



DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810-AB70

[Docket ID ED-2024-OESE-0008]

**Indian Education Discretionary Grant Programs; Professional
Development Program**

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

ACTION: Final regulations.

SUMMARY: The Department of Education (Department) amends
the regulations that govern the Professional Development
(PD) program, authorized under the Elementary and Secondary
Education Act of 1965, as amended (ESEA), to establish
priorities, requirements, and a definition for the program,
including a priority for educator retention projects.

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

FOR FURTHER INFORMATION CONTACT: Linda Brake, U.S.
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If you are deaf, hard of hearing, or have a speech
disability and wish to access telecommunications relay
services, please dial 7-1-1.

A summary of the rule is available at

<https://www.regulations.gov/document/ED-2024-OESE-0008-0001>.

SUPPLEMENTARY INFORMATION:

Purpose of this Regulatory Action: Under ESEA section 6122(a)(4), one of the purposes of the PD program is to develop and implement initiatives to promote the 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. The Department amends the program regulations to support implementation of this aspect of the program purpose.

Assistance Listing Number (ALN): 84.299B.

Background

Through this regulatory action, we amend part 263 of title 34 of the Code of Federal Regulations. We published a notice of proposed rulemaking (NPRM) for this program on July 29, 2024 (89 FR 60844). In the preamble of the NPRM, we discussed the major changes proposed in that document. In these final regulations, in addition to the changes proposed in the NPRM, we are making the following revisions to ensure consistency throughout the regulations:

- In the NPRM, we proposed updates to the regulations to include part-time participants (89 FR 60844, 60847), but inadvertently did not make the updates in all places where it was necessary. We are making those related changes in

§§ 263.3 (definition of "stipend") and 263.11(a), and we are removing the definition of "full-time student," as it is no longer necessary.

- In § 263.5(a)(2), consistent with the other application requirements in paragraph (a), we are adding "as applicable" to reflect that PD program competitions may focus on a subset of the allowable activities, such as retention.

- We are revising § 263.10(b)(3) to confirm that, consistent with § 263.10(f), the deferred payback option is available for eligible full-time volunteer work "up to a period of 36 months."

Public Comment: In response to our invitation in the NPRM, we did not receive any substantive and/or relevant comments on the proposed regulations. Except for minor technical revisions and the conforming changes summarized above, there are no differences between the proposed regulations and these final regulations.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, OMB must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, 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 \$200 million or more (as of 2022 but adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) of OMB for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments;

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

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

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles stated in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This regulatory action is not a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866, as amended by Executive Order 14094.

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." OIRA 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 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 an analysis of anticipated costs and benefits, we believe that these regulations are consistent with the principles in Executive Order 13563.

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

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

Costs and Benefits

We believe that the potential costs associated with the regulatory changes will be minimal, and the benefits will exceed these costs.

For Professional Development grants, there will be no additional time or cost for applicants developing an application under the new priorities and application requirements. The benefits include allowing the program to better meet its mission of recruiting and retaining qualified Indian individuals to become educators. We do not anticipate grantees needing additional time to report full-time participant payback information in the Professional Development Program Data Collection System (PDPDCS). The costs of carrying out these activities would continue to be paid for with program funds.

The benefits also include enhancing project design and quality of services to better meet the objectives of the program and the needs of potential grantees with more educators remaining in their current positions and increasing their impact on Indian students and communities, as well as more accurately calculating the length of payback for participants in part-time training. We added payback deferral options for participants who serve as full-time volunteers with Indian Tribes, because it will provide them with opportunities to better understand the educational needs of Indian students, while helping to build the capacity of Tribes, and for participants who

experience a temporary disability that affects the participant's ability to complete their payback obligations. These deferral pathways will provide participants more flexibility and help them obtain experience that fulfills their service obligation and provides relief to Tribal communities.

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 Department certifies that these regulations will not have a substantial 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 regulations are LEAs, IHEs, Tribal Colleges and Universities, Tribes, and Tribally operated schools receiving Federal funds under this program. The

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. Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and relate mostly to an increase in the number of applications prepared and submitted annually for competitive grant competitions. Therefore, we do not believe that these regulations present any significant impact on small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

Paperwork Reduction Act

These regulations do not create any new information collection requirements under OMB Control number 1810-0722 and therefore do not change the related information collection.

Intergovernmental Review

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

This document provides early notification of our

specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

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. At this site, you can view this document, as well as all other Department documents 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.

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

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.

Adam Schott,
*Principal Deputy Assistant
Secretary, Delegated the
Authority to Perform the
Functions and Duties of the
Assistant Secretary, Office
of Elementary and Secondary
Education.*

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

PART 263-INDIAN EDUCATION PROFESSIONAL DEVELOPMENT PROGRAM

1. The authority citation continues to read as follows:

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

2. Amend § 263.3 by:

a. Adding in alphabetical order a definition for "educator".

b. Removing the definition of "full-time student".

c. Revising the definition of "stipend".

The addition and revision read as follows:

§ 263.3 What definitions apply to the Professional Development program?

* * * * *

Educator means an individual who is one or more of--

(1) A teacher (including an early education teacher);

(2) A principal or other school leader;

(3) An administrator;

(4) Specialized instructional personnel (e.g., school psychologist, school counselor, school social worker, school nurse, librarian, early intervention service personnel);

(5) A paraprofessional; or

(6) Faculty.

* * * * *

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

* * * * *

3. Revise § 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, if applicable;

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

(3) Assist participants who receive pre-service training in meeting the payback requirements under § 263.9(b), if applicable;

(b) If required by the Secretary through a notice inviting applications published in the *Federal Register*, 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 8358 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.

4. Amend § 263.6 by adding paragraphs (b) (5) and (6) to read as follows:

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

* * * * *

(b) * * *

(5) *Indian educator retention.* The Secretary

establishes a priority for projects that—

(i) Propose an educator retention initiative to help address the shortage of fully certified Indian educators to help ensure that Indian students gain knowledge and understanding of Native communities, languages, histories, traditions, and cultures, and expand their impact on Indian students' education; or

(ii) Support compensated educator leadership models designed to increase the retention of effective, experienced Indian educators who take on additional leadership and peer support responsibilities such that Indian teachers have the opportunity to advance in their careers and earn additional compensation.

(6) *State or local educational agencies or Bureau of Indian Education school lead applicants.* The Secretary establishes a priority for applications that are submitted by one or more of the below types of applicants, in consortium with an institution of higher education, which could include a Tribal college or university:

(i) State educational agency.

(ii) Local educational agency.

(iii) Bureau of Indian Education school.

* * * * *

5. Amend § 263.9 by:

a. Revising paragraph (a) introductory text and paragraph (b) (2).

- b. Adding paragraph (b) (5).
- c. Removing paragraph (c) (4) and redesignating paragraph (c) (5) as paragraph (c) (4).
- d. Revising the newly redesignated paragraph (c) (4) and the note to § 263.9.

The revisions and addition read as follows:

§ 263.9 What are the payback requirements?

(a) *General.* All participants who receive pre-service training must—

* * * * *

(b) * * *

(2) The period of time required for a work-related payback is determined as follows:

(i) If a participant was a full-time student in a pre-service training program, the work-related payback period is equivalent to the total period of time for which pre-service training under the Professional Development program was actually received on a month-for-month basis.

(ii) If a participant was a part-time student in a pre-service training program, the work-related payback period is proportional to the accumulated academic years for which pre-service training under the Professional Development program was actually received on a month-for-month basis, taking into consideration the typical academic calendar of the institution where the training was received.

(iii) If a participant received pre-service training as a full-time student for a portion of the program and as a part-time student for another portion of the program, the period of work-related payback is prorated accordingly.

* * * * *

(5) The work-related payback period for an individual supported under the Professional Development program may extend beyond the end of the performance period of the Professional Development grant.

(c) * * *

(4) Notwithstanding paragraph (c)(1) of this section, participants who exited or completed a grant-funded pre-service training program in Federal fiscal year 2020 (October 1, 2019-September 30, 2020) who did not submit employment verification within 24 months of program exit or completion, and participants with qualifying employment during Federal fiscal year 2020 who did not submit employment verification for a 24-month period, will automatically be referred for a cash payback unless the participant qualifies for a deferral as described in § 263.10.

Note to § 263.9: For grants that provide pre-service administrator training, a participant who has received administrator training and subsequently works for a Tribal education 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.

6. Revise § 263.10 to read as follows:

§ 263.10 What are the exceptions to payback requirements and requirements for payback deferral?

(a) *Exceptions to payback.* Based upon sufficient evidence to substantiate the grounds, the Secretary may grant, in whole or in part, an exception to the repayment requirement in § 263.9 as follows:

(1) Repayment is not required if the participant--

(i) Is unable to continue the course of study or perform the service obligation because of a permanent disability that--

(A) Had not been diagnosed at the time the participant executed the initial agreement; or

(B) Did not originally prevent the participant from performing the requirements of the course of study or the service obligation at the time the participant signed the agreement but subsequently worsened; or

(ii) Has died.

(2) To request an exception to payback under paragraph (a) (1) of this section for oneself or on behalf of another individual, a requestor must submit an explanation of the reason for the exception along with substantiating evidence to the Secretary through the program officer.

(b) *Deferral of payback.* Subject to meeting the requirements of this section, the Secretary may defer payback requirements during the time the participant is--

(1) Continuing education after completing or exiting the Professional Development program, in a full- or part-time course of study without interruption, in a program leading to a degree at an accredited institution of higher education;

(2) Serving on active duty as a member of the Armed Forces of the United States;

(3) Serving as a full-time volunteer for an Indian Tribe, for a period not to exceed 36 months;

(4) Experiencing a temporary disability that affects the participant's ability to continue the course of study or perform the work obligation, for a period not to exceed thirty-six months.

(c) *Secretarial exceptions.* Under limited circumstances as determined by the Secretary and based upon evidence submitted by the participant, the Secretary may grant an exception to, or deferral of, the payback requirement under circumstances not specified in this section. These circumstances may include, but are not limited to, the need to care for a disabled spouse, partner, or child, or to accompany a spouse or partner on active duty in the Armed Forces or Bureau of Indian Affairs law enforcement.

(d) *Requesting payback deferral for continuing education.* (1) To receive a payback deferral under paragraph (b)(1) of this section, a participant must submit a request to the Secretary through the program officer that includes—

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

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

(iii) The degree being sought; and

(iv) The projected date of completion.

(2) If the Secretary approves the deferral of the payback requirement under paragraph (b)(1) of this section, the participant must submit to the Secretary through the program officer a status report from an academic advisor or other authorized representative of the institution of higher education, showing verification of enrollment and status, after every grading period.

(e) *Requesting payback deferral for active duty in the Armed Forces.* If a participant exits the Professional Development program because the participant is called or ordered to active duty status in connection with a war, military operation, or national emergency for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101, or as a member of the National Guard on full-time National Guard duty, as defined in 10

U.S.C. 101(d)(5), the Secretary may defer the payback requirement until the participant has completed the military service. Requests for deferral must be submitted to the Secretary through the program officer within 30 days of the earlier of receiving the call to military service or completing or exiting the Professional Development program, and must include—

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

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

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

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

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

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

(f) *Requesting payback deferral for volunteer work.*

(1) To receive a payback deferral related to qualifying volunteer work under paragraph (b)(3) of this section, the participant must submit a request to the Secretary through the program officer that includes—

(i) The name of the Indian Tribe at which the participant will be volunteering;

(ii) A copy of the letter appointing the participant as a full-time volunteer at the Indian Tribe;

(iii) A statement of volunteer work to be performed; and

(iv) The projected date of completion.

(2) If the Secretary approves payback deferral under this paragraph (f), the participant must submit to the Secretary through the program officer a status report from an authorized representative from the entity with which the participant is volunteering, showing verification of continued engagement every 12 months. The Secretary may defer the payback requirement until the participant has completed his or her qualifying volunteer work, for a period not to exceed 36 months.

(g) *Requesting payback deferral for temporary disability.* To receive a payback deferral under paragraph (b) (4) of this section, the participant must submit a request to the Secretary through the program officer that includes--

(1) An explanation of the reason for the deferral;

(2) An indication of the length of time for which they are requesting deferral; and

(3) Substantiating evidence.

§ 263.11 [Amended]

7. Amend § 263.11 in paragraph (a) by removing the phrase "as a full-time student".

8. Revise § 263.12 to read as follows:

§ 263.12 What are the post-award requirements for grantees providing pre-service training?

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

(b) *Requirement for payback agreement.* (1) Prior to providing funds or services to a participant, and for each subsequent year that training funds are disbursed, the grantee must enter into a written agreement with each participant in which the participant agrees to the terms and conditions required by this section.

(2) The payback agreement must explain the Secretary's authority to grant deferrals and exceptions to the service obligation pursuant to § 263.10 and include--

(i) The current Department address for purposes of the participant's compliance with § 263.11, or any other purpose under this part, and other Office of Indian Education contact information;

(ii) The estimated length of training;

(iii) The total training costs;

(iv) The total amount of assistance accrued year-to-date;

(v) The total number of months in the service

obligation year-to-date;

(vi) 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

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

(3) The grantee must submit a signed payback agreement to the Department within 30 days of the date on which the payback agreement is fully executed by the grantee and participant. The grantee must provide a copy of the payback agreement to the participant upon execution.

(c) *Exit certification.* At the time of exit from the program, the grantee must provide the below information to the participant. Upon receipt of this information from the grantee, the participant must provide written certification to the grantee that this information is correct:

(1) The name of the institution where the participant received pre-service training and the award number of the Federal grant that provided the scholarship.

(2) The number of months the participant needs to work in an LEA that serves a high proportion of Indian students to satisfy the payback requirements in § 263.9.

(3) The total amount of financial assistance received.

(4) The participant's field of study and the

obligation of the participant to perform the service obligation with employment that meets the requirements in § 263.9(b).

(d) *Career preparation.* During the grant period, a grantee must conduct activities to assist participants in identifying qualified employment opportunities following completion of the program.

(e) *Information and annual reporting.* The grantee must report to the Secretary all participant training and payback information in a manner specified by the Secretary as well as any other information that is necessary to carry out the Secretary's functions under section 6122 of the ESEA and this part. Each grantee will make annual reports to the Secretary, unless more frequent reporting is required by the Secretary, that are necessary to carry out the Secretary's functions under this part.

(f) *Standards for satisfactory progress.* The grantee must establish, publish, notify participants of, and apply reasonable standards for measuring whether a participant is making satisfactory progress in the training program. The Secretary considers an institution's standards to be reasonable if the standards--

(1) Are the same as the institution's standards for a student enrolled in the same academic program who is not receiving assistance under this program; and

(2) Include the following elements:

(i) Grades, work projects completed, including performance tasks, or comparable factors that are measurable against a norm and are aligned with demonstrating effective practice.

(ii) A maximum timeframe in which the participant must complete the participant's educational objective, degree, or certificate.

(iii) Consistent application of standards to all participants within categories of students, (e.g., full-time, part-time, undergraduate students, and graduate students).

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(v) Specific procedures for appeal of a determination that a participant is not making satisfactory progress and for reinstatement of aid.

(g) *Requirement for Indian preference.* (1) Under section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638), to the greatest extent feasible, a grantee must—

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

(ii) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian

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

(2) For the purposes of this paragraph (g), an Indian is a member of any federally recognized Indian Tribe.

[FR Doc. 2025-01317 Filed: 1/15/2025 4:15 pm; Publication Date: 1/17/2025]