

PART 20—FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAM

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SOURCE: 42 FR 6568, Feb. 2, 1977, unless otherwise noted.

Subpart A—Definitions, Purpose and Policy

§ 20.1 Definitions.

(a) Appeal means a written request for correction of an action or decision claimed to violate a person’s legal rights or privileges as provided in part 2 of this chapter.

(b) Applicant means an individual or persons on whose behalf an application for assistance and/or services has been made under the part.

(c) Application means the process through which a request is made for assistance or services.

(d) Area Director means the Bureau official in charge of an Area Office.

(e) 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 acting on behalf or representing the applicant or recipient.

(f) Bureau means the Bureau of Indian Affairs, U.S. Department of the Interior.

(g) Child means a person under the age of 18 or such other age of majority as may be established for purposes of parental support by tribal or state law (if any) applicable to the person at his or her residence, except that no person who has been emancipated by marriage shall be deemed a child.

(h) Child welfare assistance means financial assistance provided on behalf of an Indian child, or an Indian under age 22 if assistance was initiated before age 18, who requires placement in a foster home or specialized non-medical care facility in accordance with standards of payments established by the State pursuant to the foster care program under title IV of the Social Security Act (49 Stat. 620) or who has need of special services not available under general assistance.

(i) Commissioner means the Commissioner of Indian Affairs.

(j) Designated representative means an official of the Bureau designated by a Superintendent to hold a hearing as prescribed in § 20.30 and who has had no prior involvement in the proposed decision under § 20.12 and whose hearing decision under § 20.30 shall have the same force and effect as if rendered by the Superintendent.

(k) Family and community services means social services, including protective services, usually not including money payments, provided through the social work skills of casework, group work or community development to solve social problems involving children, adults or communities.

(l) Foster care service means those social services provided when an Indian person lives away from the family home.

(m) BIA general assistance is a secondary or residual source of assistance for eligible Indian people and means financial aid payments to eligible Indian individuals and households for assistance in meeting the cost of essential needs.
(n) Indian means any person who is a member, or a one-fourth degree or more blood quantum descendant of a member of any Indian tribe.

(o) Indian court means Indian tribal court or court of Indian offenses.

(p) Indian tribe means any Indian tribe, band, nation, rancheria, pueblo, colony, or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the U.S. Government for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(q) Miscellaneous assistance means a financial payment made for burial services, to facilitate the provision of emergency food or disaster programs, or for other financial needs not defined in this part but related to assistance for needy Indians.

(r) Near reservation means those areas or communities adjacent or contiguous to reservations which are designated by the Commissioner upon recommendation of the local Bureau Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as: (1) Number of Indian people native to the reservation residing in the area, (2) a written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation, (3) geographical proximity of the area to the reservation, and (4) administrative feasibility of providing an adequate level of services to the area. The Commissioner shall designate each area and publish the designations in the Federal Register.

(s) Need means the deficit after consideration of income and other liquid assets necessary to meet the cost of basic need items and special need items as defined by the Bureau standard of assistance for the State in which the applicant or recipient resides.

(t) Public assistance means those programs of assistance provided under title IV of the Social Security Act (49 Stat. 620), as amended, and includes the Aid to Families with Dependent Children (AFDC) Program provided under title IV-A.

(u) Recipient means an individual or persons who have been determined as eligible and are receiving financial assistance or services under this part.

(v) Reservation means any federally recognized Indian tribe’s reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

(w) Resources means income 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.

(x) Secretary means the Secretary of the Interior.

(y) Superintendent means the Bureau official in charge of an agency office.

(2) Supplemental Security Income means those programs of assistance provided under title XVI of the Social Security Act (49 Stat. 620), as amended.

(aa) Traditional Indian country means the State of Oklahoma except Oklahoma City and non-trust land in the city of Tulsa.

(bb) Tribal governing body means the recognized governing body of an Indian tribe.

(cc) Essential needs include at a minimum shelter, food, clothing and utilities, but do not include needs, except for burial expenses, beyond those basic and special needs included in the Bureau standard of assistance for the State where the Indian individual or household lives.

(dd) Household means persons living together with the head of household who may be related or unrelated to the head of household and who function as members of the family.
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(ee) Tribal Work Experience Program (TWEP) means a program operated by tribal contract which provides eligible participants with work experience and training that promotes and preserves work habits and develops work skills.

(ff) Recipient means an individual to whom or for whom a BIA general assistance payment is made for the month.

(gg) Case includes all individuals in the household as defined in §20.1(dd) whose needs are included in the BIA general assistance payment made for the month.

(25 U.S.C. 2 and 9)

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Policy.

The regulations in this part govern the provision of general assistance, child welfare assistance, miscellaneous assistance and family and community services to eligible Indians.

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Information collection.

The information collection requirements contained in §§20.10, 20.11, 20.22, 20.23, and 20.24 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1076-0017. The information is collected to determine applicant eligibility for services. The information will be used to determine eligibility and to insure uniformity of services. Response is required to obtain a benefit.

[53 FR 21994, June 13, 1988]
requested, and financial assistance may be retroactive, as appropriate, to the date of application.

(2) The application shall be denied if the applicant does not meet the appropriate eligibility criteria set forth in subpart C of this part for the type of assistance requested.

(3) Action to approve or deny an application shall be made within 30 days of the date of the application, or if not the applicant shall be notified in writing of the reasons why such a decision cannot be made, but in no event shall any application be held pending beyond 45 days of the date of the application.

(b) As appropriate, other decision actions include the following:

(1) To increase or decrease the amount of recipient’s financial assistance pursuant to the eligibility criteria set forth in subpart C of this part.

(2) To suspend or terminate recipient’s financial assistance pursuant to the eligibility criteria set forth in subpart C of this part.

§ 20.13 Written notice of proposed decision.

Written notice of all proposed decisions shall be mailed or hand delivered to the applicant or recipient which clearly and completely advise of their legal rights to contest any adverse proposed decision as set forth in §20.30 or under part 2 of this chapter and shall further consist of the following:

(a) A statement of the action being taken, the effective date, and the reasons for the decision.

(b) If the action is to reduce, suspend, or terminate financial assistance to the recipient, the written notice shall be provided to the recipient 20 days in advance of the proposed effective date.

(c) Shall advise the applicant or recipient of his right to request a hearing if dissatisfied with the proposed decision.

(d) Shall advise the applicant or recipient of his right to be represented by an authorized representative at no expense to the Bureau.

(e) Shall advise the applicant or recipient that failure to request a hearing within the 20 day period following the date of notice of proposed decision will cause the proposed decision to become final subject to appeal under part 2 of this chapter, and that the decision will not be disturbed except for fraud or gross irregularity or where found by higher authority that failure to appeal on the part of the applicant or recipient would result in inequity or injustice to the parties.

§ 20.14 Adjusting incorrect payments.

(a) When the Bureau finds that an incorrect payment of financial assistance has been made to an individual or family, proper adjustment or recovery shall be required, based upon individual need as appropriate to the circumstances that resulted in an incorrect payment. However, prior to adjustment or recovery by the Bureau, the recipient shall be notified of the proposal to correct the payment and given an informal opportunity to resolve the matter. If an informal resolution cannot be attained the recipient is entitled to a written notice of decision, and a hearing if requested, in accordance with §§20.12, 20.13 and 20.30. Unless a hearing is requested or an appeal made, the proposed decision shall become final within 20 days after written notice is mailed or delivered to the recipient.

(b) Applicants and recipients who knowingly and willfully provide the Bureau with false, fictitious 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 five years, or both.

Subpart C—Eligibility Conditions

§ 20.20 General.

(a) Basic eligibility conditions shall be:

(1) The applicant must be an Indian, except that in the States of Alaska and Oklahoma a one-fourth degree or more Indian or Native blood quantum will be an additional eligibility requirement;

(2) The applicant must reside on a reservation; or

(3) The applicant must reside near reservation as specifically defined in §20.1(r) and be a member of the tribe that requested designation of the near reservation service area.
§ 20.21 General assistance.

In States where BIA general assistance would otherwise be available, the Bureau will not provide general assistance:

(a) To on or near-reservation members of tribes currently not served by BIA general assistance unless the tribe formally requests, through final governing body action, that the Bureau operate a general assistance program. Such request for BIA general assistance should be timed with the Bureau’s next fiscal year for the general assistance program;

(b) In any State having a general assistance program available to meet the needs of eligible citizens, including the needs of Indians. A State general assistance program is available if payments are:

(1) Available statewide to eligible individuals and families, including Indians on reservations;

(2) Authorized by State law with funds regularly appropriated to make such payments, or if State law requires all county governments or localities to make such payments even though payments may fluctuate subject to the limited availability of funds;

(3) For the purpose of meeting monthly minimum essential needs on a continuing basis; and,

(4) Where the Bureau provides general assistance on a reservation in one State and that reservation extends into a bordering State(s), the Bureau will provide general assistance to members of the tribe in the other bordering State(s) based on the standard of assistance in the State where the recipient or applicant resides. However, the Bureau will provide such assistance in the bordering State(s) only to those members who are not eligible for State general assistance as defined in §20.21.

(c) In States where the Bureau provides general assistance, Indians, in order to be considered eligible for general assistance under this part, must meet the requirements prescribed in §20.21(a); and the following conditions:

(1) Must not receive financial assistance from AFDC or Supplemental Security Income (SSI);

(i) Indians eligible to receive AFDC or SSI will be allowed to receive BIA general assistance once they have applied for and until they begin to receive assistance payments from AFDC or SSI, except that payment shall be authorized when good cause reasons, such as physical isolation, lack of transportation or intermittent availability of State eligibility specialists, temporarily prevent concurrent application; and when it can be documented that the application process has been initiated by scheduling an appointment, or that the BIA/tribal case-worker has initiated the application process on behalf of the general assistance applicant.

(ii) The Bureau will not make payments for any month for which AFDC or SSI payments are made.

(2) Must have insufficient resources to meet the basic and special need items defined by the Bureau standard of assistance;

(3) Must apply for assistance from other Federal, State, county, or local programs for which they may be eligible concurrent with application to the Bureau for general assistance, unless good cause reasons, such as physical isolation with sporadic access to transportation or intermittent availability of State eligibility specialists, temporarily prevent concurrent application; and when it can be documented that the application process has been initiated by scheduling an appointment, or
that the BIA/tribal caseworker has initiated the application process on behalf of the general assistance applicant.

(d) Redeterminations. (1) The Bureau shall determine eligibility and the amount of the BIA general assistance payment based on its best estimate of income and circumstances which will exist in the month for which the Bureau is to provide assistance. Recipients are required to immediately inform the Bureau of any changes in status which may affect their eligibility or amount of assistance. The Bureau shall redetermine eligibility:

(i) Whenever there is an indication of a change in circumstances;

(ii) Not less frequently than every three (3) months for individuals who are not exempt under paragraph 20.21(i) from seeking or accepting employment;

(iii) Not less frequently than one every six (6) months for all households.

(2) The redetermination process shall include personal contact with the recipient, preferably a home visit, not less than once a year to evaluate changes in living circumstances and household composition, and to assess the need for continued assistance.

(e) Standards of assistance. (1) Where the Bureau operates a general assistance program, its standard of assistance shall be the AFDC payment standard used in the State where the applicant or recipient resides. In a State that meets 100 percent of the need standard, the Bureau standard is the need standard. In a State that does not meet need in full and applies a rateable reduction to the need standard, the Bureau standard is the rateable reduced amount. The AFDC payment standard incorporates the same basic and special need items as the AFDC standard of assistance, and is the amount from which the Bureau will subtract net income and liquid assets to determine eligibility for and the amount of the Bureau’s general assistance payment.

(2) In the event the State has no standard for one adult, the Bureau standard for one adult shall be the difference between the standard for one child and the standard for a household of two which includes an adult, or one-half the amount of the standard for a household of two, whichever is greater.

(f) Resources. In determining eligibility for and the amount of the general assistance payment, the Bureau shall consider all types of income and other liquid assets available for support and maintenance unless otherwise disregarded under §20.21(g), or specifically excluded by Federal statute. All earned or unearned income will be counted as income in the month received and as a liquid asset thereafter, except certain income from the sale of real personal property as provided for under §20.21(f)(2)(i). Resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum, as defined at 25 CFR 20.1(w), and has the ability to make such sum available for support and maintenance.

(1) Earned income means in cash or in kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee.

(i) Earned income includes earnings over a period of time for which settlement is made at one given time, as in the instance of the sale of farm crops, livestock, etc.

(ii) With respect to self-employment, earned income means total profit from business enterprise, i.e., gross receipts after subtracting business expenses directly related to producing the goods or services and without which the goods or services could not be produced. Business expenses do not include items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment and payments on the principal on loans for capital assets or durable goods.

(2) Unearned income includes but is not limited to:

(i) Income from: Interest; oil and gas and other mineral royalties; rental property; cash contributions such as child support and alimony; retirement, disability and unemployment benefits; per capita payments not excluded by Federal statute; sale of trust land and real or personal property which is not
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set aside for the purpose of reinvestment in trust land or a primary residence, or if set aside, has not been reinvested in trust land or a primary residence at the end of one year from the date the income was received; Federal and State tax refunds. All of the above shall be counted to the extent they are not disregarded by Federal statute.

(ii) Income in kind contributions providing shelter at no cost to the individual or household: In establishing the amount of the in kind contribution, the Bureau shall use the amount for shelter included in the standard, if identifiable, or 25 percent of the standard unless there is evidence provided that the value of free shelter is less; and,

(iii) Assistance provided by a State, county or local agency.

(3) The Bureau shall prorate (i): Over a 12-month period recurring annual income received by individuals, such as teachers whose regular employment does not engage them on a year round basis; (ii) income received by individuals employed on a contractual basis over the period of the contract; and (iii) intermittent income received quarterly, semiannually or yearly over the period covered by the income. The Bureau shall prorate the income unless there is evidence that the income will not continue to be received in the future. However, for a period of three years from the publication date of these regulations, the Bureau will not prorate lease income which has been obligated by a household in a manner which makes it unavailable in consumable form to the household.

(g) Disregards. (1) The Bureau shall disregard, from the gross amount of earned income, amounts deducted for:

(i) Federal, State and local taxes;
(ii) Social Security (FICA);
(iii) Health insurance;
(iv) Work related expenses, including reasonable transportation costs;
(v) Child care costs except where the other parent in the home is not working or is not disabled; and
(vi) The cost of special clothing, tools and equipment directly related to the individual's employment. All of the above, as appropriate, will be disregarded from self-employment income after deducting costs of doing business.

(2) The Bureau shall disregard as income, or other liquid assets:

(i) The first $1,000 of liquid resources available to the household;
(ii) Any home produce from garden, livestock and poultry utilized by the applicant or recipient and his/her household for their consumption;
(iii) Resources specifically excluded by Federal statute.

(h) Payments. (1) The Bureau shall make assistance payments in an amount not to exceed the difference between the Bureau standard of assistance and all resources not otherwise disregarded. In the event the State in which the individual or household lives applies a rateable reduction to that difference or maintains a system of dollar maximums on the payment, the Bureau shall also apply the rateable reduction and/or the maximum to the payment.

(2) If there is more than one household living in a dwelling and the household(s) receiving general assistance contribute to shelter expenses, the Bureau shall prorate the actual shelter cost, but the amount in the payment for shelter will not exceed the amount in the Bureau standard of assistance for shelter, or if not identifiable, the prorated amount, in addition to other needs, cannot exceed the total amount in the standard for individuals or households in similar circumstances.

(3) The Bureau will round the payment down to the next lower whole dollar.

(4) In no case shall the Bureau provide retroactive payments of general assistance for any period prior to the date of application for assistance.

(i) Employment. (1) An applicant or recipient must actively seek employment, including use of available tribally or Bureau-funded employment assistance services. The individual is also required to accept available local employment. An individual who does not comply will not be eligible for general assistance. These requirements do not apply to:

(i) A person under the age of 16 years;
(ii) A full-time student under the age of 19 who is attending an elementary or secondary school, or a vocational or technical school equivalent to a secondary school;
Bureau of Indian Affairs, Interior § 20.22

(iii) A person suffering from an illness, when it is determined on medical evidence or on other sound basis that the individual’s illness or injury is serious enough to temporarily prevent entry into employment;

(iv) An incapacitated person, when verified that a physical or mental impairment determined by a physician or licensed or certified psychologist, by itself or in conjunction with age, prevents the individual from engaging in employment;

(v) A person who, upon the documented assessment of the social services caseworker, and pending examination by a physician or other appropriate professional, is deemed essentially incapacitated because of age, physical or mental impairment;

(vi) An individual responsible for a person in the home who has a verified physical or mental impairment that requires the individual in the home on a virtually continuous basis, and there is no other appropriate household member available;

(vii) A parent or other individual who personally provides full-time care of a child under that age of 6;

(viii) A parent or minor living in the household if the other parent is not exempt from seeking or accepting employment;

(ix) A person who is working 30 hours or more per week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 work days; and

(x) A person for whom employment is not accessible in a commuting time that is reasonable and comparable with others in similar circumstances.

(2) Where the tribe administers a Tribal Work Experience Program (TWEP), the nonexempt individual shall be available to participate. However, participation does not relieve the individual from seeking or accepting employment.

(3) Individuals not exempt under one of the preceding clauses of this section must, in seeking employment, provide evidence of efforts to obtain employment.

(4) Individuals not exempt under one of the preceding clauses of this section, who refuse, or otherwise fail to seek and accept available local employment, or who voluntarily and without good cause do not maintain their employed status, will not be eligible to receive general assistance for a period of 60 days following the date of application, or eligibility redetermination.

(i) The 60-day period of ineligibility will be renewed upon each application for general assistance until the applicant complies with the requirement to seek and accept available local employment.

(ii) An unemployed individual against whom a 60-day eligibility suspension has been levied will have the suspension period reduced by 30 days upon providing evidence that he/she has made effort to seek employment.

(iii) Periods of eligibility suspension shall affect only the individual who fails to comply with the provision of this section, but shall not apply to other members of his/her household.

[50 FR 39928, Sept. 30, 1985]

§ 20.22 Child welfare assistance.

An Indian child meeting the requirements prescribed in §20.20(a) shall be considered eligible for child welfare assistance or services under this part. Provided, That:

(a) The child’s legally responsible parent, guardian, or Indian court having jurisdiction:

(1) Requests such assistance in writing and is unable to provide necessary care and guidance for the child in his own home for other than financial reasons and is unable to meet the cost of foster care.

(2) Requests such assistance in writing and is unable to provide for the child’s special needs which cannot be through other assistance programs including the Bureau’s general assistance program.

(b) The child is not receiving and is not eligible to receive public assistance or Supplemental Security Income payments and is not included in such payments made to others. However, an otherwise eligible child may receive child welfare assistance under this part upon application for and pending initial receipt of public assistance or Supplemental Security Income payments.
and may receive continued services irrespective of assistance payments if such services are not otherwise available.

(c) The child resides in an area where comparable child welfare assistance and services are not available or are not being provided to all residents on the same basis from a State, county or local public jurisdiction.

§ 20.23 Miscellaneous assistance.

In the absence of other resources, miscellaneous assistance shall be provided to eligible Indians meeting the requirements prescribed in §20.20(a): Provided, That they reside in areas where comparable miscellaneous assistance is not available or is not being provided to all residents on the same basis from a State, county or local public jurisdiction.

§ 20.24 Family and community services.

(a) Family and community services shall be provided for Indians meeting the requirements prescribed in §20.20(a) who request such services or on whose behalf such services are requested.

(b) Family and community services may include, but are not limited to, the following:

(1) Family and individual counseling to assist in solving problems related to family functioning, housekeeping practices, care and supervision of children, interpersonal relationships, economic opportunity, money management, and problems related to illness, physical or mental handicaps, drug abuse, alcoholism and violation of law.

(2) Protective services which are provided when children or adults are deprived temporarily or permanently of needed supervision by responsible adults, or are neglected, exploited, or need services when they are mentally or physically handicapped or otherwise disabled, and for children who have run away from home. Protective services will be developed in consultation and cooperation with tribal protective services, if applicable. Such services may include but are not limited to the following:

(i) Response to requests from members of the community on behalf of children or adults alleged to need protective services.

(ii) Family and supplemental services, including referral for homemaker and day care services, which appropriately divert children from the juvenile justice system.

(iii) Services to responsible family members or guardians to seek appropriate court protections for the child or adult and, in the absence of such responsible adult, to seek the appointment of a guardian.

(3) Services to Indian courts, which may include but are not limited to the following:

(i) Investigations and reports as to allegations of child and adult abuse and neglect, abandonment, delinquency, running away from home, and conditions such as mentally or physically handicapped or otherwise disabled.

(ii) Provision of social information related to the disposal of a case, including evaluation of alternative resources of treatment.

(iii) Provision of services requested by the court prior to adjudication such as marriage and divorce counseling, child custody, and after adjudication such as probation, foster care, supervision of children and adults in their own home.

(4) Foster care services for children which shall be provided when an Indian child is a recipient of child welfare assistance under §20.22 and services are not available from another source, and may be provided as needed for an Indian child living away from its parent(s) in the absence of a child welfare assistance payment. Such services shall include but are not limited to:

(i) Determination that foster care is the best available plan for the child.

(ii) Development of an immediate and long range plan to establish a more stable emotional and social life for the child and its family, including referral of the child for adoption when indicated.

(iii) Services in the recruitment and development of suitable foster homes and other foster care facilities.

(iv) Services to responsible family members, or at the request of an Indian court having jurisdiction, in the selection of a suitable foster care facility.
and a continued evaluation of the suitability of the facility.

(v) Services in the placement of an Indian child for long or short term foster care suited to his needs and to review the plan periodically.

(vi) Services to parent(s), foster parent(s), or other caretaker(s) to provide care and guidance for the child in foster care.

(5) Foster care services for adults which shall be provided when a general assistance payment under §20.21 is made for their care in a foster care facility, or when needed in the absence of a general assistance payment. The services may include but are not limited to:

(i) Arranging for care in a private family home, or a facility for the care of the aged or disabled except where the primary service provided by the facility is medical.

(ii) Services to responsible family members, guardians, or at the request of an Indian court having jurisdiction, in selecting a facility which will provide needed care.

(iii) Services providing for continuity with family and community ties.

(iv) Services to continually evaluate the suitability of the selected care facility, including referral for other care as indicated.

(6) Community services which are services involving other groups, agencies, and facilities in the community may include but are not limited to:

(i) Responses to community needs for evaluating social conditions affecting the well-being of its citizens.

(ii) Treatment of the identified conditions that are within the competence of social services.

(iii) Maintenance of a liaison relationship with other community agencies for the purpose of:

(A) Identifying the availability of services that may be utilized to assist in solving the social problems of individuals, families and children.

(B) Facilitating the use of available community services by Indian persons who need them.

§ 20.25 Consultation with tribes.

Bureau personnel shall upon request provide consultation and advice to tribal governing bodies and other tribal entities including Indian courts seeking to organize their social services to meet more effectively the social service needs of their people. See §11.21 of this chapter. All programs provided for in this part shall, insofar as possible, be consistent with tribal custom, codes and law.

Subpart D—Hearings and Appeals

§ 20.30 Hearings and appeals.

(a) Any applicant or recipient of financial assistance under this part who is dissatisfied with any decision or action concerning eligibility for or receipt of financial assistance may request a hearing before the Superintendent or his designated representative within 20 days after the date of mailing or delivery of the written notice of the proposed decision as provided in §20.13. The Superintendent may extend the 20 day period for good cause shown and documented in the record.

(b) Upon request for a hearing by a recipient dissatisfied by a proposed decision the recipient’s financial assistance will be continued or reinstated to provide no break in financial assistance until the date of decision by the Superintendent or his designated representative in accordance with §20.30(f).

(c) The Superintendent or his designated representative shall set a date for the hearing within 10 days of the date of request for a hearing, at a location convenient to both parties, and give written notice to the applicant or recipient.

(d) The written notice of hearing date and location shall include:

(1) A statement of the issues.

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

(3) The applicant or recipient’s right to present both oral and written evidence, and written statements prior to or during the hearing.

(4) The applicant or recipient’s right to confront and cross-examine witnesses at the hearing.

(5) The applicant or recipient shall have the right of one continuance of
not more than 10 days with respect to the date of hearing.

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

(e) The Superintendent or his designated representative shall conduct the hearing in an informal but orderly manner, record the hearing, and provide the applicant or recipient with a transcript of the hearing upon request.

(f) The Superintendent or his designated representative shall render a written decision within 10 days of the completion of the hearing. The written decision shall consist of the following:

1. A written statement covering the evidence relied upon and reasons for the decision.

2. The applicant or recipient’s right to further appeal from any dissatisfied decision in accordance with procedures for appeals from administrative actions set forth in part 2 of this chapter.

(g) An interested party wishing to make such an appeal may request Bureau assistance in preparation of the appeal also as prescribed in part 2 of this chapter.

PART 21—ARRANGEMENT WITH STATES, TERRITORIES, OR OTHER AGENCIES FOR RELIEF OF DISTRESS AND SOCIAL WELFARE OF INDIANS

Sec.
21.1 Commissioner to negotiate contracts.
21.2 Contracts; by whom executed.
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SOURCE: 22 FR 10531, Dec. 24, 1957, unless otherwise noted.

§ 21.1 Commissioner to negotiate contracts.

The Commissioner of Indian Affairs may negotiate with State, territory, county or other Federal welfare agencies for such agencies to provide welfare services as contemplated by the Act of June 4, 1936 (49 Stat. 1458; 25 U.S.C. 452), for Indians residing within a particular State within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs.

[29 FR 5828, May 2, 1964]

§ 21.2 Contracts; by whom executed.

All contracts executed for the purposes of §21.1 shall be signed on behalf of the United States by the Commissioner of Indian Affairs. The proper officer of the State, territory, county or welfare agency shall execute the contract on its behalf. Evidence of the authority of such officer must accompany the contract. All contracts must be executed in quadruplicate. (They shall become effective only after approval by the Secretary of the Interior.)

§ 21.3 State or other contracting agency furnish plan of operation.

A plan executed by the proper State or other agency entering into the contract shall accompany each instrument. This plan shall describe the services and assistance to be rendered under the terms of the contract. It shall include a budget showing the plan of expenditure of the funds to be turned over to the State or other agency. Upon the approval of the contract, no deviation from the plan shall be made unless approved in advance by the Commissioner of Indian Affairs.

§ 21.4 Standards of service.

Standards of aid, care, and service rendered to the Indians under the contracts shall not be less than those standards maintained by the State for other clients requiring similar aid, care and services.

§ 21.5 Personnel.

The personnel employed for public welfare services to Indians under the contract shall be subject to the State merit system and to the approval of the Commissioner of Indian Affairs and the welfare authorities of the State,
§ 21.6 Financial statement.

Thirty days after the close of each fiscal year, the State or other agency to which funds have been furnished pursuant to the contract shall submit to the Commissioner of Indian Affairs a detailed financial statement showing all expenditures made pursuant to the contract. An explanation shall be contained of any deviation from the plan originally submitted by the agency. The records of the contractor shall be available for inspection by representatives of the Bureau of Indian Affairs.

§ 21.7 Cooperative services.

The Bureau will maintain cooperative services through its superintendents and other personnel to further the purposes of the contract. When mutually agreed to in the contract, the Bureau may maintain on its payroll one or more representatives whose duties shall be described in the contract and the salary and expenses of any such person or persons shall constitute part of the funds to be furnished to the State or other contracting agency.

§ 21.8 Use of Government property and facilities.

The contract shall specify the terms upon which property, other facilities and equipment of the Government may be used by the State or other agency. All contracts which provide for the use of Government automobiles shall require that the particular State or other agency shall be responsible for the return of the equipment in as good condition as when received, excepting usual wear and tear and depreciation and such agency shall be responsible for all damage or injury done to property or persons and shall carry sufficient insurance to cover same and expressly relieve the Government of any and all liability for any such personal injury or property damages committed while such automobile is in the possession of the contracting agency.

§ 21.9 Information collection.

The information collection requirements contained in §§ 21.3 and 21.6 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1076-0113 and 1076-0110, respectively. The information in § 21.3 is being collected to determine how contract funds are utilized. The information will be used to measure performance of the contractor and plan for future contracts. The information in § 21.6 is collected to specify the services or assistance to be rendered and the plan for expenditure of funds to be turned over to the State or agency. The information will be used to determine the adequacy of services and utilization of the budget provided by the contracting agency. Response is required to obtain a benefit.

[53 FR 21994, June 13, 1988]
§ 23.1 Purpose.

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 step-parent.

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 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 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 tribe means any Indian tribe, band, nation, or other organized group or community of Indians federally recognized as eligible for 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).

Indian tribe's tribe means the Indian tribe in which an Indian child is a member 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 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 "Guidelines for State Courts—Indian Child Custody Proceedings."

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 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 established 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
§ 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 Collection Clearance Officer, Room 336-SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs Paperwork Reduction Project—1076-0111, 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
Bureau of Indian Affairs, Interior

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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
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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.

(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, NE, 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, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harman, 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 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, 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.

(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 Director, 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.
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(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 receipt 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:

(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 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 procedures 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

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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 2.7 and 43 CFR 4.310 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 not 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
§ 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 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.

(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.
§ 23.23 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 tribal 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.

(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
§ 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 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 the competitive review procedures prescribed in §23.33. An application shall not receive approval for
§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 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

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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 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;
§ 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,
§ 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.


(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 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...
§ 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 timeframe 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
$ 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;

(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 the possible cancellation. The 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 $23.53 (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 continuation 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.

§ 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, 1840 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
§ 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—EMPLOYMENT ASSISTANCE FOR ADULT INDIANS

Subpart A—Definitions, Scope of the Employment Assistance Program and Information Collection

Sec. 26.1 Definitions.
26.2 Scope of the Employment Assistance Program.
26.3 Information collection.

Subpart B—Administrative Procedures

26.4 Filing applications.
26.5 Selection of applicants.
26.6 Program services and client participation.
26.7 Financial assistance for program participants.

Subpart C—Appeals

26.8 Appeals.


SOURCE: 49 FR 2098, Jan. 18, 1984, unless otherwise noted.

Subpart A—Definitions, Scope of the Employment Assistance Program and Information Collection

§ 26.1 Definitions.

(a) Agency office means the current organization unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian tribes.
(b) Appeal means a written request for correction of an action or decision claimed to violate a person's legal rights or privileges as provided in part 2 of this chapter.
(c) Applicant means an individual applying under this part.
(d) Application means the process through which a request is made for assistance or services.
(e) Area Director means the Bureau official in charge of an Area Office.
(f) Contract office means the office established by a tribe or tribes who have a contract to administer the Employment Assistance Program.
(g) Indian means any person of Indian or Alaska native descent who is an enrolled member of any of those tribes listed or eligible to be listed in the Federal Register pursuant to 25 CFR 83.6 as recognized by and receiving services from the Bureau of Indian Affairs or a descendant of one-fourth degree or more Indian blood of an enrolled member; and any person not a member of one of the listed or eligible to be listed tribes who possesses at least one-half degree of Indian blood which is not derived from a tribe whose relationship is terminated by an Act of Congress.
(h) Indian tribe means any Indian tribe, band, nation or other organized group or community including any Alaska Native Village which is recognized by the Secretary of the Interior as having special rights and responsibilities and is recognized as eligible for the services provided by the United States to Indians because of their status as Indians.
(i) Near reservation means those areas or communities adjacent or contiguous to reservations which are designated by the Assistant Secretary upon recommendation of the local Bureau superintendent, which recommendation shall be based upon agreement with the tribal governing body of those reservations, as locales appropriate for the extension of financial and/or social services, on the basis of such general criteria as:
   (1) Number of Indian people native to the reservation residing in the area,
   (2) Geographical proximity of the area to the reservation, and
   (3) Administrative feasibility of providing an adequate level of services to the area. The Assistant Secretary shall
designate each area and publish the designations in the Federal Register.

(j) Reservation means any bounded geographical area established or created by treaty, statute, executive order or interpreted by court decision and over which a federally recognized Indian Tribal entity may exercise certain jurisdiction.

(k) Superintendent means the Superintendent or Officer in Charge of any one of the Agency offices of the Bureau of Indian Affairs or his/her authorized representative.

(l) Tribal governing body means the recognized entity empowered to exercise the governmental authority of a federally recognized tribe.

§ 26.2 Scope of the Employment Assistance Program.

The purpose of the Employment Assistance Program is to assist Indian people who have a job skill to obtain and retain permanent employment. Within that framework, the program provides services to eligible Indians, as provided in §26.5, including vocational counseling and employment services on reservations and at other home areas, in communities near reservations and in off-reservation areas. Support services are also included, as provided in §26.6.

§ 26.3 Information collection.

The information collection requirements contained in §§26.4 and 26.6 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h) and are assigned clearance numbers 1076-0062 and 1076-0061. Information necessary for an application for employment assistance will be submitted on an application form which may be obtained at a local Bureau of Indian Affairs Agency or tribal program contractor office. This information is being collected for the purpose of applying for Federal assistance. The information will be used to determine if an Indian person is eligible to participate in this program and to determine the amount of assistance needed. The obligation to respond is a requirement to obtain the benefits.

Subpart B—Administrative Procedures

§ 26.5 Filing applications.

(a) Application for Employment Assistance services must be filed at Bureau of Indian Affairs Agency offices, or at facilities under contract with the Bureau or contract offices which are located on or near reservations or other geographic areas of eligibility. Applications are approved by the Agency Superintendent or designated contractor. An eligible applicant should apply, be funded and receive services at the servicing office nearest to his/her residence at the time of application.

(b) For clarity and uniformity, application forms used will be in accordance with the requirements of the Paperwork Reduction Act, section 3504(h) of Pub. L. 96-511.

§ 26.5 Selection of applicants.

(a) Applicants must be adult Indians residing on or near Indian reservations and demonstrate a need for employment services.

(b) An applicant must be unemployed or underemployed in order to receive employment services.

(c) Selection of applicants shall be made without regard to sex or marital status.

(d) Only those applicants who declare a desire and intent to accept and retain full time permanent employment at the employment location chosen shall be selected, with the exception of those individuals participating in the temporary summer placement program as provided in §26.6(b)(1).

(e) Repeat employment services involving expenditure of grant funds are to be determined on an individual basis, considering ability, prior performance, need and motivation. No client shall automatically be entitled to funded repeat services. No more than two (2) funded repeat services for a client shall be allowed. Exceptions may be made if additional funded services not provided would create extreme hardship on the client. Applications are to be submitted with proper justification for repeat service to the Area Director for approval or disapproval.
§ 26.6 Program services and client participation.

(a) When a request is made for employment services, the applicant shall be offered assistance to assess his/her job skills and work experience and to relate these to available employment opportunities. In many cases, applicants for placement services will already possess training skills, and/or experience sufficient for entry into job placement. In other cases, applicants may be encouraged to consider further education or training options as a preliminary to permanent employment. In any case, vocational counseling appropriate to the individual situation shall be made available.

(b) Services may be provided either with or without the expenditure of financial grants depending upon the type of service requested and the need for financial assistance. Funds shall not be provided to finance temporary employment except for the following:

(1) High school students who are at least 17 years of age or college students participating in summer placement programs to gain work experience and temporary income may receive limited funding as needed to enable such persons to secure and hold summer jobs. This special service will not count against the number of services allowed under §26.5(e).

(2) Persons who have moved to an off-reservation area for permanent employment, through services of the Employment Assistance program, may at times be required to accept temporary employment until permanent employment is available. Such persons may receive funds as needed within established limitations and justifiable circumstances, as allowed by the Area Director, until permanent employment is found and/or the need is met.

(c) Permanent employment shall normally be defined as employment which is generally anticipated to be of one year or more in duration. Employment in the construction or other trades where moving from one job to another is generally required of persons engaged in such occupations shall be considered as permanent employment.

(d) In those cases where applicants apply and are selected for employment services in off-reservation urban locations, a variety of services may be provided, based upon individual client needs and requests for assistance. These may include advice in rental of housing, shopping, money management, community adjustment, counseling, applying for and seeking employment, and emergency financial assistance for up to six months from the date of entry into this program. Continuing non-financial assistance, as needed, shall remain indefinitely available.

(e) Assistance as needed may be provided to enable clients who move for employment to an off-reservation urban or non-urban area to accept a specific job offer. In such cases, however, transportation or financial assistance may be provided only after confirmation has been obtained from the employer, giving details of employment, including the following:

(1) Job title,
(2) Beginning wage,
(3) Date to start work,
(4) First payday,
(5) First full payday, and
(6) A statement that the job is anticipated to be of a permanent nature.

§ 26.7 Financial assistance for program participants.

(a) Individuals or families with a family member participating in the Employment Assistance program may be granted financial assistance, as needed, based upon rates established by the Area Director for the respective areas or jurisdictions within those areas.

(b) Not more than thirty (30) percent of the funds appropriated for any program year may be used to pay for the costs of administration. Administrative costs include salaries and fringe benefits of direct program administrative positions such as program director or program officer, program financial analyst, labor market analyst, clerical personnel, travel costs, materials, supplies, equipment, space and utilities. The remaining seventy (70) percent of funds available may be used for transportation and subsistence enroute to employment location; subsistence for one month or until the first paycheck from employment is received; emergency assistance is allowed where
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verified emergencies justify such grants and must have Area Director approval; and supportive services. Supportive services includes tools for employment, initial union dues, transportation of household effects, security and safety deposits, personal appearance and housewares, child care, and costs of employment counselors engaged in providing services to applicants (salaries, fringe benefits and travel costs).

(c) Marital status of applicants is not a consideration for determining eligibility for services, but this factor is a consideration for determining appropriate subsistence grants. Proof of a legal relationship requiring support shall be required as a basis for application of family subsistence rates. In the case of married persons, proof of marriage shall be required to satisfy this requirement.

(d) Financial assistance shall not be used to supplement the income of a person already employed.

Subpart C—Appeals

§ 26.8 Appeals.

The decision of any Bureau official under this part can be appealed pursuant to the procedures in 25 CFR part 2.

PART 27—VOCATIONAL TRAINING FOR ADULT INDIANS

Subpart A—Definitions, Scope of the Vocational Training Program and Information Collection

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§ 27.2 Scope of the vocational training program.

The purpose of the vocational training program is to assist Indian people to acquire the job skills necessary for full time satisfactory employment. Within that framework, the program provides testing, vocational counseling or guidance to assist program participants to make career choices relating personal assets to training option and availability of jobs in the labor market. The program provides for full time institutional training in any vocational or trade school as provided in §27.7. Apprenticeship and on-the-job training are also provided. Institutional, apprenticeship, or on-the-job training courses shall not exceed twenty-four (24) months in length, with the exception that Registered Nurses training may be for periods not to exceed thirty-six (36) months. Individual program recipients may not receive more than twenty-four (24) months of full-time training, except that Registered Nursing students may receive not more than thirty-six (36) months of training.

§ 27.3 Information collection.

The information collection requirements contained in §§27.4, 27.6 and 27.9 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h) and are assigned clearance numbers 1076-0062, 1076-0063 and 1076-0069. Information necessary for an application for vocational training assistance will be submitted on an application form which may be obtained at a local Bureau of Indian Affairs Agency or tribal program contractor office. This information is being collected for the purpose of applying for Federal assistance. The information will be used to determine if an Indian individual is eligible to participate in this program and to determine the amount of assistance needed. The obligation to respond is a requirement to obtain the benefits.
Subpart B—Administrative Procedures

§ 27.4 Filing applications.
(a) Applications for adult vocational training services must be filed at Bureau of Indian Affairs agency offices, or at facilities under contract with the Bureau. In such contract offices located on or near reservations or other geographic areas of eligibility. Applications are approved by the Agency Superintendent or designated contractor. An eligible applicant should apply, be funded and receive services at the servicing office nearest to his/her residence at the time of application.

(b) For clarity and uniformity, application forms used will be in accordance with the requirements of the Paperwork Reduction Act, section 3504(h) of Pub. L. 96-511.

§ 27.5 Selection of applicants.
(a) Applicants must be adult Indians residing on or near Indian reservations.
(b) Eligible individuals shall be at least eighteen (18) years of age, except that high school graduates shall be eligible at the age of seventeen (17) years. Also, while the program is designed primarily for persons between the ages of eighteen (18) and thirty-five (35), persons over the age of thirty-five (35) shall be eligible, assuming training and permanent employment to be otherwise feasible in terms of health and physical capability.
(c) An applicant must be in need of training in order to obtain reasonable and satisfactory employment or is underemployed and without additional training would result in extreme hardship for the applicant, and is in need of financial assistance in order to obtain such training. It must also be feasible for the applicant to pursue training.
(d) Selection of applicants shall be made without regard to sex or marital status, providing they meet the requirements of paragraphs (a), (b), and (c) of this section. Non-Indian spouses shall not be eligible for training.
(e) No more than two (2) repeat training services will be allowed. Repeat training services will be on a lower priority than the initial service and will be determined on an individual basis, considering need, ability, prior performance and present motivation of the applicant. In order to be in need of repeat institutional training, an applicant must be unemployed, underemployed, or unable to work in his/her primary occupation due to physical or other disabilities. Time spent in on-the-job training programs will be deducted from the maximum of institutional training eligibility.

(f) Only those applicants who willingly declare intent to accept full time employment as soon as possible after completion of training shall be selected. Plans may subsequently change, but the intent of the training program is preparation for employment, and this must be the initial intent of program participants. The program is not meant to serve as a preliminary to immediate further education.

§ 27.6 Satisfactory progress during training.
An individual who enters training pursuant to the provisions of this part is required to make satisfactory progress in training. Individuals in institutional vocational training courses are required to give evidence of progress by authorizing the institution attended to provide grade and/or progress reports to the appropriate Bureau of Indian Affairs or contract office. Program participants shall maintain a reasonable standard of conduct. Failure to meet these requirements due to reasons within the trainee’s control may result in termination of training benefits.

§ 27.7 Approval of courses for vocational training at institutions.
(a) A course of vocational training at any institution, public or private, offering vocational training may be approved by the Assistance Secretary; provided:
(1) The institution is accredited by a recognized national regional accrediting association; or
(2) The institution is approved for training by a state agency authorized to make such approvals; and
(3) It is determined that there is reasonable certainty of employment for graduates of the institution in their respective fields of training.
§ 27.8 Approval of apprenticeship training.

A program of apprenticeship training may be approved when such training:

(a) Is offered by a corporation or association which has furnished such training to bona fide apprentices for at least one year preceding participation in this program;

(b) Is under the supervision of a State apprenticeship agency, a State Apprenticeship Council, or the Federal Apprenticeship Training Services;

(c) Leads to an occupation which requires the use of skills that normally are learned through training on the job and employment which is based upon training on the job rather than upon such elements as length of service, normal turnover, personality, and other personal characteristics; and

(d) Is identified expressly as apprenticeship training by the establishment offering it.

§ 27.9 Approval of on-the-job training.

(a) On-the-job training contracts shall be approved only by the official to whom such authority has been delegated in the 10 BIAM.

(b) On-the-job training may be approved when such training is offered by a corporation, small business association, tribe or tribal enterprise which provides an on-the-job training program offering definite potential for skilled permanent employment.

(c) Yearly on-the-job training contractual agreements with a specific contractor shall not be renewed beyond the second year without review and written approval from the Assistant Secretary-Indian Affairs. Extension of contracts exceeding two years will be based upon a contractor's demonstrated expansion of the enterprise, need for additional trainees, and placement of trainees completing the program.

(d) Reimbursement to the on-the-job training contractor may include one-half of the hourly wage paid during the training period with the contractor paying the other half. The hourly rate must be at least the established minimum wage under the Fair Labor Standards Act of 1938, as amended.

§ 27.10 Financial assistance for trainees.

(a) Applicants entering full-time training under this part may be granted financial assistance as needed, based upon rates established by the Area Director for the respective areas, or jurisdictions within those areas. Trainees may be assisted to secure educational grants from other sources for which they qualify. Such income shall be considered in computing amounts of financial assistance to be provided by the Bureau of Indian Affairs. Marital status of trainees is not a consideration for determining eligibility for training, but this factor is a consideration in determining appropriate subsistence grants. Proof of a legal relationship requiring support shall be required as a basis for application of family subsistence rates. In the case of married persons, proof of marriage shall be required to satisfy this requirement. Financial assistance may be provided for transportation and subsistence enroute to training, tuition and related training costs, subsistence while in training; emergency assistance is allowed where verified emergencies justify such grants and must have Area Director approval; and supportive services while in training. Supportive services includes tools for employment, initial union dues, transportation of household effects, security and safety deposits, personal appearance and housewares, child care, and cost of vocational training counselors engaged in providing services to trainees (salaries, fringe benefits and travel costs).

(b) Not more than thirty (30) percent of the funds appropriated for any program year may be used to pay for the costs of administration. Administrative costs include salaries and fringe benefits of direct program administrative positions such as program director.
or program officer, program/financial analyst, labor market analyst, clerical personnel, travel costs, materials, supplies, equipment, space and utilities.

§ 27.11 Contracts and agreements.

Training facilities and services required for programs of vocational training may be arranged through contracts or agreements with agencies, establishments or organizations. These may include:

(a) Indian tribal governing bodies,
(b) Appropriate Federal, State or local government agencies,
(c) Public or private schools which have a recognized reputation in vocational education as successfully obtaining employment for graduates in the fields of training approved by the Assistant Secretary or his/her authorized representative for purposes of the program,
(d) Educational firms to operate residential training centers, or
(e) Corporations and associations or small business establishments with apprenticeship or on-the-job training programs leading to skilled employment.

Subpart C—Appeals

§ 27.12 Appeals.

The decisions of any Bureau official under this part can be appealed pursuant to the procedures in 25 CFR part 2.