



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

JUN 19 2014

Dear Tribal Leader:

The Bureau of Indian Education (BIE) has prepared a draft rule to address leasing and fundraising at BIE operated schools. This rule currently affects only federally operated schools, lessees, and school employees. It does not affect tribally operated schools, grant schools, or any schools not operated by BIE.

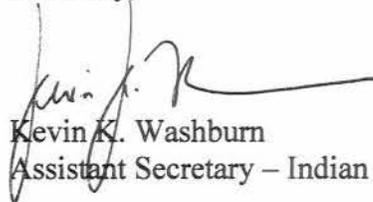
The rule implements a mandate from Congress to establish standards for leasing and fundraising at BIE-operated schools (See Pub. L. 112-74, the Consolidated Appropriations Act, 2012). The leasing standards apply to leasing of BIE-operated school land and/or facilities in exchange for funds to be used for school purposes. The fundraising standards apply to BIE-operated school employees who fundraise for a BIE-operated school.

A copy of the draft rule is enclosed for your review. In addition, the full text is available at <http://www.bia.gov/WhoWeAre/AS-IA/Consultation>. To be clear, this rule affects only the 57 schools and 2 post-secondary schools that BIE operates. Nevertheless, you may be interested in this rule simply because tribal members and their children may attend those schools.

You may submit comments on the substance of the rule through July 31, 2014, to Ms. Jacquelyn Cheek, Bureau of Indian Education, 1849 C Street, NW, MS 4656-MIB, Washington, DC 20240. You may also submit comments via email at [IELeasing@BIA.gov](mailto:IELeasing@BIA.gov).

Should you have questions regarding this draft rule, please contact Ms. Cheek by telephone at (202) 208-6983.

Sincerely,



Kevin K. Washburn  
Assistant Secretary – Indian Affairs

Enclosure

**BUREAU OF INDIAN EDUCATION - DRAFT REGULATION**  
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**PART 48 – LEASES COVERING BUREAU-OPERATED SCHOOLS AND  
FUNDRAISING ACTIVITIES AT BUREAU-OPERATED SCHOOLS**

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**Subpart A – General Provisions**

**§ 48.001      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 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 schools, and 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) This part supplements provisions for leasing and permitting of Government land at 25 CFR part 162 where the Bureau-operated school is located on land owned by the United States.

(c) 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 use of the facilities;

(2) 25 U.S.C. 2010(g) regarding the product or result of student projects; or

(3) The Federal Employees Quarters Facilities Act, 5 U.S.C. 5911, or implementing regulations and policies at 41 CFR 114-51 and Departmental Manual part 400, chapter 3.

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**§ 48.002      What is the scope of this part?**

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

**§ 48.003      What terms do I need to know?**

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

Bureau means Bureau of Indian Education.

Bureau official means the official in charge of administrative functions for the Bureau under this part.

Bureau-operated school means a day or boarding school, or a dormitory for students attending a school other than a Bureau school, 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.

Designee means a supervisory contracting specialist the Director designates to act on his or her behalf.

Director means the Director, Bureau of Indian Education.

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.

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Employee means an employee of the Bureau of Indian Education working with or 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, Dorm Manager, Superintendent of the School, or equivalent head of a Bureau-operated school where facilities are being leased under this Part.

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

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school use; building construction, maintenance and/or operations; landscape construction, modifications, or maintenance on the school grounds.

**Subpart B –Leasing Bureau-operated Schools**

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

Only the Director or a 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 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.

**§ 48.105 Who may use the funds?**

The Bureau-operated school may use funds received as compensation for leasing that school's facilities. The funds must first be sent to the Bureau official as provided for in the subject lease for processing in accordance with § 48.204 of this part.

**§ 48.106 What may the funds be used for?**

The Bureau-operated school must first use the funds to pay for indirect and direct costs of the lease. The Bureau-operated school must use the remaining funds for any school purposes.

**§ 48.107 How long will the funds be available?**

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Funds generated under these regulations remain available to the recipient school until expended, notwithstanding 31 U.S.C. 3302.

**Subpart C – Standards for Leases and Ethical Conduct**

**§ 48.201 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 a net financial benefit to the school and that the Head of the School has certified, after consultation with the school board or board of regents, that the lease meets the standards in paragraph (b) and the leasing guidelines and procedures established under paragraph (c).

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

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

(c) The Assistant Secretary will establish leasing guidelines and procedures appropriate for the various types of leases that may be issued at Bureau-operated schools and make them available to the public. The guidelines and procedures must ensure that leases do not compromise the safety and security of students and staff or damage facilities.

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**§ 48.202 What is considered unethical conduct in the context of this part?**

Violation or the appearance of violation of any applicable ethics statute or regulation by an employee may be considered unethical conduct.

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

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

**§48.204 How are lease payments processed?**

The Bureau official must deposit funds received as lease consideration into the Treasury account set up to receive the proceeds from the Bureau-operated school's lease.

**§ 48.205 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.

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

The Head of School for each Bureau-operated school that has active leases under this part must submit a quarterly 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;

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- (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.

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

The Bureau will determine what consideration is appropriate for a lease in accordance with the guidelines and procedures developed by the Assistant Secretary. Such determination will consider, at a minimum, the following factors:

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

**§ 48.208 What format and provisions must a lease include?**

The Bureau will make a model lease available to the public with a recommended outline of provisions. All leases must:

- (a) Include certain mandatory provisions, including but not limited to provisions that indemnify the Department and United States from liability for negligence or intentional misconduct on the part of the third-party leasing school facilities and its invitees or licensees, unless the lessee is prohibited by law from doing so; and
- (b) Maintain insurance sufficient to cover negligence or intentional misconduct occurring on the leasehold.

**Subpart D – Fundraising Activities**

**§ 48.301 What is the scope of this subpart?**

This subpart applies to employees under the direction and supervision of the Director that fundraise for a Bureau-operated school. This subpart does not apply to students who fundraise.

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**§ 48.302 May employees fundraise?**

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

(1) The Bureau official 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.

**§ 48.303 How much time may employees spend fundraising?**

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

(b) There is no limit to the time employees may spend fundraising in a personal capacity when not on duty, as long as other requirements of this subpart are met.

**§ 48.304 For what school purposes may employees fundraise?**

Employees may fundraise for school purposes as defined in § 48.003.

**§ 48.305 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 ethical statutes or regulations.

(c) Fundraising and donations 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;

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(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.

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(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;

(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 reprimand, condemnation, nor criticism shall be made of, nor any retaliatory action taken against, any student, community member, or organization for failure to participate or succeed in fundraising.

**§ 48.306 From whom may employees seek donations?**

Employees may request donations from certain categories of prospective donors, depending upon the activity, as specified in guidelines and procedures of the Assistant Secretary.

**§ 48.307 What approvals are necessary to accept a donation?**

(a) Prior to accepting a donation, the Bureau official must approve the acceptance and certify that it complies with this subpart, including the considerations of § 48.305, Departmental policy, and any applicable statute or regulation.

(b) Prior to accepting a donation that consists of volunteer services, the Bureau official must approve the acceptance and certify that it complies with this subpart, including the

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considerations of § 48.305, 25 CFR § 38.14, Departmental policy, and any applicable statute or regulation.

**§ 48.308 How may donations solicited under this subpart be used?**

(a) The Bureau official must deposit all income from the fundraising into the Treasury account set up to receive the proceeds from the fundraising activities authorized under this part. 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).

(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 § 48.003 of this part.

(c) Each Bureau-operated school that has received donations must submit a quarterly report to the Director containing the following information:

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