

contractor received for Fiscal Year 2018 (the fiscal year preceding the enactment of the JOM Modernization Act).

(d) Beginning December 31, 2022 (4 years after the December 31, 2018, date of enactment of the JOM Modernization Act), no contracting party will receive for a fiscal year more than a 10 percent decrease in funding per eligible Indian student from the previous year.

§ 273.141 Will funding be prorated?

All monies provided by a contract may be expended only for the benefit of eligible Indian students. Where students other than eligible Indian students participate in programs contracted, money expended under the contract will be prorated to cover the participation of only the eligible Indian students, except where the participation of non-eligible students is so incidental as to be *de minimis*. Such *de minimis* participation must be approved by the Indian Education Committee.

§ 273.142 Are advance payments on a contract allowed under the Johnson-O'Malley Act?

Payments to States, public school districts and Indian corporations will be made in advance or by way of reimbursement and in such installments and on such conditions as the BIE Director deems necessary to carry out the purposes of the Act.

§ 273.143 Must other Federal, State, and local funds be used?

(a) Contract funds under this part supplement, and do not supplant, Federal, State and local funds. Each contract must require that the use of these contract funds will not result in a decrease in State, local, or Federal funds that would be made available for Indian students if there were no funds under this part.

(b) State, local and other Federal funds must be used to provide comparable services to non-Indian and Indian students prior to the use of contract funds.

(c) Except as hereinafter provided, the school lunch program of the United States Department of Agriculture (USDA) constitutes the only federally funded school lunch program for Indian students in public schools. Where In-

dian students do not qualify to receive free lunches under the National School Lunch Program of USDA because such students are non-needy and do not meet the family size and income guidelines for free USDA lunches, plans prepared pursuant to § 273.119 may provide, to the extent of funding available for Johnson-O'Malley programs, for free school lunches for those students who do not qualify for free USDA lunches but who are eligible Indian students under § 273.112.

§ 273.144 Can Johnson-O'Malley funds be used for capital outlay or debt retirement?

In no instance may contract funds provided under this part be used as payment for capital outlay or debt retirement expenses; except that, such costs are allowable if they are considered to be a part of the full per capita cost of educating eligible Indian students who reside in Federal boarding facilities for the purpose of attending public schools.

§ 273.145 How can funds be used for subcontractors?

The Bureau may make contract funds under the Johnson-O'Malley Act available directly only to Tribal organizations, States, public school districts, and Indian corporations. However, Tribal organizations, States, public school districts, and Indian corporations receiving funds may use the funds to subcontract for necessary services with any appropriate individual, organization, or corporation.

§ 273.146 Can funds be used outside of schools?

Nothing in this part prevents the BIE Director from contracting with Indian corporations who will expend all or part of the funds in places other than the public or private schools in the community affected.

§ 273.147 Are there requirements of equal quality and standard of education?

Contracts with State education agencies or public school districts receiving funds must provide educational opportunities to all Indian children within that school district on the same terms