

## SUBCHAPTER D—HUMAN SERVICES

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### Subpart A—Definitions, Purpose and Policy

#### § 20.100 What definitions clarify the meaning of the provisions of this part?

*Adult* means an Indian person age 18 or older.

*Adult care assistance* means financial assistance provided on behalf of an Indian adult who is not eligible for any other state, federal, or tribal assistance as documented in the case file and who requires non-medical personal care and supervision due to advanced age, infirmity, physical condition or mental impairment.

*Appeal* means a written request for correction of an action or decision of a specific program decision by a Bureau

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official (§20.700) or a tribal official (§20.705).

*Applicant* means an Indian individual by or on whose behalf an application for financial assistance and/or social services has been made under this part.

*Application* means the written or oral process through which a request is made for financial assistance or social services.

*Assistant Secretary* means the Assistant Secretary—Indian Affairs.

*Authorized representative* means a parent or other caretaker relative, conservator, legal guardian, foster parent, attorney, paralegal acting under the supervision of an attorney, friend or other spokesperson duly authorized and acting on behalf or representing the applicant or recipient.

*Bureau* means the Bureau of Indian Affairs of the United States Department of the Interior.

*Bureau Standard of Assistance* means payment standards established by the Assistant Secretary for burial, disaster, emergency, TWEP and adoption and guardian subsidy. In accordance with Public Law 104-193, the Bureau standard of assistance for general assistance is the state rate for TANF in the state where the applicant resides. Where the Bureau provides general assistance on a reservation that extends into another state, the Bureau will provide general assistance to eligible Indians based on the standard of assistance where the applicant resides if the applicant is not eligible for state general assistance or TANF. The Bureau standard of assistance for adult care assistance is the state rate for adult care assistance in the state where the applicant resides. The Bureau standard of assistance for foster care is the state rate for foster care in the state where the applicant resides as provided by Title IV of the Social Security Act (49 Stat. 620).

*Burial assistance* means a financial assistance payment made on behalf of an indigent Indian who meets the eligibility criteria to provide minimum burial expenses according to Bureau payment standards established by the Assistant Secretary.

*Case* means a single type of assistance and/or service provided to an individual or household in response to an

identified need which requires intervention by social services.

*Case management* means the activity of a social services worker in assessing client and family problem(s), case planning, coordinating and linking services for clients, monitoring service provisions and client progress, advocacy, tracking and evaluating services provided, such as evaluation of child's treatment being concurrent with parent's treatment, and provision of aftercare service. Activities may also include resource development and providing other direct services such as accountability of funds, data collection, reporting requirements, and documenting activities in the case file.

*Case plan* means a written plan with time limited goals which is developed and signed by the service recipient and social services worker. The case plan will include documentation of referral and disapproval of eligibility for other services. The plan must incorporate the steps needed to assist individuals and families to resolve social, economic, psychological, interpersonal, and/or other problems, to achieve self-sufficiency and independence. All plans for children in foster care or residential care must include a permanency plan which contains a time specific goal of the return of the child to the natural parents or initiation of a guardianship/adoption.

*Child* means an Indian person under the age of 18 except that no person who has been emancipated by marriage will be deemed a child.

*Child assistance* means financial assistance provided on behalf of an Indian child, who has special needs as specified in §20.100. In addition, assistance includes services to a child who requires placement in a foster home or a residential care facility in accordance with standards of payment levels established by the state or county in which the child resides. Further, assistance includes services to a child in need of adoption or guardianship in accordance with payment levels established by the Assistant Secretary.

*Designated representative* means an official of the Bureau who is designated by a Superintendent to hold a hearing as prescribed in §§20.700 through 20.705 and who has had no prior involvement

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in the proposed decision under § 20.603 and whose hearing decision under §§ 20.700 through 20.705 will have the same force and effect as if rendered by the Superintendent.

*Disaster* means a situation where a tribal community is adversely affected by a natural disaster or other forces which pose a threat to life, safety, or health as specified in §§ 20.327 and 20.328.

*Emergency* means a situation where an individual or family's home and personal possessions are either destroyed or damaged through forces beyond their control as specified in § 20.329.

*Employable* means an eligible Indian person who is physically and mentally able to obtain employment, and who is not exempt from seeking employment in accordance with the criteria specified in § 20.315.

*Essential needs* means shelter, food, clothing and utilities, as included in the standard of assistance in the state where the eligible applicant lives.

*Extended family* means persons related by blood, marriage or as defined by tribal law or custom.

*Family assessment* means a social services assessment of a family's history and present abilities and resources to provide the necessary care, guidance and supervision for individuals within the family's current living situation who may need social service assistance and/or services.

*Financial Assistance* means any of the following forms of assistance not provided by other federal, state, local or tribal sources:

- (1) Adult Care Assistance for adults who require non-medical personal care and supervision;
- (2) Burial Assistance for indigent burials;
- (3) Child Assistance for any child with special needs, in need of placement in a foster home or residential care facility, or in need of adoption or guardianship;
- (4) Disaster Assistance;
- (5) Emergency Assistance for essential needs to prevent hardship caused by burnout, flooding of homes, or other life threatening situations that may cause loss or damage of personal possessions;

(6) General Assistance for basic essential needs; or

(7) Tribal Work Experience Program for participants in work experience and training.

*Foster care services* means those social services provided to an eligible Indian child that is removed from his or her home due to neglect, abandonment, abuse or other maltreatment and placed in a foster home. Services must also be extended to the affected family members and foster parent(s) with a goal of reuniting and preserving the family.

*General Assistance* means financial assistance payments to an eligible Indian for essential needs provided under §§ 20.300 through 20.319.

*Guardianship* means long-term, social services and court approved placement of a child.

*Head of household* means a person in the household that has primary responsibility and/or obligation for the financial support of others in the household. In the case of a two parent household, one will be considered the head of household for the purpose of making an application for benefits.

*Homemaker services* means non-medical services provided by social services, in the absence of other resources, to assist an eligible Indian in maintaining self-sufficiency, and preventing placement into foster care or residential care. Examples of services included in homemaker services are: cleaning an individual's home, preparing meals for an individual, and maintaining or performing basic household functions.

*Household* means persons living together who may or may not be related to the "head of household."

*Indian* means:

- (1) Any person who is a member of an Indian tribe; or
- (2) In the Alaska service area only, any person who meets the definition of "Native" as defined under 43 U.S.C. 1602(b): "A citizen of the United States and one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are

not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary regarding eligibility for enrollment shall be final.”

*Indian court* means Indian tribal court or Court of Indian Offenses.

*Indian tribe* means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community which is recognized as eligible for the special programs and services provided by the United States because of their status as Indians.

*Individual Self-sufficiency Plan (ISP)* means a plan designed to meet the goal of employment through specific action steps and is incorporated within the case plan for the general assistance recipient. The plan is jointly developed and signed by the recipient and social services worker.

*Near Reservation* means those areas or communities designated by the Assistant Secretary that are adjacent or contiguous to reservations where financial assistance and social service programs are provided.

*Need* means the deficit after consideration of income and other resources necessary to meet the cost of essential need items and special need items as defined by the Bureau standard of assistance for the state in which the applicant or recipient resides.

*Permanency plan* means the documentation in a case plan which provides for permanent living alternatives for the child in foster care, a residential care facility, or in need of adoption or guardianship. Permanency plans are developed and implemented in accordance with tribal, cultural, and tribal/state legal standards when the parent or guardian is unable to resolve the issues that require out-of-home placement of the child.

*Protective services* means those services necessary to protect an Indian who is the victim of an alleged and/or substantiated incident of abuse, neglect or exploitation or who is under the supervision of the Bureau in regard to the

use and disbursement of funds in his or her Individual Indian Money (IIM) account.

*Public assistance* means those programs of financial assistance provided by state, tribal, county, local and federal organizations including programs under Title IV of the Social Security Act (49 Stat. 620), as amended, and Public Law 104-193.

*Recipient* is an eligible Indian receiving financial assistance or social services under this part.

*Recurring income* means any cash or in-kind payment, earned or unearned, received on a monthly, quarterly, semi-annual, or annual basis.

*Regional Director* means the Bureau official in charge of a Regional Office.

*Reservation* means any federally recognized Indian tribe's reservation, pueblo, or colony, including Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688).

*Residential care services* means those rehabilitation services provided to an eligible Indian child that is removed from his or her home due to lack of resources in the home to care for him or her and placed in a residential care facility.

*Resources* means income, both earned and unearned, and other liquid assets available to an Indian person or household to meet current living costs, unless otherwise specifically excluded by federal statute. Liquid assets are those properties in the form of cash or other financial instruments which can be converted to cash, such as savings or checking accounts, promissory notes, mortgages and similar properties, and retirements and annuities.

*Secretary* means the Secretary of the Interior.

*Service area* means a geographic area designated by the Assistant Secretary where financial assistance and social services programs are provided. Such a geographic area designation can include a reservation, near reservation, or other geographic location. “The Assistant Secretary has designated the entire State of Alaska as a service area.”

*Services to children, elderly and families* means social services, including protective services provided through the

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social work skills of casework, group work or community development to assist in solving social problems involving children, elderly and families. These services do not include money payments.

*Special needs* means a financial assistance payment made to or on behalf of children under social services supervision for circumstances that warrant financial assistance that is not included in the foster care rates; for example, respite care, homemaker service, day care service, and may include basic needs (special diets) which are not considered as a medical need where other resources are not available.

*Superintendent* means the Bureau official in charge of an agency office.

*Supplemental Security Income (SSI)* means cash assistance provided under Title XVI of the Social Security Act (49 Stat. 620), as amended.

*Temporary Assistance for Needy Families (TANF)* means one of the programs of financial assistance provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

*Tribal governing body* means the federally recognized governing body of an Indian tribe.

*Tribal redesign plan* means a tribally designed method for changing general assistance eligibility and/or payment levels in accordance with 25 U.S.C.A. §13d-3.

*Tribal Work Experience Program (TWEP)* means a program operated by tribal contract/grant or self-governance annual funding agreement, which provides eligible participants with work experience and training that promotes and preserves work habits and develops work skills aimed toward self-sufficiency. The Bureau payment standard is established by the Assistant Secretary.

*Unemployable* means a person who meets the criteria specified in §20.315.

[65 FR 63159, Oct. 20, 2000; 65 FR 76563, Dec. 7, 2000, as amended at 66 FR 15030, Mar. 15, 2001]

### §20.101 What is the purpose of this part?

The regulations in this part govern the provision to eligible Indians of the following kinds of financial assistance and social services:

- (a) Adult Care Assistance;
- (b) Burial Assistance;
- (c) Child Assistance;
- (d) Disaster Assistance;
- (e) Emergency Assistance;
- (f) General Assistance;
- (g) Services to Children, Elderly and Families; and
- (h) Tribal Work Experience Program.

### §20.102 What is the Bureau's policy in providing financial assistance and social services under this part?

(a) Bureau social services programs are a secondary, or residual resource, and must not be used to supplement or supplant other programs.

(b) The Bureau can provide assistance under this part to eligible Indians when comparable financial assistance or social services are either not available or not provided by state, tribal, county, local or other federal agencies.

(c) Bureau financial assistance and social services are subject to annual Congressional appropriations.

### §20.103 Have the information collection requirements in this part been approved by the Office of Management and Budget?

The information collection requirements contained in §§20.300, 20.400, and 20.500 were submitted for clearance to the Office of Management and Budget under 44 U.S.C. 35d *et seq.* This information collection was approved by OMB with OMB Control #1076-0017. The expiration date is on the form. The information is collected to determine applicant eligibility for services. The information will be used to determine applicant eligibility and to insure uniformity of services. Response is required to obtain a benefit. The public reporting burdens for this form are estimated to average 15 minutes per response including time for reviewing the instructions, gathering and maintaining data, and completing and reviewing the form.

## Subpart B—Welfare Reform

### §20.200 What contact will the Bureau maintain with State, tribal, county, local, and other Federal agency programs?

We will coordinate all financial assistance and social services programs

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with state, tribal, county, local and other federal agency programs to ensure that the financial assistance and social services program avoids duplication of assistance.

### **§ 20.201 How does the Bureau designate a service area and what information is required?**

The Assistant Secretary can designate or modify service areas for a tribe. If you are a tribe requesting a service area designation, you must submit each of the following:

(a) A tribal resolution that certifies that:

(1) All eligible Indians residing within the service area will be served; and  
(2) The proposed service area will not include counties or parts thereof that have reasonably available comparable services.

(b) Additional documentation showing that:

(1) The area is administratively feasible (that is, an adequate level of services can be provided to the eligible Indians residing in the area.);

(2) No duplication of services exists; and

(3) A plan describing how services will be provided to all eligible Indians can be implemented.

(c) Documentation should be sent to the Regional Director or Office of Self-Governance.

The Director or office will evaluate the information and make recommendations to the Assistant Secretary. The Assistant Secretary can make a determination to approve or disapprove and publish notice of the designation of service area and the Indians to be served in the FEDERAL REGISTER. Tribes currently providing services are not required to request designation for service areas unless they make a decision to modify their existing service areas.

### **§ 20.202 What is a tribal redesign plan?**

If you are a tribe administering a general assistance program, you can develop and submit to us a tribal redesign plan to change the way that you administer the program.

(a) A tribal redesign plan allows a tribe to:

(1) Change eligibility for general assistance in the service area; or

(2) Change the amount of general assistance payments for individuals within the service area.

(b) If you develop a tribal redesign plan it must:

(1) Treat all persons in the same situation equally; and

(2) Will not result in additional expenses for the Bureau solely because of any increased level of payments.

### **§ 20.203 Can a tribe incorporate assistance from other sources into a tribal redesign plan?**

Yes, when a tribe redesigns its general assistance program, it may include assistance from other sources (such as Public Law 102–477 federal funding sources) in the plan.

### **§ 20.204 Must all tribes submit a tribal redesign plan?**

No, you must submit a tribal redesign plan under § 20.206 only if you want to change the way that the General Assistance program operates in your service area.

### **§ 20.205 Can tribes change eligibility criteria or levels of payments for General Assistance?**

Yes, if you have a redesign plan, you can change eligibility criteria or levels of payment for general assistance.

(a) The funding level for your redesigned general assistance program will be the same funding received in the most recent fiscal or calendar year, whichever applies.

(b) If you do not have a prior year level of funding, the Bureau or Office of Self-Governance will establish a tentative funding level based upon best estimates for caseload and expenditures.

(c) A Bureau servicing office can administer a tribal redesign plan as requested by a tribal resolution.

### **§ 20.206 Must a tribe get approval for a tribal redesign plan?**

If you have a Public Law 93–638 contract or receive direct services from us, you must obtain our approval before implementing a redesign plan. You can apply for approval to the Regional Director through the Bureau servicing office.

(a) You must submit your redesign plan for approval at least 3 months before the effective date.

(b) If you operate with a self-governance annual funding agreement, you must obtain the approval of the redesign from the Office of Self-Governance.

(c) If you operate with a Public Law 102-477 grant, you must obtain approval from the Bureau Central Office.

[65 FR 63159, Oct. 20, 2000; 65 FR 76563, Dec. 7, 2000]

**§ 20.207 Can a tribe use savings from a tribal redesign plan to meet other priorities of the tribe?**

Yes, you may use savings from a redesign of the general assistance program to meet other priorities.

**§ 20.208 What if the tribal redesign plan leads to increased costs?**

The tribe must meet any increase in cost to the General Assistance program that results solely from tribally increased payment levels due to a redesign plan.

**§ 20.209 Can a tribe operating under a tribal redesign plan go back to operating under this part?**

Yes, a tribe operating under a tribal redesign plan can choose to return to operation of the program as provided in §§ 20.300 through 20.323.

**§ 20.210 Can eligibility criteria or payments for Burial Assistance, Child Assistance, and Disaster Assistance and Emergency Assistance change?**

No, unless otherwise provided by law, the Bureau nor a tribe may change eligibility criteria or levels of payment for Burial Assistance, Child Assistance, Disaster Assistance, and Emergency Assistance awarded in Public Law 93-638 contracts, Public Law 102-477 grants, or Public Law 103-413 self-governance annual funding agreements.

**Subpart C—Direct Assistance**

ELIGIBILITY FOR DIRECT ASSISTANCE

**§ 20.300 Who qualifies for Direct Assistance under this subpart?**

To be eligible for assistance or services under this part, an applicant must meet all of the following criteria:

(a) Meet the definition of Indian as defined in this part;

(b) Not have sufficient resources to meet the essential need items defined by the Bureau standard of assistance for those Bureau programs providing financial payment;

(c) Reside in the service area as defined in § 20.100; and

(d) Meet the additional eligibility criteria for each of the specific programs of financial assistance or social services in §§ 20.301 through 20.516.

[65 FR 63159, Oct. 20, 2000, as amended at 66 FR 15030, Mar. 15, 2001]

**§ 20.301 What is the goal of General Assistance?**

The goal of the General Assistance program is to increase self-sufficiency. Each General Assistance recipient must work with the social services worker to develop and sign an Individual Self-Sufficiency Plan (ISP). The plan must outline the specific steps the individual will take to increase independence by meeting the goal of employment.

**§ 20.302 Are Indian applicants required to seek assistance through Temporary Assistance for Needy Families?**

Yes, all Indian applicants with dependent children are required to apply for Temporary Assistance for Needy Families (TANF) and follow TANF regulations.

**§ 20.303 When is an applicant eligible for General Assistance?**

To be eligible for General Assistance an applicant must:

(a) Meet the criteria contained in § 20.300;

(b) Apply concurrently for financial assistance from other state, tribal, county, local, or other federal agency programs for which he/she is eligible;

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(c) Not receive any comparable public assistance; and

(d) Develop and sign an employment strategy in the ISP with the assistance of the social services worker to meet the goal of employment through specific action steps including job readiness and job search activities.

### § 20.304 When will the Bureau review eligibility for General Assistance?

The Bureau will review eligibility for General Assistance:

(a) Every 3 months for individuals who are not exempt from seeking or accepting employment in accordance with § 20.315 or the ISP;

(b) Every 6 months for all recipients; and

(c) Whenever there is a change in status that can affect a recipient's eligibility or amount of assistance. Recipients must immediately inform the social services office of any such changes.

### § 20.305 What is redetermination?

Redetermination is an evaluation by a social services worker to assess the need for continued financial assistance as outlined in § 20.304. It includes:

(a) A home visit;

(b) An estimate of income, living circumstances, household composition for the month(s) for which financial assistance is to be provided; and

(c) Appropriate revisions to the case plan and the ISP.

### § 20.306 What is the payment standard for General Assistance?

(a) Under Public Law 104-193, the Bureau must use the same TANF payment standard (and any associated rateable reduction) that exists in the state or service area where the applicant or recipient resides. This payment standard is the amount from which the Bureau subtracts net income and resources to determine General Assistance eligibility and payment levels;

(b) If the state does not have a standard for an adult, we will use either the difference between the standard for a child and the standard for a household of two, or one-half of the standard for a household of two, whichever is greater; and

(c) If the state does not have a TANF program, we will use the AFDC pay-

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ment standard which was in effect on September 30, 1995, in the State where the applicant or recipient resides.

### DETERMINING NEED AND INCOME

### § 20.307 What resources does the Bureau consider when determining need?

When the Bureau determines General Assistance eligibility and payment levels, we consider income and other resources as specified in §§ 20.308 and 20.309.

(a) All income, earned or unearned, must be calculated in the month it is received and as a resource thereafter, except that certain income obtained from the sale of real or personal property may be exempt as provided in § 20.309.

(b) Resources are considered to be available when they are converted to cash.

### § 20.308 What does earned income include?

Earned income is cash or any in-kind payment earned in the form of wages, salary, commissions, or profit, from activities by an employee or self-employed individual. Earned income includes:

(a) Any one-time payment to an individual for activities which were sustained over a period of time (for example, the sale of farm crops, livestock, or professional artists producing art work); and

(b) With regard to self-employment, total profit from a business enterprise (i.e., gross receipts less expenses incurred in producing the goods or services). Business expenses do not include depreciation, personal business and entertainment expenses, personal transportation, capital equipment purchases, or principal payments on loans for capital assets or durable goods.

### § 20.309 What does unearned income include?

Unearned income includes, but is not limited to:

(a) Income from interest; oil and gas and other mineral royalties; gaming income per capita distributions; rental property; cash contributions, such as child support and alimony, gaming winnings; retirement benefits;

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(b) Annuities, veteran's disability, unemployment benefits, and federal and state tax refunds;

(c) Per capita payments not excluded by federal statute;

(d) Income from sale of trust land and real or personal property that is set aside for reinvestment in trust land or a primary residence, but has not been reinvested in trust land or a primary residence at the end of one year from the date the income was received;

(e) In-kind contributions providing shelter at no cost to the individual or household, this must equal the amount for shelter included in the state standard, or 25 percent of the state standard, whichever is less; and

(f) Financial assistance provided by a state, tribal, county, local, or other federal agency.

### § 20.310 What recurring income must be prorated?

The social services worker will prorate the following recurring income:

(a) Recurring income received by individuals over a 12-month period for less than a full year's employment (for example, income earned by teachers who are not employed for a full year);

(b) Income received by individuals employed on a contractual basis over the term of a contract; and

(c) Intermittent income received quarterly, semiannually, or yearly over the period covered by the income.

### § 20.311 What amounts will the Bureau deduct from earned income?

(a) The social services worker will deduct the following amounts from earned income:

(1) Other federal, state, and local taxes;

(2) Social Security (FICA);

(3) Health insurance;

(4) Work related expenses, including reasonable transportation costs;

(5) Child care costs for children under the age of 6 except where the other parent in the home is unemployed and physically able to care for the children; and

(6) The cost of special clothing, tools, and equipment directly related to the individual's employment.

(b) For self-employed individuals, the social services worker will deduct the

costs of conducting business and all of the amounts in paragraph (a) of this section.

### § 20.312 What amounts will the Bureau deduct from income or other resources?

The social services worker will deduct the following amounts from income, or other resources:

(a) The first \$2,000 of liquid resources annually available to the household;

(b) Any home produce from a garden, livestock, and poultry used by the applicant or recipient and his/her household for their consumption; and

(c) Resources specifically excluded by federal statute.

### § 20.313 How will the Bureau compute financial assistance payments?

(a) The social services worker will compute financial assistance payments by beginning with the Bureau standard of assistance and doing the following:

(1) Subtracting from all resources calculated under §§ 20.307 through 20.310;

(2) Subtracting the rateable reduction or maximum payment level used by the state where the applicant lives;

(3) Subtracting an amount for shelter (see paragraph (b) of this section for details on how to calculate a shelter amount); and

(4) Rounding the result down to the next lowest dollar.

(b) The social services worker must calculate a shelter amount for purposes of paragraph (a)(3) of this section. To calculate the shelter amount:

(1) The shelter amount must not exceed the amount for shelter in the state TANF standard;

(2) If the state TANF does not specify an amount for shelter, the social services worker must calculate the amount as 25 percent of the total state TANF payment; and

(3) If there is more than one household in a dwelling, the social services worker must prorate the actual shelter cost among the households receiving General Assistance; this amount cannot exceed the amount in the standard for individuals in similar circumstances. The head of each household is responsible for his/her portion of the documented shelter cost.

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(c) The social services worker must not provide General Assistance payments for any period before the date of the application for assistance.

(2) Make satisfactory progress in an ISP; and

(3) Accept local and reasonable employment when it is available.

**EMPLOYMENT REQUIREMENTS**

**§ 20.314 What is the policy on employment?**

(a) An applicant or recipient must:

(1) Actively seek employment, including the use of available state, tribal, county, local or Bureau-funded employment services;

(b) A head of household who does not comply with this section will not be eligible for General Assistance for a period of at least 60 days but not more than 90 days. This action must be documented in the case file.

(c) The policy in this section does not apply to any person meeting the criteria in § 20.315.

**§ 20.315 Who is not covered by the employment policy?**

The employment policy in § 20.314 does not apply to the persons shown in the following table.

The employment policy in § 20.314 does not apply to . . .	if . . .	and . . .
(a) Anyone younger than 16.		
(b) A full-student under the age of 19 .....	He/she is attending an elementary or secondary school or a vocational or technical school equivalent to a secondary school.	He/she is making satisfactory progress.
(c) A person enrolled at least half-time in a program of study under Section 5404 of Pub. L. 100–297.	He/she is making satisfactory progress ..	He/she was an active General Assistance recipient for a minimum of 3 months before determination/redetermination of eligibility.
(d) A person suffering from a temporary medical injury or illness.	It is documented in the case plan that the illness or injury is serious enough to temporarily prevent employment.	He/she must be referred to SSI if the disability status exceeds 3 months.
(e) An incapacitated person who has not yet received Supplemental Security Income (SSI) assistance.	A physician, psychologist, or social services worker certifies that a physical or mental impairment (either by itself, or in conjunction with age) prevents the individual from being employed.	The assessment is documented in the case plan.
(f) A caretaker who is responsible for a person in the home who has a physical or mental impairment.	A physician or certified psychologist verifies the condition.	The case plan documents that: the condition requires the caretaker to be home on a virtually continuous basis; and there is no other appropriate household member available to provide this care.
(g) A parent or other individual who does not have access to child care.	He/she personally provides full-time care to a child under the age of 6.	
(h) A person for whom employment is not accessible.	There is a minimum commuting time of one hour each way.	

**§ 20.316 What must a person covered by the employment policy do?**

(a) If you are covered by the employment policy in § 20.314, you must seek employment and provide evidence of your monthly efforts to obtain employment in accordance with your ISP.

(b) If you do not seek and accept available local and seasonal employment, or you quit a job without good cause, you cannot receive General Assistance for a period of at least 60 days but not more than 90 days after you refuse or quit a job.

**§ 20.317 How will the ineligibility period be implemented?**

(a) If you refuse or quit a job, your ineligibility period will continue as provided in § 20.316(b) until you seek and accept appropriate available local and seasonal employment and fulfill your obligations already agreed to in the ISP;

(b) The Bureau will reduce your suspension period by 30 days when you show that you have sought local and seasonal employment in accordance with the ISP; and

(c) Your eligibility suspension will affect only you. The Bureau will not apply it to other eligible members of the household.

**§ 20.318 What case management responsibilities does the social services worker have?**

In working with each recipient, you, the social services worker must:

(a) Assess the general employability of the recipient;

(b) Assist the recipient in the development of the ISP;

(c) Sign the ISP;

(d) Help the recipient identify the service(s) needed to meet the goals identified in their ISP;

(e) Monitor recipient participation in work related training and other employment assistance programs; and

(f) Document activities in the case file.

**§ 20.319 What responsibilities does the general assistance recipient have?**

In working with the social services worker, you, the recipient, must:

(a) Participate with the social services worker in developing an ISP and sign the ISP;

(b) Perform successfully in the work related activities, community service, training and/or other employment assistance programs developed in the ISP;

(c) Participate successfully in treatment and counseling services identified in the ISP;

(d) Participate in evaluations of job readiness and/or any other testing required for employment purposes; and

(e) Demonstrate that you are actively seeking employment by providing the social services worker with

evidence of job search activities as required in the ISP.

TRIBAL WORK EXPERIENCE PROGRAM  
(TWEP)

**§ 20.320 What is TWEP?**

TWEP is a program that provides work experience and job skills to enhance potential job placement for the general assistance recipient. TWEP programs can be incorporated within Public Law 93-638 self-determination contracts, Public Law 102-477 grants, and Public Law 103-413 self-governance annual funding agreements at the request of the tribe.

**§ 20.321 Does TWEP allow an incentive payment?**

Yes, incentive payments to participants are allowed under TWEP.

(a) Incentive payments are separate. The Bureau will not consider incentive payments as wages or work related expenses, but as grant assistance payments under §§ 20.320 through 20.323.

(b) The approved payment will not exceed the Bureau maximum TWEP payment standard established by the Assistant Secretary.

**§ 20.322 Who can receive a TWEP incentive payment?**

(a) The head of the family unit normally receives the TWEP assistance payment.

(b) The social services worker can designate a spouse or other adult in the assistance group to receive the TWEP assistance payment. The social services worker will do this only if:

(1) The recognized head of the family unit is certified as unemployable; and

(2) The designation is consistent with the ISP.

(c) Where there are multiple family units in one household, one member of each family unit will be eligible to receive the TWEP incentive payment.

**§ 20.323 Will the local TWEP be required to have written program procedures?**

Yes, the local TWEP must have specific written program procedures that cover hours of work, acceptable reasons for granting leave from work, evaluation criteria and monitoring

## § 20.324

plans and ISP's for participants. Work readiness progress must be documented in each ISP.

### BURIAL ASSISTANCE

#### § 20.324 When can the Bureau provide Burial Assistance?

In the absence of other resources, the Bureau can provide Burial Assistance for eligible indigent Indians meeting the requirements prescribed in § 20.300.

#### § 20.325 Who can apply for Burial Assistance?

If you are a relative of a deceased Indian, you can apply for burial assistance for the deceased Indian under this section.

(a) To apply for burial assistance under this section, you must submit the application to the social services worker. You must submit this application within 30 days following death.

(b) The Bureau will determine eligibility based on the income and resources available to the deceased in accordance with § 20.100. This includes but is not limited to SSI, veterans' death benefits, social security, and Individual Indian Money (IIM) accounts. Determination of need will be accomplished on a case-by-case basis using the Bureau payment standard.

(c) The Bureau will not approve an application unless it meets the criteria specified at § 20.300.

(d) The approved payment will not exceed the Bureau maximum burial payment standard established by the Assistant Secretary.

#### § 20.326 Does Burial Assistance cover transportation costs?

Transportation costs directly associated with burials are normally a part of the established burial rate. If a provider adds an additional transportation charge to the burial rate because of extenuating circumstances, the social services worker can pay the added charge. To do this, the social services worker must ensure and document in the case plan that:

(a) The charges are reasonable and equitable;

(b) The deceased was an eligible indigent Indian who was socially, cul-

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turally, and economically affiliated with his or her tribe; and

(c) The deceased resided in the service area for at least the last 6 consecutive months of his/her life.

### DISASTER ASSISTANCE

#### § 20.327 When can the Bureau provide Disaster Assistance?

Disaster assistance is immediate and/or short-term relief from a disaster and can be provided to a tribal community in accordance with § 20.328.

#### § 20.328 How can a tribe apply for Disaster Assistance?

(a) The tribe affected by the disaster is considered the applicant and must submit the following to the Regional Director through the local Superintendent:

(1) A tribal resolution requesting disaster assistance;

(2) A copy of county, state, or Presidential declaration of disaster; and

(3) The projected extent of need in the service area not covered by other federal funding sources.

(b) The Regional Director must forward the above tribal documents and his/her recommendation to the Assistant Secretary for final decision on whether disaster assistance will be provided and to what extent.

### EMERGENCY ASSISTANCE

#### § 20.329 When can the Bureau provide Emergency Assistance payments?

Emergency Assistance payments can be provided to individuals or families who suffer from a burnout, flood, or other destruction of their home and loss or damage to personal possessions. The Bureau will make payments only for essential needs and other non-medical necessities.

#### § 20.330 What is the payment standard for Emergency Assistance?

The approved payment will not exceed the Bureau's maximum Emergency Assistance payment standard established by the Assistant Secretary.

ADULT CARE ASSISTANCE

**§ 20.331 What is Adult Care Assistance?**

Adult care assistance provides non-medical care for eligible adult Indians who:

- (a) Have needs that require personal care and supervision due to advanced age, infirmity, physical condition, or mental impairments; and
- (b) Cannot be cared for in their own home by family members.

**§ 20.332 Who can receive Adult Care Assistance?**

An adult Indian is eligible to receive adult care assistance under this part if he/she:

- (a) Is unable to meet his/her basic needs, including non-medical care and/or protection, with his/her own resources; and
- (b) Does not require intermediate or skilled nursing care.

**§ 20.333 How do I apply for Adult Care Assistance?**

To apply for adult care assistance, you or someone acting on your behalf must submit an application form to the social services worker.

**§ 20.334 What happens after I apply?**

- (a) The Bureau will determine eligibility based upon the income and available resources of the person named in the application.
- (b) Upon approval by the Bureau Line Officer, payments will be approved under purchase of service agreements for adult care provided in state or tribally licensed or certified group settings, or by individual service providers licensed or certified for home-maker service.

[65 FR 63159, Oct. 20, 2000; 65 FR 76563, Dec. 7, 2000]

**§ 20.335 What is the payment standard for Adult Care Assistance?**

The approved payment for adult care assistance will not exceed the applicable state payment rate for similar care.

[65 FR 63159, Oct. 20, 2000; 65 FR 76563, Dec. 7, 2000]

**Subpart D—Services to Children, Elderly, and Families**

**§ 20.400 Who should receive Services to Children, Elderly, and Families?**

Services to Children, Elderly, and Families will be provided for Indians meeting the requirements prescribed in § 20.300 who request these services or on whose behalf these services are requested.

**§ 20.401 What is included under Services to Children, Elderly, and Families?**

Services to Children, Elderly, and Families include, but are not limited to, the following:

- (a) Assistance in solving problems related to family functioning and interpersonal relationships;
- (b) Referral to the appropriate resource for problems related to illness, physical or mental handicaps, drug abuse, alcoholism, and violation of the law; and
- (c) Protective services.

In addition, economic opportunity and money management may also be provided.

**§ 20.402 When are protective services provided?**

Protective services are provided when children or adults:

- (a) Are deprived temporarily or permanently of needed supervision by responsible adults;
- (b) Are neglected, abused or exploited;
- (c) Need services when they are mentally or physically handicapped or otherwise disabled; or

(d) Are under the supervision of the Bureau in regard to the use and disbursement of funds in the child's or adult's Individual Indian Money (IIM) account. Those IIM accounts that are established for children will be supervised by the Bureau until the child becomes an adult as defined in 25 CFR 115.

**§ 20.403 What do protective services include?**

Protective services provided to a child, family or elderly person will be documented in the case files and:

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(a) Can include, but are not limited to, any of the following:

(1) Providing responses to requests from members of the community on behalf of children or adults alleged to need protective services;

(2) Providing services to children, elderly, and families, including referrals for homemaker and day care services for the elderly and children;

(3) Coordinating with Indian courts to provide services, which may include, but are not limited to, the following:

(i) Investigating and reporting on allegations of child abuse and neglect, abandonment, and conditions that may require referrals (such as mental or physical handicaps);

(ii) Providing social information related to the disposition of a case, including recommendation of alternative resources for treatment; and

(iii) Providing placement services by the court order before and after adjudication.

(4) Coordinating with other community services, including groups, agencies, and facilities in the community. Coordination can include, but are not limited to:

(i) Evaluating social conditions that affect community well-being;

(ii) Treating conditions identified under paragraph (b)(1) of this section that are within the competence of social services workers; and

(iii) Working with other community agencies to identify and help clients to use services available for assistance in solving the social problems of individuals, families, and children.

(5) Coordinating with law enforcement and tribal courts, to place the victim of an alleged and/or substantiated incident of abuse, neglect or exploitation out of the home to assure safety while the allegations are being investigated. Social services workers may remove individuals in life threatening situations. After a social services assessment, the individual must be either returned to the parent(s) or to the home from which they were removed or the social services worker must initiate other actions as provided by the tribal code; and

(6) Providing social services in the home, coordinating and making referrals to other programs/services, includ-

ing Child Protection, and/or establishing Multi-Disciplinary Teams.

(b) Must include, where the service population includes IIM account holders:

(1) Conducting, upon the request of an account holder or other interested party, a social services assessment to evaluate an adult account holder's circumstances and abilities and the extent to which the account holder needs assistance in managing his or her financial affairs; and

(2) Managing supervised IIM accounts of children and adults (in conjunction with legal guardians), which includes, but is not limited to, the following:

(i) Evaluating the needs of the account holder;

(ii) Developing, as necessary and as permitted under 25 CFR 115, a one-time or an annual distribution plan for funds held in an IIM account along with any amendments to the plan for approval by the Bureau;

(iii) Monitoring the implementation of the approved distribution plan to ensure that the funds are expended in accordance with the distribution plan;

(iv) Reviewing the supervised account every 6 months or more often as necessary if conditions have changed to warrant a recommendation to change the status of the account holder, or to modify the distribution plan;

(v) Reviewing receipts for an account holder's expenses and verifying that expenditures of funds from a supervised IIM account were made in accordance with the distribution plan approved by the Bureau, including any amendments made to the plan; and

(vi) Petitioning a court of competent jurisdiction for the appointment of, or change in, a legal guardian for a client, where appropriate.

[65 FR 63159, Oct. 20, 2000; 65 FR 76563, Dec. 7, 2000]

**§ 20.404 What information is contained in a social services assessment?**

A social services assessment must contain, but is not limited to, the following:

(a) Identifying information about the client (for example, name, address, age, gender, social security number, telephone number, certificate of Indian blood, education level), family history

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and medical history of the account holder;

(b) Description of the household composition: information on each member of the household (e.g., name, age, and gender) and that person's relationship to the client;

(c) The client's current resources and future income (e.g., VA benefits, retirement pensions, trust assets, employment income, judgment funds, general assistance benefits, unemployment benefits, social security income, supplemental security income and other governmental agency benefits);

(d) A discussion of the circumstances which justify special services, including ability of the client to handle his or her financial affairs and to conduct day-to-day living activities. Factors to be considered should include, but are not limited to:

- (1) Age;
- (2) Developmental disability;
- (3) Chronic alcoholism or substance abuse;
- (4) Lack of family assistance or social support systems, or abandonment;
- (5) Self-neglect;
- (6) Financial exploitation or abuse;
- (7) Physical exploitation, neglect or abuse;
- (8) Senility; and
- (9) Dementia.

(e) Documentation supporting the need for assistance (e.g., medical reports, police reports, court orders, let-

ters from interested parties, prior assessments or evaluations, diagnosis by psychologist/psychiatrist); and

(f) Summary of findings and proposed services to meet the identified needs of the client.

**Subpart E—Child Assistance**

**§ 20.500 Who is eligible for Child Assistance?**

A child is eligible for Child Assistance under this subpart if all of the following criteria are met:

(a) The child must meet the requirements in § 20.300.

(b) The child's legally responsible parent, custodian/guardian, or Indian court having jurisdiction must:

(1) Request assistance under this part in writing;

(2) State that they are unable to provide necessary care and guidance for the child, or to provide for the child's special needs in his/her own home; and

(3) Provide a documented social services assessment from the social services worker of whether parent(s), custodian, guardian(s) are able to care for their child.

(c) All income accruing to the child, except income exempted by federal statute, must be used to meet the cost of special needs, foster home or residential care facility as authorized and arranged by social services.

HOW CHILD ASSISTANCE FUNDS CAN BE USED

**§ 20.501 What services can be paid for with Child Assistance funds?**

The social services program can use Child Assistance funds to pay for services as shown in the following table.

Service that can be paid	Conditions that must be met	Maximum payment level
(a) Room and board at residential care facilities licensed by the tribe or state.	There must be no other resources available to pay these costs. See § 20.502 for other conditions that must be met.	The state or county residential care rate in the state in which the child resides.
(b) Adoption or guardianship subsidies.	There must be no other resources available to pay for this service. See § 20.503 for other conditions that must be met.	The Bureau's maximum adoption and guardianship payment standard.
(c) Short-term homemaker services.	There must be no other resources (such as Medicaid) available to pay for this service. Services can be purchased for a maximum of 3 months. See § 20.504 for other conditions that must be met.	As approved by the Bureau line officer.
(d) Temporary foster care .....	See § 20.509 for conditions that must be met .....	The state or county foster care rate in the state in which the child resides.

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**§ 20.502 Can Child Assistance funds be used to place Indian children in residential care facilities?**

You, the social service program, can use Child Assistance funds to purchase or contract for room and board in licensed residential care facilities.

(a) You can use Child Assistance funds to pay only for room and board. You must pay for other services that may be needed, including mental health, education, and physical therapy from other sources.

(b) Before placement the various funding sources must sign an agreement that specifies the services each source will pay. The Bureau Line Officer must approve this agreement.

**§ 20.503 When can Child Assistance funds be used for Indian adoption or guardianship subsidies?**

You, the social services program, can use Child Assistance funds to provide either adoption or guardianship subsidies if all of the following are true:

(a) The child is 17 or younger;

(b) The child has been in foster care prior to approval of the subsidy;

(c) The social services worker has considered all other available resources, attempted permanency planning, and documented in the case file that placement was in the best interest of the child; and

(d) The Bureau Line Officer approves the subsidy before it is authorized and redetermines eligibility on a yearly basis.

**§ 20.504 What short-term homemaker services can Child Assistance pay for?**

You, the social services program, can use Child Assistance funds to pay for homemaker services as specified in § 20.501 and this section. While housekeeping services are covered, homemaker services must focus on training household members in such skills as child care and home management. Homemaker services are provided for:

(a) A child who would otherwise need foster care placement or who would benefit from supportive (protective) supervision;

(b) A severely handicapped or special needs child whose care places undue stress on the family; or

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(c) A child whose care would benefit from specialized training and supportive services provided to family members.

**§ 20.505 What services are provided jointly with the Child Assistance Program?**

The services listed in this section are provided by Services to Children, Elderly, and Families under this subpart jointly with the Child Assistance Program.

(a) Social services provided for children in their own home aimed at strengthening the family's ability to provide for and nurture their child. These supportive services can include:

(1) Social work case management;

(2) Counseling for parents and children;

(3) Group work, day care; and

(4) Homemaker services, when necessary.

(b) Protection of Indian children from abuse, neglect or exploitation in coordination with law enforcement and courts.

(c) A written case plan must be established within 30 days of placement and reviewed within 60 days of placement or as outlined in tribally established standards, when temporary placement outside the home is necessary. The case plan must contain a written agreement signed among the various funding sources to identify the services that will be paid by each source in those instances where the child requires services outside the authority of the Child Assistance program.

**FOSTER CARE**

**§ 20.506 What information is required in the foster care case file?**

At a minimum the following information is required:

(a) Tribal enrollment verification in accordance with § 20.100;

(b) A written case plan (established within 30 days of placement), which would include a permanency plan detailing the need for and expected length of placement;

(c) Information on each child's health status and school records, including medications and immunization records;

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(d) Parental consent(s) for emergency medical care, school, and transportation;

(e) A signed plan for payment, including financial responsibility of parents and use of other appropriate resources;

(f) A copy of the certification/license of the foster home;

(g) A current photo of each child;

(h) A copy of the social security card, birth certificate, Medicaid card and current court order;

(i) For a placement beyond 30 days, copy of the action taken or authorized by a court of competent jurisdiction that documents the need for protection of the child;

(j) For an involuntary placement, a social services assessment completed by a social services worker within 30 days of placement;

(k) Documentation of a minimum of one visit to the placement setting per month by the social services worker with each child; and

(l) A list of all prior placements, including the names of the foster parents and dates of placements.

### § 20.507 What requirements must foster care providers meet?

If a child needs foster care, the social services worker must select care that meets the physical, behavioral, and emotional needs of the child. Foster care is intended to be short-term. The case plan must show that all of the requirements in paragraphs (a) through (c) of this section are met:

(a) All foster homes must be certified or licensed by the tribe or other appropriate authority. Foster care placements beyond 30 days must be made through a court of competent jurisdiction to ensure that:

(1) Federal background checks are completed prior to placement as required by Public Law 101-630; and

(2) Training (optional for placements with relatives) is provided to the foster family.

(b) If the child is placed with relatives in an adoption and guardian placement, the case file must contain an approved current home study.

(c) An off-reservation foster home, or residential care facility under contract must meet the licensing standards of the state in which it is located or trib-

ally established certifying/licensing standards.

### § 20.508 What must the social services agency do when a child is placed in foster care, residential care or guardianship home?

The social services agency must make efforts to secure child support for the child in foster care or residential care through a court of competent jurisdiction.

### § 20.509 What must the social services worker do when a child is placed in foster care or residential care facility?

When a child is placed in foster care or a residential care facility the social services worker must do all of the following:

(a) Discuss with foster parents or caretakers, the child's special needs, including disabilities;

(b) Provide counseling or referral to available resources;

(c) Refer any child requiring medical, substance abuse, or behavioral (mental) health services to an appropriate health services to be assessed and to receive services;

(d) Ensure that the case plan provides for all necessary costs of care (including clothing, incidentals, and personal allowance) in accordance with established state standards of payments;

(e) Develop a foster family agreement signed and dated by the parties involved that specifies the roles and responsibilities of the biological parents, foster parents, and placing agency; the terms of payment of care; and the need for adherence to the established case plan;

(f) Immediately report any occurrences of suspected child abuse or neglect in a foster home or residential care facility to law enforcement and protective services in accordance with tribal standards and reporting requirements under Public Law 101-630; and

(g) Complete a yearly assessment of each tribal or state licensed foster home or residential care facility evaluating how the home has fulfilled its function relative to the needs of the child placed in the home.

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### § 20.510 How is the court involved in child placements?

The court retains custody of a child in placement and the care and supervision must be given to the appropriate social services agency. While the court can issue any court order consistent with tribal law, the courts do not have the authority to require expenditure of federal funds to pay for specifically prescribed or restrictive services or out-of-home placements of children. Case plans must be reviewed with the appropriate court at least every 6 months and a permanency hearing held within 12 months after a child enters foster care or residential care, or according to established tribal standards. These standards can be established in the tribal code and can be in accordance with available funding source requirements.

### § 20.511 Should permanency plans be developed?

Permanency planning must be developed for all child placements within 6 months after initial placement of the child. Every reasonable effort will be made to preserve the family and/or reunify the children with the family and relatives when developing permanency plans. However, the child's health and safety are the paramount concern.

### § 20.512 Can the Bureau/tribal contractors make Indian adoptive placements?

The Bureau is not an authorized adoption agency and staff must not arrange adoptive placements. However, long-term permanency planning can involve the Bureau social services workers cooperating with tribal courts to provide an adoption subsidy. Tribal contractors will provide adoption services as authorized by the tribal courts in accordance with tribal codes/law.

### § 20.513 Should Interstate Compacts be used for the placement of children?

Interstate compact agreements should be used when appropriate for foster care, adoption and guardianship to protect the best interests of the child and to assure the availability of the funding resources and services from the originating placement source.

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### § 20.514 What assistance can the courts request from social services on behalf of children?

The courts can request the following:

- (a) Investigations of law enforcement reports of child abuse and neglect;
- (b) Assessment of the need for out-of-home placement of the child; and
- (c) Provision of court-related services following adjudication, such as monitoring, foster care, or residential care, or pre/post placement services.

### § 20.515 What is required for case management?

Social services workers must document regular contact with children and families in accordance with specific program requirements. The social services agency is responsible for implementation of quality case management; this requires the supervisor's review of case plans every 90 days.

### § 20.516 How are child abuse, neglect or exploitation cases to be handled?

Reported child abuse, neglect or exploitation cases and the requirement for background clearances will be handled in accordance with the Indian Child Protection and Family Violence Prevention Act of 1990, Public Law 101–630, 25 CFR part 63, federal and/or state laws where applicable, and tribal codes which protect Indian children and victims of domestic violence. This includes developing and maintaining Child Protection Teams in accordance to Public Law 101–630 and collection of child abuse, neglect and exploitation data according to Public Law 99–570. Those cases referred by the state will be handled according to the Indian Child Welfare Act, Public Law 95–608, and 25 CFR part 23.

## Subpart F—Administrative Procedures

### § 20.600 Who can apply for financial assistance or social services?

- (a) You can apply for financial assistance or social services under this part if you:
- (1) Believe that you are eligible to receive benefits; or
  - (2) Are applying on behalf of someone who you believe is eligible to receive benefits.

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(b) Under paragraph (a) of this section, any of the following may apply for benefits on behalf of another person: relatives, interested individuals, social services agencies, law enforcement agencies, courts, or other persons or agencies.

### § 20.601 How can applications be submitted?

You can apply for financial assistance or social services under this part by:

(a) Completing an application that you can get from your social services worker or tribe; or

(b) Through an interview with a social services worker who will complete an application for you based on the oral interview.

### § 20.602 How does the Bureau verify eligibility for social services?

(a) You, the applicant, are the primary source of information used to determine eligibility and need. If it is necessary to secure information such as medical records from other sources, you must authorize the release of information.

(b) You must immediately report to your social services worker any changes in circumstances that may affect your eligibility or the amount of financial assistance that you receive.

### § 20.603 How is an application approved or denied?

(a) Each application must be approved if the applicant meets the eligibility criteria in this part for the type of assistance requested and all recipients will be redetermined for eligibility every 6 months. Financial assistance will be made retroactive to the application date.

(b) An application must be denied if the applicant does not meet the eligibility criteria in §§ 20.300 through 20.516.

(c) The social services worker must approve or deny an application within 30 days of the application date. The local social services worker must issue written notice of the approval or denial of each application within 45 days of the application date.

(d) If for a good reason the social services worker cannot meet the dead-

line in paragraph (c) of this section, he or she must notify the applicant in writing of:

(1) The reasons why the decision cannot be made; and

(2) The deadline by which the social services worker will send the applicant a decision.

[65 FR 63159, Oct. 20, 2000; 65 FR 76563, Dec. 7, 2000]

### § 20.604 How is an applicant or recipient notified that benefits or services are denied or changed?

If the Bureau increases, decreases, suspends, or terminates financial assistance, the social services worker must mail or hand deliver to the applicant or recipient a written notice of the action. The notice must:

(a) State the action taken, the effective date, and the reason(s) for the decision;

(b) Inform the applicant or recipient of the right to request a hearing if dissatisfied with the decision;

(c) Advise the applicant or recipient of the right to be represented by an authorized representative at no expense to the Bureau;

(d) Include the address of the local Superintendent or his/her designated representative to whom the request for a hearing must be submitted;

(e) Advise the applicant or recipient that failure to request a hearing within 20 days of the date of the notice will cause the decision to become final and not subject to appeal under 25 CFR part 2; and

(f) Be delivered to the applicant 20 days in advance of the effective date of the action.

### § 20.605 What happens when an applicant or recipient appeals a decision under this subpart?

If you are an applicant or recipient and appeal a decision made under § 20.604, you can continue to receive your assistance while your appeal is pending. For this to happen, you must submit your appeal by the deadline in § 20.604(e).

### § 20.606 How is an incorrect payment adjusted or recovered?

(a) When an incorrect payment of financial assistance has been made to an

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individual or family, a proper adjustment or recovery is required.

(b) The proper adjustment or recovery is based upon individual need as appropriate to the circumstances that resulted in an incorrect payment.

(c) Before adjustment or recovery, the recipient will be notified of the proposal to correct the payment and given an informal opportunity to resolve the matter.

(d) If an informal resolution cannot be attained, the recipient must be given a written notice of decision and the procedures of § 20.604 will apply.

(e) If a hearing is requested, the hearing will be conducted in accordance with the procedures under §§ 20.700 through 20.705.

### **§ 20.607 What happens when applicants or recipients knowingly and willfully provide false or fraudulent information?**

Applicants or recipients who knowingly and willfully provide false or fraudulent information are subject to prosecution under 18 U.S.C. § 1001, which carries a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both. The social services worker will prepare a written report detailing the information considered to be false and submit the report to the Superintendent or his/her designated representative for appropriate investigative action.

## **Subpart G—Hearings and Appeals**

### **§ 20.700 Can an applicant or recipient appeal the decision of a Bureau official?**

Yes, if you are an applicant or recipient, and are dissatisfied with a Bureau decision made under this part, you can request a hearing before the Superintendent or his/her designated representative. You must submit your request by the deadline in § 20.604. The Superintendent or his/her designated representative can extend the deadline if you show good cause.

### **§ 20.701 Does a recipient receive financial assistance while an appeal is pending?**

Yes, if you appeal under this subpart, financial assistance will be continued

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or reinstated to insure there is no break in financial assistance until the Superintendent or his/her designated representative makes a decision. The Superintendent or his/her designated representative can adjust payments or recover overpayments to conform with his/her decision.

[65 FR 63159, Oct. 20, 2000; 65 FR 76563, Dec. 7, 2000]

### **§ 20.702 When is an appeal hearing scheduled?**

The Superintendent or his/her designated representative must set a date for the hearing within 10 days of the date of request for a hearing and give written notice to the applicant or recipient.

### **§ 20.703 What must the written notice of hearing include?**

The written notice of hearing must include:

(a) The date, time and location of the hearing;

(b) A statement of the facts and issues giving rise to the appeal;

(c) The applicant's or recipient's right to be heard in person, or to be represented by an authorized representative at no expense to the Bureau;

(d) The applicant or recipient's right to present both oral and written evidence during the hearing;

(e) The applicant's or recipient's right to confront and cross-examine witnesses at the hearing;

(f) The applicant's or recipient's right of one continuance of not more than 10 days with respect to the date of hearing; and

(g) The applicant's or recipient's right to examine and copy, at a reasonable time before the hearing, his/her case record as it relates to the proposed action being contested.

### **§ 20.704 Who conducts the hearing or appeal of a Bureau decision or action and what is the process?**

(a) The Superintendent or his/her designated representative conducts the hearing in an informal but orderly manner, records the hearing, and provides the applicant or recipient with a transcript of the hearing upon request.

(b) The Superintendent or his/her designated representative must render a written decision within 10 days of the completion of the hearing. The written decision must include:

(1) A written statement covering the evidence relied upon and reasons for the decision; and

(2) The applicant's or recipient's right to appeal the Superintendent or his/her designated representative's decision pursuant to 25 CFR part 2 and request Bureau assistance in preparation of the appeal.

**§ 20.705 Can an applicant or recipient appeal a tribal decision?**

Yes, the applicant or recipient must pursue the appeal process applicable to the Public Law 93-638 contract, Public Law 102-477 grant, or Public Law 103-413 self-governance annual funding agreement. If no appeal process exists, then the applicant or recipient must pursue the appeal through the appropriate tribal forum.

**PART 23—INDIAN CHILD WELFARE ACT**

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Sec.

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- 23.2 Definitions.
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- 23.4 Information collection.

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- 23.83 Assistance in locating biological parents of Indian child after termination of adoption.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 1901-1952.

SOURCE: 59 FR 2256, Jan. 13, 1994, unless otherwise noted.

### Subpart A—Purpose, Definitions, and Policy

#### § 23.1 Purpose.

The purpose of the regulations in this part is to govern the provision of funding for, and the administration of Indian child and family service programs as authorized by the Indian Child Welfare Act of 1978 (Pub. L. 95–608, 92 Stat. 3069, 25 U.S.C. 2, 9, 1901–1952).

#### § 23.2 Definitions.

*Act* means the Indian Child Welfare Act (ICWA), Pub. L. 95–608, 92 Stat. 3069, 25 U.S.C. 1901 *et seq.*

*Assistant Secretary* means the Assistant Secretary—Indian Affairs, the Department of the Interior.

*Bureau of Indian Affairs* (BIA) means the Bureau of Indian Affairs, the Department of the Interior.

*Child custody proceeding* includes:

(1) Foster care placement, which shall mean any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(2) Termination of parental rights, which shall mean any action resulting in the termination of the parent-child relationship;

(3) Preadoptive placement, which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement;

(4) Adoptive placement, which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption; and

(5) Other tribal placements made in accordance with the placement preferences of the Act, including the temporary or permanent placement of an Indian child in accordance with tribal children's codes and local tribal custom or tradition;

(6) The above terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime in the jurisdiction

where the act occurred or upon an award, in a divorce proceeding, of custody to one of the parents.

*Consortium* means an association or partnership of two or more eligible applicants who enter into an agreement to administer a grant program and to provide services under the grant to Indian residents in a specific geographical area when it is administratively feasible to provide an adequate level of services within the area.

*Extended family member* shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

*Grant* means a written agreement between the BIA and the governing body of an Indian tribe or Indian organization wherein the BIA provides funds to the grantee to plan, conduct or administer specific programs, services, or activities and where the administrative and programmatic provisions are specifically delineated.

*Grantee* means the tribal governing body of an Indian tribe or Board of Directors of an Indian organization responsible for grant administration.

*Grants officer* means an officially designated officer who administers ICWA grants awarded by the Bureau of Indian Affairs, the Department of the Interior.

*Indian* means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1606.

*Indian child* means any unmarried person who is under age 18 and is either a member of an Indian tribe, or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

*Indian child's tribe* means the Indian tribe in which an Indian child is a member or is eligible for membership or, in the case of an Indian child who is a member of or is eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts, to be determined in accordance with the BIA's

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“Guidelines for State Courts—Indian Child Custody Proceedings.”

*Indian custodian* means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody and control has been transferred by the parent of such child.

*Indian organization*, solely for purposes of eligibility for grants under subpart D of this part, means any legally established group, association, partnership, corporation, or other legal entity which is owned or controlled by Indians, or a majority (51 percent or more) of whose members are Indians.

*Indian preference* means preference and opportunities for employment and training provided to Indians in the administration of grants in accordance with section 7 (b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450).

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3 (c) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602 (c).

*Off-reservation ICWA program* means an ICWA program administered in accordance with 25 U.S.C. 1932 by an off-reservation Indian organization.

*Parent* means the biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the unwed father where paternity has not been acknowledged or established.

*Reservation* means Indian country as defined in 18 U.S.C. 1151 and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

*Secretary* means the Secretary of the Interior.

*Service areas solely for newly recognized or restored Indian tribes without es-*

*tablished reservations* means those service areas congressionally established by Federal law to be the equivalent of a reservation for the purpose of determining the eligibility of a newly recognized or restored Indian tribe and its members for all Federal services and benefits.

*State court* means any agent or agency of a state, including the District of Columbia or any territory or possession of the United States, or any political subdivision empowered by law to terminate parental rights or to make foster care placements, preadoptive placements, or adoptive placements.

*Subgrant* means a secondary grant that undertakes part of the obligations of the primary grant, and assumes the legal and financial responsibility for the funds awarded and for the performance of the grant-supported activity.

*Technical assistance* means the provision of oral, written, or other relevant information and assistance to prospective grant applicants in the development of their grant proposals. Technical assistance may include a preliminary review of an application to assist the applicant in identifying the strengths and weaknesses of the proposal, ongoing program planning, design and evaluation, and such other program-specific assistance as is necessary for ongoing grant administration and management.

*Title II* means title II of Public Law 95-608, the Indian Child Welfare Act of 1978, which authorizes the Secretary to make grants to Indian tribes and off-reservation Indian organizations for the establishment and operation of Indian child and family service programs.

*Tribal Court* means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

*Tribal government* means the federally recognized governing body of an Indian tribe.

*Value* means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

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#### § 23.3 Policy.

In enacting the Indian Child Welfare Act of 1978, Pub. L. 95–608, the Congress has declared that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and Indian families by the establishment of minimum Federal standards to prevent the arbitrary removal of Indian children from their families and tribes and to ensure that measures which prevent the breakup of Indian families are followed in child custody proceedings (25 U.S.C. 1902). Indian child and family service programs receiving title II funds and operated by federally recognized Indian tribes and off-reservation Indian organizations shall reflect the unique values of Indian culture and promote the stability and security of Indian children, Indian families and Indian communities. It is the policy of the Bureau of Indian Affairs to emphasize and facilitate the comprehensive design, development and implementation of Indian child and family service programs in coordination with other Federal, state, local, and tribal programs which strengthen and preserve Indian families and Indian tribes.

#### § 23.4 Information collection.

(a) The information collection requirements contained in § 23.13 of this part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1076–0111.

(1) This information will be used to determine eligibility for payment of legal fees for indigent Indian parents and Indian custodians, involved in involuntary Indian child custody proceedings in state courts, who are not eligible for legal services through other mechanisms. Response to this request is required to obtain a benefit.

(2) Public reporting for this information collection is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any aspect of this information collection should be mailed or hand-delivered to the Bureau of Indian Affairs, Information Collec-

tion Clearance Officer, Room 336–SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs Paperwork Reduction Project—1076–0111, Office of Management and Budget, Washington, DC 20503.

(b) The information collection requirements contained in §§ 23.21; 23.31; 23.46; 23.47, and 23.71 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0131. The information collection requirements under §§ 23.21 and 23.31 are collected in the form of ICWA grant applications from Indian tribes and off-reservation Indian organizations. A response to this request is required to obtain grant funds. The information collection requirements under § 23.46 are collected in compliance with applicable OMB circulars on financial management, internal and external controls and other fiscal assurances in accordance with existing Federal grant administration and reporting requirements. The grantee information collection requirements under § 23.47 are collected in the form of quarterly and annual program performance narrative reports and statistical data as required by the grant award document. Pursuant to 25 U.S.C. 1951, the information collection requirement under § 23.71 is collected from state courts entering final adoption decrees for any Indian child and is provided to and maintained by the Secretary.

(1) Public reporting for the information collection at §§ 23.21 and 23.31 is estimated to average 32 hours per response, including the time for reviewing the grant application instructions, gathering the necessary information and data, and completing the grant application. Public reporting for the information collection at §§ 23.46 and 23.47 is estimated to average a combined total of 16 annual hours per grantee, including the time for gathering the necessary information and data, and completing the required forms and reports. Public reporting for the information collection at § 23.71 is estimated to average 4 hours per response, including the time for obtaining and preparing the final adoption decree for transmittal to the Secretary.

(2) Direct comments regarding any of these burden estimates or any aspect of these information collection requirements should be mailed or hand-delivered to the Bureau of Indian Affairs, Information Collection Clearance Officer, room 336-SIB, 1849 C Street, NW., Washington, DC, 20240; and the Office of Information and Regulatory Affairs Paperwork Reduction Project—1076-0131, Office of Management and Budget, Washington, DC 20503.

### **Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel in State Courts**

#### **§ 23.11 Notice.**

(a) In any involuntary proceeding in a state court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's Indian parents or custodians or tribe is known, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall directly notify the Indian parents, Indian custodians, and the child's tribe by certified mail with return receipt requested, of the pending proceedings and of their right of intervention. Notice shall include requisite information identified at paragraphs (d)(1) through (4) and (e)(1) through (6) of this section, consistent with the confidentiality requirement in paragraph (e)(7) of this section. Copies of these notices shall be sent to the Secretary and the appropriate Area Director listed in paragraphs (c)(1) through (12) of this section.

(b) If the identity or location of the Indian parents, Indian custodians or the child's tribe cannot be determined, notice of the pendency of any involuntary child custody proceeding involving an Indian child in a state court shall be sent by certified mail with return receipt requested to the appropriate Area Director listed in paragraphs (c)(1) through (12) of this section. In order to establish tribal identity, it is necessary to provide as much information as is known on the Indian child's direct lineal ancestors including, but not limited to, the information

delineated at paragraph (d)(1) through (4) of this section.

(c)(1) For proceedings in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia or any territory or possession of the United States, notices shall be sent to the following address: Eastern Area Director, Bureau of Indian Affairs, 3701 N. Fairfax Drive, Suite 260, Arlington, Virginia 22201.

(2) For proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, or Wisconsin, notices shall be sent to the following address: Minneapolis Area Director, Bureau of Indian Affairs, 331 Second Avenue South, Minneapolis, Minnesota 55401-2241.

(3) For proceedings in Nebraska, North Dakota, or South Dakota, notices shall be sent to the following address: Aberdeen Area Director, Bureau of Indian Affairs, 115 Fourth Avenue, SE, Aberdeen, South Dakota 57401.

(4) For proceedings in Kansas, Texas (except for notices to the Ysleta del Sur Pueblo of El Paso County, Texas), and the western Oklahoma counties of Alfalfa, Beaver, Beckman, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods and Woodward, notices shall be sent to the following address: Anadarko Area Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005. Notices to the Ysleta del Sur Pueblo of El Paso County, Texas shall be sent to the Albuquerque Area Director at the address listed in paragraph (c)(6) of this section.

(5) For proceedings in Wyoming or Montana (except for notices to the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana), notices shall be sent to the following address: Billings Area Director, Bureau of Indian Affairs, 316 N. 26th Street, Billings, Montana 59101. Notices to the

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Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana, shall be sent to the Portland Area Director at the address listed in paragraph (c)(11) of this section.

(6) For proceedings in the Texas counties of El Paso and Hudspeth and proceedings in Colorado or New Mexico (exclusive of notices to the Navajo Tribe from the New Mexico counties listed in paragraph (c)(9) of this section), notices shall be sent to the following address: Albuquerque Area Director, Bureau of Indian Affairs, 615 First Street, P.O. Box 26567, Albuquerque, New Mexico 87125. Notices to the Navajo Tribe shall be sent to the Navajo Area Director at the address listed in paragraph (c)(9) of this section.

(7) For proceedings in Alaska (except for notices to the Metlakatla Indian Community, Alaska), notices shall be sent to the following address: Juneau Area Director, Bureau of Indian Affairs, 709 West 9th Street, Juneau, Alaska 99802-1219. Notices to the Metlakatla Indian Community of the Annette Islands Reserve, Alaska, shall be sent to the Portland Area Director at the address listed in paragraph (c)(11) of this section.

(8) For proceedings in Arkansas, Missouri, and the eastern Oklahoma counties of Adair, Atoka, Bryan, Carter, Cherokee, Craig, Creek, Choctaw, Coal, Delaware, Garvin, Grady, Haskell, Hughes, Jefferson, Johnson, Latimer, LeFlore, Love, Mayes, McCurtain, McClain, McIntosh, Murray, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pittsburg, Pontotoc, Pushmataha, Marshall, Rogers, Seminole, Sequoyah, Wagoner, Washington, Stephens, and Tulsa, notices shall be sent to the following address: Muskogee Area Director, Bureau of Indian Affairs, 101 North Fifth Street, Muskogee, Oklahoma 74401.

(9) For proceedings in the Arizona counties of Apache, Coconino (except for notices to the Hopi and San Juan Paiute Tribes) and Navajo (except for notices to the Hopi Tribe); the New Mexico counties of McKinley (except for notices to the Zuni Tribe), San Juan, and Socorro; and the Utah county of San Juan, notices shall be sent to the following address: Navajo Area Di-

rector, Bureau of Indian Affairs, P.O. Box 1060, Gallup, New Mexico 87301. Notices to the Hopi and San Juan Paiute Tribes shall be sent to the Phoenix Area Director at the address listed in paragraph (c)(10) of this section. Notices to the Zuni Tribe shall be sent to the Albuquerque Area Director at the address listed in paragraph (c)(6) of this section.

(10) For proceedings in Arizona (exclusive of notices to the Navajo Tribe from those counties listed in paragraph (c)(9) of this section), Nevada or Utah (exclusive of San Juan county), notices shall be sent to the following address: Phoenix Area Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001.

(11) For proceedings in Idaho, Oregon or Washington, notices shall be sent to the following address: Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232. All notices to the Confederated Salish & Kootenai Tribes of the Flathead Reservation, located in the Montana counties of Flathead, Lake, Missoula, and Sanders, shall also be sent to the Portland Area Director.

(12) For proceedings in California or Hawaii, notices shall be sent to the following address: Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

(d) Notice to the appropriate Area Director pursuant to paragraph (b) of this section may be sent by certified mail with return receipt requested or by personal service and shall include the following information, if known:

(1) Name of the Indian child, the child's birthdate and birthplace.

(2) Name of Indian tribe(s) in which the child is enrolled or may be eligible for enrollment.

(3) All names known, and current and former addresses of the Indian child's biological mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married and former names or aliases; birthdates; places of birth and death; tribal enrollment numbers, and/or other identifying information.

(4) A copy of the petition, complaint or other document by which the proceeding was initiated.

(e) In addition, notice provided to the appropriate Area Director pursuant to paragraph (b) of this section shall include the following:

(1) A statement of the absolute right of the biological Indian parents, the child's Indian custodians and the child's tribe to intervene in the proceedings.

(2) A statement that if the Indian parent(s) or Indian custodian(s) is (are) unable to afford counsel, and where a state court determines indigency, counsel will be appointed to represent the Indian parent or Indian custodian where authorized by state law.

(3) A statement of the right of the Indian parents, Indian custodians and child's tribe to be granted, upon request, up to 20 additional days to prepare for the proceedings.

(4) The location, mailing address, and telephone number of the court and all parties notified pursuant to this section.

(5) A statement of the right of the Indian parents, Indian custodians and the child's tribe to petition the court for transfer of the proceeding to the child's tribal court pursuant to 25 U.S.C. 1911, absent objection by either parent: Provided, that such transfer shall be subject to declination by the tribal court of said tribe.

(6) A statement of the potential legal consequences of the proceedings on the future custodial and parental rights of the Indian parents or Indian custodians.

(7) A statement that, since child custody proceedings are conducted on a confidential basis, all parties notified shall keep confidential the information contained in the notice concerning the particular proceeding. The notices shall not be handled by anyone not needing the information contained in the notices in order to exercise the tribe's rights under the Act.

(f) Upon receipt of the notice, the Secretary or his/her designee shall make reasonable documented efforts to locate and notify the child's tribe and the child's Indian parents or Indian custodians. The Secretary or his/her designee shall have 15 days, after re-

ceipt of the notice from the persons initiating the proceedings, to notify the child's tribe and Indian parents or Indian custodians and send a copy of the notice to the court. If within the 15-day time period the Secretary or his/her designee is unable to verify that the child meets the criteria of an Indian child as defined in 25 U.S.C. 1903, or is unable to locate the Indian parents or Indian custodians, the Secretary or his/her designee shall so inform the court prior to initiation of the proceedings and state how much more time, if any, will be needed to complete the search. The Secretary or his/her designee shall complete all research efforts, even if those efforts cannot be completed before the child custody proceeding begins.

(g) Upon request from a party to an Indian child custody proceeding, the Secretary or his/her designee shall make a reasonable attempt to identify and locate the child's tribe, Indian parents or Indian custodians to assist the party seeking the information.

**§ 23.12 Designated tribal agent for service of notice.**

Any Indian tribe entitled to notice pursuant to 25 U.S.C. 1912 may designate by resolution, or by such other form as the tribe's constitution or current practice requires, an agent for service of notice other than the tribal chairman and send a copy of the designation to the Secretary or his/her designee. The Secretary or his/her designee shall update and publish as necessary the names and addresses of the designated agents in the FEDERAL REGISTER. A current listing of such agents shall be available through the area offices.

**§ 23.13 Payment for appointed counsel in involuntary Indian child custody proceedings in state courts.**

(a) When a state court appoints counsel for an indigent Indian party in an involuntary Indian child custody proceeding for which the appointment of counsel is not authorized under state law, the court shall send written notice of the appointment to the BIA Area Director designated for that state in § 23.11. The notice shall include the following:

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(1) Name, address, and telephone number of attorney who has been appointed.

(2) Name and address of client for whom counsel is appointed.

(3) Relationship of client to child.

(4) Name of Indian child's tribe.

(5) Copy of the petition or complaint.

(6) Certification by the court that state law makes no provision for appointment of counsel in such proceedings.

(7) Certification by the court that the Indian client is indigent.

(b) The Area Director shall certify that the client is eligible to have his or her appointed counsel compensated by the BIA unless:

(1) The litigation does not involve a child custody proceeding as defined in 25 U.S.C. 1903 (1);

(2) The child who is the subject of the litigation is not an Indian child as defined in 25 U.S.C. 1903 (4);

(3) The client is neither the Indian child who is the subject of the litigation, the Indian child's parent as defined in 25 U.S.C. 1903 (9), nor the child's Indian custodian as defined in 25 U.S.C. 1903 (6);

(4) State law provides for appointment of counsel in such proceedings;

(5) The notice to the Area Director of appointment of counsel is incomplete; or

(6) Funds are not available for the particular fiscal year.

(c) No later than 10 days after receipt of the notice of appointment of counsel, the Area Director shall notify the court, the client, and the attorney in writing whether the client has been certified as eligible to have his or her attorney fees and expenses paid by the BIA. If certification is denied, the notice shall include written reasons for that decision, together with a statement that complies with 25 CFR 2.7 and that informs the applicant that the decision may be appealed to the Assistant Secretary. The Assistant Secretary shall consider appeals under this subsection in accordance with 25 CFR 2.20 (c) through (e). Appeal procedures shall be as set out in part 2 of this chapter.

(d) When determining attorney fees and expenses, the court shall:

(1) Determine the amount of payment due appointed counsel by the same pro-

cedures and criteria it uses in determining the fees and expenses to be paid appointed counsel in state juvenile delinquency proceedings; and

(2) Submit approved vouchers to the Area Director who certified eligibility for BIA payment, together with the court's certification that the amount requested is reasonable under the state standards considering the work actually performed in light of criteria that apply in determining fees and expenses for appointed counsel in state juvenile delinquency proceedings.

(e) The Area Director shall authorize the payment of attorney fees and expenses in the amount requested in the voucher approved by the court unless:

(1) The amount of payment due the state-appointed counsel is inconsistent with the fees and expenses specified in § 23.13 (d)(1); or

(2) The client has not been certified previously as eligible under paragraph (c) of this section; or

(3) The voucher is submitted later than 90 days after completion of the legal action involving a client certified as eligible for payment of legal fees under paragraph (b) of this section.

(f) No later than 15 days after receipt of a payment voucher, the Area Director shall send written notice to the court, the client, and the attorney stating the amount of payment, if any, that has been authorized. If the payment has been denied, or the amount authorized is less than the amount requested in the voucher approved by the court, the notice shall include a written statement of the reasons for the decision together with a statement that complies with 25 CFR 2.7 and that informs the client that the decision may be appealed to the Interior Board of Indian Appeals in accordance with 25 CFR 2.4 (e); 43 CFR 4.310 through 4.318 and 43 CFR 4.330 through 4.340.

(g) Failure of the Area Director to meet the deadline specified in paragraphs (c) and (f) of this section may be treated as a denial for purposes of appeal under paragraph (f) of this section.

(h) Payment for appointed counsel does not extend to Indian tribes involved in state court child custody proceedings or to Indian families involved in Indian child custody proceedings in tribal courts.

### Subpart C—Grants to Indian Tribes for Title II Indian Child and Family Service Programs

#### § 23.21 Noncompetitive tribal government grants.

(a) *Grant application information and technical assistance.* Information on grant application procedures and related information may be obtained from the appropriate Agency Superintendent or Area Director. Pre-award and ongoing technical assistance to tribal governments shall be provided in accordance with § 23.42 of this part.

(b) *Eligibility requirements for tribal governments.* The tribal government(s) of any Indian tribe or consortium of tribes may submit a properly documented application for a grant to the appropriate Agency Superintendent or Area Director. A tribe may neither submit more than one application for a grant nor be the beneficiary of more than one grant under this subpart.

(1) Through the publication of a FEDERAL REGISTER announcement at the outset of the implementation of the noncompetitive grant award process during which tribal applications will be solicited, the Assistant Secretary will notify eligible tribal applicants under this subpart of the amount of core funds available for their ICWA program. The funding levels will be based on the service area population to be served. Upon the receipt of this notice from the Agency Superintendent or appropriate Area Director, tribal applicants shall submit a completed ICWA application no later than 60 days after the receipt of this notice.

(2) A grant to be awarded under this subpart shall be limited to the tribal governing body(ies) of the tribe(s) to be served by the grant.

(3) For purposes of eligibility for newly recognized or restored Indian tribes without established reservations, such tribes shall be deemed eligible to apply for grants under this subpart to provide ICWA services within those service areas legislatively identified for such tribes.

(4) A grantee under this subpart may make a subgrant to another Indian tribe or an Indian organization subject to the provisions of § 23.45.

(c) *Revision or amendment of grants.* A grantee under this subpart may submit a written request and justification for a post-award grant modification covering material changes to the terms and conditions of the grant, subject to the approval of the grants officer. The request shall include a narrative description of any significant additions, deletions, or changes to the approved program activities or budget in the form of a grant amendment proposal.

(d) Continued annual funding of an ICWA grant under this subpart shall be contingent upon the fulfillment of the requirements delineated at § 23.23(c).

(e) Monitoring and program reporting requirements for grantees under this subpart are delineated at §§ 23.44 and 23.47.

#### § 23.22 Purpose of tribal government grants.

(a) Grants awarded under this subpart are for the establishment and operation of tribally designed Indian child and family service programs. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and to ensure that the permanent removal of an Indian child from the custody of his or her Indian parent or Indian custodian shall be a last resort. Such child and family service programs may include, but need not be limited to:

(1) A system for licensing or otherwise regulating Indian foster and adoptive homes, such as establishing tribal standards for approval of on-reservation foster or adoptive homes;

(2) The operation and maintenance of facilities for counseling and treatment of Indian families and for the temporary custody of Indian children with the goal of strengthening Indian families and preventing parent-child separations;

(3) Family assistance, including homemaker and home counselors, protective day care and afterschool care, recreational activities, respite care, and employment support services with the goal of strengthening Indian families and contributing to family stability;

(4) Home improvement programs with the primary emphasis on preventing the removal of children due to

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unsafe home environments by making homes safer, but not to make extensive structural home improvements;

(5) The employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters, but not to establish tribal court systems;

(6) Education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) A subsidy program under which Indian adoptive children not eligible for state or BIA subsidy programs may be provided support comparable to that for which they could be eligible as foster children, taking into account the appropriate state standards of support for maintenance and medical needs;

(8) Guidance, legal representation and advice to Indian families involved in tribal, state, or Federal child custody proceedings; and

(9) Other programs designed to meet the intent and purposes of the Act.

(b) Grants may be provided to tribes in the preparation and implementation of child welfare codes within their jurisdiction or pursuant to a tribal-state agreement.

(c) Grantees under this subpart may enhance their capabilities by utilizing ICWA funds as non-Federal matching shares in connection with funds provided under titles IV-B, IV-E and XX of the Social Security Act or other Federal programs which contribute to and promote the intent and purposes of the Act through the provision of comprehensive child and family services in coordination with other tribal, Federal, state, and local resources available for the same purpose.

(d) Program income resulting from the operation of programs under this subpart, such as day care operations, may be retained and used for purposes similar to those for which the grant was awarded.

#### **§ 23.23 Tribal government application contents.**

(a) The appropriate Area Director shall, subject to the tribe's fulfillment of the mandatory application requirements and the availability of appropriated funds, make a grant to the trib-

al governing body of a tribe or consortium of tribes eligible to apply for a grant under this subpart.

(b) The following mandatory tribal application requirements must be submitted to the appropriate Agency Superintendent or Area Director in accordance with the timeframe established in § 23.21 (b) of this subpart:

(1) A current tribal resolution requesting a grant by the Indian tribe(s) to be served by the grant. If an applicant is applying for a grant benefiting more than one tribe (consortium), an authorizing resolution from each tribal government to be served must be included. The request must be in the form of a current tribal resolution by the tribal governing body and shall include the following information:

(i) The official name of tribe(s) applying for the grant and who will directly benefit from or receive services from the grant;

(ii) The proposed beginning and ending dates of the grant;

(iii) A provision stating that the resolution will remain in effect for the duration of the program or until the resolution expires or is rescinded; and

(iv) The signature of the authorized representative of the tribal government and the date thereof.

(2) A completed Application for Federal Assistance form, SF-424.

(3) A narrative needs assessment of the social problems or issues affecting the resident Indian population to be served; the geographic area(s) to be served; and estimated number of resident Indian families and/or persons to receive benefits or services from the program.

(4) A comprehensive developmental multi-year plan in narrative form describing what specific services and/or activities will be provided each program year and addressing the above-identified social problems or issues. At a minimum, the plan must include:

(i) The program goals and objectives, stated in measurable terms, to be achieved through the grant;

(ii) A narrative description of how Indian families and communities will benefit from the program; and

(iii) The methodology, including culturally defined approaches, and procedures by which the tribe(s) will accomplish the identified goals and objectives.

(5) An internal monitoring system to measure progress and accomplishments, and to assure that the quality and quantity of actual performance conforms to the requirements of the grant.

(6) A staffing plan that is consistent with the implementation of the above-described program plan of operation and the procedures necessary for the successful delivery of services.

(i) The plan must include proposed key personnel; their qualifications, training or experience relevant to the services to be provided; responsibilities; Indian preference criteria for employment; and position descriptions.

(ii) In accordance with 25 U.S.C. 3201 *et seq.* (Pub. L. 101-630), title IV, the Indian Child Protection and Family Violence Prevention Act, grantees shall conduct character and background investigations of those personnel identified in that statute. Grantees must initiate character and background investigations of said personnel prior to their actual employment, and complete the investigations in a timely manner.

(7) A program budget and budget narrative justification submitted on an annual basis for the amount of the award and supported by the proposed plan, appropriate program services and activities for the applicable grant year.

(8) Identification of any consultants and/or subgrantees the applicant proposes to employ; a description of the consultant and/or subgrantee services to be rendered; the qualifications and experience in performing the identified services; and the basis for the cost and amount to be paid for such services.

(9) A certification by a licensed accountant that the bookkeeping and accounting procedures which the tribe(s) uses or intends to use meet existing Federal standards for grant management and administration specified at § 23.46.

(10) A system for managing property and recordkeeping which complies with subpart D of 43 CFR part 2 implementing the Privacy Act (5 U.S.C. 552a) and with existing Federal requirements

for grants at 25 CFR 276.5 and 276.11, including the maintenance and safeguarding of direct service case records on families and/or individuals served by the grant.

(11) A listing of equipment, facilities, and buildings necessary to carry out the grant program. Liability insurance coverage for buildings and their contents is recommended for grantees under this subpart.

(12) Pursuant to the Drug-Free Workplace Act of 1988, tribal programs shall comply with the mandatory Drug-Free Workplace Certification, a regulatory requirement for Federal grant recipients.

(c) Continued annual funding of an ICWA program under this subpart shall be contingent upon the existing grant program receiving a satisfactory program evaluation from the area social services office for the previous year of operation. A copy of this evaluation must be submitted together with an annual budget and budget narrative justification in accordance with paragraph (b)(7) of this section. Minimum standards for receiving a satisfactory evaluation shall include:

(1) The timely submission of all fiscal and programmatic reports;

(2) A narrative program report indicating work accomplished in accordance with the applicant's approved multi-year plan and, if applicable, a description of any modification in programs or activities to be funded in the next fiscal year; and

(3) The implementation of mutually determined corrective action measures, if applicable.

#### **Subpart D—Grants to Off-Reservation Indian Organizations for Title II Indian Child and Family Service Programs**

##### **§ 23.31 Competitive off-reservation grant process.**

(a) Grant application procedures and related information may be obtained from the Area Director designated at § 23.11 for processing ICWA notices for the state in which the applicant is located. Pre-award and ongoing technical assistance of off-reservation Indian organization grantees shall be provided in accordance with § 23.42.

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(b) Prior to the beginning of or during the applicable year(s) in which grants for off-reservation programs will be awarded competitively, the Assistant Secretary—Indian Affairs shall publish in the FEDERAL REGISTER an announcement of the grant application process for the year(s), including program priorities or special considerations (if any), applicant eligibility criteria, the required application contents, the amount of available funding and evaluation criteria for off-reservation programs.

(c) Based on the announcement described in paragraph (b) of this section, an off-reservation applicant shall prepare a multi-year developmental application in accordance with §23.33 of this subpart. To be considered in the area competitive review and scoring process, a complete application must be received by the deadline announced in the FEDERAL REGISTER by the Area Director designated at §23.11 for processing ICWA notices for the state in which the applicant is located.

(d) Eligibility requirements for off-reservation Indian organizations. The Secretary or his/her designee shall, contingent upon the availability of funds, make a multi-year grant under this subpart for an off-reservation program when officially requested by a resolution of the board of directors of the Indian organization applicant, upon the applicant's fulfillment of the mandatory application requirements and upon the applicant's successful competition pursuant to §23.33 of this subpart.

(e) A grant under this subpart for an off-reservation Indian organization shall be limited to the board of directors of the Indian organization which will administer the grant.

(f) Continued annual funding of a multi-year grant award to an off-reservation ICWA program under this subpart shall be contingent upon the grantee's fulfillment of the requirements delineated at §23.33 (e).

(g) Monitoring and program reporting requirements for grants awarded to off-reservation Indian organizations under this subpart are delineated at §§23.44 and 23.47.

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**§ 23.32 Purpose of off-reservation grants.**

The Secretary or his/her designee is authorized to make grants to off-reservation Indian organizations to establish and operate off-reservation Indian child and family service programs for the purpose of stabilizing Indian families and tribes, preventing the breakup of Indian families and, in particular, to ensure that the permanent removal of an Indian child from the custody of his/her Indian parent or Indian custodian shall be a last resort. Child and family service programs may include, but are not limited to:

(a) A system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate state standards of support for maintenance and medical needs;

(b) The operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children with the goal of strengthening and stabilizing Indian families;

(c) Family assistance (including homemaker and home counselors), protective day care and afterschool care, employment support services, recreational activities, and respite care with the goal of strengthening Indian families and contributing toward family stability; and

(d) Guidance, legal representation and advice to Indian families involved in state child custody proceedings.

**§ 23.33 Competitive off-reservation application contents and application selection criteria.**

(a) An application for a competitive multi-year grant under this subpart shall be submitted to the appropriate Area Director prior to or on the announced deadline date published in the FEDERAL REGISTER. The Area Director shall certify the application contents pursuant to §23.34 and forward the application within five working days to the area review committee, composed

of members designated by the Area Director, for competitive review and action. Modifications and/or information received after the close of the application period, as announced in the FEDERAL REGISTER, shall not be reviewed or considered by the area review committee in the competitive process.

(b) Mandatory application requirements for Indian organization applicants shall include:

(1) An official request for an ICWA grant program from the organization's board of directors covering the duration of the proposed program;

(2) A completed Application for Federal Assistance form, SF 424;

(3) Written assurances that the organization meets the definition of Indian organization at §23.2;

(4) A copy of the organization's current Articles of Incorporation for the applicable grant years;

(5) Proof of the organization's non-profit status;

(6) A copy of the organization's IRS tax exemption certificate and IRS employer identification number;

(7) Proof of liability insurance for the applicable grant years; and

(8) Current written assurances that the requirements of Circular A-128 for fiscal management, accounting, and recordkeeping are met.

(9) Pursuant to the Drug-Free Workplace Act of 1988, all grantees under this subpart shall comply with the mandatory Drug-Free Workplace Certification, a regulatory requirement for Federal grant recipients.

(c) *Competitive application selection criteria.* The Area Director or his/her designated representative shall select those proposals which will in his/her judgment best promote the purposes of the Act. Selection shall be made through the area review committee process in which each application will be scored individually and ranked according to score, taking into consideration the mandatory requirements as specified above and the following selection criteria:

(1) The degree to which the application reflects an understanding of the social problems or issues affecting the resident Indian client population which the applicant proposes to serve;

(2) Whether the applicant presents a narrative needs assessment, quantitative data and demographics of the client Indian population to be served;

(3) Estimates of the number of Indian people to receive benefits or services from the program based on available data;

(4) Program goals and objectives to be achieved through the grant;

(5) A comprehensive developmental multi-year narrative plan describing what specific services and/or activities will be provided each program year and addressing the above-identified social problems or issues. At a minimum, the plan must include a narrative description of the program; the program goals and objectives, stated in measurable terms, to be achieved through the grant; and the methodology, including culturally defined approaches, and procedures by which the grantee will accomplish the identified goals and objectives;

(6) An internal monitoring system the grantee will use to measure progress and accomplishments, and to ensure that the quality and quantity of actual performance conforms to the requirements of the grant;

(7) Documentation of the relative accessibility which the Indian population to be served under a specific proposal already has to existing child and family service programs emphasizing the prevention of Indian family breakups, such as mandatory state services. Factors to be considered in determining accessibility include:

- (i) Cultural barriers;
- (ii) Discrimination against Indians;
- (iii) Inability of potential Indian clientele to pay for services;
- (iv) Technical barriers created by existing public or private programs;
- (v) Availability of transportation to existing programs;
- (vi) Distance between the Indian community to be served under the proposal and the nearest existing programs;
- (vii) Quality of services provided to Indian clientele; and
- (viii) Relevance of services provided to specific needs of the Indian clientele.

(8) If the proposed program duplicates existing Federal, state, or local

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child and family service programs emphasizing the prevention of Indian family breakups, proper and current documented evidence that repeated attempts to obtain services have been unsuccessful;

(9) Evidence of substantial support from the Indian community or communities to be served, including but not limited to:

(i) Tribal support evidenced by a tribal resolution or cooperative service agreements between the administrative bodies of the affected tribe(s) and the applicant for the duration of the grant period, or

(ii) Letters of support from social services organizations familiar with the applicant's past work experience;

(10) A staffing plan that is consistent with the implementation of the above-described program plan of operation and the procedures necessary for the successful delivery of services. The plan must include proposed key personnel, their qualifications, training or experience relevant to the services to be provided, responsibilities, Indian preference criteria for employment and position descriptions. In accordance with 25 U.S.C. 3201 et seq. (Pub. L. 101-630), title IV, the Indian Child Protection and Family Violence Prevention Act, grantees shall conduct character and background investigations of those personnel identified in that statute prior to their actual employment;

(11) The reasonableness and relevance of the estimated overall costs of the proposed program or services and their overall relation to the organization's funding base, activities, and mission;

(12) The degree to which the detailed annual budget and justification for the requested funds are consistent with, and clearly supported by, the proposed plan and by appropriate program services and activities for the applicable grant year;

(13) The applicant's identification of any consultants and/or subgrantees it proposes to employ; description of the services to be rendered; the qualifications and experience of said personnel, reflecting the requirements for performing the identified services; and the basis for the cost and the amount to be paid for such services;

(14) Certification by a licensed accountant that the bookkeeping and accounting procedures that the applicant uses or intends to use meet existing Federal standards for grant administration and management specified at § 23.46;

(15) The compliance of property management and recordkeeping systems with subpart D of 43 CFR part 2 (the Privacy Act, 5 U.S.C. 552a), and with existing Federal requirements for grants at 25 CFR 276.5 and 276.11, including the maintenance and safeguarding of direct service case records on families and/or individuals served by the grant;

(16) A description of the proposed facilities, equipment, and buildings necessary to carry out the grant activities; and

(17) Proof of liability insurance coverage for the applicable grant year(s).

(d) Two or more applications receiving the same competitive score will be prioritized in accordance with announcements made in the FEDERAL REGISTER pursuant to § 23.31 (b) for the applicable year(s).

(e) Continued annual funding of a multi-year grant award to an off-reservation ICWA program under this subpart shall be contingent upon the availability of appropriated funds and upon the existing grant program receiving a satisfactory program evaluation from the area social services office for the previous year of operation. A copy of this evaluation shall be submitted together with an annual budget and budget narrative justification in accordance with paragraph (c)(10) of this section. Minimum standards for receiving a satisfactory evaluation shall include the timely submission of all fiscal and programmatic reports; a narrative program report indicating work accomplished in accordance with the initial approved multi-year plan; and the implementation of mutually determined corrective action measures, if applicable.

#### **§ 23.34 Review and decision on off-reservation applications by Area Director.**

(a) *Area office certification.* Upon receipt of an application for a grant by an off-reservation Indian organization

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at the area office, the Area Director shall:

(1) Complete and sign the area office certification form. In completing the area certification form, the Area Director shall assess and certify whether applications contain and meet all the application requirements specified at § 23.33. Area Directors shall be responsible for the completion of the area office certification forms for all applications submitted by off-reservation Indian organizations.

(2) Acknowledge receipt of the application to the applicant and advise the applicant of the disposition of the application within 10 days of receipt; and

(3) Transmit all applications within five working days of receipt to the area review committee for competitive review and subsequent approval or disapproval of the applications.

(b) *Area office competitive review and decision for off-reservation applications.* Upon receipt of an application for an off-reservation grant under this part requiring the approval of the Area Director, the Area Director shall:

(1) Establish and convene an area review committee, chaired by a person qualified by knowledge, training and experience in the delivery of Indian child and family services.

(2) Review the area office certification form required in paragraph (a) of this section.

(3) Review the application in accordance with the competitive review procedures prescribed in § 23.33. An application shall not receive approval for funding under the area competitive review and scoring process unless a review of the application determines that it:

(i) Contains all the information required in § 23.33 which must be received by the close of the application period. Modifications of the grant application received after the close of the application period shall not be considered in the competitive review process.

(ii) Receives at least the established minimum score in an area competitive review, using the application selection criteria and scoring process set out in § 23.33. The minimum score shall be established by the Central Office prior to each application period and announced

in the FEDERAL REGISTER for the applicable grants year(s).

(4) Approve or disapprove the application and promptly notify the applicant in writing of the approval or disapproval of the application. If the application is disapproved, the Area Director shall include in the written notice the specific reasons therefore.

(c) The actual funding amounts for the initial grant year shall be subject to appropriations available nationwide and the continued funding of an approved off-reservation grant application under subpart D of this part shall be subject to available funds received by the respective area office for the applicable grant year. Initial funding decisions and subsequent decisions with respect to funding level amounts for all approved grant applications under this part shall be made by the Area Director.

### § 23.35 Deadline for Central Office action.

Within 30 days of the receipt of grant reporting forms from the Area Directors identifying approved and disapproved applications pursuant to subpart D of this part and recommended funding levels for approved applications, the Secretary or his/her designee shall process the Area Directors' funding requests.

## Subpart E—General and Uniform Grant Administration Provisions and Requirements

### § 23.41 Uniform grant administration provisions, requirements and applicability.

The general and uniform grant administration provisions and requirements specified at 25 CFR part 276 and under this subpart are applicable to all grants awarded to tribal governments and off-reservation Indian organizations under this part, except to the extent inconsistent with an applicable Federal statute, regulation or OMB circular.

### § 23.42 Technical assistance.

(a) Pre-award and ongoing technical assistance may be requested by an Indian tribe or off-reservation Indian organization from the appropriate agency

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or area office to which the tribe or organization will be submitting an application for funds under subparts C and D of this part. A request for pre-award technical assistance by an off-reservation Indian organization must be received by the Area Director designated at § 23.11 for the state in which the applicant is located no later than 10 days prior to the application deadline to assure sufficient time for area response.

(b) Pre-award and ongoing technical assistance may be provided by the appropriate BIA agency or area office for purposes of program planning and design, assistance in establishing internal program monitoring and evaluation criteria for ongoing grant administration and management, and for other appropriate assistance requested.

(c) The area social services staff shall provide technical assistance to grantees upon receipt of an authorized request from the grantee or when review of the grantee's quarterly performance reports shows that:

(1) An ICWA program is yielding results that are or will be detrimental to the welfare of the intended Indian beneficiaries of the program;

(2) A program has substantially failed to implement its goals and objectives;

(3) There are serious irregularities in the fiscal management of the grant; or

(4) The grantee is otherwise deficient in its program performance.

(5) Upon receiving an authorized request from the grantee, the area social services staff and/or grants officer shall provide the necessary technical assistance to arrive at mutually determined corrective action measures and their actual implementation, if necessary, and the timeframes within which said corrective actions will be implemented.

### **§ 23.43 Authority for grant approval and execution.**

(a) *Tribal government programs.* The appropriate Agency Superintendent or Area Director may approve a grant application and its subsequent execution under subpart C when the intent, purpose and scope of the application pertains solely to reservations located within the service area jurisdiction of the agency or area office.

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(b) *Off-reservation programs.* The appropriate Area Director may approve a grant application and its subsequent execution under subpart D when the intent, purpose and scope of the grant proposal pertains to off-reservation Indian service populations or programs.

### **§ 23.44 Grant administration and monitoring.**

All grantees under this part shall be responsible for managing day-to-day program operations to ensure that program performance goals are being achieved and to ensure compliance with the provisions of the grant award document and other applicable Federal requirements. Unless delegated to the Agency Superintendent, appropriate area office personnel designated by the Area Director shall be responsible for all grant program and fiscal monitoring responsibilities.

### **§ 23.45 Subgrants.**

A tribal government grantee may make a subgrant under subpart C of this part, provided that such subgrants are for the purpose for which the grant was made and that the grantee retains administrative and financial responsibility over the activity and the funds.

### **§ 23.46 Financial management, internal and external controls and other assurances.**

Grantee financial management systems shall comply with the following standards for accurate, current and complete disclosure of financial activities.

(a) OMB Circular A-87 (Cost principles for state and local governments and federally recognized Indian tribal governments).

(b) OMB Circular A-102 (Common rule 43 CFR part 12).

(c) OMB Circular A-128 (Single Audit Act).

(d) OMB Circular A-110 or 122 (Cost principles for non-profit organizations and tribal organizations, where applicable).

(e) *Internal control.* Effective control and accountability must be maintained for all grants. Grantees must adequately safeguard any property and must ensure that it is used solely for authorized purposes.

(f) *Budget control.* Actual expenditures must be compared with budgeted amounts for the grant. Financial information must be related to program performance requirements.

(g) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, grant documents, or other information required by the grantee's financial management system. The Secretary or his/her designee may review the adequacy of the financial management system of an Indian tribe(s) or off-reservation Indian organization applying for a grant under this part.

(h) Pursuant to 18 U.S.C. 641, whoever embezzles, steals, purloins, or knowingly converts to his or her use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or whoever receives, conceals, or retains the same with intent to convert it to his or her use or gain, knowing it to have been embezzled, stolen, purloined, or converted shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both; but if the value of such property does not exceed the sum of \$100, he or she shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

**§ 23.47 Reports and availability of information to Indians.**

(a) Any tribal government or off-reservation Indian organization receiving a grant under this part shall make general programmatic information and reports concerning that grant available to the Indian people it serves or represents. Access to this information may be requested in writing and shall be made available within 10 days of receipt of the request. Except as required by title IV of Pub. L. 101-630, the Indian Child Protection and Family Violence Prevention Act, grantees shall hold confidential all information obtained from persons receiving services from the program, and shall not release

such information without the individual's written consent. Information may be disclosed in a manner which does not identify or lead to the identification of particular individuals.

(b) Grantees shall submit Standard Form 269 or 269A on a quarterly and an annual basis to report their status of funds by the dates specified in the grant award document.

(c) Grantees shall furnish and submit the following written quarterly and annual program reports by the dates specified in the award document:

(1) Quarterly and annual statistical and narrative program performance reports which shall include, but need not be limited to, the following;

(i) A summary of actual accomplishments and significant activities as related to program objectives established for the grant period;

(ii) The grantee's evaluation of program performance using the internal monitoring system submitted in their application;

(iii) Reports on all significant ICWA direct service grant activities including but not limited to the following information:

(A) Significant title II activities;

(B) Data reflecting numbers of individuals referred for out-of-home placements, number of individuals benefiting from title II services and types of services provided, and

(C) Information and referral activities.

(iv) Child abuse and neglect statistical reports and related information as required by 25 U.S.C. 2434, Pub. L. 99-570, the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986;

(v) A summary of problems encountered or reasons for not meeting established objectives;

(vi) Any deliverable or product required in the grant; and

(vii) Additional pertinent information when appropriate.

(2) The BIA may negotiate for the provision of other grant-related reports not previously identified.

(d) Events may occur between scheduled performance reporting dates which have significant impact on the grant-supported activity. In such cases, the grantee must inform the awarding

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agency as soon as problems, delays, adverse conditions, or serious incidents giving rise to liability become known and which will materially impair its ability to meet the objectives of the grant.

#### **§ 23.48 Matching shares and agreements.**

(a) Grant funds provided to Indian tribes under subpart C of this part may be used as non-Federal matching shares in connection with funds provided under titles IV-B, IV-E and XX of the Social Security Act or such other Federal programs which contribute to and promote the purposes of the Act as specified in §§ 23.3 and 23.22 (25 U.S.C. 1931).

(b) Pursuant to 25 U.S.C. 1933, in furtherance of the establishment, operation, and funding of programs funded under subparts C and D of this part, the Secretary may enter into agreements with the Secretary of Health and Human Services. The latter Secretary is authorized by the Act to use funds appropriated for the Department of Health and Human Services for programs similar to those funded under subparts C and D of this part (25 U.S.C. 1931 and 1932), provided that authority to make payment pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

#### **§ 23.49 Fair and uniform provision of services.**

(a) Grants awarded under this part shall include provisions assuring compliance with the Indian Civil Rights Act; prohibiting discriminatory distinctions among eligible Indian beneficiaries; and assuring the fair and uniform provision by the grantees of the services and assistance they provide to eligible Indian beneficiaries under such grants. Such procedures must include criteria by which eligible Indian beneficiaries will receive services, record-keeping mechanisms adequate to verify the fairness and uniformity of services in cases of formal complaints, and an explanation of what rights will be afforded an individual pending the resolution of a complaint.

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(b) Indian beneficiaries of the services to be rendered under a grant shall be afforded access to administrative or judicial bodies empowered to adjudicate complaints, claims, or grievances brought by such Indian beneficiaries against the grantee arising out of the performance of the grant.

#### **§ 23.50 Service eligibility.**

(a) Tribal government Indian child and family service programs. Any person meeting the definition of Indian, Indian child, Indian custodian, or Indian parent of any unmarried person under the age of 18 as defined in § 23.2 is eligible for services provided under 25 U.S.C. 1931 of the Act. Tribal membership status shall be determined by tribal law, ordinance, or custom. The tribe may, under subpart C, extend services to nontribal family members related by marriage to tribal members, provided such services promote the intent and purposes of the Act. A tribe may also, within available resources, extend services under this part to individuals who are members of, or are eligible for membership in other Indian tribes, and who reside within the tribe's designated service area.

(b) Off-reservation Indian child and family service programs and agreements with the Secretary of Health and Human Services pursuant to 25 U.S.C. 1933. For purposes of eligibility for services provided under 25 U.S.C. 1932 and 1933 of the Act, any person meeting the definition of Indian, Indian child, Indian custodian, or Indian parent of any unmarried person under the age of 18 as defined in § 23.2, or the definition of Indian as defined in 25 U.S.C. 1603(c), shall be eligible for services. Tribal membership status shall be determined by tribal law, ordinance, or custom.

#### **§ 23.51 Grant carry-over authority.**

Unless restricted by appropriation, and contingent upon satisfactory program evaluations from the appropriate area or agency office for an existing program, grantees are authorized to carry over unliquidated grant funds which remain at the end of a budget period. Such funds may be carried over for a maximum period of two years beyond the initial grant funding period

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and must be utilized only for the intent, purpose and scope of the original grant. These carry-over grant funds shall not be reprogrammed into other appropriation activities or subactivities. Funds carried over into another fiscal year will be added to the grantee's new fiscal year funding amount.

### § 23.52 Grant suspension.

(a) When a grantee has materially failed to comply and remains out of compliance with the terms and conditions of the grant, the grants officer may, after reasonable notice to the grantee and the provision of requested technical assistance, suspend the grant. The notice preceding the suspension shall include the effective date of the suspension, the corrective measures necessary for reinstatement of the grant and, if there is no immediate threat to safety, a reasonable time-frame for corrective action prior to actual suspension.

(b) No obligation incurred by the grantee during the period of suspension shall be allowable under the suspended grant, except that the grants officer may at his/her discretion allow necessary and proper costs which the grantee could not reasonably avoid during the period of suspension if such costs would otherwise be allowable under the applicable cost principles.

(c) Appropriate adjustments to the payments under the suspended grant will be made either by withholding the payments or by not allowing the grantee credit for disbursements which the grantee may make in liquidation of unauthorized obligations the grantee incurs during the period of suspension.

(d) Suspension shall remain in effect until the grantee has taken corrective action to the satisfaction of the grants officer, or given assurances satisfactory to the grants officer that corrective action will be taken, or until the grants officer cancels the grant.

### § 23.53 Cancellation.

(a) The grants officer may cancel any grant, in whole or in part, at any time before the date of completion whenever it is determined that the grantee has:

(1) Materially failed to comply with the terms and conditions of the grant;

(2) Violated the rights as specified in § 23.49 or endangered the health, safety, or welfare of any person; or

(3) Been grossly negligent in, or has mismanaged the handling or use of funds provided under the grant.

(b) When it appears that cancellation of the grant will become necessary, the grants officer shall promptly notify the grantee in writing of this possibility. This written notice shall advise the grantee of the reason for the possible cancellation and the corrective action necessary to avoid cancellation. The grants officer shall also offer, and shall provide, if requested by the grantee, any technical assistance which may be required to effect the corrective action. The grantee shall have 60 days in which to effect this corrective action before the grants officer provides notice of intent to cancel the grant as provided for in paragraph (c) of this section.

(c) Upon deciding to cancel for cause, the grants officer shall promptly notify the grantee in writing of that decision, the reason for the cancellation, and the effective date. The Area Director or his/her designated official shall also provide a hearing for the grantee before cancellation. However, the grants officer may immediately cancel the grant, upon notice to the grantee, if the grants officer determines that continuance of the grant poses an immediate threat to safety. In this event, the Area Director or his/her designated official shall provide a hearing for the grantee within 10 days of the cancellation.

(d) The hearing referred to in paragraph (c) of this section shall be conducted as follows:

(1) The grantee affected shall be notified, in writing, at least 10 days before the hearing. The notice should give the date, time, place, and purpose of the hearing.

(2) A written record of the hearing shall be made. The record shall include written statements submitted at the hearing or within five days following the hearing.

### Subpart F—Appeals

#### § 23.61 Appeals from decision or action by Agency Superintendent, Area Director or Grants Officer.

A grantee or prospective applicant may appeal any decision made or action taken by the Agency Superintendent, Area Director, or grants officer under subpart C or E of this part. Such an appeal shall be made to the Assistant Secretary who shall consider the appeal in accordance with 25 CFR 2.20 (c) through (e). Appeal procedures shall be as set out in part 2 of this chapter.

#### § 23.62 Appeals from decision or action by Area Director under subpart D.

A grantee or applicant may appeal any decision made or action taken by the Area Director under subpart D that is alleged to be in violation of the U.S. Constitution, Federal statutes, or the regulations of this part. These appeals shall be filed with the Interior Board of Indian Appeals in accordance with 25 CFR 2.4 (e); 43 CFR 4.310 through 4.318 and 43 CFR 4.330 through 4.340. However, an applicant may not appeal a score assigned to its application or the amount of grant funds awarded.

#### § 23.63 Appeals from inaction of official.

A person or persons whose interests are adversely affected, or whose ability to protect such interests is impeded by the failure of an official to act on a request to the official, may make the official's inaction the subject of an appeal under part 2 of this chapter.

### Subpart G—Administrative Provisions

#### § 23.71 Recordkeeping and information availability.

(a)(1) Any state court entering a final decree or adoptive order for any Indian child shall provide the Secretary or his/her designee within 30 days a copy of said decree or order, together with any information necessary to show:

(i) The Indian child's name, birthdate and tribal affiliation, pursuant to 25 U.S.C. 1951;

(ii) Names and addresses of the biological parents and the adoptive parents; and

(iii) Identity of any agency having relevant information relating to said adoptive placement.

(2) To assure and maintain confidentiality where the biological parent(s) have by affidavit requested that their identity remain confidential, a copy of such affidavit shall be provided to the Secretary or his/her designee. Information provided pursuant to 25 U.S.C. 1951(a) is not subject to the Freedom of Information Act (5 U.S.C. 552), as amended. The Secretary or his/her designee shall ensure that the confidentiality of such information is maintained. The address for transmittal of information required by 25 U.S.C. 1951(a) is: Chief, Division of Social Services, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop 310–SIB, Washington, DC 20240. The envelope containing all such information should be marked "Confidential." This address shall be sent to the highest court of appeal, the Attorney General and the Governor of each state. In some states, a state agency has been designated to be repository for all state court adoption information. Where such a system is operative, that agency may assume reporting responsibilities for the purposes of the Act.

(b) The Division of Social Services, Bureau of Indian Affairs, is authorized to receive all information and to maintain a central file on all state Indian adoptions. This file shall be confidential and only designated persons shall have access to it. Upon the request of an adopted Indian individual over the age of 18, the adoptive or foster parents of an Indian child, or an Indian tribe, the Division of Social Services shall disclose such information as may be necessary for purposes of tribal enrollment or determining any rights or benefits associated with tribal membership, except the names of the biological parents where an affidavit of confidentiality has been filed, to those persons eligible under the Act to request such information. The chief tribal enrollment officer of the BIA is authorized to disclose enrollment information relating to an adopted Indian child where the biological parents have by affidavit

requested anonymity. In such cases, the chief tribal enrollment officer shall certify the child's tribe, and, where the information warrants, that the child's parentage and other circumstances entitle the child to enrollment consideration under the criteria established by the tribe.

### Subpart H—Assistance to State Courts

#### §23.81 Assistance in identifying witnesses.

Upon the request of a party in an involuntary Indian child custody proceeding or of a court, the Secretary or his/her designee shall assist in identifying qualified expert witnesses. Such requests for assistance shall be sent to the Area Director designated in §23.11(c). The BIA is not obligated to pay for the services of such expert witnesses.

#### §23.82 Assistance in identifying language interpreters.

Upon the request of a party in an Indian child custody proceeding or of a court, the Secretary or his/her designee shall assist in identifying language interpreters. Such requests for assistance should be sent to the Area Director designated in §23.11(c). The BIA is not obligated to pay for the services of such language interpreters.

#### §23.83 Assistance in locating biological parents of Indian child after termination of adoption.

Upon the request of a child placement agency, the court or an Indian tribe, the Secretary or his/her designee shall assist in locating the biological parents or prior Indian custodians of an adopted Indian child whose adoption has been terminated pursuant to 25 U.S.C. 1914. Such requests for assistance should be sent to the Area Director designated in §23.11(c).

## PART 26—JOB PLACEMENT AND TRAINING PROGRAM

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- 26.38 May I appeal a decision about my application?

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SOURCE: 74 FR 41331, Aug. 17, 2009, unless otherwise noted.

### Subpart A—General Applicability

#### § 26.1 What terms do I need to know?

As used in this part:

*Bureau* means the Bureau of Indian Affairs (BIA).

*Department* means the Department of the Interior.

*Gainful Employment* means work resulting in self-sufficiency.

*Indian* means any person who is a member of a federally recognized tribe, including Alaska Natives.

*Individual Self-Sufficiency Plan (ISP)* means a written plan designed to meet the goal of employment through specific actions that meet the needs of the individual. The plan is jointly developed and is signed by both the applicant and the servicing office. The ISP addresses the client's barriers to employment and a plan of action to address barriers.

*Must* means a mandatory act or requirement.

*On or Near Reservation* means those areas or communities adjacent or contiguous to reservations, or service areas where Job Training and Placement programs are provided upon approval of the Assistant Secretary-Indian Affairs or his designated representative. For purposes of this program and services, Alaska is included in this definition.

*On-the-Job-Training (OJT)* means a written agreement for an employer to provide training to a participant who

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engages in productive work that provides knowledge or skills essential to the full and adequate performance of the job. The employer receives reimbursement from the Job Training Program for the wage rate of the participant. OJT may be used to meet the goal(s) in the participant's ISP, as long as it does not exceed 24 months.

*Permanent Employment* means a year-round job or one that re-occurs seasonally, lasting at least 90 days per work season.

*Service Area* means a location agreed to by the tribe with the Bureau to provide Job Training and Placement Services.

*Servicing Office* means the Bureau office or the office of the tribal service provider that administers the Job Training and Placement Program.

*Tribal Governing Body* means the recognized entity empowered to exercise governmental authority over a federally recognized tribe.

*Tribal Service Provider* means a tribe or tribal organization that administers the Job Training and Placement Program pursuant to Public Law 93-638 or Public Law 102-477.

*Tribe* means any tribal entity listed in the FEDERAL REGISTER notice that the Secretary of the Interior publishes under Public Law 103-454, 108 Stat. 4791.

*Underemployed* means an individual who is working but whose income is insufficient to meet essential needs.

*Unemployed* means an individual who is not currently working or employed.

*Unmet need* means the difference between available resources and the cost associated with finding gainful employment.

*Vocational Training* means technical training that leads to permanent and gainful employment.

*We, us, or our* means the Secretary of the Interior, or an official in the Office of the Assistant Secretary—Indian Affairs, or an official in the Bureau of Indian Affairs to whom the Secretary has delegated authority.

#### § 26.2 Who authorizes this collection of information?

The information collection requirements contained in this part have been approved by the Office of Management

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and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned OMB clearance number 1076-0062. 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 the form or regulation requesting the information has a currently valid OMB Control Number.

### § 26.3 What is the purpose of the Job Placement and Training Program?

The purpose of the Job Placement and Training Program is to assist eligible applicants to obtain job skills and to find and retain a job leading to self-sufficiency.

### § 26.4 Who administers the Job Placement and Training Program?

The Job Placement and Training Program is administered by the Bureau of Indian Affairs or a tribal service provider. Tribes are encouraged to provide services directly to Indians by either entering into a Public Law 93-638 contract with the Bureau or a compact with the Office of Self-Governance. Tribes may also consolidate Job Placement and Training Program funds in accordance with the provisions of the Indian Employment, Training, and Related Services Demonstration Act of 1992, Public Law 102-477.

### § 26.5 Who may be eligible for Job Placement and Training?

You may apply for assistance for employment or training if all of the following criteria are met:

- (a) You meet the definition of Indian in § 26.1; and
- (b) You are residing on or near an Indian reservation or in a service area, or in the agreed contract service area; and
- (c) You are unemployed or underemployed or need and can benefit from employment assistance as determined by your servicing office; and
- (d) You complete an ISP.

### § 26.6 Who is eligible to receive financial assistance?

Financial assistance is only available to persons:

- (a) Approved for training that will lead to permanent, gainful and meaningful employment; or

- (b) Who have obtained a job and need financial assistance to retain the job, as determined by the servicing office.

### § 26.7 How is financial need established?

You must show that current income and other available resources are not sufficient to meet employment or training goals.

### § 26.8 Where do I go to apply for Job Placement and Training assistance?

You may apply for Job Placement and Training assistance at the servicing office nearest to your current residence.

### § 26.9 How do I apply for assistance?

- (a) You should contact the BIA office or the tribal service provider which is nearest to your current residence to get an application form;
- (b) You must complete the application process as established by your servicing office; and
- (c) You must complete and sign a comprehensive ISP (or an individual development plan (IDP) or employment development plan (EDP), which are synonymous with an ISP).

### § 26.10 When will I find out if I have been selected for Job Placement and Training assistance?

- (a) Your servicing office will notify you in writing within 30 calendar days once it receives a completed job training application request; or
- (b) Your servicing office will notify you within 5 business days once it has received a completed Job Placement application and written job offer.

### § 26.11 What type of Job Placement and Training assistance may be approved?

Services provided may include funding for employment, training or supplemental assistance that supports job placement or training activities (see subpart B of this part for Job Placement or subpart C of this part for Training Services).

### § 26.12 Who provides the Job Placement and Training?

The Bureau or a tribal service provider may enter into contracts or

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agreements to provide facilities and services required for vocational training programs with:

- (a) Indian tribal governing bodies or, when approved by the tribal service provider, other provider of meaningful training programs not currently operated by the tribe;
- (b) Appropriate Federal, State, or local government agencies;
- (c) Public or private schools with a recognized reputation in vocational education and successfully obtaining employment for graduates;
- (d) Education firms that operate residential training centers; and
- (e) Corporations and associations or small business establishments with apprenticeship or on-the-job training (OJT) programs leading to skilled employment.

### § 26.13 How long may I be in training and how long can I receive other assistance?

- (a) Your training at any approved institution, apprenticeship, and/or OJT must not exceed 24 months of full-time actual training hours.
- (b) Registered nurse training must not exceed 36 months of full actual training hours.
- (c) You may receive other financial assistance under this program determined by your ISP that you have developed with your tribal service provider.

### § 26.14 What or who is a service provider?

A service provider is an administrative unit of a BIA Regional Office, a BIA Agency Office, a BIA Field Office, a Tribal contracted office, or Alaska Native federally recognized tribe, or a tribal organization, that provides grants to help offset the cost of vocational or technical training (at approved places), or immediate job placement services. To the extent resources will allow, other kinds of support services may also be available.

### § 26.15 What makes an applicant eligible for Job Placement and Training services?

- You are eligible for services if:
- (a) You meet the definition of an American Indian or Alaska Native; and
  - (b) Either:

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- (1) You can demonstrate an unmet need and show a need for job training or placement services in order to become gainfully and meaningfully employed; or
- (2) You are skilled, but need financial assistance to get to a job, and you show an aptitude and potential to benefit from services.

### § 26.16 If I am awarded financial assistance, how much will I receive?

- (a) The amount of financial assistance you receive depends on your unmet needs. If applicable, you should apply for:
  - (1) A Pell Grant if your training institution offers this grant; and
  - (2) Other education grants or loans for which you may qualify.
- (b) The Bureau or tribal service provider will award financial assistance up to the level of your unmet need to the extent resources are available. It is possible that the combination of available financial assistance will not equal your financial need.

### § 26.17 Can more than one family member be financially assisted at the same time?

Yes, more than one family member can be assisted, providing that each applicant is eligible.

### § 26.18 What kinds of supportive services are available?

The BIA or tribal service provider may provide, but is not limited to, the following supportive services:

- (a) Assistance in completing an application and the provision of supporting documents;
- (b) A description of the Job Placement and Training Program and related services;
- (c) An assessment of eligibility;
- (d) An assessment of need for employment services (or a combination of training and employment services);
- (e) The creation of an ISP (which may include training and other support services);
- (f) Counseling services that address cultural differences and strengthen probability of client success;
- (g) Referral to other appropriate services;
- (h) Youth work experience;

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- (i) Tools for employment;
- (j) Initial union dues;
- (k) Transportation of household effects;
- (l) Security and safety deposits;
- (m) Items to improve personal appearance such as professional work clothing;
- (n) If required, kitchen and other household effects including bedding and appliances; and
- (o) Childcare.

### **§ 26.19 Will I be required to contribute financially to my employment and training goals?**

Yes, the Job Placement and Training Program clients are required to seek other funding, including the use of personal resources as a condition of their ISP.

### **§ 26.20 Can I be required to return portions of my grant?**

Yes, grants are awarded for a specific purpose as described in the applicant's ISP. If the funds cannot be spent according to the ISP, the unused portion must be returned to the service provider's job placement and training budget.

### **§ 26.21 Can this program be combined with other similar programs for maximum benefit?**

Yes, combining this program with other programs is encouraged, to the extent that laws governing program services permit partnering with similar programs and resources.

### **§ 26.22 May a tribe integrate Job Placement and Training funds into its Public Law 102-477 Plan?**

Yes, Indian tribes may integrate Job Placement and Training Program funds into their Public Law 102-477 Plan.

### **§ 26.23 What is an Individual Self-Sufficiency Plan (ISP)?**

- (a) An ISP is a document that:
  - (1) Spells out the details necessary for a person to assume a meaningful job (usually within a reasonable period of time);
  - (2) Supplements the application process and includes needed finances, special clothing, transportation, and support services necessary for employment;

(3) Identifies all financial resources and defines the employment or training objective and activities planned to reach the objective; and

(4) Outlines how the applicant will participate in job placement, where resources will allow.

(b) The employer's job information and offer should be attached to the ISP, which becomes a part of the application (and supporting documents).

(c) The ISP must indicate that the services received will meet the individual's and tribal goals.

(d) Only one comprehensive ISP can be in effect for each applicant at one time. The comprehensive ISP should be coordinated and integrated with other programs offered by the servicing agency.

## **Subpart B—Job Placement Services**

### **§ 26.24 What is the scope of the Job Placement Program?**

The Job Placement Program assists Indian people who have job skills to obtain and retain gainful employment leading to self-sufficiency.

### **§ 26.25 What constitutes a complete Job Placement Program application?**

To be complete, a Job Placement Program application must contain all of the items required by this section.

(a) An application signed by the applicant and servicing office representative.

(b) An ISP, including a list of goods and services needed to get the applicant to the job, signed by the applicant and servicing representative.

(c) An accepted official document that shows the formal relationship between the applicant and a federally recognized tribe or a document that shows an applicant's eligibility for services.

(d) A statement by the service provider that the applicant has been declared eligible for services.

(e) A financial statement that reflects the applicant's unmet need.

(f) An employer certification that the applicant has been hired. The certification must include, at a minimum:

- (1) Job title;

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- (2) Beginning date;
- (3) Beginning wage;
- (4) Date first full paycheck will be issued; and
- (5) Expected duration of the job.

### § 26.26 What Job Placement services may I receive?

As determined by the service provider, you may receive transportation to work for a limited period, funds to finalize your job resume, and job placement assistance.

### § 26.27 What kind of Job Placement support services can I expect?

Service office representatives will make the determination of what support services are necessary and to be funded. Examples of job placement support services include, but are not limited to resume preparation, interview techniques, job retention, and related living skills.

### § 26.28 What follow-up services are available after I become employed?

As determined by the service provider, the following type of services may be available: Temporary housing, transportation to work for a limited period of time, work clothing, and childcare.

## Subpart C—Training Services

### § 26.29 What is the scope of the Job Training Program?

A service provider may offer career counseling, assessment, recommend training institutions that properly prepare applicants for entry into their career field, and help prepare applicants for gainful employment to the extent program funding will allow and based on applicants' established need.

### § 26.30 Does the Job Training Program provide part-time training or short-term training?

Yes, part-time and short-term training are allowable provided the training assists individuals to develop skills necessary to acquire gainful employment, in accordance with the ISP, and depending upon availability of resources. Part-time means no less than six credit units per semester (based on a nine-month school year).

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### § 26.31 May I repeat my training?

Eligibility for repeat training and other financial assistance will be determined by your tribal service provider.

### § 26.32 What constitutes a complete Job Training Program application?

A request for training includes:

- (a) Intake and application data;
- (b) Feasible, comprehensive ISP;
- (c) Tribal affiliation document;
- (d) Selective Service registration;
- (e) Selected place of training;
- (f) Statement of financial need;
- (g) Statement of eligibility; and
- (h) Applicant assessment or other documents as required by the servicing agency.

### § 26.33 How do I show I need job training?

The need for Job Placement and Training is shown by completing an application for training that demonstrates financial need.

### § 26.34 What type of job training assistance may be approved?

The following types of training that lead to gainful employment may be approved:

- (a) Nationally accredited vocational training;
- (b) Training and non-accredited vocational courses provided by a tribe;
- (c) Training programs not operated by the tribe but approved by the service provider;
- (d) Apprenticeship training supervised by a State apprenticeship agency or council or by the Federal Apprenticeship Training Service that is provided by a corporation or association that has been training bona fide apprentices for at least one year or any other apprenticeship program approved by the service provider; or
- (e) OJT offered by a public or private business.

### § 26.35 What kind of support services are available to me?

As determined by the service provider, training support services include, but are not limited to, stipends, transportation, and childcare.

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**§ 26.36 What follow-up service is available after I complete training?**

Job Placement assistance may follow training.

**§ 26.37 Are there training standards that I must follow?**

Yes, students must maintain the minimum academic requirements and be in good standing as set forth by the training institute. If an applicant is separated from training for good cause, the applicant may be responsible for repaying any portion of misused funds.

**Subpart D—Appeal by an Applicant**

**§ 26.38 May I appeal a decision about my application?**

If the servicing agency denies your application you may appeal under part 2 of this chapter by sending your appeal to your service provider. If your servicing agency is a tribal contractor, you should file your appeal with the tribal contractor under their established procedure. The letter informing you of the decision on your application will include information on how to appeal.