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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 48

[212A2100DD; AAKC001030; A0A501010.999900]

RIN 1076-AF55

Use of Bureau-Operated Schools by Third Parties under Lease Agreements and Fundraising Activity by Bureau-Operated School Personnel

AGENCY: Bureau of Indian Education, Interior.

ACTION: Final rule.

SUMMARY: Congress authorized the Director of the Bureau of Indian Education (BIE or Bureau) to enter into agreements with third parties to lease the land or facilities of a Bureau-operated school in exchange for funding that benefits the school. This final rule establishes standards for the appropriate use of lands and facilities under a lease agreement, provisions for establishment and administration of mechanisms for the acceptance of consideration for the use and benefit of a school, accountability standards to ensure ethical conduct, and provisions for monitoring the amount and terms of consideration received, the manner in which the consideration is used, and any results achieved by such use. This final rule also establishes standards to implement authority provided by Congress for BIE personnel to fundraise on behalf of Bureau-operated schools.

DATES: This rule takes effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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I. Background

Public Law 112-74, as amended by Public Law 113-235 and Public Law 114-113, authorizes the Director of BIE, or the Director's designee, to enter into agreements with public and private persons and entities allowing them to lease the land or facilities of a Bureau-operated school in exchange for consideration (in the form of funds) that benefits the school. The head of the school determines the manner in which the consideration will be used to benefit the school, as long as the use is for school purposes otherwise authorized by law. Congress provided that any funds obtained under this authority will not affect or diminish appropriations for the operation and maintenance of Bureau-operated schools, and that no funds will be withheld from distribution to the budget of a school due to receipt of such funds.

This public law also allows personnel of Bureau-operated schools to participate in fundraising activity for the benefit of a Bureau-operated school in their official capacity, as part of their official duties.

To carry out these public law provisions, the Act requires the Secretary of the Interior to promulgate regulations. The Act provides that the regulations must include standards for the appropriate use of Bureau-operated school lands and facilities by third parties under a rental or lease agreement; provisions for the establishment and administration of mechanisms for the acceptance of consideration for the use and benefit of a school; accountability standards to

ensure ethical conduct; and provisions for monitoring the amount and terms of consideration received, the manner in which the consideration is used, and any results achieved by such use.

The BIE published a proposed rule on October 14, 2020 (85 FR 65000) and received four comments, which are discussed later in this preamble.

II. Summary of Rule

This rule establishes a new Code of Federal Regulations (CFR) part to implement the leasing and fundraising authority that Congress granted to BIE under Public Law 112-74, as amended by Public Law 113-235 and Public Law 114-113. The leasing provisions of this rule apply only to the facilities and land of Bureau-operated schools. This rule does not apply to public schools, Public Law 100-297 Tribally controlled grant schools, or Public Law 93-638 contract schools. This rule implements statutory leasing authority specific to leasing of Bureau-operated school facilities and land and is separate from the general statutory authority for leasing. To obtain approval of a lease of a Bureau-operated facility or land, one would need to comply with this new regulation, rather than the more generally applicable regulations at 25 CFR part 162. While the regulations at part 162 allow the granting of permits for use of Government land, the primary purpose of part 162 is to promote leasing of Indian land for housing, economic development, and other purposes. In contrast, the purpose of these new regulations at part 48 is to lease or rent Bureau-operated school facilities in exchange for consideration that will be used for school purposes. We note that nothing in this rule affects 25 CFR 31.2, which allows for use of Bureau-operated school facilities or land for community activities and adult education activities upon approval by the superintendent or officer-in-charge, where no consideration is received in exchange for the use of the facilities. The fundraising provisions of this rule apply only to employees of schools operated by the BIE. Subpart A of the rule sets forth the purpose, definitions, and other general provisions applicable to both leasing and fundraising.

Subpart B establishes the mechanisms and standards by which the Bureau may lease Bureau-operated school facilities and land to third parties. The statutory authority for the rule's leasing sections provides that the BIE Director or the Director's designee is authorized to enter into agreements with public and private persons and entities that provide for such persons and entities to rent or lease the land or facilities of a Bureau-operated school in exchange for a consideration (in the form of funds) that benefits the school, as determined by the head of the school. Pub. L. 112-74, section 115(a)(1). The rule allows only the BIE Director or his or her designee to enter into leases, and defines the Director's designee to be the Associate Deputy Director – Bureau-Operated Schools or the Associate Deputy Director – Navajo Schools. While most lease negotiations will occur at the school level, having someone at the Associate Deputy Director level make the ultimate determination whether to enter into a lease provides an appropriate level of oversight. The rule is written to provide a basic framework for leasing of Bureau-operated school facilities without being overly prescriptive so that it can accommodate a wide range of leasing circumstances – everything from leasing out a school gymnasium for a few hours to entering into a commercial lease of Bureau-operated school facility land to a billboard company. Accordingly, the rule sets forth the standards the BIE Director (or designee) will use to determine whether to enter into a lease. A primary standard for determining whether to enter into a lease is that the lease provides a net financial benefit to the school because the statutory authority for this regulation is centered on BIE receiving consideration in the form of funds that benefit the school. The BIE Director (or designee) will also consider including lease terms to incorporate the standards listed in § 48.104. This subpart also establishes what provisions a lease must include, what actions are necessary if permanent improvements are to be constructed under the lease, and how the Bureau will ensure compliance with the lease. In accordance with the limited authority provided by the statute, this subpart provides that the Bureau may only accept funds (as opposed to in-kind consideration) as consideration for a lease and may only use the funds for school purposes. The rule also broadly establishes how the Director or his or her

designee will determine what amount is proper for lease consideration. While fair market value is a consideration, a formal appraisal may not be needed in all circumstances (e.g., leasing out the school gym for a few hours) so the rule does not require a formal appraisal. The rule also establishes the mechanics for lessees to pay consideration and describes how the Bureau will process the funds. The rule provides the same late payment fees as are provided in the part 162 provisions for leasing Indian land. For oversight purposes, the rule requires Bureau-operated school personnel to report annually on any active lease to the Director and others, and include an accounting of all expenditures and supporting documentation showing expenditures were made for school purposes.

Subpart C of the rule addresses fundraising activities by employees of Bureau-operated schools in their official capacity on behalf of those schools. (Nothing in this rule affects fundraising activities by students). The statutory authority for the rule's fundraising sections allows BIE personnel to participate in a fundraising activity for the benefit of a Bureau-operated school in an official capacity as part of their official duties, and using the employee's official title, position, and authority. This subpart of the rule allows authorized personnel to spend a "reasonable portion" of his or her official duty time fundraising. BIE uses the phrase "reasonable portion" rather than specifying a number of hours or percentage of duty time to provide flexibility for different work schedules and fundraising activities while ensuring that school personnel are still fulfilling their work duties. The Director, Director's designee, or Head of School would determine what constitutes a reasonable portion when they review the proposed fundraising activity under § 48.202 to certify that it complies with regulatory requirements. In accordance with the statute's requirement for the regulations to establish standards to ensure ethical conduct, this subpart limits the types of fundraising an employee may conduct to ensure fundraising maintains the school's integrity, the Bureau's impartiality, and public confidence in the school. Certain approvals are required before personnel may accept a donation on behalf of a school as a mechanism for acceptance of the use of funds and a check to ensure standards are

being upheld. In accordance with the statute's requirement that fundraising activity benefit a Bureau-operated school, each Bureau-operated school that receives donations is required to report annually to the Director and others, including an accounting of all expenditures and supporting documentation showing expenditures were made for school purposes.

III. Responses to Comments

BIE received four written comment submissions on the proposed rule, some of which contained more than one comment. A summary of each of the issues raised in the comments and BIE's responses follow:

Comment: No taxpayer dollars should be used for religious purposes unless the religion is a traditional Native American religion.

Response: Funds received under Part 48 are not taxpayer funds. The funds received come from leases and donations and can be used for school purposes as defined in § 48.3, which do not include sectarian purposes. It is the policy for the BIE Director, pursuant to 25 CFR 32.4(f), to promote and respect the right to cultural practices and religious freedom for all students, consistent with Tribal and Alaska Native entities' wishes and with the provisions of the American Indian Religious Freedom Act.

Comment: The requirements in Subpart B are vague because they don't list the detailed requirements that each possible lessee must have to obtain a lease.

Response: The rule lists the detailed requirements for the lease at § 48.105.

Comment: The rule should establish specific guidelines regarding how the funds are to be used to benefit the school or there will be confusion and misuse of funds.

Response: The rule defines the "school purposes" for which the funds may be used. *See* §§ 48.3 (definition of "school purposes"), 48.110 (regarding use of funds received through leasing), and 48.204 (regarding use of funds received through fundraising).

Comment: This rule should incorporate other types of schools such as Tribal schools that are underfunded in locations where students may not have the opportunity to attend a Bureau school.

Response: The statutory authority for this rule extends only to BIE-operated schools.

Comment: We are in favor of this rule because of the magnitude of BIE-operated schools' need for funds and that any funding received through leasing and fundraising will not affect or diminish appropriations. Since the intent of the rule is to increase the amount of funds at BIE-schools' disposal in order to improve educational outcomes for students, it would be regrettable if this rule eventually precipitated the opposite and resulted in a loss of funding for these schools.

Response: Congress provided that nothing in the statute authorizing leasing of and fundraising by Bureau-operated schools diminishes or otherwise affects the appropriation of funds to the budget accounts for operation and maintenance of Bureau-operated schools. Congress further provided that no funds may be withheld from distribution to the budget of any Bureau-operated school due to the school's receipt of funds from leasing or fundraising.

Comment: The stipulation that the rule does not affect 25 CFR 31.2, which allows BIE facilities to be used for adult education and community activities without the requirement of consideration, mitigates concerns that the rule may be detrimental to the community, as both adult education activities and communities provide positive outcomes, particularly in communities facing higher poverty rates, such as those in which BIE-operated schools are located.

Response: The final rule includes the stipulation that this commenter supports.

Comment: The requirement in section 48.205(f) that participation in fundraising must be voluntary is important not just for teachers, but also students, community members and organizations, to ensure they are not punished or retaliated against for not participating in a fundraiser, or for participating in an "unsuccessful" fundraiser.

Response: The final rule includes the requirement that this commenter supports.

Comment: A major advantage to this rule is that it improves these schools' access to much-needed funds without having to increase government spending or divert government funding from other important purposes. Although BIE schools receive more funding per pupil than the average U.S. public school, the financial need for this rule is still evident due to the unique challenges and higher costs such schools face. The funding schools can obtain from fundraising would help make necessary improvements to the quality of education for all its students; however, the GAO, in its 2014 report, specified concerns regarding BIE schools' ability to manage funds efficiently and ethically and, in 2017, added BIE to its High Risk List for agencies and programs vulnerable to mismanagement. A prudent solution would be to resolve existing issues to prevent poor stewardship of taxpayer dollars. Ideally, BIE would first demonstrate an improved ability to handle its finances before entrusting BIE schools with additional funds.

Response: The rule provides that the schools must report on the use of funds received through leasing (*see* § 48.115) and fundraising (§ 48.208).

Comment: The condition at section 48.206 requiring donations equal to or exceeding \$5,000 be approved by the Director's designee could cause school administrators to discourage donations exceeding this threshold in order to minimize bureaucratic approvals, or misrepresent the true dollar amount of the donation while "pocketing" amounts in excess of the threshold.

Response: Criminal statutes prohibit employees from "pocketing" funds.

Comment: Listing \$5,000 as a threshold will eventually produce considerably different results over time due to inflation; instead, add a stipulation that the exact dollar amount is to be equivalent of the real value as of 2021. There are free, fast, user-friendly inflation calculators on the internet that would assist in adjusting the value based on inflation in successive years.

Response: BIE will reevaluate this monetary threshold after it obtains experience in implementing this regulation.

Comment: The rule's requirement at section 48.104 that the Director must determine that any proposed leases must not interfere with school activities or compromise school safety should be supported by a reporting mechanism between the impacted school's faculty, staff, and students and the Director in case an interference occurs during the lease term. Those individuals witness the day-to-day operations of the school and will identify whether a lease results in unanticipated negative effects on schooling. There should be a procedure to allow them to file complaints with the Director so the Director fully understands the effects of the actual implementation of a given lease and can take appropriate actions as needed.

Response: The Head of the School, in consultation with the school board or board of regents, certifies that the lease will not interfere with existing or planned school activities prior to the Director entering into the lease. Each individual lease will have provisions specific to the activities that the lessee will conduct under the lease to ensure that lease activities will not interfere with school activities. Failure to comply with lease terms would be addressable under §§ 48.116 and 48.117.

Comment: It seems that Native American children with exceptionalities are or may be denied the protections of the Rehabilitation Act of 1973 and other laws that empower them to achieve education-related goals. Many living on reservations are trapped in poverty, inadequate housing, alcoholism, drug abuse, and exceptionally high levels of unemployment, and children living on the reservation have two options: obtain an education to end the vicious cycle or remain trapped. Without the opportunity to obtain an education because you are, by default, excluded from the classroom because of your exceptionality. It is imperative that children attending public schools on Indian reservations be granted the opportunity to obtain an education, regardless of whether they have an exceptionality.

Response: This comment is not directly relevant to this rulemaking, but BIE has considered it in its implementation of Section 504 of the Rehabilitation Act of 1973.

IV. Changes to Proposed Rule

The final rule makes three changes to the proposed rule for clarity and to better define BIE officials' roles and responsibilities:

- Revises the definition of “Director’s designee” to mean only the Associate Deputy Director (deleting the “Education Program Administrator”);
- Adds in § 48.202 that the Head of the School, in addition to the Director or Director’s designee, is one of the individuals authorized to approve fundraising in advance; and
- Separates out the discussion of how a Bureau-operated school processes donated funds from § 48.207, regarding how donations may be used, to a new § 48.208.

V. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 et seq.). It does not change current funding requirements and any economic effects on small entities would be fees charged for the use of the facilities, which must be tied to either fair market value or the costs to the Bureau of the lease and would not have a significant economic effect on the small entities.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian Tribes that will result from this rulemaking. The Department acknowledges that Tribes with children attending Bureau-operated schools have an interest in this rule because it provides for consideration for the leasing of Bureau-operated schools and fundraising standards for employees of Bureau-operated schools. As such, the Department engaged Tribal government representatives by distributing a letter, dated June 19, 2014, with a copy of the draft rule and requesting comment on the draft rule by July 31, 2014. The Department also published a proposed rule on June 21, 2016 (81 FR 40218) and hosted a listening session and two teleconference consultations on the rule, but received no substantive comments. The Department hosted an additional consultation November 13, 2020, but received no substantive comments.

I. Paperwork Reduction Act

This rule contains new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). We may not conduct or sponsor and you are not required to respond to a collection of information unless it

displays a currently valid Office of Management and Budget (OMB) control number. The Department is seeking approval of a new information collection, as follows.

Brief Description of Collection: The Bureau of Indian Education (BIE) is establishing standards for the appropriate use of lands and facilities by third parties. These standards address the following: the execution of lease agreements; the establishment and administration of mechanisms for the acceptance of consideration for the use and benefit of a Bureau-operated school; the assurance of ethical conduct; and monitoring the amount and terms of consideration received, the manner in which the consideration is used, and any results achieved by such use. The paperwork burden associated with the rule results from lease provisions; lease violations; and assignments, subleases, or mortgages of leases.

Title: Use of Bureau-Operated Schools by Third Parties.

OMB Control Number: 1076–0187.

Form Number: None.

Type of Review: New collection.

Respondents/Affected Public: Individuals and Private Sector.

Total Estimated Number of Annual Respondents: 17.

Total Estimated Number of Annual Responses: 24.

Estimated Completion Time per Response: One to three hours.

Total Estimated Number of Annual Burden Hours: 68 hours.

Respondents' Obligation: Required to obtain a benefit.

Frequency of Response: Annually.

Total Estimated Annual Non-Hour Burden Cost: \$0.

CFR Cite	Description	No. Respondents	Annual Responses	Burden Hours per Response	Total Annual Burden Hours
48.105	Provisions of leases (businesses)	10	10	3	30

48.105	Provisions of leases (individuals)	2	2	3	6
48.105	Provisions of leases (governments)	5	5	3	15
48.106	Covered improvements under lease (businesses)	2 (subset)	2	3	6
48.106	Covered improvements under lease (governments)	1 (subset)	1	3	3
48.117	Violations of leases (businesses)	1 (subset)	1	1	1
48.117	Violations of leases (individuals)	1 (subset)	1	1	1
48.119	Assignments, subleases, and mortgages of leases (businesses)	1 (subset)	1	3	3
48.119	Assignments, subleases, and mortgages of leases (individuals)	1 (subset)	1	3	3
	Total	17	24	N/A	68

OMB Control Number: 1090-0009.

Title: Donor Certification Form (DI-3680).

Brief Description of Collection: This information will provide Department staff with the basis for beginning the evaluation as to whether the Department will accept the proposed donation. The authorized employee will receive the donor certification form in advance of accepting the proposed donation where the donation is valued at \$25,000 or more. The employee will then review the totality of circumstances surrounding the proposed donation to determine whether the Department can accept the donation and maintain its integrity, impartiality, and public confidence. We expect to receive 25 responses to this information collection annually. The burden associated with this information collection is already reflected in the approval of OMB Control Number 1090-0009.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Written comments and recommendations for the information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function. Please provide a copy of your comments to consultation@bia.gov. Please reference OMB Control Number 1076-0187 in the subject line of your comments.”

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the environmental effects of this rule are too speculative to lend themselves to meaningful analysis and will later be subject to the NEPA process, unless covered by a categorical exclusion. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 25 CFR Part 48

Educational facilities, Indians-education.

For the reasons given in the preamble, the Department of the Interior amends 25 CFR chapter 1, subchapter E, by adding part 48 to read as follows:

PART 48 – LEASES OF LAND OR FACILITIES OF BUREAU-OPERATED SCHOOLS AND FUNDRAISING ACTIVITIES AT BUREAU-OPERATED SCHOOLS

Subpart A – General Provisions

- Sec.
- 48.1 What is the purpose of this part?
- 48.2 What is the scope of this part?
- 48.3 What definitions apply to terms in this part?
- 48.4 What accounting standards will the Bureau use in monitoring the receipt, holding, and use of funds?
- 48.5 How does the Paperwork Reduction Act affect this part?

Subpart B – Leasing of Bureau-operated Facilities

- 48.101 Who may enter into a lease on behalf of a Bureau-operated school?
- 48.102 With whom may the Director enter into a lease?
- 48.103 What facilities may be leased?
- 48.104 What standards will the Director use in determining whether to enter into a lease?
- 48.105 What provisions must a lease contain?
- 48.106 May a lessee construct permanent improvements under a lease?
- 48.107 What consideration may a Bureau-operated school accept in exchange for a lease?
- 48.108 How will the Bureau determine appropriate consideration for a lease?
- 48.109 Who may use the funds?
- 48.110 For what purposes may a Bureau-operated school use the funds?
- 48.111 How does a lessee pay the Bureau-operated school under a lease?
- 48.112 How are lease payments processed?
- 48.113 Will late payment charges or special fees apply to delinquent lease payments?
- 48.114 How long will the funds be available?
- 48.115 How will the Bureau monitor the results achieved by the use of funds received from leases?
- 48.116 Who may investigate compliance with a lease?
- 48.117 What will the Bureau do about a violation of a lease?
- 48.118 What will the Bureau do if a lessee does not cure a lease violation on time?
- 48.119 May a lease be assigned, subleased, or mortgaged?

Subpart C – Fundraising Activities

- 48.201 To whom does this subpart apply?
- 48.202 May employees fundraise?
- 48.203 How much time may employees spend fundraising?
- 48.204 For what school purposes may employees fundraise?
- 48.205 What are the limitations on fundraising?
- 48.206 What approvals are necessary to accept a donation?

- 48.207 How may the donations solicited under this subpart be used?
48.208 How does a Bureau-operated school process donated funds?
48.209 How must the Bureau-operated school report donations?

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9; Pub. L. 112-74; Pub. L. 113-235; Pub. L. 114-113.

Subpart A – General Provisions

§ 48.1 What is the purpose of this part?

- (a) The purpose of this part is to set forth processes and procedures to:
- (1) Implement authorization for the Director or his or her designee to lease or rent Bureau-operated school facilities in exchange for consideration in the form of funds;
 - (2) Establish mechanisms and standards for leasing or renting of Bureau-operated facilities, and management and use of the funds received as consideration;
 - (3) Describe allowable fundraising activities by the employees of Bureau-operated schools;
 - (4) Set accountability standards to ensure ethical conduct; and
 - (5) Establish provisions for monitoring the amount and terms of consideration received, the manner in which the consideration is used, and any results achieved by such use.
- (b) Nothing in this part affects:
- (1) 25 CFR 31.2, allowing for use of Federal Indian school facilities for community activities and adult education activities upon approval by the superintendent or officer-in-charge, where no consideration is received in exchange for the use of the facilities;
 - (2) 25 CFR 31.7 and 36.43(g), establishing guidelines for student fundraising; or
 - (3) The implementing regulations for the Federal Employees Quarters Facilities Act, 5 U.S.C. 5911, at 41 CFR part 114-51 and policies at Departmental Manual part 400, chapter 3; or
 - (4) The use of Bureau-operated school facilities or lands by other Federal agencies so long as the use is memorialized in a written agreement between the Bureau and the other Federal agency.

§ 48.2 What is the scope of this part?

The leasing provisions of this part apply only to facilities of schools operated by the Bureau and the fundraising provisions of this part apply only to employees of schools operated by the Bureau. This part does not apply to public schools, Public Law 100-297 Tribally controlled schools, or Public Law 93-638 contract or grant schools.

§ 48.3 What definitions apply to terms in this part?

Assistant Secretary means the Assistant Secretary – Indian Affairs or his or her designee.

Bureau means the Bureau of Indian Education.

Bureau-operated school means a day or boarding school, a dormitory for students attending a school other than a Bureau school, or an institution of higher learning and associated facilities operated by the Bureau. This term does not include public schools, Public Law 100-297 Tribally controlled schools, or Public Law 93-638 contract or grant schools.

Construction means construction of new facilities, modification, or alteration of existing grounds or building structures.

Days means calendar days unless otherwise specified.

Director means the Director, Bureau of Indian Education.

Director's designee or *designee* means the Associate Deputy Director – Navajo Schools or Associate Deputy Director – Bureau-Operated Schools.

Department means the Department of the Interior.

Donation means something of value (e.g., funds, land, personal property) received from a non-Federal source without consideration or an exchange of value.

Employee means an employee of the Bureau working at a Bureau-operated school.

Facilities means land or facilities authorized for use by a Bureau-operated school.

Funds means money.

Fundraising means requesting donations, selling items, or providing a service, activity, or event to raise funds, except that writing a grant proposal to secure resources to support school purposes is not fundraising. Fundraising does not include requests for donated supplies,

materials, in-kind services, or funds (e.g., fees for school activities) that schools traditionally require or request parents and guardians of students to provide.

Head of the School means the Principal, President, School Supervisor, Residential Life Director, Superintendent of the School, or equivalent head of a Bureau-operated school.

Lease means a written contract or rental agreement executed in accordance with this part, granting the possession and use of facilities at a Bureau-operated school to a private or public person or entity in return for funds.

Private person or entity means an individual who is not acting on behalf of a public person or entity and includes, but is not limited to, private companies, nonprofit organizations and any other entity not included in the definition of public person or entity.

Public person or entity means a State, local, Federal, or Tribal governmental agency or unit thereof.

School purposes means lawful activities and purchases for the benefit of students and school operations including, but not limited to: academic, residential, and extra-curricular programs during or outside of the normal school day and year; books, supplies or equipment for school use; building construction, maintenance and/or operations; landscape construction, modifications, or maintenance on the school grounds.

§ 48.4 What accounting standards will the Bureau use in monitoring the receipt, holding, and use of funds?

The Bureau will use applicable Federal financial accounting rules in monitoring the receipt, holding, and use of funds.

§ 48.5 How does the Paperwork Reduction Act affect this part?

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076-NEW and OMB Control Number 1090-0009. Response is required to obtain a benefit. A

Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Subpart B –Leasing of Bureau-operated Facilities

§ 48.101 Who may enter into a lease on behalf of a Bureau-operated school?

Only the Director or the Director's designee may enter into leases.

§ 48.102 With whom may the Director enter into a lease?

The Director or designee may lease to public or private persons or entities who meet the requirements of this part that are applicable to leasing activities.

§ 48.103 What facilities may be leased?

Any portion of a Bureau-operated school facility may be leased as long as the lease does not interfere with the normal operations of the Bureau-operated school, student body, or staff, and otherwise meets applicable requirements of this part.

§ 48.104 What standards will the Director use in determining whether to enter into a lease?

(a) The Director or designee will make the final decision regarding approval of a proposed lease. The Director or designee must ensure that the lease provides appropriate consideration that benefits the school and that the Head of the School where facilities are being leased has certified, after consultation with the school board or board of regents, that the lease meets the standards in paragraph (b) of this section.

(b) The lease must:

- (1) Comply with the mission of the school;
- (2) Conform to principles of good order and discipline;
- (3) Not interfere with existing or planned school activities or programs;
- (4) Not interfere with school board staff and/or community access to the school;
- (5) Not allow contact or access to students inconsistent with applicable law;

(6) Not result in any Bureau commitments after the lease expires; and

(7) Not compromise the safety and security of students and staff or damage facilities.

(c) The Director's or designee's decision on a proposed lease is discretionary and is not subject to review or appeal under part 2 of this chapter or otherwise.

§ 48.105 What provisions must a lease contain?

(a) All leases of Bureau-operated school facilities must identify at a minimum:

(1) The facility, or portion thereof, being leased;

(2) The purpose of the lease and authorized uses of the leased facility;

(3) The parties to the lease;

(4) The term of the lease, and any renewal term, if applicable;

(5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements, and meeting due diligence requirements under § 48.106;

(6) Payment requirements and late payment charges, including interest;

(7) That lessee will maintain insurance sufficient to cover negligence or intentional misconduct occurring on the leasehold; and

(8) Any bonding requirements, as required in the discretion of the Director. If a performance bond is required, the lease must state that the lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.

(b) All leases of Bureau-operated facilities must include, at a minimum, the following provisions:

(1) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;

(2) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements;

(3) The Bureau has the right, at any reasonable time during the term of the lease and upon reasonable notice to enter the leased premises for inspection and to ensure compliance; and

(4) The Bureau may, at its discretion, treat as a lease violation any failure by the lessee to cooperate with a request to make appropriate records, reports, or information available for inspection and duplication.

(c) Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions:

(1) The lessee holds the United States harmless from any loss, liability, or damages resulting from the lessee's, its invitees', and licensees' use or occupation of the leased facility; and

(2) The lessee indemnifies the United States against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault with the exception that the lessee is not required to indemnify the United States for liability or cost arising from the United States' negligence or willful misconduct

§ 48.106 May a lessee construct permanent improvements under a lease?

(a) The lessee may construct permanent improvements under a lease of a Bureau-operated facility only if the lease contains the following provisions:

(1) A description of the type and location of any permanent improvements to be constructed by the lessee and a general schedule for construction of the permanent improvements, including dates for commencement and completion of construction;

(2) Specification of who owns the permanent improvements the lessee constructs during the lease term and specifies whether each specific permanent improvement the lessee constructs will:

(i) Remain on the leased premises, upon the expiration, cancellation, or termination of the lease, in a condition satisfactory to the Director, and become the property of the Bureau-operated school;

(ii) Be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as closely as possible to their condition before construction of the permanent improvements; or

(iii) Be disposed of by other specified means.

(3) Due diligence requirements that require the lessee to complete construction of any permanent improvements within the schedule specified in the lease or general schedule of construction, and a process for changing the schedule by mutual consent of the parties.

(i) If construction does not occur, or is not expected to be completed, within the time period specified in the lease, the lessee must provide the Director with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.

(ii) Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease.

(b) The lessee must prepare the required information and analyses, including information to facilitate the Bureau's analysis under applicable environmental and cultural resource requirements.

(c) The Bureau may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the lessee's expense before or after expiration, termination, or cancellation of the lease. The Bureau may collect and hold the performance bond or alternative form of security until removal and restoration are completed.

§ 48.107 What consideration may a Bureau-operated school accept in exchange for a lease?

A Bureau-operated school may accept only funds as consideration for a lease.

§ 48.108 How will the Bureau determine appropriate consideration for a lease?

The Bureau will determine what consideration is appropriate for a lease by considering, at a minimum, the following factors:

- (a) Fair market value and the indirect and direct costs of the lease; and
- (b) Whether there will be a net financial benefit to the school.

§ 48.109 Who may use the funds?

The Bureau-operated school may use funds, including late payment charges, received as compensation for leasing that school's facilities.

§ 48.110 For what purposes may a Bureau-operated school use the funds?

The Bureau-operated school must use the funds for school purposes.

§ 48.111 How does a lessee pay the Bureau-operated school under a lease?

A lessee must pay consideration and any late payment charges due under the lease to the Bureau by certified check, money order, or electronic funds transfer made out to the Bureau and containing identifying information as provided for in the lease.

§ 48.112 How are lease payments processed?

The Bureau will deposit all funds received as lease consideration or late payment charge into the designated Treasury account. Once the Bureau deposits the funds, the Bureau will work with the Bureau-operated school to make the funds available for school purposes.

§ 48.113 Will late payment charges or special fees apply to delinquent lease payments?

(a) Late payment charges will apply as specified in the lease. The failure to pay these amounts will be treated as a lease violation.

(b) The Bureau may assess the following special fees to cover administrative costs incurred by the United States in the collection of the debt, if rent is not paid in the time and manner required, in addition to late payment charges that must be paid under the terms of the lease:

Table 1 to paragraph (b)

The lessee will pay...	For...
(1) \$50.00.....	Any dishonored check.
(2) \$15.00.....	Processing of each notice or demand letter.
(3) 18 percent of balance due.....	Treasury processing following referral for collection of delinquent debt.

§ 48.114 How long will the funds be available?

Funds generated under these regulations remain available to the recipient school until expended, notwithstanding 31 U.S.C. 3302, in accordance with the Bureau-operated school’s plan for expending the funds for school purposes.

§ 48.115 How will the Bureau monitor the results achieved by the use of funds received from leases?

The Head of the School for each Bureau-operated school that has active leases under this part must submit an annual report to the Director, the designee, and the Office of Facilities Management and Construction. The report must contain the following information:

- (a) A list of leases and the facilities covered by each lease;
- (b) An accounting of receipts from each lease;
- (c) An accounting of all expenditures and the supporting documentation showing that expenditures were made for school purposes;
- (d) A report of the benefits provided by the leasing program as a whole;
- (e) A certification that the terms of each lease were met or, if the terms of a lease were not met, the actions taken as a result of the noncompliance; and
- (f) Any unexpected expenses incurred.

§ 48.116 Who may investigate compliance with a lease?

The Head of the School or his or her designee or any Bureau employee may enter the leased facility at any reasonable time, upon reasonable notice, and consistent with any notice requirements under the lease to determine if the lessee is in compliance with the requirements of the lease.

§ 48.117 What will the Bureau do about a violation of a lease?

(a) If the Bureau determines there has been a violation of the conditions of a lease, it will promptly send the lessee and any surety and mortgagee a notice of violation, by certified mail, return receipt requested.

(1) The notice of violation will advise the lessee that, within 10 business days of the receipt of a notice of violation, the lessee must:

- (i) Cure the violation and notify the Bureau in writing that the violation has been cured;
- (ii) Dispute the determination that a violation has occurred; or
- (iii) Request additional time to cure the violation.

(2) The notice of violation may order the lessee to cease operations under the lease.

(b) A lessee's failure to pay compensation in the time and manner required by the lease is a violation of the lease, and the Bureau will issue a notice of violation in accordance with this section requiring the lessee to provide adequate proof of payment.

(c) The lessee and its sureties will continue to be responsible for the obligations in the lease until the lease expires, or is terminated or cancelled.

§ 48.118 What will the Bureau do if a lessee does not cure a lease violation on time?

(a) If the lessee does not cure a violation of a lease within the required time period, or provide adequate proof of payment as required in the notice of violation, the Bureau will take one or more of the following actions:

(1) Cancel the lease;

(2) Invoke other remedies available under the lease or applicable law, including collection on any available performance bond or, for failure to pay compensation, referral of the debt to the Department of the Treasury for collection; or

(3) Grant the lessee additional time in which to cure the violation.

(b) The Bureau may take action to recover unpaid compensation and any associated late payment charges under § 48.113, and does not have to cancel the lease or give any further notice

to the lessee before taking action to recover unpaid compensation. The Bureau may still take action to recover any unpaid compensation if it cancels the lease.

(c) If the Bureau decides to cancel the lease, it will send the lessee and any surety and mortgagee a cancellation letter by certified mail, return receipt requested, within 5 business days of its decision. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) If applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the lease;

(3) Notify the lessee of the lessee's right to appeal to the Director if the decision is made by the Director's designee, or to the Interior Board of Indian Appeals if the decision is made by the Director, including the possibility that the official to whom the appeal is made may require the lessee to post an appeal bond;

(4) Order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and

(5) Order the lessee to take any other action the Bureau deems necessary to protect the facility.

(d) The Bureau may invoke any other remedies available under the lease, including collecting on any available performance bond.

§ 48.119 May a lease be assigned, subleased, or mortgaged?

A lessee may assign, sublease, or mortgage a lease only with the approval of the Director.

Subpart C – Fundraising Activities

§ 48.201 To whom does this subpart apply?

This subpart applies to employees that fundraise for a Bureau-operated school. This subpart does not apply to students who fundraise.

§ 48.202 May employees fundraise?

(a) Employees may fundraise for school purposes as part of their official duties using their official title, position and authority, so long as:

(1) The Director or the Director's designee or the Head of the School approves the fundraising in advance and certifies that it complies with this subpart; and

(2) The employees ensure the fundraising conforms to the requirements of this subpart.

(b) Nothing in this part allows participation in political or other activities prohibited by law.

§ 48.203 How much time may employees spend fundraising?

Each authorized employee may spend no more than a reasonable portion of his or her official duty time as an employee in any calendar year fundraising.

§ 48.204 For what school purposes may employees fundraise?

Employees may fundraise for school purposes as defined in § 48.3.

§ 48.205 What are the limitations on fundraising?

(a) Fundraising may not include any gaming or gambling activity.

(b) Fundraising may not violate, or create an appearance of violating, any applicable ethics statutes or regulations.

(c) Donations from fundraising must maintain the integrity of the Bureau-operated school programs and operations, including but not limited to the following considerations:

(1) The donation may not, and may not appear, to be an attempt to influence the exercise of any regulatory or other authority of the Bureau;

(2) The donation may not require commitment of current or future funding that is not planned or available;

(3) The donation must be consistent with, and may not otherwise circumvent, law, regulation, or policy;

(4) The Bureau-operated school must be able to properly utilize or manage any donated real or personal property within policy, programmatic, and management goals;

(5) Any conditions on the donation must be consistent with authorized school purposes and any relevant policy or planning documents;

(6) The donation may not be used by the donor to state or imply endorsement by the Bureau or Bureau-operated school of the donor or the donor's products or services;

(7) The donation, if it consists of personnel or funding to hire personnel, must be structured such that the donated or funded personnel do not inappropriately influence any Bureau regulatory action or other significant decision.

(d) The fundraising and donation must maintain the impartiality, and appearance of impartiality, of the Bureau, Bureau-operated school, and its employees, including but not limited to the following considerations:

(1) The proposed donation may be only in an amount that would not influence or appear to influence any pending Bureau decision or action involving the donor's interests;

(2) There may be no actual or implied commitment to take an action favorable to the donor in exchange for the donation;

(3) The donor may not obtain or appear to obtain special treatment dealing with the Bureau or Bureau-operated school.

(e) The fundraising and donation must maintain public confidence in the Bureau and Bureau-operated school, its programs, and its personnel, including but not limited to the following considerations:

(1) The fundraising and acceptance of the donation would not likely result in public controversy;

(2) Any conditions on donations must be consistent with the Bureau and Bureau-operated school's policy, goals, and programs; and

(3) The fundraising and donation may not involve any inappropriate goods or services.

(f) Participation in fundraising is voluntary. No student, community member, or organization shall be forced, coerced or otherwise unduly pressured to participate in fundraising.

No criticism nor any retaliatory action may be taken against, any student, community member, or organization for failure to participate or succeed in fundraising.

§ 48.206 What approvals are necessary to accept a donation under this subpart?

Prior to accepting a donation valued at \$5,000 or more under this subpart, the Director's designee must approve the acceptance and certify that it complies with this subpart, including the considerations of § 48.205, Departmental policy, and any applicable statute or regulation.

§ 48.207 How may donations solicited under this subpart be used?

(a) The Bureau-operated school must first use the funds to pay documented costs of the fundraising activity and must use the remaining funds in accordance with paragraph (b) of this section.

(b) Funds and in-kind donations solicited under this subpart may be used for the school purposes identified in the solicitation. If the solicitation did not identify the school purposes, the funds and in-kind donations may be used for any school purposes defined in § 48.3 of this part.

§ 48.208 How does a Bureau-operated school process donated funds?

The Bureau will deposit all funds received as donations into the designated Treasury account. Once the Bureau deposits the funds, the Bureau will work with the Bureau-operated school to make the funds available for school purposes.

§ 48.209 How must the Bureau-operated school report donations?

Each Bureau-operated school that has received donations must submit an annual report to the Director containing the following information:

- (a) A list of donors, donation amounts, and estimated values of donated goods and services;
- (b) An accounting of all costs of fundraising activities;
- (c) Supporting documentation showing the donations were used for school purposes; and
- (d) A report of the results achieved by use of donations.

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