

# INDIAN CONSULTATION IMPACT AID REGULATIONS

WebEx  
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# FRAMING THE DISCUSSION

There are certain topics of concern among tribes that relate to distribution and use of Impact Aid funds for children residing on Indian lands. Frequent concerns include:

- A concern that the funding does not go directly to the tribes
- A concern that the .25 Indian land additional weight may not go directly to the education of Indian lands children

We appreciate and understand these and other related concerns; however, the statute mandates that the payments be made directly to local education agencies (LEAs) and that the LEAs have broad discretion on how to use these funds. As such, these concerns are **outside our scope of discussion.**

# FRAMING THE DISCUSSION

What we can discuss and influence are the regulations that implement our statute. As approximately half the children claimed for Impact Aid are children who either reside on Indian lands or whose parents work on Indian lands, nearly every provision relates to this discussion.

# FRAMING THE DISCUSSION

## *Topics for Discussion*

- 1.** Indian lands property verification
- 2.** Indian lands data collection
- 3.** Indian Policies and Procedures (IPPs)
- 4.** IPP Waivers
- 5.** Remedies for non-compliance with IPPs
- 6.** Any other regulatory concern

# INDIAN LANDS

When we talk about Indian lands we mean:

- **“Trust Property”** - Real property that is tax exempt due to Federal law, agreement or policy and that is held in trust by the United States for individual Indians or Indian tribes.
- **“Restricted Property”** - Any property that is tax exempt due to Federal law, agreement or policy and that is held by individual Indians or Indian tribes subject to restrictions on alienation imposed by the United States.

# INDIAN LANDS

- **“ANCSA Land” (Alaska only) - Real property that is tax-exempt due to Federal law, agreement or policy and that was conveyed under the Alaska Native Claims Settlement Act (ANCSA) to a Native individual, Native group, corporation organized under section 1613(h)(3) of ANCSA, or village or Regional Corporation, as those terms are defined in ANCSA**

# INDIAN LANDS

- **“NAHASDA Land”** - Real property that is owned by an Indian housing authority and used for low-income housing and at any time was designated by treaty as tribal land or satisfied the definition of Federal property under section 403(1)(A) of P.L. 81-874.

# INDIAN LAND VERIFICATION

## Issues related to Indian lands certification

- The Bureau of Indian Affairs (BIA) often certifies the trust or restricted status of Indian lands.
- The BIA usually requires legal descriptions to make property determinations.
- In limited cases the Bureau of Land Management (BLM) may also certify trust or restricted properties, but they also need a legal description.
- A complete legal descriptions includes, at a minimum, Section, Lot and Block numbers and tract or allotment numbers where available.

# QUESTIONS FOR DISCUSSION

## §222.35

- Are there other ways to certify that the land is held in trust or restricted status?
- Do tribes have readily available access to legal descriptions?
- Do you have suggestions for other sources of certification or alternative approaches for Indian lands verification?
- Are there any issues or concerns about providing us with this data?

# INDIAN LANDS DATA COLLECTION

## §222.35

### SOURCE CHECK FORMS

1. An applicant may count the membership of its federally connected children by using a source check to substantiate a pupil's place of residence or parent's place of employment on the survey date.
  
2. A source check is a form provided to the following people:
  - i. To a parent's employer, who identifies the place of employment of a parent of a pupil claimed.
  
  - ii. To a housing official, who indicates the residence of each pupil claimed.
  
  - iii. To a tribal official, who states that each pupil claimed resides on Indian lands over which that tribal official has jurisdiction.



**SAMPLE Impact Aid Program Source Check Form SAMPLE**  
**Indian Lands Property Claimed on Table 1, 3 or 5 (Except ANCSA and OK Tribal Treaty Land Applicants)**

Application Fiscal Year: \_\_\_\_\_ School Year: \_\_\_\_\_

LEA Name: \_\_\_\_\_ Survey Date: \_\_\_\_\_ IAP Application Table \_\_\_\_\_ (List only one table and property per form)

**CERTIFICATION OF ELIGIBILITY OF INDIAN LANDS:**

I hereby certify that on the survey date, each parcel of property (column 4) indicated as being "trust" or "restricted" in Column 5 is either (a) owned by the United States and held in trust for an Individual Indian or Indian tribe or (b) held by an individual Indian or Indian tribe subject to restrictions on alienation imposed by the United States.

\_\_\_\_\_  
 Print Name and Title, BIA/Tribal Official

\_\_\_\_\_  
 Signature, BIA/Tribal Official

\_\_\_\_\_  
 Telephone Number

\_\_\_\_\_  
 Date

I hereby certify that on the survey date, each parcel property (column 4) listed in column 5 as leased, restricted indicated in column 6 as being *not taxable*, is *exempt* from state and local real property taxes for elementary and secondary school current expenditures purposes, and that this exemption is due to *federal law*, agreement or policy.

\_\_\_\_\_  
 Print Name and Title, Tax Assessor

\_\_\_\_\_  
 Signature, Tax Assessor

\_\_\_\_\_  
 Telephone Number

\_\_\_\_\_  
 Date

**CERTIFICATION OF PARENT/CHILD ELIGIBILITY:**

I hereby certify that the information shown under columns 1, 2, 3, and 7 is correct as of the survey date.

\_\_\_\_\_  
 Print Name and Title, Tribal Official/ Employer

\_\_\_\_\_  
 Signature, Tribal Official

\_\_\_\_\_  
 Telephone Number

\_\_\_\_\_  
 Date

I hereby certify that the students listed in column 7 were enrolled in this school district on the survey date, and the information listed in columns 8 and 9 is correct.

\_\_\_\_\_  
 Print Name and Title, School Official

\_\_\_\_\_  
 Signature, School Official

\_\_\_\_\_  
 Telephone Number

\_\_\_\_\_  
 Date

# SOURCE CHECK VERIFICATION

## §222.35

### ■ Issues

- If the LEA is sending the source check document to the BIA or BLM, they must supply a complete legal description.
- While our forms permit a physical address or a legal description, this may cause some confusion among the certifiers.

# SOURCE CHECK VERIFICATION

## §222.35

### ■ Questions:

1. Do you have any concerns about this form of data collection?
2. Do you have any suggestions or comments for changing this data collection tool?
3. How can we improve our processes?

# SECTION 8004 OF TITLE VII OF THE ESEA

LEAs serving children residing on Indian lands must have policies and procedures that ensure:

1. Children residing on Indian lands participate in programs and activities supported by Impact Aid funds on an equal basis with all other children;
2. Parents of children residing on Indian lands and Indian tribes are afforded an opportunity to present their views on programs and activities supported by Impact Aid funds, including making recommendations on the needs of those children and how the LEA may help such children realize the benefits of such programs and activities;

## **SECTION 8004 OF TITLE VII OF THE ESEA**

- 3. Parents and Indian tribes are consulted and involved in planning and developing programs and activities supported by Impact Aid funds;**
- 4. Relevant applications, evaluations, and program plans are disseminated to the parents of children living on Indian lands and Indian tribes;**
- 5. Parents of children living on Indian lands and Indian tribes are afforded an opportunity to present their views to an LEA regarding the LEA's general educational program.**

# SUBPART G—SPECIAL PROVISIONS FOR LOCAL EDUCATIONAL AGENCIES THAT CLAIM CHILDREN RESIDING ON INDIAN LANDS

While we cannot change the statutory provisions, we do have regulations. These regulations implement the statute and can be revised through the rulemaking process.

## Current Regulations

IPP content requirements §222.94

- IPP content review §222.95
- Complaint procedures §222.102-104
- Department's hearing procedures §222.108-113
- Withholding Procedures §222.114-122

# IPP CONTENT §222.94

**§222.94** What provisions must be included in a local educational agency's Indian policies and procedures?

**(a)** An LEA's Indian policies and procedures (IPPs) must include a description of the specific procedures for how the LEA will—

**(1)** Give the tribal officials and parents of Indian children an opportunity to comment on whether Indian children participate on an equal basis with non-Indian children in the education programs and activities provided by the LEA;

**(2)** Assess the extent to which Indian children participate on an equal basis with non-Indian children served by the LEA;

# IPP CONTENT §222.94

(a) An LEA's Indian policies and procedures (IPPs) must include a description of the specific procedures for how the LEA will— (Continued)

(3) Modify, if necessary, its education program to ensure that Indian children participate on an equal basis with non-Indian children served by the LEA;

(4) Disseminate relevant applications, evaluations, program plans and information related to the education programs of the LEA in sufficient time to allow the tribes and parents of Indian children an opportunity to review the materials and make recommendations on the needs of the Indian children and how the LEA may help those children realize the benefits of the LEA's education programs and activities;

(5) Gather information concerning Indian views, including those regarding the frequency, location, and time of meetings;

# IPP CONTENT §222.94

(a) An LEA's Indian policies and procedures (IPPs) must include a description of the specific procedures for how the LEA will—  
(Continued)

(6) Notify the Indian parents and tribes of the locations and times of meetings;

(7) Consult and involve tribal officials and parents of Indian children in the planning and development of the LEA's education programs and activities; and

(8) Modify the IPPs if necessary, based upon the results of any assessment described in paragraph (b) of this section.

(b) Tribes and parents of Indian children may assess the effectiveness of their input regarding the participation of Indian children in the LEA's education programs and activities and the development and implementation of the IPPs, and share the results of that assessment with the LEA.

# QUESTIONS/COMMENTS

- How can we strengthen these IPPs to be as meaningful and impactful as possible?
- Input from the tribe and parents of Indian children is an essential component of the IPPs. In what ways can an LEA demonstrate that it has taken that input into consideration when developing its educational program?
  - For example, would a written response from the LEA to input received be appropriate?
  - What other evidence would you like to see to help ensure that the concerns of tribal officials and parents of Indian children are being addressed?
  - How is input currently collected and do you believe there are other or better ways for collecting input?

# IPP REVIEW §222.95

§222.95 How are IPPs reviewed? (summary of regulation)

- 1.** If an LEA claimed children residing on Indian lands, it has to submit its IPPs annually.
- 2.** The program routinely reviews IPPs for content and to make sure that they are up to date.
- 3.** If an IPP does not meet the requirements of Section 8004(e) and §222.94, the LEA receives a letter outlining why it is not in compliance and what steps it must take to bring it into compliance.

# IPP REVIEW §222.95

§222.95 How are IPPs reviewed? (summary of regulation)

4. The LEA has 60 days to correct the deficiencies
5. Any corrections must be provided to the Impact Aid Program and the affected tribe.
6. If the deficiencies are not corrected, the Department may withhold all payments to the LEA

# QUESTIONS / COMMENTS

- What has been your experience with the review process?
- Do you have any suggestions that can make this section more effective?
- What is your opinion about the provision that allows for the Department to withhold all payments for noncompliance?
  - Should the entire payment should be withheld?

# QUESTIONS / COMMENTS

- Should the payment for children residing on Indian lands be withheld?
- Should only funds resulting from the Indian lands added weight of .25 be withheld?
- Are other mechanisms to encourage LEA compliance with this section?
- Is withholding payments, in general, useful?

# IPP WAIVER AUTHORITY IN SECTION 8004(C)

- **WAIVER** - A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 8003 shall not be required to comply with the requirements of subsection (a) and (b) for any fiscal year with respect to any Indian tribe from which such agency has received a written statement that the agency need not comply with those subsections because the tribe is satisfied with the provision of educational services by such agency to such children.

# SAMPLE WAIVER LETTER

In accordance with Waiver Requirements, Section 8004 "For any year in which an LEA receives written statement from the Indian Tribe or Tribes whose children attends the LEA's schools that the LEA need not comply with IPP requirements, because the Tribe is satisfied with the LEA's provisions of Education services to such children."

The [REDACTED] is satisfied with the educational service provided by the [REDACTED] School district to the [REDACTED] Children enrolled in the LEA.

# QUESTIONS / COMMENTS

- What types of information would you need to make an educated decision to voluntarily waive the IPP requirements for the LEA?
- What issues or concerns have caused you to be dissatisfied with the educational program?
- What flexibility should an LEA have with regards to its IPPs? For example, should an LEA that has been found to be noncompliant with §222.94 be allowed to get a waiver from the tribe instead of bringing its IPPs into compliance?
- Do you have any other questions or concerns?

# WRITTEN COMMENTS

- THANK YOU!!! We realize this is a lot to digest and consider.
- If you would like more time to provide input, please feel free to contact us via email with comments no later August 31, 2015.
- The sooner you submit your comments the more impact they can have on the regulation development process.
- You make recommendations on any regulation, not just the ones we highlighted today. The complete regulations can be found at:
- [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title34/34cfr222\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title34/34cfr222_main_02.tpl)
- Please send any additional comments to [kristen.walls-rivas@ed.gov](mailto:kristen.walls-rivas@ed.gov) with “Indian consultation” in the subject line.