, Office of Indian Education Programs, MS 3512 MIB, OIE-30, 1849 C Street NW, Washington, DC 20240, or, may be hand delivered to room 3512 at the same address. Telefax responses may be transmitted to (202) 273-0030 or email responses sent to OIEPCONS@IOS.DOI.GOV through the Internet.

We encourage all tribes, Indian school boards, parents, school employees, student organizations and other interested parties to participate in the consultation process by attending one of the regional consultation meetings or by submitting written comments on any of the consultation items or other local education issues. If you have any questions, please do not hesitate to call the local education contact identified for your respective area.

Sincerely,

Larry Holman
Acting Director, Office of Indian Education Programs

[KOO E00 9/0 35300]

[4310-02]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Notice of Tribal Consultation Meetings

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct consultation meetings to obtain oral and written comments concerning potential issues in Indian education. The potential issues which will be set forth in a tribal consultation booklet to be issued prior to the meetings are:

1. Revision of the application for construction replacement of the education facilities, instructions and ranking criteria.
2. Open Item.
3. Need for additional Family and Child Education Programs.
4. Grants to Tribally Controlled Community Colleges and Navajo Community College.

DATES: May 17, 18, 19, 20, 21, 26, 25, 27, and 28, 1999, for all locations listed. Several dates and locations were scheduled to coincide with meetings of various Indian education organizations. All meetings will begin at 9:00 a.m. and continue until 3:00 p.m. (local time) or until all meeting participants have an opportunity to make comments.

MEETING SCHEDULE

DATE	LOCATION	LOCAL CONTACTS	PHONE NUMBERS
May 26, 1999	Bismark, ND	Cherie Farlee	(605) 964-8722
May 28, 1999	Folsom, CA	Fayetta Babby	(916) 979-2560
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May 19, 1999	Bethel, AK	Robert Pringle	(907) 271-4120

Written comments should be mailed, to be received, on or before July 30, 1999, to the Bureau of Indian Affairs, Office of Indian Education Programs, MS-3512-MIB, OIE-32, 1849 C Street, NW, Washington, D.C. 20240, Attn: Larry Holman: OR, may be hand delivered to Room 3512 at the same address. Comments may also be faxed to (202) 273-0030 or email to OIEPCONS@IOS.DOI.GOV.

FOR FURTHER INFORMATION CONTACT: Dr. James Martin or Goodwin K. Cobb III at the above address or call (202) 208-3550.

SUPPLEMENTARY INFORMATION:

The meetings are a follow-up to similar meetings conducted by the OIEP/BIA since 1990. The purpose of the consultation, as required by 25 U.S.C. 2010(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA regarding Indian education programs. A consultation booklet for the May meetings is being distributed to Federally recognized Indian Tribes, Bureau Area and Agency Offices and Bureau-funded schools. The booklets will also be available from local contact persons and at each meeting.

DATE

ASSISTANT SECRETARY - INDIAN AFFAIRS

CONSULTATION ITEM # 1

CONSULTATION ITEM/TOPIC	Revision of the application for construction replacement of education facilities', instructions and ranking criteria.
POTENTIAL ISSUE OF CHANGE	To revise and streamline the application, instructions and ranking criteria for construction replacement of education facilities.
REASON FOR PROPOSING ISSUE OF CHANGE	To lessen the burden of the application process.
CURRENT OPTION(S) BEING CONSIDERED BY THE BUREAU	Replacement School Construction (see attached).

BACKGROUND

In 1993 the Department of the Interior, Office of Construction Management developed proposed regulations for replacement school construction and held tribal consultation hearings. A final rule was not issued based upon negative tribal reaction. The replacement school priority list was frozen at 16 projects in the same year.

In 1998, the planning, design and construction of the original priority list were approaching completion. As a result, the Assistant Secretary of Indian Affairs directed the BIA to resume the development of the application instructions and specific criteria for ranking new applications. Recognizing that formal rule publication is time consuming, a decision was made to issue guidelines. The draft guidelines were developed and tribal consultation was held in the fall of 1998. Tribal comments, recommendations and suggested changes to the draft were incorporated into a final document. In order to have a recommended replacement school construction list for the FY-2001 budget the decision was made to formally call for new applications, train applicants on the revised process in order to evaluate and rank applications for submission to the applicable Congressional Committees.

All applications will be evaluated and ranked on the basis of "need" using historical and current data. The second portion of the application provides a process for tribes and tribally sanctioned schools to submit financial partnership proposals to the Congressional Committees for their review and possible action.

[Federal Register: March 29, 1999 (Volume 64, Number 59)]
[Notices]
[Page 14936-14937]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr29mr99-97]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Construction of Replacement Education Facilities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Call for applications and notice of revised instructions and ranking criteria.

SUMMARY: This Notice is the official call for applications for construction of Bureau-funded replacement education facilities. It also explains how to obtain copies of the revised publication, ``Instructions and Application for Replacement School Construction 1999.'' Applications for construction of Bureau-funded replacement education facilities may be submitted in accordance with these 1999 revised instructions.

DATES: Applications must be received on or before July 16, 1999.

ADDRESSES: Copies of the revised instructions and ranking criteria are available upon request from the BIA Office of Indian Education Programs at 1849 C Street NW, MS-3512 MIB, Washington, DC 20240 or from 201 Third St. NW, Suite 510, Albuquerque, New Mexico 87102. The revised instructions are also available from BIA Area and Education line offices and from the BIA Facilities Management and Construction Center, 201 Third St. NW,

[[Page 14937]]

Suite 500, Albuquerque, New Mexico 87102.

All applications must be submitted to the BIA Office of Indian Education Programs at 201 Third St. NW, Suite 510, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Questions regarding applications may be submitted to the attention of Dr. Kenneth G. Ross, Special Assistant to the Director, Office of Indian Education Programs, 201 Third St. NW, Suite 510, Albuquerque, New Mexico 87102, (505) 346-6544, Fax (505) 346-6553 or to applicable Education Line Officers whose addresses and phone numbers are available in Appendix A of the application document.

SUPPLEMENTARY INFORMATION: We published a notice in the Federal Register on November 17, 1998 (63 FR 63942), requesting comments on draft instructions governing the priority ranking process for construction of replacement education facilities and the criteria used in ranking applications. We have reviewed all written comments received and incorporated some of the comments in the revised instructions in this notice. The revised instructions entitled ``Instructions and Application for Replacement School Construction 1999" are available at the address provided in the ADDRESSES section.

The revised process will not provide for new school starts nor grade level expansions. The revised procedures will provide more continuity, objectivity and accountability in the priority ranking for construction of replacement education facilities; address the handling of emergency needs; and accommodate federal/tribal financial partnerships for education construction projects.

We will send copies of the revised instructions to all BIA schools and schools that receive BIA funds under contract or grant. (Catalog of Federal Domestic Assistance Program Number: 15.062 ``Replacement and Repair of Indian Schools.") Applications for construction of Bureau-funded replacement education facilities may be submitted in accordance with the 1999 revised instructions. This Notice is the official call for applications for construction of Bureau-funded replacement education facilities.

BIA's Office of Indian Education Programs' Line Officers will conduct training on the revised instructions and ranking criteria for all schools under their administrative jurisdiction. The BIA Education Line Officers, in March 1999, will canvas the schools to find out whether they intend to submit an official application for replacement school construction and to identify the person who will be the point of contact for correspondence. Each potential applicant must submit their response to their Education Line Officer by close of business of the due date specified for that response. BIA will place all respondents on the mailing list and provide them with instructions and application forms.

We will send all potential applicants the specifics relating to training location, date, and times by certified mail. Applications will be accepted beginning June 28, 1999, until July 16, 1999. We will use the criteria in the revised instructions to review and evaluate all applications that we receive on or before the deadline.

This Notice is published under authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs in the Departmental Manual at 209 DM 8. 25 U.S.C. 2005(c) directed BIA to publish, in the Federal Register, the system used to determine priorities for school construction projects and to submit a current priority ranking for school construction projects at the time any budget request is presented to Congress. The Conference Report for the FY 1992 Interior and Related Agencies Appropriation Act, House Report No. 256, 102d Cong., 1st Sess. 46 (1991), indicated that Congress wanted the Department to revise the priority ranking process for new school construction. The Conference Report said that BIA should emphasize tribal consultation and improve the objectivity of the ranking process, provide continuity to the priority ranking list, and provide procedures for handling emergency needs. The Education Line Officers will conduct training for applicants on how to complete their applications. Tribes and BIA-funded school boards will receive advance, written notice of training session dates, times, and locations for tribes and schools under their respective jurisdictions.

Dated: March 22, 1999.
Kevin Gover,
Assistant Secretary--Indian Affairs.
[FR Doc. 99-7658 Filed 3-26-99; 8:45 am]
BILLING CODE 4310-02-P

INSTRUCTIONS AND APPLICATION

FOR

REPLACEMENT SCHOOL CONSTRUCTION

1999

Bureau of Indian Affairs
Replacement School Construction
Office of Indian Education Programs
201 Third Street, N.W., Suite 510
Albuquerque, NM 87102

REVISION 6 -- 2/26/99

Application Checklist

Before submitting your application, please complete this checklist to ensure that your application is complete. All forms and application instructions are provided in the pages that follow.

Have You Included?

[Check each box to indicate that the required item is included in your application package]

- ☐ A completed Application form SF-424 (Rev. 7/97)
- ☐ Point of contact person.
- ☐ A tribal resolution or school board resolution if authorization has been delegated from the tribe to the school board in a previous tribal resolution.

Submit Application To:

Applications must be postmarked no later than July 16, 1999, and should be sent to the Special Assistant to the Director, OIEP, at the address below. Questions may be faxed or e-mailed to the Special Assistant.

Bureau of Indian Affairs
Replacement School Construction
Office of Indian Education Programs
201 Third Street, N.W., Suite 510
Albuquerque, New Mexico 87102
Phone: (505) 346-6544
Fax: (505) 346-6553
E-mail: **ken_ross@ios.doi.gov**

INTRODUCTION

This document has been prepared to assist Federally recognized Tribal Governments, Tribally sanctioned school boards and Federal Program administrators in understanding the process for submitting applications for education facilities replacement construction. The guidelines that are included in the document explain the congressional restrictions on expanding BIA-funded schools, identify the specific criteria that is used to rank applications, and outlines the procedures for tribal financial partnerships.

The Bureau of Indian Affairs expects to call for replacement school construction applications in March 1999. Applications will be accepted beginning June 28, 1999. The deadline for submission is July 16, 1999.

A letter shall be distributed to each BIA-funded school in March 1999 requesting their intent to submit an application and designating a point of contact to receive training in application preparation.

Office of Indian Education Programs, Education Line Officers with assistance from FMCC staff shall provide training on these guidelines and technical assistance on completing applications in March. Education Line Officers shall provide notice of the regional training sessions to all BIA-funded schools that have acknowledged their intent to apply, advising them of the training date, the location, and times.

The Replacement School Application contains:

The Replacement school guidelines.
Instructions for application filing.
An application form.

A copy of this document is being provided to all federally recognized tribes whose members are served by an authorized BIA-funded school and each authorized BIA-funded school board.

This document is available upon request from the Office of Indian Education Programs, BIA, Facilities Management and Construction Center. This document may also be obtained from the Internet at **ftp://www.oirm.bia.gov/oiep**.

EDUCATION FACILITIES REPLACEMENT CONSTRUCTION

Program Purpose

What is the purpose of these instructions and what do they cover?
What are the information collection requirements?
What is the Bureau's policy regarding school facility construction?
What terms are used in these instructions?
Will the Bureau provide technical assistance to Indian tribe(s) and Indian organization(s)?

Application Process

Who may apply for a replacement school construction project?
What are the time frames involved in filing a project application(s)?
When should I file an application and what is the deadline for filing?
What about emergency situations?

What needs to be in the application(s)?
Who will provide needed FACCOM/FMIS data?

Priority Ranking

What criteria are used in ranking applications?
Application Narrative Format
Application Narrative Instruction
Evaluation Criteria
What is the process for reviewing applications?
Is the Director, OIEP the only reviewer?
How am I notified about my application(s) rank and status?
How is the priority ranking list prepared?
How is the priority ranking list approved and where do I get this information?

Facilities Financial Partnership(s)

Why is the Bureau proposing Federal Financial Partnerships?
Who may participate in a Financial Partnership?
How does an applicant indicate a desire to participate in a Financial Partnership?
What procedures will be used to implement the Financial Partnerships after the priority list is established?
Are there any special requirements for entering into Financial Partnerships?

Appeals

What is the appeals process?

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 25 U.S.C. 13; 25 U.S.C. 295; 25 U.S.C. 2005(c): 29 U.S.C. 794.

Program Purpose

What is the purpose of these instructions and what do they cover?

These instructions identify and explain the policies, procedures, and requirements for the priority ranking process for construction of education replacement facilities. They describe and establish a multi-year priority ranking process for major replacement of federally owned, or granted education facilities. The priority ranking process is not contractible under the Indian Self-Determination and Educational Assistance Act (Pub. L. 93-638, 88 Stat. 2203), as amended.

This ranking process ensures that funding resources are applied to the most critical education facilities needs.

The ranking process established in these instructions does not apply to facilities construction for post secondary schools, tribally controlled community colleges, public schools or "cooperative agreements".

What are the information collection requirements?

The information collection requirements contained here are necessary to comply with the application requirements of the Office of Management and Budget (OMB) Circular No. A-102. The Standard Form 424 (Rev. 7/97) and attachments prescribed by that circular are approved by OMB under 44 U.S.C. 3501 et seq. and are assigned approval number 0348-0006.

Information needed for an application for Federal assistance must contain information that satisfies requirements of OMB Circular A-102 and be submitted on Standard Form 424. (Rev. 7/97)

This information is collected when applying for Federal assistance and must be used in determining priority ranking. You must respond on standard forms 424, 424 (c), and 424 (d) to obtain benefits.

What is the Bureau's policy regarding school facility construction?

The Bureau's policy is to:

Acquire, construct, improve and repair, or provide Federal education facilities to comply with all applicable health and safety codes and standards as required.

Acquire sites, construct, replace, renovate, repair, discontinue use of excess and/or demolish Federal education facilities listed on the Bureau facilities inventory in consultation with affected Indian tribes.

Consider major expansions and replacement construction projects for educational facilities which cannot be accomplished by other Federal agencies and which address the development of tribal school systems that serve students as close to their permanent residence, on a day basis, whenever possible and within defined attendance boundaries.

Replace facilities when economically advantageous to the Government given the life expectancy and long range need for that facility.

Minimize the disruption of education programs during replacement of facilities to the extent feasible.

Incorporate program space in education facilities construction projects to accommodate program activities associated with flow-through funding.

Plan, design, and construct or provide federal facilities to comply with all applicable Federal space standards.

Apply value engineering to all replacement and major expansion projects.

What terms are used in these instructions?

The following terms are used:

Applicant means a person who applies for funding consideration of an education facilities construction project.

Assistant Secretary means the Assistant Secretary - Indian Affairs, Department of the Interior, or designee.

Boundaries (or School Attendance Boundaries) means the boundary restrictions approved by the tribe(s) and/or the Bureau.

Bureau means the Bureau of Indian Affairs of the Department of the Interior.

Bureau-Funded School means any school receiving funds from the Bureau.

Bureau Line Officer means any Education Line Officer; the Director, OIEP; or the Assistant Secretary - Indian Affairs.

Bureau-Operated School means any school including peripheral dormitory operated directly by the Bureau of Indian Affairs.

Director, FMCC means the Director, Facilities Management and

Construction Center or designee.

Director, OIEP means the Director, Office of Indian Education Programs, or designee.

Education Facility means any facility whether owned or not owned by the Federal government, that is operated and/or funded by the Office of Indian Education Programs, Bureau of Indian Affairs, for the direct support of primary and secondary Indian education. An education facility may include an entire school facility or building, or a component(s) of a school facility or building, such as, classrooms, administrative offices, a multi-purpose room or gymnasium, a media center or library, a cafeteria/kitchen; or a Bureau-funded dormitory for primary or secondary Indian students.

Education Line Officer (ELO) means the Bureau official in charge of education programs and functions in a Bureau Agency or Area Office who reports to the Director, OIEP, or designee.

Education Facilities Construction Project means any educational facilities construction project operated under the educational facilities construction program and is referred to throughout this notice as the ***"project(s)"***.

FACCOM (Facility Construction, Operations, and Maintenance) is an automated management information system that provides the Bureau with a vehicle to justify and account for funds appropriated to operate, maintain, repair, and construct Bureau facilities.

Facility means any building, structure or other improvements to real property that includes but are not limited to water storage tanks, water and sewer distribution lines, electrical distribution systems, sewage lagoons, parking lots, streets, and other site improvements.

FMIS (Facility Management Information System) is the new system being designed to replace FACCOM.

Flow-through Funding means funds received by the Bureau from other Federal governmental departments for the operation of education programs in the Bureau-funded schools.

Governmental Unit means a Federal, tribal, state, county or other local governmental entity, or a functional element of a governmental entity.

Grant School means a school (other than a public school) that is funded by the Bureau under a grant authorized by Pub. L. 100-297.

Indian Health Service means the Indian Health Service of the United States Department of Health and Human Services.

Indian Organization means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized Indian tribes.

Indian Tribe means any Indian tribe, band, nation, Rancheria, Pueblo, colony or community, including any Alaska Native village or regional or village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized by the Secretary as eligible for the special program and services provided by the Bureau to Indians because of their status as Indians.

In-Kind Contribution includes the fair and reasonable value of labor, materials, equipment, and supplies directly associated with the planning and design phases of a project.

Major Expansion means construction that involves the addition of over 15,000 square feet to an existing facility for Bureau-approved program functions due to an increase in the numbers of valid facility users or due to a change in program functions impacting on programmatic space requirements.

Secretary means the Secretary of the Interior, or designee.

Temporary Structure(s) means a facility intended for use on a temporary basis. Temporary structures may vary in quality and projected useful life. Temporary structures may be referred to as portables. The size, dimension, and structure of portables allows them to be readily transportable and relocated as needed. Temporary structures may also be referred to as modular; however, not all modular facilities are temporary structures. Some modular facilities are considered permanent structures.

Tribal Resolution means the formal manner in which the tribal government expresses its legislative authority pursuant to its organic document. In the absence of such organic document, a written expression adopted pursuant to tribal practices will be acceptable.

Tribally-Operated Contract or Contract School means a school (other than a public school) that is funded through a contract with the Bureau under the Indian Self-Determination and Educational Assistance Act [25 U.S.C. §§ 450f, 450h(a), or 458(d)].

Value Engineering means an organized team study of construction project functions and components, that occurs during the project planning and design stage. It creatively generates alternatives which will satisfy user needs at the lowest life cycle cost. **Value engineering** will not sacrifice performance, reliability, quality, maintainability, or safety.

Will the Bureau provide technical assistance to Indian tribe(s) and Indian organization(s)?

The Bureau will provide technical assistance in applying for education facilities construction projects (**hereafter known as "project" or "projects"**) if requested in writing by an Indian tribe(s) or Indian organization(s). Technical assistance may include:

Assistance in obtaining and completing the application.

Assistance in correcting identified deficiencies in the application.

Assistance in filing an appeal.

Any Bureau Line Officer will make information available to the applicant that is needed to prepare the application, correct deficiencies, or file an appeal except as exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or restricted under the Privacy Act or other applicable law.

Application Process

Who may apply for a replacement school?

The following may apply for a replacement school construction project:

Federally recognized Indian tribe(s) or Indian organization(s) sanctioned by a federally recognized tribe or federal law may apply for a replacement school. The Indian tribe(s) or Indian organization(s) must control and manage the contract or grant school, and title to the land on which a contract or grant school is located must be vested in the Indian tribe or the United States; or, a lease for the useful life of the improvement must be entered into with the Indian tribe or the United States for the ground on which the project is located.

Bureau operated, contract, or grant school must have a minimum current enrollment or projected enrollment of 25 students in grades K through 8 and/or 50 students in grades 9 through 12.

Current Congressional mandates prohibit grade-level expansions or construction of new schools. These provisions shall apply unless the Congressional prohibition is rescinded. Since charter schools are new schools, they will not be eligible to apply.

Where do I obtain an application(s) for a project?

You may obtain application forms, instructions for completing the application, and related materials from any Office of Indian Education Programs Line Officer or the Director, Facilities Management and Construction Center, (addresses are found in Appendix A).

What are the time frames involved in filing a project application(s)?

New or updated applications for projects will be rated and priority ranked for funding consideration at least once every three years, or as, determined necessary by the Assistant Secretary Indian Affairs.

When new applications for projects must be filed, the Assistant Secretary shall:

Publish a Notice in the Federal Register.

Mail Notices and a copy of these instruction's directly to all federally-recognized Indian tribes that have Bureau-funded schools.

The Notice shall:

Solicit applications for priority ranking, describe procedures to be followed, and the schedule for filing applications.

State how and where applications may be obtained as well as the name, address, and telephone number of a person to contact for further information.

A new or updated application for a project must be filed with the Special Assistant to the Director, OIEP, on or before the date when new applications for projects will be accepted as specified in the Federal Register Notice soliciting applications. Applications can be filed only:

By mail. The applicant must send the application to the Special Assistant to the Director, OIEP, certified mail, return receipt requested, and the application

must be postmarked no later than midnight of the deadline specified.

By personal delivery. The application must be received in the Office of the Special Assistant to the Director, OIEP, no later than close of business on the deadline specified.

Applications filed after the deadline as specified in the Federal Register Notice soliciting applications will not be considered.

Filing more than one application for projects at the same project location is prohibited. Multiple applications will be consolidated and considered as one application.

What about emergency situations?

An application for a project based on an emergency situation should be filed with the appropriate Education Line Officer at any time. The ELO will review the application, take any appropriate action, and forward the information to the Director, OIEP. The application should clearly state the emergency situation.

Emergency situations are deemed to exist:

If an education facility or a component of an education facility requires replacement or repair as a result of a major fire or natural disaster.

If an education facility or a component of an education facility is subject to immediate closure based on a determination by the Bureau safety officer that facility conditions constitute an imminent danger to health and safety.

Immediate action will be taken to provide interim corrective action, such as, consolidating, curtailing, or providing alternative facilities for the education program subject to the availability of appropriated funds.

The Director, OIEP, in consultation with the Indian tribe or tribal organization, and, if appropriate, the BIA safety officer and affected education and facilities personnel, shall determine what necessary permanent corrective action is required to eliminate the facility conditions that constitute the imminent danger to health and safety. The Director, OIEP, shall notify the Indian tribe or Indian organization of the determination.

If it is determined that permanent corrective action requires replacement, the Director, OIEP, will seek supplemental emergency funding and/or will add the project to the end of the priority ranking list of projects. Inclusion on the priority ranking list will be subject to approval by the Assistant Secretary.

What needs to be in the application(s)?

An application for a project must be in writing and shall consist of:

Application Form SF-424 (Rev. 7/97) which shall contain:

Date application submitted.

Full name of the Indian tribe(s) for whom the application is filed, telephone number and mailing address.

Name and telephone number of a person knowledgeable about the application, who may or may not be the authorized representative, to be contacted on matters involving the application.

Name of the authorized representative, title, telephone number, signature of authorized representative and date signed. The individual named as the

authorized representative will be considered the point of contact for the application and shall be recognized as being responsible for the application;

A tribal or school board resolution accompanying the application naming the individual as the authorized representative.

All notices and correspondence relating to the application will be sent to the individual named as the authorized representative as applicant.

The address submitted shall be considered the address of record. It shall be the applicant's responsibility to keep the Director, OIEP, advised of his or her current address.

Who will provide needed FACCOM/ FMIS data?

During applicant training, ELO's will provide attendees copies of their facility deficiency reports. **It is the applicant's responsibility to ensure that the data is current and complete.** On May 31, 1999, FMCC will retrieve the final deficiency reports to be used by the evaluators. To be considered in the review process, all data must be updated prior to **May 31, 1999.**

Priority Ranking

What criteria are used in ranking applications?

APPLICATION NARRATIVE FORMAT

1.A. Building Code and Life Safety Deficiencies (15 pts)
Applicant provides no information under this criterion.

1.B. Environmental Risks (10 pts)
Narrative:

1.C. Accessibility (5 pts)
Narrative:

2.A. Efficiency of Educational Space Use (5)
Applicant provides no information under this criterion.

2.B. Inappropriately-Housed Students (5)
Narrative:

2.C. Regional Accreditation Deficiencies (5).
In which Regional Accreditation Association area is your school located North Central Accreditation Association, Southern Association Colleges and Schools, etc.)?
Narrative:

2.D. Students per Square Foot of Classroom Space (5)
What accreditation Standard have you adopted?
What is the total permanent design capacity of your school based on that accreditation standard?
What is the current certified student count?
What is your calculated Crowding Factor?

3. Building and Equipment Condition (30)
Narrative:

4. Site Conditions (10)
Narrative:

5. Availability of Alternative

Facilities (5)

Narrative:

6. Historical Enrollment Trends (5)

Applicant provides no information under this criterion

Total Points = 100

EVALUATION CRITERIA

What is the process for reviewing applications?

Applications are reviewed by the Director, OIEP or designee. If an application for a project is filed after the deadline as specified in this notice, the Director, OIEP, will notify the applicant by certified mail, return receipt requested, that the application was received after the deadline, and it will not be considered in the priority ranking process.

An application will not be considered if:

The application is for a project for an education program that has not been approved by the Director, OIEP, or;

There is no tribal resolution of review and approval of the application.

The Directors of OIEP and FMCC shall jointly obtain the additional necessary or relevant information contained in Bureau records as described in these instructions and include the information with the applications for projects filed by applicants.

Is the Director, OIEP the only reviewer?

No. The Director, OIEP, will establish an Evaluation Committee for the purposes of reviewing and rating applications for projects. The Evaluation Committee shall be comprised of appropriate Bureau personnel, including education, facilities, and safety personnel. The Director, OIEP, may also include appropriate personnel from the United States Department of Education or other competent impartial professionals on the Evaluation Committee.

The Evaluation Committee shall conduct a review of all applications filed by the deadline specified in the Federal Register Notice to verify completeness. Incomplete applications shall be rejected and notice of rejection will be sent to the applicant.

The Evaluation Committee shall consider information contained in the applications as well as relevant information contained in Bureau records in that review. There will be no on-site validation in the application process.

The Evaluation Committee shall rate the applications for projects in accordance with the criteria specified in these instructions:

An individual on the Evaluation Committee shall not review and rate an application for projects filed:

By or for the Indian tribe in which he or she is a member; the Indian tribe in which his or her spouse is a member; or, the Indian tribe in which a parent is, or was, a member.

For the education facility where he or she is employed or over which he or she is the official in charge of or has any line authority over the education functions

at that facility.

How am I notified about my application(s) rank and status?

The Director, OIEP, and the Director, FMCC will rank the projects based on the ratings by the Evaluation Committee and identify those projects which will be added to the priority ranking list.

The Director, OIEP, and the Director, FMCC will notify all applicants whose projects will be added to this list as established in these instructions. Notification shall:

Be in writing and sent by certified mail, return receipt requested.

Describe the projects to be added to the list. The projects to be listed will be based on a determination of actual need by the Director, OIEP and may differ from the applicant's original project.

State the relative ranking position required for addition to the ranking list to be published in the Federal Register.

The Director, OIEP, and the Director, FMCC will notify all applicants whose projects did not rank high enough to be added to the list. Notification shall:

Be in writing and sent by certified mail, return receipt requested.

State the relative ranking position required for addition to the ranking list to be published in the Federal Register.

Provide an explanation of the reasons for the ranking.

How is the priority ranking list prepared?

The Director, OIEP, and the Director, FMCC shall update the priority ranking list of projects each year or as necessary by:

Removing any projects that are fully funded from the previously published list.

Retaining in order any projects from the previously published priority list that have not received full funding;

Adding any projects which may have been determined necessary to correct an emergency situation under this notice, and by adding any projects which have been identified for addition to the list. Projects will be identified for addition to the priority ranking list every three years, or as necessary.

How is the priority ranking list approved and where do I get this information?

The Director, OIEP, and Director, FMCC shall forward the priority ranking list of projects to the Assistant Secretary for consideration.

The Assistant Secretary, upon approval, shall:

Publish the priority ranking list of projects in the Federal Register. This publication shall constitute a final agency action and may not be appealed.

Submit the priority ranking list of projects to Congress with the Bureau's budget justification.

The Assistant Secretary will not consider petitions to include additional projects to the priority ranking list or change the ranking of a project on the list.

Funding requests by the Department for projects will be based on the priority ranking list published in the Federal Register. However, actual funding for construction of the projects on the list is subject to the availability of funds.

FEDERAL FINANCIAL PARTNERSHIP

Why is the Bureau proposing Federal Financial Partnerships?

The United States Government has a unique legal relationship with American Indian tribal governments as set forth in the Constitution, treaties, statutes, and court decisions of the United States.

Congress has historically appropriated financial resources for the construction, replacement, repair, operations and maintenance, and instructional program support of federally operated Indian schools. In recent years, tribal self-determination has resulted in many of the federal Indian schools being administered and operated by tribal governments or local community school boards empowered by tribal governments. This transfer of program operations has not altered the Federal Government's legal obligation and responsibility to provide safe and functional facilities at Bureau of Indian Affairs-funded schools, via the provision of financial support to fund the construction, replacement, repair, operations and maintenance needs of Bureau of Indian Affairs-funded schools.

These guidelines are not intended to diminish or, in any other fashion, alter the legal obligations and responsibility of the Federal Government.

The Bureau of Indian Affairs recognizes the wide disparity of economic conditions and financial capabilities of federally recognized Indian tribes and, therefore, is obligated to equitably and uniformly provide programs that meet tribal needs, irrespective of tribal financial status. Thus, the replacement school construction program has been developed to address prioritizing replacement school construction projects, taking into consideration the specific needs of a school's education program, facilities conditions and site conditions.

The Bureau of Indian Affairs also recognizes the desire of some tribal governments to expedite replacement or construction of specific educational buildings or entire schools complexes. Given the expressed desire by several tribes, the Bureau of Indian Affairs is committed to pursue federal legislation designed to provide legal authority for non-traditional alternative financing of school construction and infrastructure replacement or repair.

Who may participate in a Financial Partnership?

Federally-recognized Indian tribes that apply under Section I and indicate a desire to commit to a financial partnership on a

proposed replacement school project. The tribal commitment to such a financial partnership may include monetary contributions toward the cost of basic replacement construction; enhancements to the basic project, or facilities operation and maintenance costs.

How does an applicant indicate a desire to participate in a Financial Partnership?

Tribal governments desiring to enter into a financial partnership shall complete Sections I and II of the application form.

What procedures will be used to implement the Financial Partnerships after the priority list is established?

The Assistant Secretary will identify within the ranked priority list those applicants which have expressed a desire to enter into Financial Partnerships. The Assistant Secretary will send to the Congress the complete ranked list and any supporting documentation received from applicants under Section II of this application for prospective action. Applicants will retain their positions on the ranked list until such action is taken.

Are there any special requirements for entering into Financial Partnerships?

Tribal governments desiring to enter into financial partnerships shall submit a tribal council resolution as proof of their long-term commitment to the project partnership. The resolution should specify the exact nature of the monetary commitment. Schools servicing multiple tribes may enter into Financial Partnerships if they provide such supporting resolutions from each member tribe.

In-kind contributions are only applicable to financial partnerships during the planning and design phases.

Schools constructed under financial partnerships shall be eligible for facilities Operations and Maintenance funding.

APPEALS

What is the appeals process?

Appeals from administrative actions relating to the ranking process shall be made in accordance with 25 CFR, Chapter 1, Part 2. In the case of appeals relating to subpart 2.19, however, the Director, OIEP shall render a decision within 10 days.

An appeal will not preclude the Bureau of Indian Affairs from submitting a ranked list to Congress. If an appeal is filed, the ranked list shall identify any appellant.

SECTION I

THE
REPLACEMENT SCHOOL CONSTRUCTION
APPLICATION

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION

Application	Preapplication
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name	Organizational Unit:
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION (EIN)

_____ - _____

7. TYPE OF APPLICANT (enter appropriate letter here) ____

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School District
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐☐

A. Increase Award B. Decrease Award
C. Increase Duration D. Decrease Duration

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER _____ - _____

TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT.

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT

Start Date	End Date

14. CONGRESSIONAL DISTRICT OF

a. Applicant b. Project

15. Estimated Funding:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE

DATE _____

b. NO.

☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes" attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number

d. Signature of Authorized Representative e. Date Signed

BEST COPY AVAILABLE

INSTRUCTIONS FOR COMPLETING SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

1. Self-explanatory.

2. Date application submitted to Federal agency and applicant's control number (if applicable).

3. Not applicable.

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

"New" means a new assistance award.

"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For pre-applications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. pplicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.

APPLICATION NARRATIVE INSTRUCTIONS

Narratives should be complete, concise, and factual descriptions of the existing facility conditions. The descriptions should directly address the criteria contained in the application package. You should summarize information you would usually include as attachments, since only the application narrative will be considered by the evaluators in awarding points.

1.A. Building Code and Life Safety Deficiencies (15 pts.)

Since the evaluators will base point values for this criterion on data in the FACCOM/FMIS database, application packages will not address this criterion; however, you should make every effort to update your backlog to include all known safety deficiencies (i.e., eye wash stations, trip hazards, ventilation systems, chemical storage, fire alarm, panic hardware, egress, smoke detectors, other NFPA deficiencies, etc.)

1.B. Environmental Risks (10 pts.)

Provide a detailed description of environmental risk factors (i.e. asbestos, lead-based paint, radon, PCB's, chemical storage, and air quality) in your school buildings.

1.C. Accessibility (5 pts.)

Describe any accessibility compliance deficiencies not already listed in your schools FACCOM/FMIS backlog.

2.A. Efficiency of Educational Space Use (5 pts.)

Since the evaluators will base point values for this criterion on data in the FACCOM/FMIS, application packages will not address this criterion; however, you should make every effort to update your backlog to address your current space utilization.

2.B. Inappropriately-Housed Students (5 pts.)

Provide a description of how your students are inappropriately housed.

2.C. Accreditation Deficiencies (5 pts.)

In which Regional Accreditation Association area is your school located (North Central Accreditation Association, Southern Association Colleges and Schools, etc.)?

Provide a detailed description of any accreditation deficiencies directly related to facility inadequacies (e.g. inadequate or no science lab, library, cafeteria, administrative space, Physical Education facility, etc.) as reflected in your regional, state, approved tribal, or BIA standards.

Applicants should cite specific standards which their facilities do not meet. Schools providing residential facilities must also comply with all BIA dormitory criteria in 25 CFR, Subchapter E, Part 36, Subpart H.

2.D. Students per Square Foot of Classroom Space (5 pts.)

On which accreditation standards is your application based?

What is the total permanent design capacity of your school based on those accreditation standards? Design capacity shall be based on eligible Indian children residing in tribally-established attendance boundaries. Exceptions outlined in 25 CFR, Subchapter E, Part 31.3 shall also apply. This capacity shall be based on acceptable enrollment projections not to exceed 5 years beyond construction completion. (In determining permanent design capacity DO NOT INCLUDE leased space.)

What is the current certified student count?

What is your calculated Crowding Factor?

Current certified count / Design capacity X 100 = Crowding Factor

3. Building and Equipment Condition (30 pts.)

Provide a detailed description of the condition of building systems (heating/ventilation/air conditioning, electrical, plumbing, exterior envelope and roof, structural, communication, and interior), explaining any disruptions to your educational program caused by these systems.

4. Site Conditions (10 pts.)

Provide a detailed description of the site conditions (sewer, water, electrical, gas/fuel, streets, environmental, and grounds) explaining any disruptions to your educational program or potential health and safety risks caused by these conditions.

5. Availability of Alternative Facilities (5 pts.)

List any schools within a 60-mile radius of your school and state whether or not space is available for your students. **(NOTE: Although the Bureau is required to consider the availability of space in any other schools, the presence of such space will not be used to reject an application.)**

6. Historical Enrollment Trends (5 pts.)

OIEP will provide evaluators with certified student count (ISEP) data for the past 6 years to enable them to award these points. You will not submit any additional data under this criterion.

TOTAL MAXIMUM CRITERIA RANKING POINTS = 100 POINTS

Note: Dorms and Quarters are part of the overall facility and all of the above criteria should be taken into account within the application. (Utilities, environmental, fire protection and O&M).

EVALUATION CRITERIA

FMCC and OIEP will provide evaluators with the following documents to assist in reviewing applications: building inventory, FACCOM/FMIS backlog, space utilization, and certified student count data. Applicants will receive the same information as part of their application packages. Evaluators will award points to applications in accordance with the following guidelines.

1. BUILDING CODE DEFICIENCIES (30 pts.)

(A) BUILDING CODE & LIFE SAFETY DEFICIENCIES (15)

Number of Violations/Cost per Student.

Points for Number of Violations			Points for Cost per Student
Enrollment less than 200		Enrollment of 200 or more	Buildings and Grounds
251 - 300= 5		500+ = 5	above $ 10 K = 10
201 - 250= 4		400-499 = 4	7-9.9 K = 8
151 - 200= 3	**OR**	300-399 = 3	5-6.9 K = 6
101 - 150= 2		200-299 = 2	3-4.9 K = 4
50 - 100= 1		100-199 = 1	0-2.9 K = 2

Cost per Student is computed by dividing the total cost to alleviate all "S" deficiencies by the student enrollment at the time of application. The number of violations and total estimated cost to correct those violations is based solely on data in the FACCOM/FMIS. **It is the applicant's responsibility to ensure that data is current.**

Number of Violations Points + Cost per Student Points = Total Points

(B) ENVIRONMENTAL RISKS (10)

	High	Middle	Low	None
Asbestos (Friable/Non Friable location)				
Lead (paint or solder)				
Radon				
PCB's				
Chemical Storage				
Air Quality				
TOTALS				

LEVEL OF ENVIRONMENTAL RISK

High	= 3	(Places facility users at immediate health and/or safety risk)
Medium	= 2	(May place facility users at immediate health and/or safety risk)
Low	= 1	(Exposes facility users to possible health and/or safety risks)
None	= 0	(Exposes facility users to no health and/or safety risks)

Applicants should provide written justification (summarized from EPA citations, lab reports, BIA and IHS reports, engineering analyses/reports, etc.)

Total point for Environmental Risk will be assigned as follows:

Applicants who have an environmental risk value of 17 — 18 receive 10 points.
Applicants who have an environmental risk value of 15 — 16 receive 9 points.
Applicants who have an environmental risk value of 13 — 14 receive 8 points.
Applicants who have an environmental risk value of 11 — 12 receive 7 points.
Applicants who have an environmental risk value of 9 — 10 receive 6 points.
Applicants who have an environmental risk value of 7 — 8 receive 5 points.
Applicants who have an environmental risk value of 5 — 6 receive 4 points.
Applicants who have an environmental risk value of 3 — 4 receive 3 points.
Applicants who have an environmental risk value of 1 — 2 receive 2 points.

(C) ACCESSIBILITY (5 pts.)

Evaluators will award from 1 to 5 points for this indicator based on the number, type, and seriousness of American's with Disability Act and Uniform Accessibility Standards compliance deficiencies. These deficiencies must be either identified in the FACCOM/FMIS backlog or indicated in this application submission. **It is the applicant's responsibility to ensure that data is current.**

2. EDUCATION PROGRAM REQUIREMENTS (20 pts.)

(A) Efficiency of Educational Space Use (5 pts.)

Evaluators will determine the points awarded for this criterion based on information from FACCOM/FMIS. **It is the applicant's responsibility to ensure that data is current.**

Efficiency of Educational Space Use	Points Awarded
100% Utilized	5
95 -- 99% Utilized	4
90 -- 94% Utilized	3
85 -- 89% Utilized	2
80 -- 84% Utilized	1

(B) Inappropriately-Housed Students (5 pts.).

Evaluators will determine the points awarded for this criterion based on the percent of students housed in temporary portables, modulars, or other inappropriate facilities (i.e., renovated dorms, employee housing, retrofitted space, leased buildings, etc.). Applicants will explain in the application narrative how the education program is inappropriately housed.

Percent of Inappropriately-Housed Students	Points Awarded
100%	5
80 -- 99%	4
60 -- 79%	3
40 -- 59%	2
20 -- 39%	1

(C) Accreditation Deficiencies (5).

Applicants must provide sufficient description of how the existing facility is inadequate to meet accreditation standards.

(D) Students per Square Foot of Classroom Space (5)

Square footage by the standards (Regional Standards such as, North Central Accreditation Association, Southern Association Colleges and Schools, State Standards, BIA Standards, and Approved Tribal Standards) on which the application is based.

Evaluators will award points for this criterion based on the applicant's Crowding Factor. Evaluators will automatically award the full 5 points to any school having all temporary structures.

Crowding Factor	Points
140 and above	5
130 — 139	4
120 — 129	3
110 — 119	2
101 — 109	1

3. BUILDING AND EQUIPMENT CONDITION (30 pts.)

	Poor	Fair	Good	Excellent
Heating, Ventilation, and Air Conditioning				
Electrical Systems				
Plumbing Systems				
Exterior Envelope, including Roof				
Structural Systems				
Communication Systems				
Floor, Walls, and Ceilings (interior)				
TOTALS				

BUILDING CONDITIONS

Poor	= 3	(System frequently causes program disruptions) One or more occurrences per month.
Fair	= 2	(System occasionally causes program disruptions) One occurrence every two months.
Good	= 1	(System seldom causes program disruptions) One occurrence every six months.
Excellent	= 0	(System does not cause program disruptions)

Applicants should provide written justification of system conditions (summarizing inspection reports, work orders showing frequency of system failures, service contract calls, total amount spent for repairs, etc.).

Total point for Building Conditions will be assigned as follows:

Applicants who have a building condition value of 19 — 21 receive 30 points.
Applicants who have a building condition value of 16 — 18 receive 25 points.
Applicants who have a building condition value of 13 — 15 receive 20 points.
Applicants who have a building condition value of 10 — 12 receive 15 points.
Applicants who have a building condition value of 7 — 9 receive 10 points.
Applicants who have a building condition value of 4 — 6 receive 5 points.
Applicants who have a building condition value of 1 — 3 receive 1 point.

4. SITE CONDITIONS (10 pts)

	Poor	Fair	Good	Excellent
Sewer Distribution System				
Water Distribution System				
Electrical Distribution System				
Gas/Fuel Distribution System				
Streets, Parking, Exterior Lighting				
Environmental (EPA)				
Grounds and Landscaping				
TOTALS				

SITE CONDITIONS

Poor	= 3	(Site condition frequently causes program disruptions) One or more occurrences per month.
Fair	= 2	(Site condition occasionally causes program disruptions) One occurrences every two months.
Good	= 1	(Site condition seldom causes program disruptions) One occurrence every six months.
Excellent	= 0	(Site condition does not cause program disruptions)

Applicants should provide written justification of system conditions (summarizing inspection reports, work orders showing frequency of system failures, service contract calls, total amount spent for repairs, etc.) to enable evaluators to award appropriate point values.

Total point for Site Conditions will be assigned as follows:

Applicants who have a site condition value of 19 — 21 receive 10 points.
Applicants who have a site condition value of 17 — 18 receive 9 points.
Applicants who have a site condition value of 15 — 16 receive 8 points.
Applicants who have a site condition value of 13 — 14 receive 7 points.
Applicants who have a site condition value of 11 — 12 receive 6 points.
Applicants who have a site condition value of 9 — 10 receive 5 points.
Applicants who have a site condition value of 7 — 8 receive 4 points.
Applicants who have a site condition value of 5 — 6 receive 3 points.
Applicants who have a site condition value of 3 — 4 receive 2 points.
Applicants who have a site condition value of 1 — 2 receive 1 point.

5. AVAILABILITY OF ALTERNATIVE FACILITIES (5 pts)

Written Documentation	Points
Correspondence from local public school district(s) or Tri[1]e	
Attesting to the fact that, no instructional and no residential space exist in public or tribally-operated schools within a 60 mile radius	5
Attesting to the fact that no instructional space exists in public or tribally-operated schools within a 60 mile radius.	4
Attesting to the fact that limited instructional and limited residential space exists in public or tribally-operated schools within a 60-mile radius.	2
Attesting to the fact that limited instructional Space exists in public or tribally-operated schools within a 60-mile radius.	1

6. HISTORICAL ENROLLMENT TRENDS (5 pts)

Evaluators will use an aggregate of the most recent six years of historical (Indian School Equalization Program) certified student count data in awarding points under this criterion. **OIEP will provide this data to the evaluators.**

	Points
Six year enrollment increase of 50% students	5
Six year enrollment increase of 40% students	4
Six year enrollment increase of 30% students	3
Six year enrollment increase of 20% students	2
Six year enrollment increase of 10% students	1

TOTAL MAXIMUM CRITERIA RANKING POINTS = 100 POINTS

SECTION II

FEDERAL FINANCIAL PARTNERSHIPS

Federal Financial Partnership(s)

Background

The United States Government has a unique legal relationship with American Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions.

The United States congress has historically appropriated financial resources for the construction, replacement, repair, operations and maintenance, and instructional program support of federally operated Indian schools. In recent years, tribal self-determination has resulted in many of the federal Indian schools being administered and operated by tribal governments or local community school boards empowered by tribal governments. This transfer of program operations has not altered the Federal Government's legal obligation and responsibility to provide safe and functional facilities at Bureau of Indian Affairs-funded schools, via the provision of financial support to fund the construction, replacement, repair, operations and maintenance needs of Bureau of Indian Affairs-funded schools.

These guidelines are not intended to diminish or, in any other fashion, alter the legal obligations and responsibility of the Federal Government.

The Bureau of Indian Affairs recognizes the wide disparity of economic conditions and financial capabilities of federally recognized Indian tribes and, therefore, is obligated to equitably and uniformly provide programs that meet tribal needs, irrespective of tribal financial status. Thus, the replacement school construction program has been developed to address prioritizing replacement school construction projects, taking into consideration the specific needs of a school's education program, facilities conditions and site conditions.

Purpose

The Bureau of Indian Affairs also recognizes the desire of some tribal governments to expedite replacement or construction of specific educational buildings or entire schools complexes. Given the expressed desire by several tribes, the Bureau of Indian Affairs is committed to pursue federal legislation designed to provide legal authority for non-traditional alternative financing of school construction and infrastructure replacement or repair.

The Bureau of Indian Affairs is committed to working directly with tribal governments that voluntarily desire to enter into a financial partnership on a project that has been evaluated and ranked through the 1999 replacement school construction application process. The tribal commitment to such a financial partnership may include monetary contributions toward the cost of basic replacement construction; enhancements to the basic project, or facilities operation and maintenance costs.

Eligibility

Tribal governments desiring to enter into such a financial partnership shall complete Section II of the application form.

Special Requirements

Tribal governments desiring to enter into financial partnerships shall submit a tribal council resolution as proof of their long-term commitment to the project partnership. The resolution should specify the exact nature of the monetary commitment.

In-kind contributions are applicable to financial partnerships during the planning and design phases.

Schools constructed under financial partnerships shall be eligible for facilities O & M funding.

Tribal governments are encouraged to provide performance bonds as evidence of their financial commitment. This and any supporting data submitted under the Federal Financial Partnership (Section II of this application) shall be forwarded to the Congressional Appropriations Committee for their information and prospective action.

FEDERAL FINANCIAL PARTNERSHIP APPLICATION/CHECKLIST

[Check each box to indicate that the required item is included in your application package]

- ☐ A completed Section I application
- ☐ Tribal resolution(s) specifying the exact nature of tribal monetary commitment
- ☐ A letter to the Assistant Secretary from the appropriate tribal official describing the tribe's specific methodology for fulfilling its financial commitment to the agreements of the partnership
- ☐ The name, address, and telephone number of the tribe's designated contact person for the partnership
- ☐ Other supporting data, relevant to the financial partnership, the tribe would like to submit for consideration

APPENDIX A

SOURCES OF TECHNICAL ASSISTANCE

Appendix A - Addresses and Phone Numbers

Dr. Kenneth G. Ross
Special Assistant to the Director
BIA/Office of Indian Education Programs
201 Third Street NW, Suite 510
P.O. Box 1238
Albuquerque, New Mexico 87102
Phone: (505) 346-6544
Fax: (505) 346-6553

Mr. William L. Collier, Director
Facilities Management & Construction Center
201 Third Street NW, Suite 501
Albuquerque, New Mexico 87102
Phone: (505) 346-6522
Fax: (505) 346-6558

Billings Area Office
Office of Indian Education Programs
316 North 26th Street
Billings, Montana 59101
Phone: (406) 247-7953
Fax: (406) 247-7965

Cheyenne River Agency
Office of Indian Education Programs
100 North Main
P.O. Box 2020
Eagle Butte, South Dakota 57625
Phone: (605) 964-8722
Fax: (605) 964-1155

Chinle Agency
Office of Indian Education Programs
P.O. Box 6003
Chinle, Arizona 86503
Phone: (520) 674-5131
Fax: (520) 674-51134

Crow Creek/Lower Brule
Office of Indian Education Programs
Education Avenue
P.O. Box 139
Ft. Thompson, South Dakota 57339
Phone: (605) 245-2398
Fax: (605) 245-2399

Eastern Navajo Agency
Office of Indian Education Programs
Main Street
P.O. Box 328
Crownpoint, NM 87313
Phone: (505) 786-6150
Fax: (505) 786-6112

Eastern States Agency
Office of Indian Education Programs
3701 N. Fairfax Drive, Suite 260
Arlington, Virginia 22203
Phone: (703) 235-3233
Fax: (703) 235-3351

Fort Apache Agency
Office of Indian Education Programs
Highway 73
P.O. Box 920
White River, Arizona 85941
Phone: (520) 338-5365
Fax: (520) 338-1944

Fort Defiance Agency
Office of Indian Education Programs
P.O. Box 110
Fort Defiance, Arizona 86504
Phone: (520) 729-7251
Fax: (520) 729-7286

Hopi Agency
Office of Indian Education Programs
Highway 264
P.O. Box 568
Keams Canyon, Arizona
Phone: (520) 738-2262
Fax: (520) 738-5139

Minneapolis Area Office
Office of Indian Education Programs
331 South Second Avenue 7th floor
Minneapolis, Minnesota 55401
Phone: (612) 373-1000
Fax: (612) 373-1065

Northern Pueblos Agency
Office of Indian Education Programs
P.O. Box 4269
Espanola, New Mexico 87533
Phone: (505) 753-1465
Fax: (505) 753-1475

Oklahoma Education Office
Office of Indian Education Programs
4149 Highline Blvd., Suite 380
Oklahoma City, Oklahoma 73108
Phone: (405) 605-6051
Fax: (405) 605-6057

Papago Agency
Office of Indian Education Programs
P.O. Box 38
Sells, Arizona 85634
Phone: (520) 383-3292
Fax: (520) 383-2399

Pima Agency
Office of Indian Education Programs
400 North 5th Street
P.O. Box 10
Phoenix, Arizona 85001
Phone: (602) 379-3944
Fax: (602) 379-3946

Pine Ridge Agency
Office of Indian Education Programs
101 Main Street
P.O. Box 333
Pine Ridge, South Dakota 57770
Phone: (605) 867-1306
Fax: (605) 867-5610

Portland Area Office
Office of Indian Education Programs
911 North East 11 Avenue
Portland, Oregon 97232
Phone: (503) 872-2743
Fax: (503) 231-6219

Rosebud Agency
Office of Indian Education Programs
P.O. Box 669
Mission, South Dakota 57555
Phone: (605) 856-4478
Fax: (605) 856-4487

Sacramento Area Office
Office of Indian Education Programs
2800 Cottage Way
Sacramento, California 95825
Phone: (916) 979-2560
Fax: (916) 979-3063

Shiprock Agency
Office of Indian Education Programs
P.O. Box 3239
Shiprock, New Mexico 87420
Phone: (505) 368-3403
Fax: (505) 368-3409

Southern Pueblos Agency
Office of Indian Education Programs
1000 Indian School Road
P.O. Box 1667
Albuquerque, New Mexico 87103
Phone: (505) 346-2431
Fax: (505) 346-2408

Standing Rock Agency
Office of Indian Education Programs
P.O. Box E
Fort Yates, North Dakota 58538
Phone: (701) 854-3865
Fax: (701) 854-7280

Turtle Mountain Agency
Office of Indian Education Programs
School Street
P.O. Box 30
Belcourt, North Dakota 58316
Phone: (701) 477-3463
Fax: (701) 477-5944

Western Navajo Agency
Office of Indian Education Programs
P.O. Box 746
Tuba City, Arizona 86045
Phone: (520) 283-2218
Fax: (520) 283-2286

Questions:

5. **How will validation of the "needs" information be conducted?**

6. **Will tribal financial partnerships affect the "needs" based application ranking?**

7. **What activities did the BIA omit in order to meet the FY-2001 budget deadline?**

CONSULTATION ITEM # 2

OPEN

This item provides the opportunity for any topic to be discussed that is a concern to schools, school boards, tribes or individuals. These concerns may be local or national in scope. Some questions being asked of Central Office are listed below. Any view points or comments would be appreciated.

1. The OIEP will be asked to respond to or propose changes to P.L. 95-561 and P.L. 100-297 as a part of the reauthorization of the Elementary and Secondary Education Act of 1965. What type of changes would you recommend?

2. In view of the current trend for Federal schools to become tribal schools administered by tribes and school boards the goal is to facilitate such transfers. However, in the case of off-reservation boarding schools, obtaining appropriate tribal governing body resolutions for the conversion has become difficult. If an off-reservation boarding school wants to become a grant school, how should the question of tribal governing body resolutions be handled?

CONSULTATION ITEM # 3

CONSULTATION ITEM TOPIC:	Request for additional funding for new Family and Child Education Programs.
POTENTIAL ISSUE OF CHANGE:	Additional schools/sites would like to participate in such a successful program.
REASON FOR PROPOSING ISSUE OF CHANGE:	Early childhood education opportunities and parental involvement are critical to the academic achievement of ALL Indian Children.
CURRENT OPTION(S) BEING CONSIDERED BY THE BUREAU:	Expanding the FACE program to include all Bureau funded schools.

BACKGROUND

The Family and Child Education (FACE) program is a family literacy program that serves children 0-8 and their parents/primary caregiver(s). It is intergenerational in approach and while it promotes family literacy, it also supports native language and culture. The program implements 4 components: early childhood, parent and child time, parenting skills, and adult education in two settings; the home and a center provided at a bureau funded school. Technical assistance to implement this unique program is provided through a partnership with Parents As Teachers, the National Center for Family Literacy and the High/Scope Foundation. In 1998, the following 22 Bureau funded schools provided this program and served approximately 1,800 families.

The FACE program is recognized by the White House as one of the twenty "Best Practice" programs nationwide in preparing participants with skills needed in the 21st Century. It has also been recognized as a best practice by the Child Care Action Campaign in implementing an early childhood - school partnership that improves children's readiness for and performance in school. Recent discoveries in neuroscience and brain development justify the critical need for early childhood education and enlightening parents about the windows of opportunity for learning particularly with infants 0-3. FACE parent educators are bringing a cutting edge, neuroscience based curriculum entitled "Born to Learn" into the home to use with parents/primary care giver(s) and their infants 0-3.

The High/Scope active learning approach which is implemented in the FACE program beginning in the early childhood classroom and through grade three, empowers teachers to addresses the multiple learning styles of all students. The High/Scope active learning approach has been approved by the U.S. Department of Education as a model for school reform.

As tribes hear of the success of the FACE program, requests for the expansion of the program to other locations have been acknowledged but put on hold due to lack of funding. Additional funding will provide for direct services to families, infants, children, schools and communities through the FACE program. The estimated total cost for the program per site is $300,000.00. This program is a model of school reform as identified in the P.L. 103-227 Goals 2000 Educate America Act and P.L. 103-382 Improving America's Schools Act.

Questions:

1. Do you support requesting additional funding and the expansion of this program?

2. What application criteria should be used for new programs?

3. Should the BIA request state funding for Even Start which would be over and beyond the 1% set-aside for tribes? These funds could be used to expand FACE.

CONSULTATION ITEM #4

CONSULTATION ITEM/TOPIC:	Grants to Tribally Controlled Community Colleges and Navajo Community College
POTENTIAL ISSUE OR CHANGE:	Issuance of final rule for 25 CFR Part 41.
REASON FOR PROPOSING ISSUE OR CHANGE:	A proposed rule for 25 CFR Part 41 was published on April 1, 1997 in plain English. Prior to issuance of the final rule, the Bureau is consulting with tribes and other interested parties on the content of the proposed rule.
CURRENT OPTION(S) BEING CONSIDERED BY THE BUREAU:	Prior to issuance of a final rule concerning this program, the Bureau is requesting consultative comments on a (h)(2) and any other comments concerning the final rule to be written in plain English

[Federal Register: April 1, 1997 (Volume 62, Number 62)]
[Proposed Rules]
[Page 15446-15452]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr01ap97_dat-33]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 41

RIN 1076-AD08

Grants to Tribally Controlled Community Colleges and Navajo Community College

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to revise part 41 to improve the clarity of the regulations and understanding of the public as mandated by Executive Order 12866. The regulations have been reorganized and rewritten in plain English.

DATES: Comments must be received on or before June 2, 1997.

ADDRESSES: Mail comments to Joann S. Morris, Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the

Interior, 1849 C St. NW, Mail Stop 3512-MIB, Washington, D.C. 20240; or, hand deliver them to Room 3512 at the above address. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Garry R. Martin, Office of Indian Education Programs, Bureau of Indian Affairs at telephone (202) 208-4871.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Publication of the **proposed** rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the **proposed** rule to the location identified in the ``addresses'' section of this document.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that the **proposed** rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This **proposed** rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This **proposed** rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

The Department has determined that this **proposed** rule does not have ``significant'' takings implications. The **proposed** rule does not pertain to ``taking'' of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this **proposed** rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of States.

NEPA Statement

The Department has determined that this **proposed** rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This **proposed** rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d), the Department of the Interior has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

All information is to be collected annually from each applicant. The annual reporting and recordkeeping burden for this collection of information is estimated to average 3 hours for each response for 24 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information. The total annual reporting and recordkeeping burden for this collection is estimated to be 72 hours.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the U.S. Department of the Interior.

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The Department considers comments by the public on this **proposed** collection of information in:

Evaluating whether the **proposed** collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

Evaluating the accuracy of the Department's estimate of the burden of the **proposed** collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

OMB is required to make a decision concerning the collection of information contained in these **proposed** regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to the OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Bureau of Indian Affairs on the **proposed** regulations.

Drafting Information

The primary author of this document is Garry R. Martin, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 41

Indians--tribally controlled colleges; Indians--educational grants.

For the reasons given in the preamble, part 41 in Chapter I of Title 25 of the Code of Federal Regulations is proposed to be revised as set forth below:

PART 41--GRANTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES AND NAVAJO COMMUNITY COLLEGE

General Provisions

Sec.

41.1 What does this part cover?
41.2 What terms are used in this part?
41.3 Where do grant funds come from?
41.4 How is the TCCC's annual budget requested?
41.5 What fairness provisions apply to this part?
41.6 How do the requirements of part 276 apply to this part?

Establishing Eligibility

41.10 Who can receive a grant under this part?
41.11 How must grant funds be used?
41.12 How does the Director determine who is eligible for a grant?
41.13 If a TCCC is eligible, when can it receive funding?
41.14 How can a TCCC appeal a finding of ineligibility?
41.15 Is a TCCC's eligibility ever reviewed?

Applying for a Title I Grant

BEST COPY AVAILABLE

41.20 How can a Title I TCCC apply for a grant?
41.21 How will the TCCC hear if it has received a grant?
41.22 What happens if the Director disapproves an application?
41.23 What additional documentation is required after a grant is approved?
41.24 Are there criminal penalties for making false statements on an application?

Counting Students and Measuring Progress

41.30 What procedures are used to count students?
41.31 Must TCCCs have standards for measuring progress?

Applying for a Title II Grant

41.40 What is **Navajo Community** College's grant entitlement?
41.41 How does NCC apply for its grant under Title II?
41.42 What other provisions apply to NCC's grant?

Grant Payments

41.50 What general limitation applies to grant payments?
41.51 How will BIA determine the per capita payment for Title I TCCCs?
41.52 What are the per capita payment procedures?
41.53 How must the TCCC handle interest or investment income?
41.54 How is other funding that a TCCC may receive affected by funding received under this part?
41.55 What about grant overpayments/underpayments?

Technical and Planning Assistance

41.60 Are there any funds for technical assistance?
41.61 Are planning **grants** available?
41.62 How can a tribe or tribal entity apply for a planning grant?
41.63 How will a tribe or tribal entity know if it has received a

planning grant?

41.64 What is required in a study made with a planning grant?

41.65 What will happen to unused planning grant funds?

41.66 What assistance will BIA provide TCCCs in determining their needs and costs?

Endowment Funds

41.70 When is a TCCC entitled to receive endowment funds?

41.71 How can a TCCC obtain endowment funds?

41.72 What requirements must an endowment trust fund meet?

41.73 How does a TCCC apply to participate in the endowment program?

41.74 What action will the Director take on applications?

41.75 What happens if a TCCC is overpaid under the endowment program?

41.76 What assets may a TCCC use to comply with the matching requirement?

41.77 How is the value of donated real or personal property established?

41.78 What happens if real or personal property that the TCCC uses to comply with the matching requirement is sold or disposed of?

41.79 How will BIA match the value of property or capital contributions?

41.80 What procedures will BIA follow when there are additional funds for the endowment program?

Appeals

41.90 What appeal rights do TCCCs have under this part?

Required Reports

41.95 What reports are required?

41.96 Are there requirements for information collection?

Authority: 25 U.S.C. 1801-1852; 25 U.S.C. 640a-640c-3

General Provisions

Sec. 41.1 What does this part cover?

The Congress of the United States has required the Department of Interior to provide funding for the establishment, operation, and improvement of **Tribally Controlled Community Colleges** (TCCCs) to ensure the growth of educational opportunities for Indian people. This part contains procedures for providing funding and technical assistance as authorized by the **Tribally Controlled Community** College Assistance Act of 1978 (Act), as amended, and the **Navajo Community** College Act of 1971, as amended.

Sec. 41.2 What terms are used in this part?

Ability to benefit means that a person without a high school diploma or its equivalent and whose age is beyond the States compulsory attendance law may be admitted conditionally as a special student in an educational program. All higher education institutions must establish, publish, and apply reasonable standards for the student to benefit which will include testing that measures the student's aptitude to successfully complete the course in which he/she is enrolled.

Academic facilities means structures used for classroom instruction, program administration and maintenance at an institution of higher education. This includes buildings used for academic, vocational, and cultural instruction; dormitories; service buildings used for storage or utilities essential to the operation of these facilities; and the campus grounds.

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Academic term means a semester, quarter, trimester, or other period

that the TCCC refers to as a division of its academic year.

Academic year means a period established by a tribal college as the annual period of operation of its education programs.

Act means Title I and Title II of the **Tribally Controlled Community** College Assistance Act of 1978, Public Law 95-471; 92 Stat. 1325, 25 U.S.C. 1801 et seq., as amended.

Assistant Secretary means the Assistant Secretary--Indian Affairs or his/her designee.

BIA means the Bureau of Indian Affairs, U.S. Department of the Interior.

Director means the Director, Office of Indian Education Programs (OIEP), Bureau or Indian Affairs or his/her designee.

Endowment fund means an interest bearing account established by a TCCC that:

(1) Is exempt from taxation;

(2) Is maintained for the purpose of generating income for the support of the TCCC; and

(3) May include real and personal property (buildings, land, and money).

Indian means a person who is a member of an Indian tribe and is eligible to receive services from the Secretary of the Interior because of his/her status as an Indian.

Indian student count (ISC) means a number equal to the total number of Indian students enrolled in each TCCC, determined on the basis of the quotient of the sum of the credit hours of all the Indian students enrolled, divided by twelve (full-time equivalency). The total (ISC) is then divided by two (semesters) or three (quarters) to determine the annual (ISC) which is used as the basis for fund distribution.

Indian tribe means any Indian tribe, band, nation, or other organized group or **community**, including any Alaskan native village or regional or village corporation as defined in, or established pursuant to, the Alaskan Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Institution of higher education means an institution of higher education as defined by section 1201(a) of the Higher Education Act of

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1965, except clause (2) of that section will not be applicable.

Per capita payment means the payment derived by dividing the amount appropriated by Congress by the sum of all ISC's and then multiplying the quotient by the ISC for each TCCC.

Personal property means property of any kind except real property. It may be tangible--having physical existence, or intangible--having no physical existence such as patents, inventions, and copyrights.

Real property means land, land improvements, structures, and appendages thereto, excluding removable personal property, machinery and equipment.

Regular student means a person who has a high school diploma or GED and is enrolled in an educational program.

Satisfactory progress means that the student is making sufficient advancement in his/her field of study in accordance with the standards of the college.

Secretary means the Secretary of the Interior, or his/her authorized representative.

Third week means the period beginning with the registration date as published by the college for each academic session and ending 21 calendar days later.

Title I means Title I of the **Tribally Controlled Community** College Assistance Act of 1978, which governs **grants** to **tribally controlled community colleges** other than NCC.

Title II means Title II of the **Tribally Controlled Community** College Assistance Act of 1978, which governs **grants** to NCC.

Tribally controlled community college (TCCC) means an institution of higher education that is formally **controlled**, sanctioned, or chartered by the governing body of an Indian tribe or tribes, except that no more than one institution will be recognized with respect to any single tribe.

Unused funds means the amount of funds provided to a TCCC under this part that has not been obligated or expended by the TCCC by the end of the fiscal year for which funds were received

Sec. 41.3 Where do grant funds come from?

Grant funds are subject to the availability of appropriations and may be drawn from:

(a) General administrative appropriations to the Secretary; or

(b) Not more than 5 percent of the funds appropriated to carry out Secs. 41.50-41.55.

Sec. 41.4 How is the TCCC's annual budget requested?

The annual budget request for TCCCs must be identified separately in the BIA Budget justifications. Funds appropriated for **grants** under this part must not be commingled with other appropriations historically expended by the BIA.

Sec. 41.5 What fairness provisions apply to this part?

(a) Services or assistance provided to Indians by TCCCs aided under this part must be provided in a fair and uniform manner.

(b) No TCCC may deny admission to any Indian student because he/she is or is not a member of a specific Indian tribe.

Sec. 41.6 How do the requirements of part 276 apply to this part?

Except as otherwise provided in this part, a TCCC must comply with part 276 of this Title, subject to express waiver of specific inappropriate provisions of part 276 that may be granted by the Assistant Secretary after request and justification by the TCCC.

Establishing Eligibility

Sec. 41.10 Who can receive a grant under this part?

A TCCC may receive **grants** if it:

(a) Was established or otherwise sanctioned or chartered by resolution, ordinance, or other official action of the governing body of an Indian tribe or tribes;

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

(c) Adheres to a philosophy, plan of operation, and stated goals that are designed to meet Indian needs;

(d) Has been in operation for more than one year and has a majority of students who are Indians;

(e) Admits as regular students persons who have a certificate of graduation from a school providing secondary education; or a recognized equivalent of such a certificate, i.e., General Education Development (GED); or who are beyond the compulsory school attendance age for the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(f) Provides an educational program resulting in certificates, associate, baccalaureate, and graduate degrees;

(g) Is a nonprofit and nonsectarian institution;

(h) Is accredited by a nationally recognized accreditation agency or association or, if not accredited:

(1) The Secretary has determined that there is satisfactory assurance that the TCCC will meet the standards of an accreditation agency or association within a reasonable time; or

(2) The TCCC's credits are accepted, on transfer, by not less than three accredited institutions for credit on the same basis as if transferred from an accredited institution.

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Sec. 41.11 How must grant funds be used?

Grants made under this part must be used for the general operating costs of the TCCC to defray, at the determination of the TCCC, expenditures for academic, educational, and administrative purposes, and for the operation and maintenance of the college. Funds provided

under this part must not be used in connection with religious worship or sectarian instruction.

Sec. 41.12 How does the Director determine who is eligible for a grant?

A TCCC may receive **grants** under this part only after the Director makes a positive determination of eligibility as provided in this section.

(a) The governing body of a tribe or tribes that sponsor a TCCC wishing to receive a grant must submit a resolution requesting to the Director.

(b) Within 30 days of receiving the resolution referred to in paragraph (a) of this section, the Director will designate a study team. Within 60 days the study team must complete an eligibility study to determine whether there is justification for maintaining a college for the tribe(s). The Director will submit a summary of the study and the decision to:

(1) The tribal governing body or bodies requesting the study; and

(2) The board of directors, regents, or trustees of the college.

(c) The eligibility study will give consideration to the following factors:

(1) The existence of a college;

(2) Financial feasibility determination based upon an ISC that will support a TCCC;

(3) Low levels of tribal matriculation in and graduation from other post-secondary educational institutions;

(4) Tribal, linguistic, or cultural differences;

(5) Relative isolation from other post-secondary institutions due to factors such as climate, roads, topography, etc.;

(6) Availability of alternate education sources in the service area;

(7) **Proposed** curriculum appropriate for Indian post-secondary education;

(8) Demonstrated adherence to a plan of operation, philosophy, or

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goals designed to meet the needs of Indians;

(9) Instructors' qualifications (their degrees and evidence of expertise in their fields of teaching);

(10) Administrative and support staffs' ability to sustain the teaching faculty and operation and maintenance of the facility;

(11) Ability to account for the funds made available under the Act and use them efficiently; and

(12) Adherence to the requirements of Sec. 41.10.

Sec. 41.13 If a TCCC is eligible, when can it receive funding?

If the Director finds a TCCC eligible and the TCCC complies with section 41.7 of the Act, the TCCC will be eligible for funding beginning with the next fiscal year.

Sec. 41.14 How can a TCCC appeal a finding of ineligibility?

If the Director finds a TCCC ineligible, he/she must notify the tribe within 60 days. The tribe may file a notice of appeal with the Assistant Secretary under Sec. 41.90. A negative determination will not prevent a tribe from requesting another eligibility study, but the application for a new study will not be accepted sooner than one year from the date of the original determination.

Sec. 41.15 Is a TCCC's eligibility ever reviewed?

Yes. The Director annually reviews the eligibility status of each TCCC. If he/she determines that a TCCC eligible under Sec. 41.12 no longer meets the criteria under which the original determination of eligibility was granted, he/she must promptly notify the TCCC in writing. That determination is grounds for rejection of a TCCC's application for a grant. Any TCCC receiving this notification may appeal the Director's determination under Sec. 41.90.

Applying for a Title I Grant

Sec. 41.20 How can a Title I TCCC apply for a grant?

A TCCC that has received a positive eligibility study determination under Sec. 41.12 is entitled to apply for **grants** under this part. A TCCC must complete an application and file it with the Director before July 1 of the year preceding the academic year for which a grant is requested. The application must:

(a) Be submitted on the approved form;

(b) Include a college catalog;

(c) Provide a **proposed** budget showing total expected operating expenses of all programs to which the information applies;

(d) Include a description of accounting procedures; and

(e) Include a statement that the TCCC will not deny admission to any Indian solely on the basis of not being a member of the tribe that has established and operates the TCCC.

Sec. 41.21 How will the TCCC hear if it has received a grant?

Within 60 days of receiving an application, the Director will review all supporting documents, make a decision, and notify the applicant in writing of the decision.

Sec. 41.22 What happens if the Director disapproves an application?

(a) If the Director disapproves an application, he/she must send the applicant written notification that includes the specific reasons for disapproval. The applicant will then have 30 days to amend or supplement the application and submit it for reconsideration.

(b) A TCCC may appeal the disapproval of its original grant proposal or its amended application by following the procedures in

Sec. 41.90.

Sec. 41.23 What additional documentation is required after a grant is approved?

A grant award under an approved application must be supported by a grant agreement, signed by a BIA **Grants** Officer, that includes the application and provisions required by Secs. 41.5 and 41.6 and section 111 of the Act.

Sec. 41.24 Are there criminal penalties for making false statements on an application?

Yes. It's a crime under section 1001 of Title 18, U.S. Code, for a person to submit, or cause to be submitted, any false information to the BIA in connection with any application, report, or other document on which Federal financial assistance or any other payment of Federal funds is based. Punishment for violations under 18 U.S.C. Sec. 1001 is a fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

Counting Students and Measuring Progress

Sec. 41.30 What procedures are used to count students?

The following Indian Student Count (ISC) procedure must be used by all Title I TCCCs:

(a) The number is calculated on the basis of Indian students who are enrolled at the conclusion of the third week, or the equivalent thereof, of each academic term;

(b) Credits earned by non-Indian students cannot be counted towards the computation of the ISC for funding under the Act;

(c) Credits earned in classes offered during a summer term are

counted toward the computation of the ISC in the succeeding fall term;

(d) Credit hours converted from CEU's are counted toward the computation of the ISC;

(e) The formula for conversion of CEU's to credit hours will be: 15 contact hours for one semester credit hour, 10 contact hours for one quarter credit

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hour. The non-credit activity must meet the standards established by the TCCC to claim the CEU credits toward computation of the ISC.

(f) Credit hours can be counted for students who are making satisfactory progress under Sec. 41.31 in accordance with the standards and practices of the TCCC.

(g) Students accepted for enrollment under the ``ability to benefit'' clause as special students will be credited and counted the same as students who have a certificate of graduation (or a recognized equivalent of such a certificate, i.e., GED) from an accredited post-secondary school if the student has:

(1) Passed an admission test that measures the student's aptitude to complete his or her educational program successfully;

(2) Successfully completed a remedial or developmental program prescribed by the institution that does not exceed one academic year. Note: Credits earned before successful completion of the prescribed program cannot be included in the TCCC's ISC; or

(3) Received a GED before the earlier of:

(i) The student's certification or graduation; or

(ii) The end of the first year of the course of study.

(h) Credits earned specific to obtaining the GED cannot be included in the institution's Indian student count.

Sec. 41.31 Must TCCCs have standards for measuring progress?

Yes. TCCCs must establish, publish, and apply reasonable standards for satisfactory progress by students pursuing degree or certificate

programs.

Applying for a Title II Grant

Sec. 41.40 What is **Navajo Community** College's grant entitlement?

(a) **Navajo Community** College (NCC) is entitled to an annual grant based upon the amount of the Congressional appropriation for administration, academic instruction, development, student services, and operations and maintenance.

(b) A separate annual budget request for NCC must be identified in the BIA budget justification. Funds appropriated for **grants** under this part must not be commingled with other appropriations that BIA has historically spent for programs and projects normally provided on the **Navajo** Reservation for **Navajo** beneficiaries.

Sec. 41.41 How does NCC apply for its grant under Title II?

(a) NCC must submit an application statement by July 1 each year. The statement must include:

(1) A description of NCC's curriculum (which may be in the form of a college catalog or similar publication);

(2) A **proposed** budget showing the total expected operating expenses of educational programs; and

(3) The expected revenue from all sources for that academic year.

(b) The chief executive officer of the NCC must certify the authenticity of the application and submit documentation that a copy of the application was submitted to the **Navajo** Tribe.

Sec. 41.42 What other provisions apply to NCC's grant?

(a) The grant award must be evidenced by a grant agreement signed by the Director, incorporating the grant application and the provisions

required by Secs. 41.5 and 41.6.

(b) Overpayments of **grants** under this part may be recovered as provided by Sec. 41.55.

(c) Payments to NCC under this part will not disqualify NCC from applying for or receiving **grants** or contracts under any other Federal programs for which it may qualify.

Grant Payments

Sec. 41.50 What general limitation applies to grant payments?

A grant under this part for any academic year is subject to the availability of appropriations and the provision that no grant can exceed the total cost of the education program provided by the TCCC.

Sec. 41.51 How will BIA determine the per capita payment for Title I TCCCs?

The per capita payment to each Title I TCCC will be determined by establishing an amount per Indian Student Count (ISC). The per capita payment is the Title I appropriation for the year divided by the total previous year's ISC.

Sec. 41.52 What are the per capita payment procedures?

(a) The Director will authorize payments in the appropriated amount for each TCCC with an approved application. Payments will be computed as follows:

(1) By October 15 or no later than 14 days after appropriations become available, whichever comes first, BIA will allot 95 percent of the funds to each TCCC based on the prior year's certified ISC.

(2) BIA will pay the balance of any grant to which a grantee is entitled paid no later than January 1 of the fiscal year, subject to

availability of funds.

(b) By July 1, the TCCC must inform the Director in writing of the amount of any funds not expected to be obligated by the end of the fiscal year. The Director will reallocate the unused funds to other TCCCs based on their ISC for that year.

Sec. 41.53 How must the TCCC handle interest or investment income?

(a) Any interest or investment income that accrues on these funds after they are paid to the TCCC will become the property of the TCCC and will not affect other funding.

(b) The TCCC must spend all interest or investment income by the close of the fiscal year following the fiscal year in which the income accrues.

(c) Funds may only be invested in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States.

Sec. 41.54 How is other funding that a TCCC may receive affected by funding received under this part?

(a) Payments to Title I TCCCs under this part will not disqualify the TCCC from applying for or receiving **grants** or contracts under any other Federal programs for which it may qualify.

(b) A TCCC receiving funds for programs under the Snyder Act of November 2, 1921, will not:

(1) Have its funding altered;

(2) Be denied a contract for Snyder Act funds under the Indian Self-Determination and Education Assistance Act; or

(3) Be denied contract support to administer those funds.

(c) Eligibility for payment under this part will not, by itself, make a TCCC ineligible to receive Federal financial assistance under the Higher Education Act of 1965 or any other programs that benefit institutions of higher education, **community colleges**, or post-secondary

educational institutions.

(d) Notwithstanding any provision of law, funds provided under this part to the TCCCs will be treated as nonfederal, private funds of the TCCC for purposes of any provision of Federal law that requires nonfederal funds for a project.

Sec. 41.55 What about grant overpayments/underpayments?

If the Director finds that a Title I TCCC receiving funds under this part has been overpayed or underpaid, he/she must promptly notify the TCCC of the grant overpayment or underpayment. An adjustment will be made in the current fiscal year, if funds are available. If funds are not available,

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the grant adjustment will be made in the next fiscal year from the amount appropriated for the Title I TCCCs.

Technical and Planning Assistance

Sec. 41.60 Are there any funds for technical assistance?

(a) To apply for technical assistance and if funds are available, the TCCC should submit a written request to the Director for program development. Technical assistance funds will be provided to all eligible TCCCs on an equal payment basis.

(b) The Director may distribute technical assistance funds with the initial payment in accordance with Sec. 41.52, or may award them to an organization that the TCCC designates. If the TCCC wishes to have its funds awarded to an organization, the TCCC must notify the Director in its annual application on or before July 1 of every year.

(c) If the Director denies a request for technical assistance, the Director will notify the TCCC in writing, including the specific reason

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for the denial.

Sec. 41.61 Are planning **grants** available?

Yes, subject to specific appropriations. If money is appropriated, BIA may approve a planning grant for a tribe or a tribal entity to conduct planning activities for establishing a TCCC.

Sec. 41.62 How can a tribe or tribal entity apply for a planning grant?

Each applicant for a planning grant must submit an application using standard form (SF) 424 in accordance with OMB Circular No. A-110. The Director will consider each application in order of receipt for each fiscal year.

Sec. 41.63 How will a tribe or tribal entity know if it has received a planning grant?

The Director will notify the grant applicant whether the application has been approved or disapproved within 60 days of its receipt. No more than five **grants**, not to exceed $15,000 each, will be awarded each fiscal year.

Sec. 41.64 What is required in a study made with a planning grant?

(a) The planning study must contain:

(1) Information pertaining to the potential number of tribal members interested in enrolling;

(2) An assessment of post-secondary educational opportunities on or near the Indian reservation;

(3) Information concerning facilities usage;

(4) A review of tribal and BIA funds spent on in-service training;

(5) The estimated tribal financial contribution toward the operation of a TCCC;

(6) Relative isolation factors;

(7) Tribal member enrollments at other post-secondary institutions in the service area; and

(8) Curriculum needs.

(b) The results of the planning study must be submitted within 60 days after completion to:

(1) The Director;

(2) The tribal governing body or bodies requesting the planning grants; and

(3) The board of directors, regents, or trustees of the TCCC.

Sec. 41.65 What will happen to unused planning grant funds?

Any unallocated funds appropriated in a fiscal year for planning grants will be distributed to the Title I colleges according to the procedures in Sec. 41.52.

Sec. 41.66 What assistance will BIA provide TCCCs in determining their needs and costs?

The Secretary, in consultation with the National Center for Education Statistics, will establish a data collection system to obtain accurate information on the needs and costs of operation and maintenance of TCCCs.

Endowment Funds

Sec. 41.70 When is a TCCC entitled to receive endowment funds?

A TCCC is entitled to receive endowment funds if the TCCC:

(a) Has received operational funds during the fiscal year in which application for an endowment fund is made; and

(b) Has not been awarded a grant under section 331 of the Higher Education Amendments of 1986, Endowment Challenge **Grants**, (20 U.S.C. 1065a) during the same fiscal year.

Sec. 41.71 How can a TCCC obtain endowment funds?

To obtain endowment funds, a TCCC must establish a trust fund as required by Sec. 41.72 and apply to the Director under Sec. 41.73.

Sec. 41.72 What requirements must an endowment trust fund meet?

A TCCC desiring to receive a grant under this section must enter an agreement with the Secretary to establish and maintain a trust fund that:

(a) Meets the requirements of section 302(b)(1) of the **Tribally Controlled Community** College Assistance Act, as amended;

(b) Provides for the deposit in the fund of:

(1) Any Federal capital contributions;

(2) A TCCC capital contribution in an amount (or of a value) equal to half the amount of each Federal capital contribution; and

(3) Any earnings of the deposited funds.

(c) Provides that deposited funds will accumulate interest at a rate not less than that of similar funds deposited at the institution for the same period of time;

(d) Provides that if a TCCC withdraws any of its capital contribution, an amount of Federal contribution equal to twice the amount (or value) of each withdrawal will be withdrawn and returned to the Secretary for redistribution;

(e) Provides that no private person may benefit from the net earnings of the trust fund;

(f) Provides a description of recordkeeping procedures for the expenditure of accumulated interest; and

(g) Provides that interest deposited in the trust fund may be periodically withdrawn and used to defray any expenses associated with the operation of the TCCC.

Sec. 41.73 How does a TCCC apply to participate in the endowment program?

BIA will notify TCCCs when funding is available for the endowment program. Upon receiving this notice, the TCCC must submit a signed letter to the Director certifying its intent to participate in the program and identifying the amount (or value of) funds/property available for matching purposes.

Sec. 41.74 What action will the Director take on applications?

(a) The Director will review each request made under Sec. 41.73. If the Director approves the request, BIA will match on a two-for-one basis the amount identified by the TCCC, up to a maximum of $750,000 in matching funds per TCCC.

(b) If the request is disapproved, the Director must notify the TCCC in writing, identifying the specific reasons for the disapproval and advising the TCCC of its right to appeal.

Sec. 41.75 What happens if a TCCC is overpaid under the endowment program?

The Director must notify a TCCC if an overpayment has been made. The TCCC must then return the excess funds.

Sec. 41.76 What assets may a TCCC use to comply with the matching requirement?

To comply with the matching requirement, a TCCC, may use:

(a) Funds available from any private or tribal source; and

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(b) Any real or personal property received as a donation or a gift on or after October 30, 1990, to the extent of its fair market value as determined by the Secretary.

Sec. 41.77 How is the value of donated real or personal property established?

(a) The fair market value of donated real or personal property must be established by a qualified appraiser. The Secretary or his/her authorized representative must review and approve the appraisal.

(b) The fair market value of property at the time it is presented to the Federal appraiser will be the amount that will be used for matching purposes regardless of future changes in value.

Sec. 41.78 What happens if real or personal property that the TCCC uses to comply with the matching requirement is sold or disposed of?

If any real or personal property that the TCCC uses to comply with the matching requirement is sold or otherwise disposed of, the proceeds must be deposited in the established endowment trust account. The deposited proceeds and will not again be considered for Federal capital contribution purposes.

Sec. 41.79 How will BIA match the value of property or capital contributions?

(a) From the amount appropriated, the Secretary will allocate to each eligible TCCC:

(1) An amount for a Federal capital contribution equal to twice the value of the property or the amount that the TCCC demonstrates is committed as a capital contribution; except,

(2) The maximum amount allocated to any TCCC for any fiscal year cannot exceed $750,000.

(b) If in any fiscal year the appropriated amount is insufficient to allocate to each TCCC an amount equal to twice the value, then the allocated amount to each TCCC will be reduced pro rata.

Sec. 41.80 What procedures will BIA follow when there are additional funds for the endowment program?

(a) The Director, after satifying the unmet endowment, will notify all eligible TCCCs of the amount of the remaining funds.

(b) Within 60 days of the date of notification of extra funds, an eligible TCCC may submit an application.

(c) After Congress appropriates funds, the Director must notify eligible TCCCs of the amount available under this part.

Appeals

Sec. 41.90 What appeal rights do TCCCs have under this part?

(a) A TCCC has the right to appeal any adverse decision made by the Director to the Assistant Secretary by filing a written notice of appeal with the Assistant Secretary within 30 days of receipt of the adverse decision.

(b) Within 30 days of receiving a notice of appeal, the Assistant Secretary, or designated representative, must conduct a hearing at which the TCCC may present evidence and offer arguments in support of its appeal.

(c) Within 30 days after the hearing, the Assistant Secretary must issue a written ruling on the appeal including the reasons for that ruling that confirms, modifies, or reverses the Director's decision.