

**DEPARTMENT OF EDUCATION****34 CFR Part 263**

RIN 1810-AB19

[Docket ID ED-2014-OESE-0050]

**Indian Education Discretionary Grant Programs; Professional Development Program and Demonstration Grants for Indian Children Program****AGENCY:** Office of Elementary and Secondary Education, Department of Education.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to revise the regulations that govern the Professional Development program and the Demonstration Grants for Indian Children program (Demonstration Grants program), authorized under title VII of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The proposed regulations would govern the grant application process for new awards for each program for the next fiscal year in which competitions are conducted for that program and subsequent years. For the Professional Development program, the regulations would enhance the project design and quality of services to better meet the objectives of the program; establish post-award requirements; and govern the payback process for grants in existence on the date these regulations become effective. For the Demonstration Grants program, we propose new priorities, including one for native youth community projects, and application requirements.

**DATES:** We must receive your comments on or before January 2, 2015.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using print-to-PDF format allows the Department to

electronically search and copy certain portions of your submissions.

• *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to: John Cheek, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W207, Washington, DC 20202-6135. Telephone: (202) 401-0274.

*Privacy Note:* The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** John Cheek, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W207, Washington, DC 20202-6135. Telephone: (202)401-0274 or by email: [john.cheek@ed.gov](mailto:john.cheek@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

*Invitation to Comment:* We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room

3W207, 400 Maryland Avenue SW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Background**

The Secretary proposes to revise the regulations in 34 CFR part 263 that govern the Professional Development program and Demonstration Grants for Indian Children program. For the Professional Development program, we propose adding grantee post-award requirements and revising the selection criteria to better enable the Department and grantees to meet the objectives of the program. For the Demonstration Grants program, we propose new priorities, including one for native youth community projects. For both the Professional Development and Demonstration Grants programs, we propose to amend certain definitions and reorganize sections of the regulations to give the Department more flexibility in determining which priorities and selection criteria to use each year of a competition.

Through our work with grantees under the Professional Development program and our monitoring of their participant recruitment, retention, graduation, and job placement rates, it became apparent that the projects being selected for grant awards were not adequately addressing the issues faced by Indian individuals seeking to become teachers and administrators. These issues include high teacher and administrator turnover rates; lack of cultural relevancy of teacher training programs; and difficulty in finding qualified employment. As a result, many Indian students participating in the Professional Development program either do not complete their course of study or cannot obtain employment upon graduation, and therefore have to repay the assistance they received in cash rather than through a work-related payback.

The proposed regulations would encourage Professional Development program applicants to better tailor their programs to meet the needs of the Indian students participating in the program. The proposed regulations also would encourage Professional Development program applicants to have stronger plans for placing participants in qualifying employment upon completion of the program and in supporting participants in their first year on the job. The proposed changes are designed to result in more participants successfully completing their program of study and obtaining employment as teachers and administrators. The proposed changes should result in fewer participants who, after receiving assistance under these grants, do not complete a “work payback” and instead must repay the Department in cash for the training received because they are not employed as teachers or administrators.

For the Demonstration Grants program, the proposed changes would add new priorities that we could use in any year of a new competition. These new priorities would provide more flexibility to tribal communities in designing coordinated projects to help students become college- and career-ready. By college- and career-ready, we mean that a student graduating from high school has the knowledge and skills to succeed in his or her chosen post-secondary path, including continued education, work, or a traditional lifestyle. A rigorous and well-rounded high school education will provide rewards for a graduate no matter his or her pursuit.

As in all communities, for native students to succeed, they must have a quality school to attend and be surrounded by community and school conditions that support learning. Low educational outcomes can be exacerbated by factors outside of school such as poor health, food insecurity, or unstable housing. Given the interconnectedness of in-school and out-of-school factors, the Federal government proposes to support communities that will assess the set of issues they face in ensuring their students are college- and career-ready, and respond with interconnected, coordinated solutions. The purpose of these proposed priorities is to encourage a community-wide approach to providing academic, social, and other support services, such as health services, for students and students’ family members that will result in improved educational outcomes for all children, and specifically college- and career-readiness.

*Tribal Consultation:* Before developing these proposed regulations, the Department held two nationally accessible consultation events on January 28, 2014 and February 5, 2014, pursuant to Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”), to solicit tribal input on the Professional Development program broadly, and on the definition of “Indian organization” for the Demonstration Grants program. A link to the transcripts for these consultations is available at: <http://www2.ed.gov/about/offices/list/oese/oie/index.html>.

Additionally, the Department sent several email messages to tribal leaders from each of the 566 federally recognized Indian tribes to solicit input, via a blog, on the future direction of the Professional Development program. The topics on which we sought input included program participants’ job placement, recruitment, and retention; induction services for program participants; costs of training programs; the definition of “Indian organization”; and the subject areas, geographic areas, and specialty areas in which educators are most needed. A link to the blog posting can be found at: [www.ed.gov/edblogs/oese/2014/03/indian-professional-development-program-for-tribal-consultation/](http://www.ed.gov/edblogs/oese/2014/03/indian-professional-development-program-for-tribal-consultation/).

While the Department received limited feedback from its consultation efforts regarding the Professional Development program, respondents were generally in favor of the Department placing a greater emphasis on applicants’ plans for recruitment and retention of qualified participants; requiring job placement assistance for graduates; and improving induction services during the first year of employment. In addition, while reaction was mixed as to whether we should expand the definition of “Indian organization,” most of the commenters were in favor of the broader definition.

The Department then conducted additional consultations regarding proposed new priorities for the Demonstration Grants program, including a priority for native youth community projects. These consultations were held in-person on October 17, 2014 (Alaska) and October 29, 2014 (Georgia), and via webinars on October 21 and 24, 2014. Tribal leaders were generally positive about the concept of native youth community projects. A link to the transcripts for these consultations is available at: <http://www2.ed.gov/about/offices/list/oese/oie/index.html>. Many participants expressed support for allowing grantees the flexibility to identify community-

specific barriers and opportunities, rather than being required to address specific issues or grade spans. In addition, participants appreciated the ability to focus attention on one or more opportunities, barriers, and strategies, through this proposal, especially if Federal grant resources are limited in a given year. Participants highlighted the need for guidance and technical assistance in developing strategies and objectives, as well as access to evidence-based and promising practices.

### Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

#### *Subpart A—Professional Development Program*

**Section 263.3** What definitions apply to the Professional Development program?

*Statute:* Under section 7122 of the ESEA, an “Indian organization,” in a consortium with an institution of higher education, is eligible to receive a grant under the Professional Development program. However, title VII of the ESEA does not define this term. Similarly, section 7122 states that funds under this program must be used for training, either in-service or pre-service, of Indian individuals to go into the field of education, but it does not define the terms “expenses,” “induction services,” “professional development activities,” “stipend,” or “undergraduate degree.” The Secretary has the authority to regulate the definitions that apply to the Professional Development program under 20 U.S.C. 1221e-3 and 3474.

*Current Regulations:* Section 263.3 of the current regulations defines key terms used by the Department in administering the program. Current definitions include, among other terms, “expenses,” “Indian organization,” “induction services,” “professional development activities,” “stipend,” and “undergraduate degree.” Under the current regulations:

- “Expenses” is defined as costs incurred by a participant during training, such as tuition, books, fees, room and board, and supplies.
- “Indian organization” is limited to an organization that, in addition to meeting other criteria, has as its primary purpose the promotion of the education of Indians.
- “Induction services” are defined as services meeting certain criteria that grantees provide to program participants

after they complete their training, including such activities as mentoring, access to research on teaching and learning, feedback on performance, and periodic meetings between participants.

- “Professional development activities” are defined as in-service training that focuses on enhancing skills of participants that are already employed.

- “Stipend” is defined as funds provided to participants to cover living expenses such as room and board.

- “Undergraduate degree” is defined as a bachelor’s degree awarded by an institution of higher education.

*Proposed Regulations:* First, we propose to remove the definition of “expenses.” Next, we propose to modify the definition of “Indian organization” to include an organization that has as one of its purposes the education of Indian students. We also propose to revise the definition of “induction services” to state that they are provided during the participant’s first year of teaching to improve participants’ performance and promote their retention. Also, the proposed revisions state that induction services must include services assisting teachers to use technology and data as part of their instruction. Additionally, the proposed revisions clarify that the mentoring and coaching services must be of high quality and that the feedback provided to participants must be clear, timely, and useful. Another proposed change is to expand the definition of “professional development activities” to include pre-service training, in addition to in-service training, which is included in the current definition. Additionally, we propose to change the definition of “stipend” to limit this term to only funds used for room, board, and personal living expenses for full-time students living at or near the institution providing the training. The last proposed change is the elimination of the definition of “undergraduate degree.”

*Reasons:* First, we propose removing the definition of “expenses” because we propose to explain in detail in § 263.4 what types of student costs are allowable.

Second, we propose to change the definition of “Indian organization” to include organizations that have as one of their primary purposes the promotion of the education of Indians, in order to expand the pool of eligible applicants. The current regulatory definition excludes from eligibility Indian organizations that have multiple areas of expertise (e.g., Indian housing or health services in addition to education) and we believe this unnecessarily limits the

pool of eligible applicants. Because these organizations have the knowledge necessary to carry out successful projects under the Professional Development program, the Department wants these entities, in consortia with institutions of higher education, to be eligible to apply for these grants.

We propose to amend the definition of “induction services” to more specifically describe the induction services that grantees would provide graduates upon completion of their pre-service training and to better align this definition with similar definitions in other Department programs, such as the Teacher Quality Partnership Grant Program. These changes would ensure that graduates receive useful and productive support in their schools during the crucial first year of teaching, and specifically that they receive training on effective use of technology and data in the classroom. Grantees either can provide induction services directly or use grant funds, as specified in proposed § 263.4(c), to sponsor mentorships at the school or school-district level. We expect these induction services to increase the likelihood that new teachers and administrators remain in the professional fields for which they received training and to increase their effectiveness.

We also propose to expand the definition of “professional development activities” to include pre-service activities to provide maximum flexibility to grantees in creating learning opportunities that will prepare participants to overcome some of the barriers they may encounter as teachers and administrators.

We also plan to limit the definition of “stipend” to only room, board, and personal living expenses for full-time students who are living at or near the institution where they are receiving training, to eliminate the practice of participants receiving stipends from two professional development grants concurrently.

Lastly, we propose to remove the definition of “undergraduate degree” because this term is not used in the regulations or guidance for the Professional Development program. The program now uses the terms “bachelor’s degree” or “baccalaureate degree,” and we do not believe these terms require definition.

#### *Section 263.4 What training costs may a Professional Development program include?*

*Statute:* Section 7122 of the ESEA states that grant funds under the Professional Development program may be used to provide support and training

for program participants, including continuing programs, workshops, conferences, and direct financial support.

*Current Regulations:* The current regulations explain the training costs that may be covered under the Professional Development program. The regulations state that training costs may include costs to fully finance a student’s educational expenses and supplement other financial aid including stipends.

*Proposed Regulations:* We propose to revise the regulations to provide greater detail about the kinds of training costs that may be covered under the Professional Development program, including in-service and pre-service training. We propose to include examples of costs that contribute to the full cost of a participant’s education, such as technology costs. Additionally, in 263.4(c), we propose to revise the regulations to specify other kinds of costs that can be covered under the Professional Development program, including costs associated with collaborating with prospective employers, providing in-service training such as mentorships for participants who have graduated, and assisting participants in finding employment. These are costs that cannot be passed on to the participants.

*Reasons:* The inclusion of examples of costs to fully finance a participant’s education would help grantees and participants understand what education costs can be covered by the program. This would result in uniform treatment of allowable educational expenses among grantees and reduce the risk that grantees would use program funds for unallowable expenses or incorrectly charge participants for costs that should be covered by grant administration funds.

The inclusion of grantee costs beyond educational expenses in this section of the regulations would encourage grantees to include costs associated with creating partnerships with prospective employers, providing in-service training such as mentorships for graduated participants, and assisting participants in finding employment in their field of study. This would improve the quality of the job placement and in-service supports provided to participants. Specifically, these changes would help increase the pool of available jobs for graduates; assist new teachers and administrators with overcoming workplace challenges they encounter within the first year of employment; and increase the number of program participants finding employment upon graduation.

*Section 263.5 What priority is given to certain projects and applicants?*

*Statute:* Section 7143 of the ESEA states that the Secretary shall give preference to Indian tribes, Indian organizations, and Indian institutions of higher education applying for grants under the Professional Development program. Section 7122 of the ESEA does not establish any other priorities for this program, but it states that funds under this program must be used to provide pre-service or in-service training for Indian individuals to become teachers, administrators, and other education professionals.

*Current Regulations:* Section 263.5 establishes two different competitive preference priorities—one for applications submitted by an Indian tribe, Indian organization, or an Indian institution of higher education, and one for consortium applications that designate a tribal college or university as a fiscal agent—and assigns five points to each of these priorities. In addition, the current regulations establish as absolute priorities applications for pre-service training of teachers and administrators.

*Proposed Regulations:* We propose to combine the two competitive preference priorities in § 263.5(a) and (b) into one competitive preference priority. Instead of setting the number of competitive points at five, as the current regulations do, we propose to determine the number of points awarded for this combined competitive preference priority annually. In other words, we will determine the number of competitive points to be awarded in each year of a new competition for the program. For the remaining current priorities, we propose to designate these priorities as absolute, competitive preference, or invitational in the notice inviting applications.

We also propose to amend the current priorities for pre-service training for teachers and administrators to require that applicants under these priorities include project-specific goals for the number of participants to be recruited, to continue each year, to graduate, and to find jobs upon completion.

Finally, we propose a new priority for applicants that submit a letter of support from a local educational agency (LEA), Bureau of Indian Education-funded school, or other entity in the applicant's service area agreeing to consider program graduates for qualifying employment. We also propose removing the note to paragraph 263.5(c)(1) regarding participants who need a fifth year of study to complete licensure requirements and

incorporating that language into paragraph 263.5(b)(i)(A). We believe this change will make it clearer that certain individuals may participate in the Professional Development program even after the end of the grant period.

*Reasons:* The removal of points associated with the competitive preference priority for applications submitted by certain Indian entities and the removal of the designation of the remaining priorities as absolute or competitive preference would provide the Secretary with flexibility to determine the priority structure and priority point allocation for each grant competition. We propose to combine the current competitive preference priorities in § 263.5(a) and (b) into a single priority to streamline the application process. The current priorities ask applicants for similar commitments, and the Department has observed that applicants that meet one of these competitive preference priorities almost always also meet the other. By combining these priorities into a single priority, applicants would no longer receive points twice for the same commitment.

We believe that requiring grantees to establish project goals for participant recruitment, retention, graduation, and job placement as part of the pre-service training priority would make grantees more accountable for setting and reaching goals in these areas.

We propose adding the priority regarding the letter of support from potential employers to improve the relationships between grantees and potential employers from the beginning of the grant period. This priority is expected to help increase the number of participants that obtain employment upon graduation from the program and complete a work-related payback because the Department has learned that grantees that develop a close working relationship with school districts and other potential employers have been more successful placing participants into eligible employment after graduation.

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

*Statute:* Under section 7142 of the ESEA, the Secretary uses a peer review process to review applications submitted for the Professional Development program. Title VII of the ESEA does not address the criteria that should be used to evaluate these applications, and under 20 U.S.C. 1221e-3 and 3474 the Secretary has the authority to establish these selection criteria through regulations.

*Current Regulations:* Under the current regulations, the Secretary awards a fixed number of points for each of the selection criteria used for evaluating grant applications. The current criteria are the:

- Need for the project (5 points);
- Significance of the project (10 points);
- Quality of project design (15 points);
- Quality of project services to be provided (15 points);
- Quality of project personnel (15 points);
- Adequacy of resources to accomplish project goals (10 points);
- Quality of the management plan (15 points); and
- Quality of the project evaluation (15 points).

*Proposed Regulations:* We propose to remove the fixed points assigned to each criterion. Instead, the Secretary would establish the number of points for each selection criterion annually, that is, for each year of a new competition for the program, in the notice inviting applications for the competition. The Secretary could also include any of the selection criteria from 34 CFR 75.210 and select from among the list of factors under each criterion in 34 CFR 75.210 or these regulations when making new grant awards.

We propose to include in the regulations only program-specific factors and to eliminate the factors that are codified in 34 CFR 75.210, as well as entire selection criteria for which we do not propose program-specific factors. To that end, we propose to remove the selection criteria for “adequacy of resources,” “quality of the management plan,” and “quality of the project evaluation.”

In § 263.6(a) we propose to revise the “need for project” selection criterion to address how the proposed project will prepare participants to work in a field of study where there are demonstrated shortages, and the extent to which employment opportunities exist in the project's service area. Both the shortages and the employment opportunities would be demonstrated through a job market analysis.

We also propose to revise the “significance” selection criterion in § 263.6(b) to address how the proposed project would help increase effective strategies for teaching and improving Indian student achievement, and would build local capacity to provide, improve, or expand services that address the specific needs of Indian students.

In § 263.6(c) we propose to add the following factors within the “quality of project design” selection criterion:

- The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are ambitious, attainable, and address specific project performance goals;
- The extent to which the applicant designed a recruitment plan that ensures that participants are likely to complete the program; and
- The extent to which the proposed project will incorporate the needs of the potential employers by establishing partnerships and developing programs that meet their employment needs.

We propose to add four new project-specific factors to the selection criterion for “quality of project services” in § 263.6(d). These proposed factors are designed to identify applicants that would:

- Provide learning experiences to help participants become successful teachers or administrators;
- Prepare participants to adapt practice to meet the breadth of Indian student needs;
- Offer job placement activities; and
- Offer induction services that reflect the latest research.

For the selection criterion “Quality of project personnel,” we propose amending the factors to include consideration of the cultural competence of proposed key project personnel.

*Reasons:* We propose these changes to make the selection criteria for the Professional Development program more focused on the goals of the program—to train qualified Indian individuals to be teachers and administrators and to increase the number of such individuals in education professions serving Indian people. Through its work with grantees, the Department has learned that the projects that best reach these goals are ones that recruit qualified participants and have supports in place to help them complete their training successfully, have high-quality plans to place graduates in jobs upon their graduation, and provide transition supports to graduates as they begin their careers.

Specifically, the proposed amendments to the “need for project” selection criterion would encourage applicants to demonstrate that their proposed training relates to a field with a demonstrated shortage of teachers and administrators in their geographic area, which would increase the likelihood of participant job placement after graduation. The proposed amendments to the “significance” selection criterion would encourage applicants to

demonstrate that the project would significantly improve the effectiveness of training given to Indian teachers and would develop strategies for improving the resulting outcomes for Indian students in ways that can be replicated. The proposed amendments to the “quality of project design” selection criterion would encourage applicants to have specific plans for recruiting qualified applicants and for creating partnerships with potential employers, and to set ambitious goals that would measure success related to these plans. The proposed amendments to the “quality of project services” selection criterion are designed to encourage applicants to have plans to place participants in jobs and to provide participants with supports during the beginning of their careers. Lastly, the proposed amendments to the “quality of project personnel” selection criterion aim to ensure that the project team would have competency regarding cultural challenges facing project participants, and the skills to address differences in learning styles of Indian students.

Additionally, we propose removing the fixed selection criteria points to provide flexibility to determine the point allocation for each grant competition. This would allow us to tailor grant competitions to changing student learning needs and employment opportunities in the field.

Finally, we propose removing the selection criteria that are identical to the selection criteria codified in section 34 CFR 75.210 because, under 34 CFR 75.200, the Secretary has the ability to use these criteria in 34 CFR 75.210 for the Department’s discretionary grant programs.

#### *Section 263.7 What are the requirements for a leave of absence?*

*Statute:* Section 7122 of the ESEA does not address how the Department or grantees should handle situations in which participants take a leave of absence from the course of study. The Secretary has the authority to regulate this issue under 20 U.S.C. 1221e–3 and 3474.

*Current Regulations:* The current regulations allow participants to be granted a leave of absence for up to one academic year as long as the participant receives approval from the project director, but the regulations do not specify how to handle these situations for the purpose of project performance reporting.

*Proposed Regulations:* We propose to specify that participants who do not return from a leave of absence by the end of the grant period will be

considered not to have completed the program for the purposes of project performance reporting. This change is proposed to address situations where participants do not return after taking a leave of absence.

*Reasons:* We propose to add the provision regarding participants who do not return to the program after a leave of absence because the current regulations do not address how such participants are treated for reporting purposes. Currently, grantees generally are not reporting the final status of participants who never return from a leave of absence. The proposed change would ensure that grantees track participant progress through the program more accurately, and it would allow the Department to track grantee progress toward meeting goals for participant completion.

#### *Section 263.8 What are the payback requirements?*

*Statute:* Section 7122 of the ESEA requires individuals who receive training under the Professional Development program to either perform work-related payback or to repay all or a prorated part of the assistance they received under the program. This section also requires the Secretary to establish regulations to govern this procedure.

*Current Regulations:* The current regulations in § 263.8 require participants to sign a payback agreement when selected to be in the Professional Development program, perform work related to training received, and repay all or a prorated amount of the assistance received if work-related payback is not completed. For cash payback, the regulations state that the cash payback is equal to the total amount of assistance received. Additionally, the current regulations in § 263.9 (“When does payback begin?”) and § 263.10 (“What are the payback reporting requirements?”) address other aspects of the payback requirements. Section 263.9 explains that payback begins within six months of training completion, and § 263.10 states that if a participant cannot complete a work-related payback, he or she must complete a cash payback.

*Proposed Regulations:* We propose to consolidate all of the regulatory provisions that govern the payback process, currently in § 263.8 through § 263.10, into § 263.8. First, we propose to outline the general payback requirements. We would clarify the two different types of payback to the Department, work-related payback and cash payback, and to specify that the preference is for participants to

complete a work-related payback. We would also note the payback agreement and employer verification requirements, which we discuss in more detail in § 263.10 and § 263.11. With respect to the payback process, we propose that work-related payback would be tracked and credited on a month-for-month basis, that it would be credited based on actual time worked, and that if a participant is unable to complete a work-related payback he or she would be required to make a cash payback on a prorated basis. For cash payback, we propose that participants who do not report eligible employment within twelve months would be automatically referred for a cash payback, would be responsible to repay the total amount of funds received, and would incur non-refundable fees and interest charges from the date of referral. The regulations would also clarify that cash payback can only be discharged through bankruptcy if repaying the loan would cause undue hardship as defined under bankruptcy law.

*Reasons:* The Department proposes to clarify the regulations that govern the payback process so that participants better understand the repayment requirement. In the current regulations, much of the information regarding work and cash payback appears in § 263.9 and § 263.10, and we believe this is confusing for participants. The proposed regulations better organize the information about work and cash payback requirements and provide more clarity to grantees and participants regarding the requirements for each.

For cash payback, we also propose to add provisions that would better inform participants of the nature of the debt they are incurring when they begin their course of study. To align the regulations with our current practice, we propose the provision regarding non-refundable fees and interest charges to notify participants that they will incur these fees in addition to their training costs if they are referred for a cash payback. Similarly, we propose to specify how loans will be treated in bankruptcy so that participants would be aware that it may not be possible to discharge these loans through bankruptcy.

We also propose to amend the regulations to clarify the date by which the two different types of payback must begin. The current regulations state that work-related payback begins within six months of completion of the training program but do not state when cash payback would begin. We propose to clarify that, for participants who have not previously reported eligible employment, cash payback would begin within twelve months of completion of

training, or, for participants who have entered but not completed work-related payback, cash payback would begin when participants have failed to submit verification of eligible employment for a twelve-month period. We believe these changes would reduce the confusion of many participants regarding when work-related payback would begin and when a participant would be referred for a cash payback.

Additionally, we expect these proposed changes would reduce the number of participants completing a cash payback because many participants do not currently submit the required employment verification documentation because they do not understand their responsibilities under the current regulations.

#### *Section 263.9 What are the requirements for payback deferral?*

*Statute:* Section 7122 of the ESEA requires individuals who receive training under the Professional Development program to either perform work-related payback or to repay all or a prorated part of the assistance they received under the program. This section also requires the Secretary to establish regulations to govern this procedure.

*Current Regulations:* Section 263.9 is currently titled, “When does payback begin?” and states that payback begins within six months of program completion. Additionally, § 263.9 allows participants who leave the Professional Development program but continue their education as full-time students to defer the payback of assistance.

*Proposed Regulations:* We propose to rename this section of the regulations “What are the requirements for payback deferral?” and to specify the two types of deferral that are available: Education and military service. Current regulations specify the conditions under which education deferrals can be granted, but they do not explain the deferrals of payback for military service.

We also propose to add a provision for deferrals, for no more than 36 months, for individuals called to active duty in the armed services for more than 30 days. We propose to add regulations to establish the criteria for a “military deferral” and the process to request a “military deferral.” As part of the request process, we propose that a participant provide to the Secretary a written statement from the recipient’s commanding officer or a copy of his or her military orders and military identification.

In addition, we propose to remove the provision stating that payback begins

within six months of program completion, as we propose to revise § 263.8 to provide that participants would be referred for cash payback if they do not submit employment verification within twelve months of completion of pre-service or in-service training or for any twelve-month period prior to work-related payback completion.

*Reasons:* We propose changing the title of this section to better reflect the information included in this regulation and to clarify the two situations in which the Department will grant deferrals. We believe the proposed changes would eliminate the confusion regarding what types of payback deferrals are available to participants who receive funding from the Professional Development program. The program has always permitted deferrals for participants who continued their education full-time and for military deployment, and the proposed regulations would clarify and specify the rules for each type of deferment. The military deferment provisions are modeled after those used in the Department’s TEACH Grant program (see 34 CFR part 686) and would allow participants serving in specified reserve components of military units to defer their payback obligations if they are called to active military service.

#### *Section 263.10 What are the participant payback reporting requirements?*

*Statute:* Section 7122 of the ESEA requires individuals who receive training under the Professional Development program to report periodically on their status in work-related payback. This section also requires the Secretary to establish regulations to govern this procedure.

*Current Regulations:* Section 263.10 requires participants to submit written notice of intent to complete a work-related payback within 30 days of completing the program, develop a plan to demonstrate how their proposed work-related service is related to the training and how it benefits Indian people, notify the Secretary within 30 days of any change in employment once employment has begun, and submit employment verification every six months that includes a certification that the work was continuous. The regulations also state that if participants cannot complete a work-related payback, they must complete a cash payback.

*Proposed Regulations:* First, we propose to amend the title of the section to indicate that the section relates to the reporting requirements of participants,

rather than grantees. We also propose to move the provisions governing the cash and work payback process to § 263.8, “What are the payback requirements?”

We also propose to eliminate the work-related payback plan and the requirement that eligible employment must be continuous.

*Reasons:* We propose to eliminate the participant work plans because these plans have been burdensome for participants to complete and for the Department to track, and they do not help participants secure employment. We propose to eliminate the continuous employment certification because the Department would accept part-time employment, temporary employment, and substitute employment as qualifying employment as this information can now be accurately tracked in the Professional Development Program Data Collection System (DCS). The DCS is an electronic service obligation tracking system that the Department now uses to track participant training assistance and the fulfillment of the work-related payback requirements of the program. The change to accept other types of employment also addresses the difficulty many first-time teachers and administrators have in securing permanent full-time employment.

*Sections 263.11 What are the grantee post-award requirements?*

*Statute:* Section 7122 and the related portions of title VII of the ESEA do not directly address post-award requirements of grantees in the Professional Development program. The Secretary has the authority to regulate the post-award requirements that apply to the Professional Development program under 20 U.S.C. 1221e–3 and 3474. Section 7(b) of the Indian Education and Self-Determination Assistance Act (Pub. L. 93–638) requires that grantees under the Professional Development program give, to the greatest extent feasible, certain employment and procurement preferences to members of federally recognized Indian tribes.

*Current Regulations:* None.

*Proposed Regulations:* We propose to add a requirement for grantees to conduct a payback meeting with each participant. At this meeting, the grantee would review the payback requirements with the participant before funds are provided to the participant. We propose to require that grantees report information regarding participant training and payback information to the Department in a manner designated by the Department. We also propose to require that grantees obtain a signed

payback agreement from each participant. These agreements would have to contain information about estimated training costs and length of training and document that a payback meeting took place between the grantee and participant. We propose that grantees would submit the signed payback agreements to the Department within seven days of their signing. Additionally, we propose a requirement that grantees assist participants in finding qualifying employment after completing the program. Finally, the proposed regulations would clarify that the hiring preference provisions of the Indian Self-Determination and Education Assistance Act apply to this program.

*Reasons:* The proposed requirements regarding the payback meeting and signed payback agreement would help ensure that participants are aware of the total training costs and payback responsibilities. We expect these changes to reduce misinformation regarding payback and address a major area of complaint from program participants. We propose that grantees report to the Secretary, using DCS, their participants’ payback information in order to strengthen the Department’s ability to oversee grantees and track their progress toward meeting their goals of graduating and placing participants in qualifying employment. The proposed requirement that grantees perform activities to assist participants in obtaining employment would increase the likelihood that participants will be able to enter qualifying employment upon graduation, which would reduce the number of participants completing a cash payback.

Finally, we propose to add § 263.11(e) to make it clear to grantees that the hiring preference requirements under the Indian Education and Self-Determination Act apply to grantees’ administration of these grants to the extent that the projects primarily serve members of federally recognized tribes.

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

*Statute:* Section 7122 and the related portions of title VII of the ESEA do not directly address the issue of continuation awards for the Professional Development program. The Secretary has the authority to regulate on this issue under 20 U.S.C. 1221e–3 and 3474.

*Current Regulations:* None.

*Proposed Regulations:* We propose to add to the criteria the Secretary would use in making continuation awards. In addition to the criteria in 34 CFR

75.253, we propose to add consideration of the extent of grantees’ progress toward meeting recruitment, retention, graduation, and job placement goals. In addition, we propose to clarify that we may reduce continuation awards, including the portions of grantees’ awards allocated to both administrative and training costs, based on grantees’ failure to meet project goals.

*Reasons:* We propose criteria for continuation awards based on grantees’ specific project goals to emphasize the importance of achieving the specific goals that grantees establish regarding recruitment, retention, graduation, and job placement of participants. The proposal to allow the Department to reduce continuation awards by taking reductions from administrative costs, student training costs, or both would provide incentives for the grantee to achieve and maintain enrollment in order to receive the full continuation award amount. This change would help reduce the high number of participants who dropout or do not find qualifying employment.

#### **Subpart B—Demonstration Grants for Indian Children Program**

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

*Statute:* Although section 7121 of the ESEA states that Indian organizations are eligible entities to receive grants under the Demonstration Grants program, title VII of the ESEA does not define this term. The Secretary has the authority to regulate the definitions that apply to the Demonstration Grants for Indian Children program under 20 U.S.C. 1221e–3 and 3474.

*Current Regulations:* Section 263.20 limits the definition of “Indian organization” to an organization that has as its primary purpose the promotion of the education of Indians.

*Proposed Regulations:* We propose to modify the definition of “Indian organization” to include an Indian organization that, in addition to meeting other criteria, has as one of its purposes the education of Indian students. We also propose to add a definition of “native youth community projects.”

*Reasons:* Our reasons for proposing the change to the definition of “Indian organization” are described in § 263.3, “What definitions apply to the Professional Development program?”

We propose the definition of “native youth community projects” to accompany the proposed priority for such projects in § 263.21, “What priority is given to certain projects and applicants?” Under this definition,

native youth community projects would be focused on a specific local geographic area, as determined by the applicant, and would not be limited to Indian reservations. These projects would be based on partnerships that include at least one tribe or its tribal educational agency, as well as a public school district or a school funded by the Department of the Interior's Bureau of Indian Education (BIE). The proposed definition does not limit the types of entities that could join in a partnership for native youth community projects; other entities such as community-based organizations or national nonprofit organizations could be valuable partners in a local initiative.

Under the statute, eligible entities for Demonstration Grants are: Indian tribes, Indian organizations, Indian institutions (including Indian institutions of higher education), BIE-funded schools, LEAs, and SEAs. For any competition in which we use the proposed priority for native youth community projects as an absolute priority, any of these eligible entities could apply as the lead applicant for a grant, but would be required to have formed a partnership that includes the required tribal and educational entities. In many tribal areas, including on reservations, there are both public schools and BIE schools, and students transfer and transition between them. Projects in such places should ideally include both types of educational institutions in order to improve outcomes for all local Indian students.

Under the proposed definition, native youth community projects would be projects, informed by evidence and data, addressing the greatest in- and out-of-school barriers to student college- and career-readiness. Projects would also address opportunities for improving student outcomes and the availability of existing programs and funding sources. Projects would select and track measurable objectives to determine progress and success of the project. For example, communities could identify, as barriers to college- and career-readiness, inadequate mental health supports for students, ineffective teacher recruitment and retention practices, and low student attendance rates. Applicants could identify opportunities such as the local school board's interest in a partnership with a native language preschool program, the superintendent's hiring goals for more Indian instructional and support staff, and recent changes to criteria for gifted and talented programs that include recognition of native arts and performance arts.

The definition would require applicants to develop a plan that identifies a strategy or strategies to address the barriers or opportunities that it determines to be most crucial for the community. For example, applicants, including the tribe, tribally-controlled school, and local school district partners, after surveying existing services and resources, could jointly decide to focus their projects on early childhood, with services for preschool-aged children and their parents. They could invite health and social service organizations to join as partners and select as measurable objectives the number of kindergarten students who meet the criteria on the State's readiness assessment compared to previous years, or the number of slots available for high-quality full-day prekindergarten. As another example, a community could identify teen substance abuse as its greatest barrier to student success, and design services around the goal of reducing that barrier. Services could include counseling and other supportive services to youth struggling with substance abuse, and prevention programs that improve school performance and teach behavior skills that increase persistence. The partnership could include a nonprofit organization with expertise in drug abuse prevention and a health services organization. Measurable objectives could be grade retention and substance use rates as reported on a school climate survey.

*Section 263.21 What priority is given to certain projects and applicants?*

*Statute:* Section 7143 of the ESEA states that the Secretary shall give preference to Indian tribes, Indian organizations, and Indian institutions of higher education applying for grants under the Demonstration Grants program. In addition, section 7121 states that the Secretary shall give priority to entities that submit applications proposing to combine at least two activities listed in section 7121(c)(1) over a period of more than one year. Section 7121 of the ESEA does not establish any other priorities for this program.

*Current Regulations:* Section 263.21 currently assigns five points to two different competitive preference priorities—one for applications submitted by an Indian tribe, Indian organization, or an Indian institution of higher education, and one for applications that propose to combine at least two activities listed in section 7121(c)(1) of the ESEA. In addition, paragraph (c) of the current regulation establishes school readiness projects,

early childhood and kindergarten programs, and transition to college programs as absolute priorities that the Secretary may choose.

*Proposed Regulations:* In proposed § 263.21(a) and (b), instead of setting the number of competitive preference points at five, as the current regulations do, we propose to determine the number of points for the current competitive preference priorities annually. In other words, we will determine the number of competitive preference points that are available in each year of a new competition for the program. In addition, in the current priority for applications submitted by tribes, Indian organizations, and Indian institutions of higher education in paragraph (b), we propose to delete the language that includes members of a consortium of eligible entities.

We propose revising paragraph (c) to: Designate these priorities as absolute, competitive preference, or invitational annually; replace the priorities relating to early childhood education and college preparatory programs that are in current paragraph (c)(1)–(3) with a priority in paragraph (c)(4) that would enable the Department to choose as a priority any of the authorized activities in section 7121(c) of the statute; and add new priorities that the Secretary may use in awarding grants under the Demonstration Grants program.

As new priorities, we first propose in paragraph (c)(1) a priority for native youth community projects. In paragraph (c)(2), we propose a priority for applications in which the lead applicant, or a primary partner that has signed the agreement described in proposed § 263.22(b)(2) of these regulations, has received a grant under another program as specified by the Secretary. Similarly, in paragraph (c)(3) of this section, we propose a priority for applicants that have the Department's approval to consolidate funds, either under the provisions of section 7116 of the ESEA or other authority designated by the Secretary.

*Reasons:* We propose to remove the point values associated with the current competitive preference priorities in paragraphs (a) and (b) to allow for flexibility to determine the point allocation for each year's competition. We also propose to limit the competitive preference priority in paragraph (b) to tribes serving as the lead applicant, in order to build tribal capacity.

We propose to remove the designation of the priorities in paragraph (c) as absolute to allow for flexibility to determine the priority structure for each grant competition. Further, to provide maximum flexibility in tailoring the

demonstration grants to the needs identified by the public, rather than providing for only the existing priorities for early childhood and college-readiness projects, we propose to enable the Department to choose any of the authorized activities in section 7121(c) of the ESEA as a priority. The twelve activities enumerated in the statute include early childhood and college-readiness projects.

We propose in paragraph (c) a new priority for native youth community projects to provide an opportunity for Indian communities to work together to develop and implement projects to address the barriers, in and out of school, to college- and career-readiness that are the most important from that community's point of view. Through tribal consultations we have heard that tribes would like the maximum flexibility to design projects that are culturally relevant, that respect tribal sovereignty, and that are tailored to a community's specific circumstance. We have also heard, and have learned through the Department's State Tribal Education Partnership (STEP) grants administered by the Office of Indian Education, that it is often difficult for tribes and local school districts to work together and share information. However, such coordination benefits students; accordingly, this priority encourages such coordination, while supporting tribal sovereignty and fostering local solutions to local challenges.

Because many Federal grant programs for Indian students have related goals, we have also proposed a priority for an applicant, or one of its primary partners, that has received a grant under another Federal program specified by the Secretary. This priority is designed to help build on existing Federal resources and programs for Indian students. For example, in a year in which the Secretary identifies in the notice inviting applications a competitive preference for applicants that have received a grant under the Department's STEP program or the Department of Interior's Sovereignty in Indian Education Grant program, an applicant or consortium member with one of those grants would receive preference points.

The proposed priority for applicants that have an approvable plan to consolidate funds under section 7116 of the ESEA has a similar goal. Section 7116 permits an entity that receives an Indian Education formula grant under title VII, Part A of the ESEA—school districts, BIE-funded schools, and certain tribes that receive a title VII formula grant in lieu of the local school district—to consolidate funds from

Federal grants received for Indian students. We have heard from some school districts that reporting and grant administration requirements are duplicative for the title VII formula grants and the Department of Interior's "Johnson O'Malley" grants, and that combining those funds, which is permissible under a plan submitted under section 7116, would be cost-effective for both programs. A plan submitted under section 7116 would also permit consolidation of funds from other Federal programs intended to benefit Indian students.

Finally, we propose a priority for rural projects. We recognize that many American Indian and Alaska Native students attend schools in urban areas, and urban school districts face unique challenges in serving students from many different tribal backgrounds in their schools. The challenges facing rural areas, however, including Indian reservations, are of a different nature; they often include longstanding problems of poverty and lack of resources due to the inability of local jurisdictions to levy property tax revenues on Indian lands. We believe the proposed priority for rural areas would help such rural areas compete with applicants from urban areas that have more resources.

*Section 263.22 What are the application requirements for these grants?*

*Statute:* To receive a grant under section 7121(d) of the ESEA, an eligible entity must submit an application at such time and in such manner as the Secretary may reasonably require. In addition to four specific application requirements, the Secretary can also require other reasonable information.

*Current Regulations:* None.

*Proposed Regulations:* The proposed regulations would add application requirements for Demonstration Grants. The requirements in proposed § 263.22(a) are statutory. Proposed § 263.22(b) contains requirements that the Secretary could choose in any year of a new grant competition.

*Reasons:* Proposed § 263.22(b) would provide flexibility for the Secretary to choose specific application requirements to correspond to the priorities chosen. The requirement for evidence of a needs assessment or other data analysis would ensure that projects are targeted toward the needs of the community. The requirement for a partnership agreement would provide evidence of a commitment among service providers and identify the responsibilities of each party. These requirements would help ensure that

high-quality applications are received and funded.

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

*Statute:* Section 7(b) of the Indian Education and Self-Determination Assistance Act requires that, for awards that are primarily for the benefit of members of federally recognized tribes, grantees must give, to the greatest extent feasible, certain employment and procurement preferences to members of federally recognized Indian tribes.

*Current Regulations:* None.

*Proposed Regulations:* The proposed regulations would clarify that the hiring preference provisions of the Indian Self-Determination and Education Assistance Act apply to this program.

*Reasons:* Our reasons for proposing this change are in "Section 263.11 What are the grantee post-award requirements?"

**Executive Orders 12866 and 13563**

*Regulatory Impact Analysis*

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

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

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

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

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

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

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in

Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

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

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

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

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

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

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

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

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

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

administering the Department’s programs and activities.

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

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

The benefits include enhancing project design and quality of services to better meet the objectives of the programs with the end result being more participants successfully completing their programs of study and obtaining employment as teachers and administrators.

For Demonstration grants, applicants may anticipate costs associated with developing a partnership agreement and providing evidence of a local needs assessment or data analysis. These requirements should improve the quality of projects funded and conducted under these grants, and we believe the benefits of these improvements will outweigh the costs.

Elsewhere in this section under *Paperwork Reduction Act of 1995*, we identify and explain burdens specifically associated with information collection requirements.

#### Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol “§” and a numbered heading; for example, § 263.1 What is the Professional Development Program?)
- Could the description of the proposed regulations in the

**SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

#### *Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that are affected by these regulations are LEAs, institutions of higher education, tribes, or tribally-operated schools receiving Federal funds under this program. The proposed regulations would not have a significant economic impact on the small entities affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations impose minimal requirements to ensure the proper expenditure of program funds, including reporting of participant payback information. We note that grantees that would be subject to the minimal requirements that these proposed regulations would impose and would be able to meet the costs of compliance using Federal funds provided through the Indian Education Discretionary Grant programs.

However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Indian Education Discretionary Grant programs. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible.

#### *Paperwork Reduction Act of 1995*

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department’s collection instructions, respondents can provide the requested

data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 263.6, 263.10, and 263.11 contain information collection requirements that have been approved by OMB. These proposed amendments do not change the OMB approved data collection burden. Section 263.22 contains information collection requirements that have not been approved by OMB. As a result of these proposed amendments, the Department is creating a new application package. Under the PRA, the Department has submitted a copy of this section to OMB for its review.

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

The Department currently collects information from applicants for the

Professional Development program using a discretionary Demonstration grant application package under the approved OMB Control Number 1810–0580. For the purposes of the PRA, the burden associated with the information grantees are required to submit would not change as a result of the proposed regulations.

Additionally, grantees, participants, and employers currently report information to the Department through the Indian Education Professional Development Grants Program: Government Performance and Results Act of 1993 (GPRA) and Service Payback Data Collection System (DCS) under the approved OMB Control Number 1810–0698. The burden associated with the information grantees, participants, and employers are currently reporting would not change as a result of the proposed regulations.

In the final regulations we will display the control numbers 1810–0580, 1810–0698, and 1810–NEW assigned by OMB to these information collection requirements.

*Section 263.6—How does the Secretary evaluate applications for the Professional Development program?*

Section 263.6 contains information collection requirements that the

Department uses to evaluate applications submitted for the Professional Development program. The proposed changes to these requirements would focus the selection criteria more specifically on the program goals and, by removing the fixed selection criteria points, permit us to tailor competitions to changing student needs and employment opportunities in the field.

Based on the current approved burden for this program, a total of 50 applications are received annually for the grant competition. It takes each applicant 30 hours to complete the application package, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, for a total burden of 1,500 hours for the collection of information through the application package. Burden costs of applicants are calculated at an annual hourly rate of \$50. Accordingly, the annual respondent cost for 50 applicants at 30 hours is \$44,198. These proposed changes to the regulations would not change the burden hours for this collection.

TABLE A–1

Data source	Number of estimated respondents	Estimated annual hour burden per respondent	Estimated annual hour burden	Total estimated annual cost
Discretionary Grant Professional Development Program Application (1810–0580) .....	50	30	1,500	\$44,198
Totals .....	50	30	1,500	44,198

*Section 263.10—What are the participant payback reporting requirements? Section 263.11—What are the grantee post-award requirements?*

Sections 263.10 and 263.11 contain information collection requirements. The information collection requirements under these sections are already approved under OMB Control Number 1810–0698 and the associated burden hours would not change as a result of these proposed regulations.

Sections 263.10 and 263.11 require both program participants and grantees to report information to the Department. Under § 263.10, participants initiate contact with Department staff within 30 days of graduating or exiting the program and indicate their intent to

complete a work-related or cash payback. They also submit employment information starting six months after completion of the program and an employment status report every six months thereafter. Under § 263.11, grantees report information on all participants for the length of the grant award providing budget and project-specific performance information in the DCS. Grantees also enter into a payback agreement with each participant and submit a copy to the Department.

In addition, as part of the information collection requirements approved under OMB Control Number 1810–0698, employers review and verify the accuracy of the information entered into the DCS by participants for work-related payback.

The three primary purposes for these information collection requirements are to:

- Fulfill six GPRA performance measures and reporting requirements;
- Ensure that participants fulfill the statutory payback requirement; and
- Collect budget and project-specific performance information from grantees for project monitoring.

The proposed changes to the regulations would establish in the program regulations the existing grantee reporting requirements and streamline the participant reporting requirements.

Table A–2 presents the current annual burden and costs for grantees and participants, approved under OMB Control Number 1810–0698. Under OMB control number 1810–0698, there are currently 35 grantees and 776

participants. The burden for grantees of completing the participant record form is two hours per participant per year. The burden for grantees of preparing and submitting a payback agreement is 3.7 hours per participant and occurs when the participant is recruited. On average, each grantee has 22 participants. Burden costs for grantee administrators are calculated at an hourly rate of \$50. Accordingly, the annual respondent cost for 35 grantees

and 776 participants at 1,540 hours is \$77,000.

The burden for participants of completing the training and employment information form is .5 hours per year. Burden costs for participants are calculated at an average hourly rate of \$24.69. Accordingly, the annual burden hours for 388 participants are \$9,580. The burden for employers of verifying participant employment information is .33 hours

per year. Burden costs for employers are calculated at an average hourly rate of \$50, with one employer for each participant for a total of 776 employers. Accordingly, the annual burden hours for employers are 259, and the annual burden for employers is \$12,950.

The proposed regulations in §§ 263.10 and 263.11 would not change the approved burden hours for this collection.

TABLE A-2

Data source	Number of respondents	Annual hour burden per respondent	Annual hour burden	Total annual cost
Grantees: Participant Record Form (Quarterly) .....	35	44	1,540	\$77,000
Grantees: Payback Agreement (Once) .....	35	3.7	130	6,500
Participants: Training and Employment Information Form (Twice/year) .....	776	.5	388	9,580
Employer Representatives: Employment Verification Form (Twice/year) .....	776	.33	259	12,950
<b>Totals</b> .....	<b>1,622</b>	<b>48.5</b>	<b>2,317</b>	<b>106,030</b>

*Section 263.22—What are the application requirements for these grants?*

Section 263.22 contains information collection requirements. The information collection requirements under this section have not been approved by OMB; the Department has submitted a new Information Collection Request (ICR) to OMB adding this

proposed section. Section 263.22 proposes to add application requirements for Demonstration grants, such as requirements to submit evidence of a local needs assessment or other data analysis and a copy of an agreement signed by the primary partners in the proposed project.

Table A-3 presents the estimated number of respondents, annual burden and costs for respondents under the

proposed ICR 1810-NEW. Under this proposed section, the number of applicants is estimated at 80, and we estimate it would take each applicant 40 hours to complete the application package, for a total burden estimate of 3,200 hours. Burden costs to applicants are estimated at an hourly rate of \$45. Accordingly, the annual respondent cost for 80 applicants is estimated at \$144,000.

TABLE A-3

Data source	Estimate of respondents	Annual hour burden estimate per respondent	Annual hour burden estimate	Total annual cost estimate
Discretionary Grant Demonstration Program Application (1810-NEW) .....	80	40	3,200	\$144,000
<b>Totals</b> .....	<b>80</b>	<b>40</b>	<b>3,200</b>	<b>144,000</b>

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to *OIRA\_DOCKET@omb.eop.gov* or by fax to (202) 395-6974. Additionally, you may send a copy of these comments to the Department via the Federal eRulemaking Portal listed in the below **ADDRESSES** section.

We have prepared an ICR for these collections. If you want to review and comment on the ICR, it is available at *www.reginfo.gov*. Click on Information Collection Review. This ICR is identified as ED-2014-OESE-0050.

We consider your comments on these collections of information in—

- Deciding whether the collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov* by selecting Docket ID ED-2014-OESE-0050 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., Mailstop L-OM-2-2E319LBJ, Room 2E115, Washington, DC 20202-4537.

**FOR FURTHER INFORMATION CONTACT:** Electronically mail [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Please do not send comments here.

### Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

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

### Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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

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

### List of Subjects in 34 CFR Part 263

Business and industry, Colleges and universities, Elementary and secondary education, Grant programs—education,

Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: November 26, 2014.

**Deborah S. Delisle,**

*Assistant Secretary for Elementary and Secondary Education.*

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

## PART 263—INDIAN EDUCATION DISCRETIONARY GRANT PROGRAMS

### Subpart A—Professional Development Program

Sec.

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

### Subpart B—Demonstration Grants for Indian Children Program

Sec.

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

**Authority:** 20 U.S.C. 7441 and 7442, unless otherwise noted.

### Subpart A—Professional Development Program

#### § 263.1 What is the Professional Development program?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) An in-service training program; and

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

(c) Eligibility of an applicant requiring a consortium with any institution of higher education, including Indian institutions of higher education, requires that the institution of higher education be accredited to provide the coursework and level of degree required by the project.

#### § 263.3 What definitions apply to the Professional Development program?

The following definitions apply to the Professional Development program:

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

*Department* means the U.S. Department of Education.

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

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

*Full-time student* means a student who—

- (1) Is a degree candidate for a baccalaureate or graduate degree;
- (2) Carries a full course load; and
- (3) Is not employed for more than 20 hours a week.

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

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

*Indian* means an individual who is—

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

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

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

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

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

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

*Indian organization* means an organization that—

- (1) Is legally established—
  - (i) By tribal or inter-tribal charter or in accordance with State or tribal law; and
  - (ii) With appropriate constitution, by-laws, or articles of incorporation;
- (2) Includes in its purposes the promotion of the education of Indians;

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

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

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

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

*Induction services* means services provided after participant's complete their training program and during their first year of teaching. Induction services support and improve participants' professional performance and promote their retention in the field of education and teaching. They include, at a minimum, these activities:

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

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

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

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

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

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

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

*Participant* means an Indian individual who is being trained under the Professional Development program.

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

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

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

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

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

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

#### **§ 263.4 What costs may a Professional Development program include?**

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

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

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

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

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

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

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

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

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

(a) The Secretary gives priority to an application submitted by an Indian tribe, Indian organization, or an Indian institution of higher education that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 of EDGAR and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive priority points only if the consortium designates the Indian institution of higher education as the fiscal agent. In order to be considered a consortium application, the application must include the consortium agreement, signed by all parties.

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

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

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

(A) Training that leads to a bachelor's degree in education before the end of the award period, unless the State requires a fifth year for licensure in a specific subject area;

(B) For States allowing a degree in a specific subject area, training that leads to a bachelor's degree in the subject area as long as the training meets the requirements for full State teacher certification or licensure; or

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

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

(iii) Include goals for the:

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

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

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

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

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

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

(ii) Provide one year of induction services, during the award period, to participants after graduation, certification, or licensure, while they are completing their first year of work as

administrators in schools with significant Indian student populations; and

(iii) Include goals for the:

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

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

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

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

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

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

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

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

(a) *Need for project.* In determining the need for the proposed project, the Secretary considers one or more of the following:

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

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

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

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

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

(c) *Quality of the project design.* The Secretary considers one or more of the following factors in determining the quality of the design of the proposed project:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The project director permits a leave of absence only if the institution of higher education certifies that the training participant is eligible to resume his or her course of study at the end of the leave of absence.

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

**§ 263.8 What are the payback requirements?**

(a) *General.* All participants must—

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

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

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

(b) *Work-related payback.*

(1) Participants qualify for work-related payback if the work they are performing is in their field of study under the Professional Development

program and benefits Indian people. Employment in a school that has a significant Indian student population qualifies as work that benefits Indian people.

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

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

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

(c) *Cash payback.*

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

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

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

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

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

**§ 263.9 What are the requirements for payback deferral?**

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

(1) A request for a deferral must be submitted to the Secretary within 30

days of leaving the Professional Development program and must provide the following information—

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

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

(iii) The degree being sought; and

(iv) The projected date of completion.

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

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

(1) A written statement from the participant's commanding or personnel officer certifying—

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

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

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

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

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

**§ 263.10 What are the participant payback reporting requirements?**

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

(b) *Work-related payback.*

(1) Starting within six months after exit from or completion of the program,

participants must submit to the Secretary employment information, which includes information explaining how the employment is related to the training received and benefits Indian people.

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

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

**§ 263.11 What are the grantee post-award requirements?**

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

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

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

(i) The estimated total training costs;

(ii) The estimated length of training; and

(iii) Information documenting that the grantee held a payback meeting with the participant that meets the requirements of this section.

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

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

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

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

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

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

(Authority: Pub. L. 93–638, Section 7(b); 25 U.S.C. 450b, 450e(b))

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

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

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

Subpart B—Demonstration Grants for Indian Children Program

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

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

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

*Indian* means an individual who is—

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

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

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

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

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

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

*Indian organization* means an organization that—

(1) Is legally established—

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

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

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

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

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

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

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

*Native youth community projects* mean projects that are—

(1) Focused on a defined local geographic area;

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

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

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

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

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

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

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

(i) A tribe or its tribal educational agency;

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

(iii) Other optional entities, including community-based organizations, national nonprofit organizations, and Alaska regional corporations; and

(6) Led by an entity that—

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

(ii) Demonstrates, or partners with an entity that demonstrates, the capacity to improve outcomes for Indian students through experience with programs funded through other sources.

*Professional development activities* means in-service training offered to enhance the skills and abilities of individuals that may be part of, but not exclusively, the activities provided in a

Demonstration Grants for Indian Children program.

(Authority: 20 U.S.C. 7441)

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

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

(b) The Secretary gives priority to an application submitted by an Indian tribe, Indian organization, or Indian institution of higher education that is eligible to participate in the Demonstration Grants for Indian Children program.

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

(1) Native youth community projects.

(2) Projects in which the applicant or one of its primary partners has received a grant under a Federal program specified by the Secretary in the notice inviting applications.

(3) Projects in which the applicant has Department approval to consolidate funding through a plan that complies with section 7116 of the ESEA or other authority designated by the Secretary.

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

(5) Projects that include either:

(i) A local educational agency that is eligible under the Small Rural School Achievement (SRSA) program or the

Rural and Low-Income School (RLIS) program authorized under title VI, part B of the ESEA, or

(ii) A school that receives funds from the Department of the Interior's Bureau of Indian Education.

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

**§ 263.22 What are the application requirements for these grants?**

(a) Each application must contain—

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Measurable objectives for reaching the project goal or goals.

(Authority: 20 U.S.C. 7441)

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

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

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

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

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

(Authority: Pub. L. 93-638, Section 7(b); 25 U.S.C. 450b, 450e(b))

[FR Doc. 2014-28354 Filed 12-2-14; 8:45 am]

BILLING CODE 4000-01-P