

Department of the Interior
Bureau of Indian Education



Johnson-O'Malley Modernization (JOM)
Proposed Rule - 25 CFR 273

Agenda

- Welcome
- JOM Authority
- JOM Modernization Act
- **Definition of “eligible Indian student”**
- Funding Formula
- Other Reconciliation and Modernization
- Additional Information
- Comments

Johnson-**O'Malley** Program Authority

- 1934 – Congress passed the Johnson-**O'Malley** (JOM) Act
 - Authorizes Interior to enter into contracts with States, schools, and private nonsectarian organizations, and to expend appropriated funds in support of Indian students under such contracts.
 - Tribes and Tribal organizations are also eligible to apply for JOM contracts.
 - Codified at 25 U.S.C. 5342 through 5348.
- Purpose: Provide for the educational needs of Indian students.

Johnson-**O'Malley** Program Authority (continued)

- 1955 – BIA established regulations
- 1975 – BIA updated the regulations to what is now in effect
 - JOM regulations are at 25 C.F.R. Part 273
- 2018 – Congress updated the JOM Act
 - JOM Supplemental Indian Education Program Modernization **Act (“JOM Modernization Act”)**
 - Public law 115-404
- Now – Proposing changes to 25 C.F.R. part 273 to implement the JOM Modernization Act

JOM Modernization Act

- Congress amended the JOM Act to direct Interior to:
 - Make an initial determination of the number of eligible Indian students served or potentially served by each eligible entity by:
 - Issuing a Preliminary Report;
 - Taking comment from eligible entities; and
 - Issuing a Final Report.
 - In subsequent academic years, determine the number of eligible Indian students served based on the eligible Indian student count numbers reported by contracting parties.
 - Prepare an annual report on the number of eligible Indian students served, recommendations on funding levels based on that determination, and assessments of the contracts.

JOM Modernization Act (continued)

- Congress amended the JOM Act to direct Interior to: (continued)
 - Complete a rule by December 31, 2019 to:
 - Determine **how the regulatory definition of “eligible Indian student” may be revised to clarify eligibility requirements for contracting parties**
 - Determine, as necessary, how the funding formula described in 25 C.F.R. 273.31 may be clarified and revised to ensure full participation of contracting parties and provide clarity on the funding process;
 - Otherwise reconcile and modernize the rules to comport with the activities of the contracting parties.

1. Indian Student Eligibility

- Current § 273.12: Student must be $\frac{1}{4}$ or more degree Indian blood and recognized by the Secretary as being eligible for Bureau services.
 - DOI required $\frac{1}{4}$ or more degree Indian blood in addition to membership in a federally recognized tribe until:
 - A 1990 U.S. District Court decision found that proof of membership in an Indian Tribe for purposes of determining eligibility for JOM benefits cannot be further narrowed by a restrictive blood quantum requirement
 - In 1991, DOI issued a memorandum stating that a student must meet the following requirements to be eligible for JOM services:
 - A member of, or at least a $\frac{1}{4}$ degree Indian blood descendent of, a member of an Indian Tribe which is eligible for the special programs and services provided by the United States through the Bureau of Indian Affairs to Indians because of their status as Indians; and
 - Reside on or near an Indian reservation or meet the criteria for attendance at a Bureau off-reservation boarding school.

1. Indian Student Eligibility (continued)

- April 2015 – BIE held consultation on various options for revising eligibility.
- March 2018 – BIE proposed a rule that would have required membership in a federally recognized Tribe, deleting eligibility for those who are not members but have $\frac{1}{4}$ or more degree Indian blood.
 - Comments on March 2018 proposed rule:
 - Wait to see if JOM Modernization Act passes
 - Establish eligibility for any student who is a member of a Tribe or $\frac{1}{4}$ degree Indian blood or more
- Current proposal:
 - Establish eligibility for any student who is a member of a federally recognized Tribe or at least $\frac{1}{4}$ degree Indian blood descendant of a member of a federally recognized Tribe.

§ 273.112

1. Indian Student Eligibility (continued)

§ 273.112

- Exact wording of proposed § 273.112:

An Indian student is eligible for benefits provided by a Johnson O'Malley contract if the student is:

- (a) From age three (3) years through grade(s) twelve (12);
- (b) Is not enrolled in a Bureau or sectarian operated school; and
- (c) Is either:
 - (1) At least one-fourth (1/4) degree Indian blood descendant of a member of a federally recognized Indian Tribe; or
 - (2) A member of a federally recognized Tribe.

2. Funding Formula

- **Current rule's funding formula**

= 25% of Weight Factor x Number of eligible Indian students

Weight factor is the higher of:

- State average per pupil operating cost; or
- National average per pupil operating cost.

- Example:

- State average per pupil operating cost = \$11,500
- National average per pupil operating cost = \$13,000

– $\$13,000 \times 0.25 = \$3,250$

- If 500,000 eligible students, then funding = $\$3,250 \times 500,000 = \$1,625,000$

2. Funding Formula (continued)

- Education Amendments of 1978, P.L. 95-561, required the Secretary of Interior to develop alternative methods for the distribution of JOM funds, and publish such formula in the Federal Register in 1979.
- 10 years later, a new formula based upon a 1.30 weight factor would be phased in. The Appropriations Act of Sep. 27, 1988, directed the use of a funding formula recommended by the AS-IA to the Committees on Appropriations in a letter dated June 27, 1988.

2. Funding Formula (continued)

- JOM Modernization Act:
 - Determine as necessary how the funding formula may be clarified and revised to ensure full participation of contracting parties and provide clarity on the funding process

§ 273.140

Proposed funding formula – same used since 1988 that BIE was directed to use

= Weight Factor x Number of eligible Indian students

Weight Factor = $\frac{\text{State average cost per pupil}}{\text{National average cost per pupil}}$ if 1.3 or higher

If weight factor < 1.3, use 1.3 for weight factor

- Use data from U.S. Dept. of Education from prior year

2. Funding Formula (continued)

= Weight Factor x Number of eligible Indian students

Weight Factor = $\frac{\text{State average cost per pupil}}{\text{National average cost per pupil}}$ if 1.3 or higher

If weight factor < 1.3, use 1.3 for weight factor

- Example

- State average per pupil operating cost = \$11,500

- National average per pupil operating cost = \$13,000

Weight Factor = \$11,500 / \$13,000 = 0.88... so Weight Factor = 1.3

If 500,000 eligible students, funding = 1.3 x 500,000 = \$650,000

2. Funding Formula (continued)

Weight Factor = 1.3

If 400,000 eligible students, funding = $1.3 \times 400,000 = \$520,000$

If 500,000 eligible students, funding = $1.3 \times 500,000 = \$650,000$

If 600,000 eligible students, funding = $1.3 \times 600,000 = \$780,000$

Weight Factor = 1.4

If 400,000 eligible students, funding = $1.4 \times 400,000 = \$560,000$

If 500,000 eligible students, funding = $1.4 \times 500,000 = \$700,000$

If 600,000 eligible students, funding = $1.4 \times 600,000 = \$840,000$

Weight Factor = 1.5

If 400,000 eligible students, funding = $1.5 \times 400,000 = \$600,000$

If 500,000 eligible students, funding = $1.5 \times 500,000 = \$750,000$

If 600,000 eligible students, funding = $1.5 \times 600,000 = \$900,000$

2. Funding Formula (continued)

- **“Hold Harmless” provision (in Modernization Act)**
 - For 4 years, any existing contracting party may not receive an amount less than what they received in FY 2017 unless:
 - The contractor fails to complete an annual report;
 - The contractor violates contract terms; or
 - The number of eligible students in the annual report decreases below the number served in FY 2017,
 - Note: the contractor may receive a total amount less than what they received in FY 2017, but will not receive an amount per eligible Indian student less than the per eligible Indian student amount received in FY 2017
 - After 4 years, no contractor may receive > 10% decrease from amount received in the prior year

3. Other Reconciliation & Modernization

- Question/answer format
- Updates terminology
 - Deletes, revises, adds definitions
 - Updates BIE titles
- Revisions

§ 273.116

- **Deletes requirement to file Committee procedures with BIE “as soon as practicable”**

§ 273.131

- Deletes Feb. 1 deadline for requests to contract

§ 273.132

- Revises to reflect current process of Regional review

§ 273.134

- Extends timeline for approval of contract decision from 60 days to 90 days

3. Other Reconciliation & Modernization (continued)

- Other new sections

§ 273.104

- Determine interest in extending geographic coverage and enhancing JOM participation

§ 273.120 –
§ 273.121

- Approval of education plan by BIE

§ 273.154 –
§ 273.155

- When reports are due and consequences of not submitting

§ 273.156 –
§ 273.158

- Technical assistance available for complying with reporting requirements

§ 273.191 –
§ 273.192

- Renewal of JOM contracts – decision within 90 days

§ 273.194

- Authority of Indian Education Committee re: canceling contract

§ 273.207 –
§ 273.209

- Dispute resolution & appeals

Guiding Questions

- Proposed Rule
 - Do you have any comments and/or recommendations regarding the items discussed on the Proposed Rule changes?
 - **How would you define “eligible Indian student”?**
 - How can funding formula be clarified?
 - Should there be clarification on how funds can be used?
 - Is it clear how a new contracting party can enter into contracts?
 - Is it clear what requirements do not apply to Tribal organizations?
 - Do you think the annual reporting requirements can be clarified?
 - **Is Are the Secretary’s reporting requirements understandable?**
 - Do you think the contract renewal process can be clarified?
 - Can the appeals process be clarified?

Additional Information

Go to:

<https://www.bie.edu/JOM/>

Or go to:

<https://www.bia.gov/as-ia/raca/regulations-and-other-documents-in-development>

And click on:

[Johnson O'Malley \(JOM\)](#)

Comments Due

- Comments on the proposed rule are due: August 26, 2019, Midnight (ET)
- Email or regulations.gov is preferred method to submit comments:
 - E-mail: consultation@bia.gov
 - Regulations.gov: Go to www.regulations.gov and search for JOM and submit comments
- Next steps
 - Review comments, make changes as appropriate
 - Publish a final rule in the Federal Register
 - Final rule will not become effective for at least 30 days after publication
 - Final rule due December 31, 2019