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DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810-AB54

[Docket ID ED-2019-OESE-0068]

Indian Education Discretionary Grant Programs; Professional Development Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations that govern the Professional Development (PD) program, authorized under title VI of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to implement changes to title VI resulting from the enactment of the Every Student Succeeds Act (ESSA). These final regulations update, clarify, and improve the current regulations. These regulations pertain to Catalog of Federal Domestic Assistance (CFDA) number 84.299B.

DATES: These regulations are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Angela Hernandez-Marshall, U.S. Department of Education, 400 Maryland

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SUPPLEMENTARY INFORMATION: These regulations implement statutory changes made to the PD program in section 6122 of the ESEA (20 U.S.C. 7442) by the ESSA and make other changes to better enable the Department and grantees to meet the objectives of the program.

We published a notice of proposed rulemaking for this program (NPRM) in the *Federal Register* on October 11, 2019 (84 FR 54806).

Publication of the control number notifies the public that the Office of Management and Budget (OMB) has approved these information collection requirements under the Paperwork Reduction Act of 1995. These regulations apply to applications for the PD program for fiscal year (FY) 2020 and subsequent years. In addition, the most recently-funded cohort of PD grantees, which received grants for FY 2018, may use the flexibility offered by the definition of "local educational agency (LEA) that serves a high proportion of Indian students" in these regulations, in arranging teaching or administrative placements for project graduates as of the effective date of these regulations.

In the preamble of the NPRM, we discussed on pages 54807-54811 the major changes proposed in that document. These included the following:

- Amending § 263.2 to include institutions of higher education (IHEs) that are accredited to provide a Native American language certificate and making conforming changes to other provisions.
- Adding to § 263.3 a definition of "local educational agency (LEA) that serves a high proportion of Indian students" and making conforming changes to other provisions.
- Adding in new § 263.5 application requirements, including an application requirement for a letter of support from an LEA that serves a high proportion of Indian students.
- Amending renumbered § 263.6 to add priorities for administrator training for work in Tribal educational agencies (TEAs), and for administrator training for school start-ups.
- Amending renumbered § 263.7 to add new selection criteria.

These final regulations contain two substantive changes from the NPRM, which we fully explain in the *Analysis of Comments and Changes* section of this preamble, in addition to several technical changes.

*Public Comment:* In response to our invitation in the NPRM, 14 parties submitted comments on the proposed regulations.

*Analysis of Comments and Changes:* An analysis of the comments and of any changes in the regulations since publication of the NPRM follows. We group major issues according to subject. Generally, we do not address technical and other minor changes.

General

Comments: We received comments from multiple parties expressing support for the PD program and for the program's expansion to include Native language certification. One commenter noted that allowing American Indian language certificate-earners access to the program should lead to greater student achievement.

Discussion: We appreciate the support for this program.

Changes: None.

Qualifying Job Placements That Satisfy the Service Payback Obligation and Letter of Support Application Requirement (§§ 263.3, 263.5, 263.12(c)(1)).

Comments: Nine commenters stated their support for the Department's definition of "local educational agency (LEA) that serves a high proportion of Indian students" in § 263.3. One of those nine parties suggested including schools as well as LEAs in the definition. One of the

commenters was supportive of the definition but stated that it benefitted mainly teacher placement in rural areas. Four of the commenters suggested expanding the definition in a variety of ways for both qualifying employment and for the application requirement of a letter of support from an LEA that serves a high proportion of Indian students, citing concerns about the source of evidentiary data that would be used to determine whether or not a proposed LEA meets the definition. For instance, one of the commenters was concerned that LEA and State-level data are often inaccurate and often undercount the number of American Indian/Alaska Native students. Several of these commenters suggested allowing Tribes to identify LEAs that would serve as qualifying placement, even if the LEA, or the school in which the participant works, did not have a high proportion of Indian students; other commenters suggested that the local Tribe be the entity to determine what data source to use for evidence of meeting the definition of "high proportion." One of the commenters recommended using five percent to measure whether an LEA has a high proportion of Indian students. This commenter asked the Department to establish five percent as a non-binding threshold for "high proportion" in order to provide a clearer guideline. Another commenter suggested allowing all LEAs that receive

Title VI formula grant funds to be considered qualifying employment.

Discussion: We appreciate the many positive and supportive responses we received regarding the definition of "LEA that serves a high proportion of Indian students." In response to the comment asking that schools as well as LEAs be considered in the definition of "high proportion," the Department's new definition of "LEA that serves a high proportion of Indian students" does, in fact, include consideration of schools as well as LEAs. The definition provides an alternative test under which service in a particular school that has a high proportion of Indian students compared to other LEAs in the State qualifies even if the LEA as a whole in which the participant works does not have a high proportion of Indian students. We do not believe it is currently clear whether the program will mainly benefit placements in rural areas, but this is something that the Department will be able to track in the years to come. The statutory text is clear that job placement must correspond to LEAs with high proportions of Native students.

With regard to concerns about evidentiary data sources, the Department agrees that it should consider a variety of different types of data in analyzing whether

LEAs or schools constitute qualifying employment locations, and that local Tribes can play an important role in helping identify accurate data for the Indian student population. For example, an applicant's letter of support from an LEA may use as evidence its Indian student count based on valid and complete Title VI formula grant program Indian Student Eligibility Certification ("ED 506") Forms (OMB Number: 1810-0021) to show a high proportion as compared to the proportion in other LEAs in the State. Tribes can provide critical aid to LEAs in ensuring the LEAs have complete and valid forms for all Indian students, in order to increase the accuracy of this count.

In the NPRM, the Department solicited public comment on sources of evidence beyond demographic information on State and district report cards; however, we received no suggestions on this topic. The Department plans to further examine this issue and develop technical assistance for applicants regarding the types of evidentiary data that would be considered in determining "high proportion" for qualifying placement. In addition, the Department plans to publish on the program's website the average school-level and school district-level Indian student population, by State, after publishing the notice inviting applications for new awards for fiscal year 2020, so that applicants

will have that data for comparison purposes in choosing which LEAs to ask for letters of support. We do not, however, support allowing Tribes to identify an LEA that serves as qualifying placement without any specific criteria, as this runs counter to the legislative intent to place Indian teachers and administrators in schools and LEAs that serve a high proportion of Indian students.

We decline to accept the suggestion of a threshold of five percent. We heard during Tribal consultation that a specific percentage cut-point would eliminate as job placements those LEAs that are located in States with very small Native student populations, even though the particular school or LEA may have a larger percentage than the State average. We are aware that the nationwide population of American Indian/ Alaska Native (AI/AN) students is approximately one percent of all students, and we believe that a comparative analysis better meets the statutory purposes of this program. We also reject the suggestion of allowing all LEAs with Title VI formula grants to serve as qualifying placement because the formula grant program funds LEAs with as few as 10 AI/AN students-- and even fewer in the three States excluded by statute from this minimum---a number that is highly unlikely to represent a "high proportion" of the student body.

Changes: None.

Application Requirements (§ 263.5)

Comments: One party recommended that, to ensure that participant training supports the Native students to be served, each grantee should be required to submit a letter of support from nearby Tribes to verify that Tribal consultation has occurred with LEAs, consistent with the ESEA consultation requirement for certain LEAs.

Discussion: The Department strongly agrees that participants should be trained to understand the unique needs of Native students, and the Tribal role in informing that work. To that end, the program regulations address these issues in multiple respects. First, the selection criteria, under quality of project services in § 263.7(d) of these final regulations, address cultural training by providing points for projects that prepare participants to adapt teaching and/or administrative practices to meet the breadth of Indian student needs. Second, the PD program grant competitions have consistently incentivized Tribal engagement by awarding competitive preference points to applicants whose lead entity is a Tribe, Tribal College or University (TCU), or Tribal organization, as well as points to non-Tribal entities that apply in consortium with a Tribe, TCU, or Tribal organization. These priority points

implement the statutory requirement in section 6143 of the ESEA that we give preference to Tribal entities in awarding grants. More than two-thirds of the 43 grantees awarded from 2016 and 2018 received these points.

If an IHE applies that is not a TCU, and is not in consortium with a Tribe, we strongly encourage that IHE to involve or consult with any local Tribes in designing and implementing their project. As explained above, historically we have awarded additional points to IHEs that apply in consortium with Tribes, Tribal organizations, or TCUs, under the priority in renumbered § 263.6(a)(2); including a Tribe as a partner in a project more effectively ensures that Tribal views are heard than does consultation.

Finally, with regard to the commenter's suggestion to require an applicant to submit a letter from Tribes to evidence that Tribal consultation has occurred, we agree that the requirement in section 8538 of the ESEA for certain affected LEAs to consult with Tribes prior to submitting an application does apply to this program, if an affected LEA is the applicant for this program in consortium with an IHE or TCU. Affected LEAs are those LEAs that have 50 percent Indian student population or received a Title VI formula grant of more than \$40,000.

The consultation must provide for the opportunity for officials from Indian Tribes or Tribal organizations to meaningfully and substantively contribute to the application. Although we have rarely, if ever, received applications for this program from LEAs or SEAs, we have added an application requirement to § 263.5 to highlight this important statutory requirement in section 8538 of the ESEA for affected LEAs.

Changes: We have added a new paragraph (d) to § 263.5 to include the application requirement described above.

Priority for Administrator Training for Work in TEAs (§ 263.6(b))

Comments: One commenter was concerned that program participants would have difficulty completing on-the-job administrator training in a TEA if they were already full-time employees while completing an administrator training program. The commenter also asked if a job in a TCU, such as professor or administrator, would qualify as service payback, under the assumption that a TCU is a TEA.

Finally, the commenter expressed their hope that roles such as language and cultural curriculum coordinator, instructional coach, and Department chair, in either a BIE-funded school or LEA with a large Native student population, would count as qualifying employment.

Discussion: The Department agrees that an administrator training program participant's on-the-job training in a TEA could pose a challenge if they were also employed full-time as a teacher or other school staff. For this reason, the Department's new priority allows grantees flexibility to determine the length of time that the on-the-job training would need to take place. For example, a grantee may implement the on-the-job training in a TEA over the summer, when existing school jobs are likely on hiatus. Another option would be to allow the participant to seek a brief leave from their full-time job.

With regard to whether or not a job in a TCU would serve as qualifying employment under the new priority for pre-service administrator training for work in a TEA, TEA is defined in these final PD program regulations as an agency, department, or instrumentality of a Tribe that is primarily responsible for Tribal students' elementary and secondary education. A TCU, however, does not provide elementary or secondary education but rather post-secondary education. Therefore, a participant could not complete service payback in any IHE or TCU, unless that entity directly operates an elementary or secondary school.

On the issue of whether leadership roles such as instructional coordinator, Department chair, and similar

positions are qualifying employment, this question is not unique to the new priority under which the question was posed but is also relevant to the existing priority for administrator training. Section 6122(h) of the ESEA requires that the participant perform work related to the training received. Thus, assuming that the job is in an LEA or BIE-funded school at the elementary or secondary level, if the position requires the degree and certification for which the participant received the training benefit, then the employment qualifies for service payback.

Changes: None.

Other Issues

Comments: None.

Discussion: As a result of our further review of the proposed regulations since publication of the NPRM, we have made two additional changes. First, we made a change to renumbered § 263.7. We are no longer including what we proposed as paragraph (d)(5) in the NPRM because, upon further review, we realized that information was captured in paragraph (c)(2). Second, we have revised renumbered § 263.8(b) regarding a participant's leave of absence. The existing regulations require that the participant have completed 12 months of training before a project director

can grant a leave of absence. However, we have learned that in some cases, teacher and administrator training programs are designed to be completed within one year, essentially prohibiting participants in these programs from being able to request a leave of absence from the program. The original language presumed that 12 months of program completion translated into having completed at least half of the program.

Changes: We have omitted proposed § 263.7(d)(5). We have revised § 263.8(b) to allow grant project directors to approve a participant's leave of absence only after the participant has completed at least 50 percent of their training.

Executive Orders 12866, 13563, and 13771

#### Regulatory Impact Analysis

Under Executive Order 12866, it must be determined 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 final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For Fiscal Year 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory

actions. These final regulations are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

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

*Discussion of Costs and Benefits:* The potential costs associated with these final regulatory changes are minimal, while there are greater potential benefits. For PD grants, applicants may anticipate minimal additional costs in developing their applications due to the new required letter of support that the applicant must obtain from an LEA under §263.5, estimated at two hours of additional work. We anticipate no additional time spent reporting participant payback information in the Professional Development Program Data Collection System (PDPDCS) and the costs of carrying out these activities would continue to 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 result being more participants successfully completing their programs of study and obtaining employment as teachers and administrators. Elsewhere in this section, under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. The U.S. Small

Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that will be affected by these final regulations are LEAs, IHEs, TCUs, Tribes, and Tribally operated schools receiving Federal funds under this program. The final regulations will 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 final regulations will impose minimal requirements to ensure the proper expenditure of program funds, including reporting of participant payback information. We note that grantees that will be subject to the minimal requirements imposed by these final regulations will be able to meet the costs of compliance using Federal funds provided through the Indian Education Discretionary Grant programs.

Paperwork Reduction Act of 1995

Sections 263.5 and 263.7 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections and related application forms to OMB for its review and approval. In accordance with the PRA, the OMB control number associated with the PD final regulations, related application forms, and ICRs for §§ 263.5 and 263.7 is OMB 1894-0006.

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.

Table A-1 illustrates the status of both the previous collections and the collections under these final regulations associated with this program:

TABLE A-1: PD Program Information Collection Status

OMB	Relevant	Expira	Previous	Burden Under	Action
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Control Number	Regulations	tion	Burden (Total Hours)	Final Rule (Total Hours)	Under Final Rule
1810-0580	Sections 263.5, 263.6, and 263.7	June 30, 2021	Applicants: 1,500	0	Discontinue this collection and use 1894-0006
1894-0006	Sections 263.5, 263.6, and 263.7	January 31, 2021	0	Applicants: 1,500	Use this collection.
1810-0698	Section 263.12	August 31, 2022	Grantees: 2,040 Participants: 660 Employers: 304	Grantees: 2,040 Participants: 660 Employers: 304	Use this collection.

Intergovernmental Review

This program is subject to the requirements of 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 this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

#### Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

In the NPRM we solicited comments on whether any sections of the proposed regulations could have federalism implications and encouraged State and local elected officials to review and provide comments on the proposed regulations. In the Public Comment section of this

preamble, we discuss any comments we received on this subject.

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 program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the *Federal Register* by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Number: 84.299B Professional Development Program.)

List of Subjects in 34 CFR Part 263

Business and industry, College and universities,  
Elementary and secondary education, Grant programs—  
education, Grant programs—Indians, Indians—education,  
Reporting and recordkeeping requirements, Scholarships and  
fellowships.

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Frank T. Brogan,  
*Assistant Secretary for  
Elementary and Secondary  
Education.*

For the reasons discussed in the preamble, the Secretary of Education amends part 263 of title 34 of the Code of the Federal Regulations as follows:

PART 263—INDIAN EDUCATION DISCRETIONARY GRANT PROGRAMS

1. The authority citation for subpart A continues to read as follows:

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

2. Amend §263.1 by:

- a. In paragraph (a) (1) removing the word "people" and adding, in its place, the word "students";
- b. Revising paragraphs (a) (2) and (a) (3);
- c. Adding paragraph (a) (4); and
- d. Revising paragraph (b) (1).

The revisions and addition read as follows:

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

(a) \* \* \*

(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) \* \* \*

(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

\* \* \* \* \*

3. Amend § 263.2 by:

- a. Revising paragraphs (a)(1) through (5);
- b. Revising paragraph (b) introductory text; and
- c. Revising paragraphs (b)(2) and (c).

The revisions read as follows:

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

(a) \* \* \*

- (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--

\* \* \* \* \*

(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.

4. Amend § 263.3 by:

a. Removing the definition of "Bureau-funded school";

b. Adding the definition of "BIE-funded school";

c. Revising the definition of "Full-time student";

d. Removing the definition of "Indian institution of higher education";

e. In paragraph (5) of the definition of "Indian organization", adding the phrase "or TCU" after the phrase "any institution of higher education";

f. Revising the definitions of "induction services" and "institution of higher education";

g. Adding in alphabetical order the definitions of "local educational agency (LEA) that serves a high proportion of Indian students", "Native American", and "Native American language";

h. Adding, in the definition of "Pre-service training" the words ", or licensing or certification in the field of Native American language instruction" after the word "degree"; and

i. Adding in alphabetical order the definitions of "qualifying employment", "Tribal College or University (TCU)", and "Tribal educational agency".

The additions and revisions read as follows:

**§ 263.3 What 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.

\* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

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

\* \* \* \* \*

*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.

\* \* \* \* \*

5. Amend § 263.4 by:

- a. Removing the word "and" at the end of paragraph (c) (2);
- b. Removing the period at the end of paragraph (c) (3) and adding, in its place, a semicolon; and
- c. Adding paragraphs (c) (4) and (5).

The additions read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(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.

\* \* \* \* \*

§§ 263.5 through 263.12 [Redesignated]

6. Redesignate §§ 263.5 through 263.12 as §§ 263.6 through 263.13.

7. Add a new § 263.5 to read as follows:

**§ 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 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.

8. Amend redesignated § 263.6 by:

a. In paragraphs (a)(1) and (a)(2)(i), removing the phrase "Indian institution of higher education" wherever it appears and adding, in its place, "TCU";

b. Adding a heading to paragraphs (a)(1) and (2);

c. Removing the word "or" at the end of paragraph (b)(1)(i)(B);

d. Adding the word "or" at the end of paragraph (b)(1)(i)(C);

e. Adding new paragraph (b)(1)(i)(D);

f. Revising paragraph (b)(1)(ii);

- g. In paragraph (b) (1) (iii) (D), removing the word "jobs" and adding, in its place, "employment";
- h. Revising paragraph (b) (2) (ii);
- i. In paragraph (b) (2) (iii) (D), removing the word "jobs" and adding, in its place, the word "employment";
- j. Revising paragraph (b) (3); and
- k. Adding paragraph (b) (4).

The additions and revisions read as follows:

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

(a) \* \* \*

(1) *Tribal Applicants.* \*\*\*

(2) *Consortium Applicants, Non-Tribal Lead.* \*\*\*

\*\*\*\*\*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(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

\* \* \* \* \*

(2) \* \* \*

(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 administrators are completing their work-related payback as administrators in LEAs that serve a high proportion of Indian students; and

\* \* \* \* \*

(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.

\* \* \* \* \*

9. Amend redesignated § 263.7 by:

a. Revising paragraph (a) (2);

b. In paragraph (c) (1) (iv), removing the word "jobs" and adding, in its place, the word "employment";

c. Revising paragraphs (c) (2) and (3);

d. Amending paragraph (d) (1) by removing the phrase "schools with significant Indian populations" and adding, in its place, the phrase "LEAs that serve a high proportion of Indian students";

e. Adding to the end of paragraph (d) (3) the phrase  
"and that offer qualifying employment opportunities";

f. Adding paragraph (d) (5); and

g. Removing paragraph (e) (3).

The additions and revisions read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(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.

\* \* \* \* \*

(c) \* \* \*

(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 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) \* \* \*

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

\* \* \* \* \*

10. Amend newly redesignated § 263.8 by revising paragraph (b) to read as follows:

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

\* \* \* \* \*

(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.

\* \* \* \* \*

11. Amend newly redesignated § 263.9 by:

a. In paragraph (b) (1), removing the word "people" and adding, in its place, the word "students" and removing the words "school that has a significant Indian population" and adding, in their place, the words "LEA that serves a high proportion of Indian students"; and

b. Adding a note at the end of this section.

The addition reads as follows:

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

\* \* \* \* \*

*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.

**§ 263.11 [Amended]**

12. Amend newly redesignated § 263.11 by removing the word "people" in paragraph (b) (1) and adding, in its place, the phrase "students in an LEA that serves a high proportion of Indian students".

13. Amend newly redesignated § 263.12 by:

- a. Removing the word "and" at the end of paragraph (c) (1) (ii);
- b. Redesignating paragraph (c) (1) (iii) as paragraph (c) (1) (iv) and adding a new paragraph (c) (1) (iii);
- c. Removing in paragraph (c) (2) the word "seven" and adding, in its place, the word "thirty"; and
- d. Revising the authority citation.

The addition and revision read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(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

\* \* \* \* \*

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

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