

§ 226.23

§ 226.23 May charter schools use grant funds for administrative costs?

(a) Except as provided in paragraph (b) of this section, charter school subgrantees may use grant funds for administrative costs that are necessary and reasonable for the proper and efficient performance and administration of this Federal grant. This use of funds, as well as indirect costs and rates, must comply with EDGAR and the Office of Management and Budget Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments).

(b) Consistent with the requirements in 34 CFR 75.564(c)(2), any charter school subgrantees that use grant funds for construction activities may not be reimbursed for indirect costs for those activities.

(Authority: 20 U.S.C. 1221e-3; 7221d(b))

PART 237 [RESERVED]

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 are the application requirements?
- 263.6 What priority is given to certain projects and applicants?
- 263.7 How does the Secretary evaluate applications for the Professional Development program?
- 263.8 What are the requirements for a leave of absence?
- 263.9 What are the payback requirements?
- 263.10 What are the requirements for payback deferral?
- 263.11 What are the participant payback reporting requirements?
- 263.12 What are the grantee post-award requirements?
- 263.13 What are the program-specific requirements for continuation awards?

34 CFR Ch. II (7–1–23 Edition)

Subpart B—Demonstration Grants for Indian Children and Youth Program

- 263.20 What definitions apply to the Demonstration Grants for Indian Children and Youth 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?
- 263.24 How does the Secretary evaluate applications for the Demonstration Grants for Indian Children and Youth grants program?
- 263.25 What are the program requirements when the Secretary uses the priority in § 263.21(c)(7)?

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

SOURCE: 80 FR 22412, Apr. 22, 2015, unless otherwise noted.

Subpart A—Professional Development Program

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

§ 263.1 What is the Professional Development program?

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

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

(2) Provide pre- and in-service training and support to qualified Indian individuals to become effective teachers, principals, other school leaders, administrators, teacher aides, paraprofessionals, counselors, social workers, and specialized instructional support personnel;

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

(4) Develop and implement initiatives to promote retention of effective teachers, principals, and school leaders who have a record of success in helping low-achieving Indian students improve their academic achievement, outcomes, and preparation for postsecondary education or employment.

(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 students in an LEA that serves a high proportion of Indian students, 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.

[80 FR 22412, Apr. 22, 2015, as amended at 85 FR 41376, July 10, 2020]

§ 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, or a TCU;

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

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

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

(5) A BIE-funded school in consortium with at least one TCU, where feasible.

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

(1) An in-service training program; and

(2) A pre-service training program when the BIE-funded school applies in consortium with an institution of higher education that meets the requirements in paragraph (c) of this section.

(c) Eligibility of an applicant that is an institution of higher education or a TCU, or an applicant requiring a consortium with any institution of higher education or TCU, requires that the institution of higher education or TCU be accredited to provide the coursework and level of degree or Native American language certificate required by the project.

[80 FR 22412, Apr. 22, 2015, as amended at 85 FR 41377, July 10, 2020]

§ 263.3 What definitions apply to the Professional Development program?

The following definitions apply to the Professional Development program:

BIE-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 candidate for a baccalaureate degree, graduate degree, or Native American language certificate, as appropriate for the project;

(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 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 or TCU; and
- (6) Is not an agency of State or local government.

Induction services means services provided—

- (1)(i) By educators, local traditional leaders, or cultural experts;
- (ii) For the one, two, or three years of qualifying employment, as designated by the Department in the notice inviting applications; and
- (iii) In LEAs that serve a high proportion of Indian students;
- (2) To support and improve participants' professional performance and promote their retention in the field of education and teaching, and that include, at a minimum, these activities:
 - (i) High-quality mentoring, coaching, and consultation services for the participant to improve performance.
 - (ii) Access to research materials and information on teaching and learning.
 - (iii) Assisting new teachers with use of technology in the classroom and use of data, particularly student achievement data, for classroom instruction.
 - (iv) Clear, timely, and useful feedback on performance, provided in coordination with the participant's supervisor.
 - (v) 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 (IHE) has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

Local educational agency (LEA) that serves a high proportion of Indian students means—

- (1) An LEA, including a BIE-funded school, that serves a high proportion of Indian students in the LEA as compared to other LEAs in the State; or
- (2) An LEA, including a BIE-funded school, that serves a high proportion of Indian students in the school in which the participant works compared to other LEAs in the State, even if the LEA as a whole in which the participant works does not have a high proportion of Indian students compared to other LEAs in the State.

Native American means “Indian” as defined in section 6151(3) of the Elementary and Secondary Education Act, as amended, which includes Alaska Native and members of federally-recognized or State-recognized Tribes; Native Hawaiian; and Native American Pacific Islander.

Native American language means the historical, traditional languages spoken by Native Americans.

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, or licensing or certification in the field of Native American language instruction.

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

Qualifying employment means employment in an LEA that serves a high proportion of Indian students.

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.

Tribal college or university (TCU) has the meaning given that term in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

Tribal educational agency (TEA) means the agency, department, or instrumentality of an Indian Tribe that is primarily responsible for supporting Tribal students' elementary and secondary education.

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

[80 FR 22412, Apr. 22, 2015, as amended at 85 FR 41377, July 10, 2020]

§ 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;

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

(4) Teacher mentoring programs, professional guidance, and instructional support provided by educators, local traditional leaders, or cultural experts, as appropriate for teachers for up to their first three years of employment as teachers; and

(5) Programs designed to train traditional leaders and cultural experts to assist participants with relevant Native language and cultural mentoring, guidance, and support.

[80 FR 22412, Apr. 22, 2015, as amended at 85 FR 41377, July 10, 2020]

§ 263.5 What are the application requirements?

An applicant must—

(a) Describe how it will—

(1) Recruit qualified Indian individuals, such as students who may not be of traditional college age, to become teachers, principals, or school leaders;

(2) Use funds made available under the grant to support the recruitment, preparation, and professional development of Indian teachers or principals in LEAs that serve a high proportion of Indian students; and

(3) Assist participants in meeting the payback requirements under § 263.9(b);

(b) Submit one or more letters of support from LEAs that serve a high proportion of Indian students. Each letter must include—

(1) A statement that the LEA agrees to consider program graduates for employment;

(2) Evidence that the LEA meets the definition of "LEA that serves a high proportion of Indian students"; and

(3) The signature of an authorized representative of the LEA;

(c) If applying as an Indian organization, demonstrate that the entity meets the definition of "Indian organization";

(d) If it is an affected LEA that is subject to the requirements of section 8538 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), consult with appropriate officials from Tribe(s) or Tribal organizations approved by the Tribes located in

§ 263.6

34 CFR Ch. II (7–1–23 Edition)

the area served by the LEA prior to its submission of an application, as required under ESEA section 8538; and

(e) Comply with any other requirements in the application package.

[85 FR 41378, June 10, 2020]

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

(a) The Secretary gives competitive preference priority to—

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

(2) *Consortium Applicants, Non-Tribal Lead*. A consortium application of eligible entities that—

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

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

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

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

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

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

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

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

(D) Training in the field of Native American language instruction;

(ii) Provide induction services, during the award period, to participants after graduation, certification, or licensure, for the period of time designated by the Department in the notice inviting applications, while participants are completing their work-related payback in schools in LEAs that serve a high proportion of Indian students; 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 employment within twelve months of completion.

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

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

(ii) Provide induction services, during the award period, to participants after graduation, certification, or licensure, for the period of time designated by the Department in the notice inviting applications, while participants are completing their work-related payback in schools in LEAs that serve a high proportion of Indian students; 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 employment within twelve months of completion.

(3) *Pre-service administrator training for work in Tribal educational agencies.* The Secretary establishes a priority for projects that—

(i) Meet the requirements of the pre-service administrator training priority in paragraph (b)(2) of this section;

(ii) Include training on working for a TEA, and opportunities for participants to work with or for TEAs during the training period; and

(iii) Include efforts by the applicant to place participants in administrator jobs in TEAs following program completion.

(4) *Pre-service administrator training for school start-ups.* The Secretary establishes a priority for projects that—

(i) Meet the requirements of the pre-service administrator training priority in paragraph (b)(2) of this section;

(ii) Include training to support the capacity of school leaders to start new schools that serve Indian students, such as charter schools or schools transitioning from BIE-operated to Tribally controlled; and

(iii) Include efforts by the applicant to place participants in administrator jobs with entities planning to start or transition a school to serve Indian students.

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

[80 FR 22412, Apr. 22, 2015. Redesignated and amended at 85 FR 41378, July 10, 2020]

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

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

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

(1) The extent to which the proposed project will prepare personnel in spe-

cific fields in which shortages have been demonstrated through a job market analysis.

(2) The extent to which LEAs with qualifying employment opportunities exist in the project's service area, as demonstrated through a job market analysis, and have provided a letter of support for the project.

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

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

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

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

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

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

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

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

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

(2) The extent to which the proposed project has a plan for recruiting and selecting participants, including students who may not be of traditional college age, that ensures that program participants are likely to complete the program.

(3) The extent to which the proposed project will incorporate the needs of potential employers, as identified by a

§ 263.8

34 CFR Ch. II (7–1–23 Edition)

job market analysis, by establishing partnerships and relationships with LEAs that serve a high proportion of Indian students 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 LEAs that serve a high proportion of Indian students.

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

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

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

(5) The extent to which the applicant will assist participants in meeting the service obligation requirements.

(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.

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

[80 FR 22412, Apr. 22, 2015. Redesignated and amended at 85 FR 41378, July 10, 2020]

§ 263.8 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 12 months, provided the participant has completed a minimum of 50 percent of the 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.

[80 FR 22412, Apr. 22, 2015. Redesignated and amended at 85 FR 41379, July 10, 2020]

§ 263.9 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 students. Employment in a LEA that serves a high proportion of Indian students qualifies as work that benefits Indian students.

(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).

(5) Notwithstanding paragraph (c)(1) of this section, participants who exit or complete a grant-funded training program in Federal fiscal year 2020 (October 1, 2019–September 30, 2020) who do not submit employment verification within 24 months of program exit or completion, and participants with qualifying employment during Federal fiscal year 2020 who do not submit employment verification for a 24-month period, will automatically be referred for a cash payback unless the partici-

pant qualifies for a deferral as described in § 263.9.

Note to § 263.9: For grants that provide administrator training, a participant who has received administrator training and subsequently works for a Tribal educational agency that provides administrative control or direction of public schools (*e.g.*, BIE-funded schools or charter schools) satisfies the requirements of paragraph (b)(1) of this section.

[80 FR 22412, Apr. 22, 2015, as amended at 85 FR 38079, June 25, 2020. Redesignated and amended at 85 FR 41379, July 10, 2020]

§ 263.10 What are the requirements for payback deferral?

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

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

- (i) The name of the accredited institution the student will be attending;
- (ii) A copy of the letter of admission from the institution;
- (iii) The degree being sought; and
- (iv) The projected date of completion.

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

(b) *Military deferral.* If a participant exits the Professional Development program because he or she is called or ordered to active duty status in connection with a war, military operation, or national emergency for more than 30 days as a member of a reserve component of the Armed Forces named in 10

§ 263.11

U.S.C. 10101, or as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), the Secretary may defer the payback requirement until the participant has completed his or her military service, for a period not to exceed 36 months. Requests for deferral must be submitted to the Secretary within 30 days of the earlier of receiving the call to military service or completing or exiting the Professional Development program, and must provide—

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

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

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

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

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

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

[80 FR 22412, Apr. 22, 2015. Redesignated at 85 FR 41378, July 10, 2020]

§ 263.11 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 students in an LEA that serves a high proportion of Indian students.

(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.

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

[80 FR 22412, Apr. 22, 2015. Redesignated and amended at 85 FR 41379, July 10, 2020]

§ 263.12 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;

(iii) A statement explaining that work must be in an “LEA that serves a high proportion of Indian students,” and the regulatory definition of that phrase; and

(iv) 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 thirty days of signing the payback agreement.

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

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

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

(ii) Give to Indian organizations and to Indian-owned economic enterprises,

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

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

(Authority: 20 U.S.C. 7442, 25 U.S.C. 5304, 5307)

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

[80 FR 22412, Apr. 22, 2015. Redesignated and amended at 85 FR 41379, July 10, 2020]

§ 263.13 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 and Youth Program

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

§ 263.20 What definitions apply to the Demonstration Grants for Indian Children and Youth 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 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 or TCU; and

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

Native youth community project means a project that is—

(1) Focused on a defined local geographic area;

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

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

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

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

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

§ 263.21

34 CFR Ch. II (7–1–23 Edition)

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

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

(i) Must include—

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

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

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

(6) Led by an entity that—

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

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

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

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 and Youth program.

Tribal College or University (TCU) 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.

[80 FR 22412, Apr. 22, 2015, as amended at 85 FR 43450, July 17, 2020]

§ 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 6121(c) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), over a period of more than one year.

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

(1) *Tribal lead applicants.* An application submitted by an Indian Tribe, Indian organization, BIE-funded school, or TCU that is eligible to participate in the Demonstration Grants for Indian Children and Youth program. A group application submitted by a consortium that meets the requirements of 34 CFR 75.127 through 75.129 or submitted by a partnership is eligible to receive the preference only if the lead applicant is an Indian Tribe, Indian organization, BIE-funded school, or TCU; or

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

(i) Includes an Indian Tribe, Indian organization, BIE-funded school, or TCU; and

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

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

(1) *Native youth community projects.* Native youth community projects, as defined in this subpart.

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

(3) *Consolidated funding.* Projects in which the applicant has Department approval to consolidate funding

through a plan that complies with section 6116 of the ESEA or other authority designated by the Secretary.

(4) *Statutorily authorized activities.* Projects that focus on a specific activity authorized in section 6116(c) of the ESEA as designated by the Secretary in the notice inviting applications.

(5) *Rural applicants.* Projects that include either—

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

(ii) A BIE-funded school that is located in an area designated with locale code of either 41, 42, or 43 as designated by the National Center for Education Statistics.

(6) *Non-rural applicants.* Non-rural projects that do not meet the priority in paragraph (c)(5) of this section. This priority can only be used in competitions where the priority in paragraph (c)(5) of this section is also used.

(7) *Accessing choices in education.* Projects to expand educational choice by enabling a Tribe, or the grantee and its Tribal partner, to select a project focus that meets the needs of their students and enabling parents of Indian students, or the students, to choose education services by selecting the specific service and provider desired.

[85 FR 43450, July 17, 2020]

§ 263.22 What are the application requirements for these grants?

(a) Each application must contain—

(1) A description of how Indian Tribes and parents and families of Indian children and youth 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 evidence-based, where applicable, or is based on an existing evidence-based program that has been modified to be culturally appropriate for Indian students;

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

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

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

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

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

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

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

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

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

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

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

(4) A plan for how the applicant will oversee service providers and ensure that students receive high-quality services under the project.

(5)(i) For an applicant that is not a Tribe, if 50 percent or more of the total student population of the schools to be served by the project consists of members of one Tribe, documentation that that Tribe is a partner for the proposed project.

(ii) For an applicant that is an LEA or SEA and is not required by paragraph (i) of this section to partner with a specific Tribe, documentation that at

§ 263.23

least one Tribe or Indian organization is a partner for the proposed project.

(6) An assurance that—

(i) Services will be supplemental to the education program provided by local schools attended by the students to be served;

(ii) Funding will be supplemental to existing sources, such as Johnson O'Malley funding; and

(iii) The availability of funds for supplemental special education and related services (*i.e.*, services that are not part of the special education and related services, supplementary aids and services, and program modifications or supports for school personnel that are required to make a free appropriate public education (FAPE) available under Part B of the Individuals with Disabilities Education Act (IDEA) to a child with a disability in conformity with the child's IEP or the regular or special education and related aids and services required to make FAPE available under a Section 504 plan, if any) does not affect the right of the child to receive FAPE under Part B of the IDEA or Section 504, and the respective implementing regulations.

(7) For an applicant that does not propose a planning period—

(i) A description of the service selection method required in § 263.25(d).

(ii) A description of the parent involvement and feedback process required in § 263.25(e).

(iii) A sample of the written agreement required in § 263.25(f).

(iv) A description of the process to choose students to be served, as required in § 263.25(g).

[80 FR 22412, Apr. 22, 2015, as amended at 85 FR 43450, July 17, 2020]

§ 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

34 CFR Ch. II (7-1-23 Edition)

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

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

(Authority: 25 U.S.C. 5304, 5307)

[80 FR 22412, Apr. 22, 2015, as amended at 85 FR 43451, July 17, 2020]

§ 263.24 How does the Secretary evaluate applications for the Demonstration Grants for Indian Children and Youth grants program?

(a) *In general.* The Secretary uses the procedures in 34 CFR 75.200 through 75.210 to establish the selection criteria and factors used to evaluate applications submitted in a grant competition for the Demonstration Grants for Indian Children and Youth program. The Secretary may also consider one or more of the criteria and factors in this section to evaluate applications.

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

(1) The extent to which the project would offer high-quality choices of services, including culturally relevant services, and providers, for parents and students to select.

(2) The extent to which the services to be offered would meet the needs of the local population, as demonstrated by an analysis of community-level data, including direct input from parents and families of Indian children and youth.

(3) The quality of the plan to ensure that the services to be offered are evidence-based, where applicable, or are based on existing evidence-based programs that have been modified to be culturally appropriate for Indian students.

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

(1) The extent to which the project is designed to improve student and parent satisfaction with the student's overall

education experience, as measured by pre- and post-project data.

(2) The extent to which the applicant proposes a fair and neutral process of selecting service providers that will result in high-quality options from which parents and students can select services.

(3) The quality of the proposed plan to inform parents and students about available service choices under the project, and about the timeline for termination of the project.

(4) The quality of the applicant's plan to oversee service providers and ensure that students receive high-quality services under the project.

(d) *Reasonableness of budget.* The Secretary may consider one or more of the following factors in determining the reasonableness of the project budget:

(1) The extent to which the budget reflects the number of students to be served and a per-pupil amount for services, based only on direct costs for student services, that is reasonable in relation to the project objectives.

(2) The extent to which the per-pupil costs of specific services and per-pupil funds available are transparent to parents and other stakeholders.

[85 FR 43451, July 17, 2020]

§ 263.25 What are the program requirements when the Secretary uses the priority in § 263.21(c)(7)?

In any year in which the Secretary uses the priority in § 263.21(c)(7) for a competition, each project must—

(a) Include the following, which are chosen by the grantee, or for LEAs and SEAs, the grantee and its partnering Tribe or Indian organization:

(1) A project focus and specific services that are based on the needs of the local community; and

(2) Service providers;

(b) Include more than one education option from which parents and students may choose, which may include—

(1) Native language, history, or culture courses;

(2) Advanced, remedial, or elective courses, which may be online;

(3) Apprenticeships or training programs that lead to industry certifications;

(4) Concurrent and dual enrollment;

(5) Tuition for private school or home education expenses;

(6) Special education and related services that supplement, and are not part of, the special education and related services, supplementary aids and services, and program modifications or supports for school personnel required to make available a free appropriate public education (FAPE) under Part B of the IDEA to a child with a disability in conformity with the child's individualized education program (IEP) or the regular or special education and related aids and services required to ensure FAPE under Section 504 of the Rehabilitation Act of 1973 (Section 504);

(7) Books, materials, or education technology, including learning software or hardware, that are accessible to all children;

(8) Tutoring;

(9) Summer or afterschool education programs, and student transportation needed for those specific programs. Such programs could include instruction in the arts, music, or sports, to the extent that the applicant can demonstrate that such services are culturally related or are supported by evidence that suggests the services may have a positive effect on relevant education outcomes;

(10) Testing preparation and application fees, including for private school and graduating students;

(11) Supplemental counseling services, not to include psychiatric or medical services; or

(12) Other education-related services that are reasonable and necessary for the project;

(c) Provide a method to enable parents and students to select services. Such a method must—

(1) Ensure that funds will be transferred directly from the grantee to the selected service provider; and

(2) Include service providers other than the applicant, although the applicant may be one of the service providers;

(d) Include a parent involvement and feedback process that—

(1) Describes a way for parents to request services or providers that are not currently offered and provide input on services provided through the project,

and describes how the grantee will provide parents with written responses within 30 days; and

(2) May include a parent liaison to support the grantee in outreach to parents, inform parents and students of the timeline for the termination of the project, and assist parents and the grantee with the process by which a parent can request services or providers not already specified by the grantee;

(e) Include a written agreement between the grantee and each service provider under the project. Each agreement must include—

(1) A nondiscrimination clause that—

(i) Requires the provider to abide by all applicable non-discrimination laws with regard to students to be served, *e.g.*, on the basis of race, color, national origin, religion, sex, or disability; and

(ii) Prohibits the provider from discriminating among students who are eligible for services under this program, *i.e.*, that meet the definition of “Indian” in section 6151 of the ESEA, on the basis of affiliation with a particular Tribe;

(2) A description of how the grantee will oversee the service provider and hold the provider accountable for—

(i) The terms of the written agreement; and

(ii) The use of funds, including compliance with generally accepted accounting procedures and Federal cost principles;

(3) A description of how students’ progress will be measured; and

(4) A provision for the termination of the agreement if the provider is unable to meet the terms of the agreement;

(f) Include a fair and documented process to choose students to be served, such as a lottery or other transparent criteria (*e.g.*, based on particular types of need), in the event that the number of requests from parents of eligible students or from students for services under the project exceeds the available capacity, with regard to the number or intensity of services offered;

(g) Ensure that—

(1) At least 80 percent of grant funds are used for direct services to eligible students, provided that, if a grantee requests and receives approval for a plan-

ning period, not to exceed 12 months, the 80 percent requirement does not apply to that planning period;

(2) Not more than 15 percent of grant funds are used on the service selection method described in paragraph (d) of this section or the parent involvement and feedback process described in paragraph (e) of this section, except in an authorized planning period; and

(3) No grant funds are used to establish or develop the capacity of entities or individuals that are or may become service providers under this project;

(h) For a grantee that receives approval for a planning period, not to exceed 12 months, submit to the Department prior to the end of that period the following documents:

(1) A description of the operational service selection process that meets the requirements of paragraph (c) of this section.

(2) A description of the operational parent involvement and feedback process that meets the requirements of paragraph (d) of this section.

(3) A sample of the written agreement that meets the requirements of paragraph (e) of this section, and a list of providers with whom the grantee has signed written agreements.

(4) A description of the process that will be used to choose students to be served in the event that the demand for services exceeds the available capacity, as described in paragraph (f) of this section.

[85 FR 43451, July 17, 2020]

PART 270—EQUITY ASSISTANCE CENTER PROGRAM

Subpart A—General

Sec.

270.1 What is the Equity Assistance Center Program?

270.2 Who is eligible to receive a grant under this program?

270.3 Who may receive assistance under this program?

270.4 What types of projects are authorized under this program?

270.5 What geographic regions do the EACs serve?

270.6 What regulations apply to this program?

270.7 What definitions apply to this program?