

**DEPARTMENT OF EDUCATION****34 CFR Part 263**

RIN 1810-AA79

**Indian Fellowship and Professional Development Programs****AGENCY:** Department of Education.**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations governing grants for the Indian Fellowship Program. This program is authorized under Title IX of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Improving America's Schools Act of 1994, enacted October 20, 1994. These regulations identify eligible applicants for the program and the specific application and other program requirements that applicants must meet in order to be considered for funding. These regulations also provide certain general provisions and requirements for the new payback provisions that apply to both the Indian Fellowship Program and the Professional Development Program.

**EFFECTIVE DATE:** These regulations take effect September 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Cathie Martin, U.S. Department of Education, 600 Independence Avenue, SW., Room 4300 Portals Building, Washington, DC 20202-6335. Telephone: (202) 260-1683. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** On October 20, 1994 the Professional Development Program and the Indian Fellowship Program were substantially revised and recodified, respectively, as sections 9122 and 9123 of Subpart 2 of Part A of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 103-382. These regulations identify eligible applicants for the Indian Fellowship Program and address the specific program requirements, including application requirements and requirements concerning the new payback provisions that applicants must meet in order to be considered for funding for both new and continuation awards. The criteria for selecting participants for the Professional Development Program are not included in these regulations. The selection criteria in the Education Department General Administrative Regulations (EDGAR), 34 CFR part 75,

are used for competitions under the Professional Development Program.

In addition, certain of these regulations govern the Professional Development Program (§ 263.3, (definitions), § 263.1 (b) and (c), and §§ 263.35 through 263.37 (the new payback provisions that also apply to this program)).

With regard to the payback provisions, the Indian Fellowship Program and Professional Development Program now require that an individual receiving financial assistance either (1) perform work related to the training for which assistance was received and that benefits Indian people; or (2) repay all or a prorated portion of the assistance.

These regulations apply to all FY 1996 awards, both new and continuation, and subsequent fiscal years' awards.

On July 26, 1996 the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the Federal Register (61 FR 39246). Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

**Public Comment**

In the NPRM the Secretary invited comments on the proposed regulations. The Secretary did not receive any comments.

**Paperwork Reduction Act of 1995**

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected sections of the regulations.

**Intergovernmental Review**

The Indian Fellowship Program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

The Professional Development Program, with the exception of assistance to federally recognized tribes, is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early

notification of the Department's specific plans and actions for this program.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 263**

Grant programs—education, Indians—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: August 27, 1996.

(Catalog of Federal Domestic Assistance Numbers: 84.087 Indian Education—Fellowships for Indian Students; and 84.299 Indian Education—Special Programs.)

Gerald N. Tirozzi,

*Assistant Secretary for Elementary and Secondary Education.*

The Secretary amends title 34 of the Code of Federal Regulations by revising part 263 to read as follows:

**PART 263—INDIAN FELLOWSHIP AND PROFESSIONAL DEVELOPMENT PROGRAMS****Subpart A—General**

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- 263.40 How are payments made?

Authority: 20 U.S.C. 7832 and 7833, unless otherwise noted.

#### Subpart A—General

##### § 263.1 What are the Indian Fellowship and the Professional Development Programs?

(a) The Indian Fellowship Program provides fellowships to enable Indian students to pursue a course of study leading to—

- (1) A postbaccalaureate degree in medicine, law, education, psychology, clinical psychology, or a related field; or
- (2) An undergraduate or postbaccalaureate degree in business administration, engineering, natural resources, or a related field.

(b) The Professional Development Program provides grants to eligible entities to—

- (1) Increase the number of qualified Indian individuals in professions that serve Indian people;
- (2) Provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and
- (3) Improve the skills of qualified Indian individuals who serve in the capacities described in paragraph (b)(2) of this section.

(c) The Indian Fellowship and the Professional Development Programs require individuals who receive training under either program to—

- (1) Perform work that is related to the training received under either program and that benefits Indian people or to repay all or a prorated part of the assistance received under the program; and
- (2) Report to the Secretary on the individual's compliance with the work requirement.

(Authority: 20 U.S.C. 7832 and 7833)

##### § 263.2 Who is eligible to apply under the Indian Fellowship Program?

In order to be eligible for a fellowship, an applicant must be—

- (a) An Indian as defined in § 263.3;
- (b) A United States citizen;
- (c) Currently in attendance or have been accepted for admission as a full-time undergraduate or graduate student at an accredited institution of higher

education in one of the fields listed in § 263.4 or a related field;

- (d) Recognized by the institution as a degree candidate; and
- (e) Eligible under 34 CFR 75.60.

(Authority: 20 U.S.C. 7833; 20 U.S.C. 1221e-3(a)(1) and 3474)

##### § 263.3 What definitions apply to the Indian Fellowship and Professional Development Programs?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Department  
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

*Dependent allowance* means costs for the care of minor children who reside with the fellow and for whom the fellow has responsibility.

*Expenses* means tuition and required fees; required university health insurance; room, personal living expenses, and board at or near the institution; dependent allowance; instructional supplies; and reasonable travel and research costs associated with doctoral dissertation completion.

*Fellow* means the recipient of a fellowship under the Indian Fellowship Program. The term "fellow" also includes individual project participants under the Professional Development Program with regard to the payback provisions contained in §§ 263.35 through 263.37.

*Fellowship* means an award under the Indian Fellowship Program.

*Full course load* means the number of credit hours that the institution requires of a full-time student.

*Full-time student* means a student who—

- (1) Is a degree candidate;
- (2) Carries a full course load; and
- (3) Is not employed for more than 20 hours a week.

*Good standing* means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

*Graduate degree* means a postbaccalaureate degree awarded by an institution of higher education beyond the undergraduate level.

*Indian* means an individual who is—

- (1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides; or
- (2) A descendant, in the first or second degree, of an individual

described in paragraph (1) of this definition; or

(3) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect on October 19, 1994.

*Institution of higher education* means an accredited college or university within the United States that offers a baccalaureate or postbaccalaureate degree.

*Payback* means work-related service or cash reimbursement to the Department of Education for the training received under the Indian Fellowship or the Professional Development Program.

*Stipend* means that portion of an award that is used for room and board and personal living expenses.

*Undergraduate degree* means a baccalaureate (bachelor's) degree awarded by an institution of higher education.

(Authority: 20 U.S.C. 7832, 7833, and 7881)

##### § 263.4 What are the allowable fields of study in the Indian Fellowship Program?

(a) The following are allowable fields for an undergraduate degree under this program:

- (1) Business administration.
- (2) Engineering.
- (3) Natural resources.

(b) The following are allowable fields for a graduate degree under this program:

- (1) Medicine.
- (2) Clinical psychology.
- (3) Law.
- (4) Education.
- (5) Psychology.
- (6) Engineering.
- (7) Natural resources.
- (8) Business administration.

(c) The Secretary considers under paragraphs (a) and (b) of this section, on a case-by-case basis, the eligibility of applications for fellowships in related fields of study.

(Authority: 20 U.S.C. 7833)

##### § 263.5 What does a fellowship award include?

(a) The Secretary awards a fellowship in an amount up to, but not more than, the expenses as defined in this part. The assistance provided by the program either—

- (1) Fully finances a student's educational expenses; or
- (2) Supplements other sources of financial aid, including other Federal financial aid other than loans, for meeting educational expenses.

(b) The Secretary announces the expected maximum amounts for subsistence and other fellowship costs in the annual application notice published in the Federal Register.

(Authority: 20 U.S.C. 7833)

**§ 263.6 What is the time period for a fellowship award?**

(a) The Secretary awards a fellowship for a period of time not exceeding—

- (1) Four academic years for an undergraduate or doctorate degree; and
- (2) Two academic years for a master's degree.

(b) With prior approval from the Secretary, summer school may be allowed for eligible continuation students after completion of the first academic year.

(Authority: 20 U.S.C. 7833)

**Subpart B—How Does the Secretary Select Fellows?**

**§ 263.20 What priority is given to certain applicants?**

The Secretary awards not more than 10 percent of the fellowships, on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education.

(Authority: 20 U.S.C. 7833)

**§ 263.21 What should the fellowship application contain?**

In addition to the requirements specified in § 263.22, an applicant shall provide—

- (a) Evidence that the applicant is an Indian as defined in § 263.3. Evidence may be in the form of—
  - (i) A copy of the applicant's documentation of tribal enrollment or membership; or
  - (ii) A copy of the parent's or grandparent's documentation of tribal enrollment or membership, with supporting birth certificates or similar documents showing the applicant's descentance from the enrolled member;
- (2) A letter of certification on official letterhead with the appropriate signature from a federally or State recognized tribe or band; or
- (3) A certificate of degree of Indian blood (CDIB) issued by an authorized representative of the Bureau of Indian Affairs or an official of a federally recognized tribe;
  - (b)(1) Evidence that the applicant is currently in attendance or has been accepted for admission as a full-time student at an accredited institution of higher education in one of the eligible fields of study listed in § 263.4; or
  - (2) For an applicant who has not yet been accepted for admission,

documentation of having been accepted by an accredited institution of higher education by a date to be specified by the Secretary;

(c)(1) The most current official high school and, if appropriate, undergraduate transcripts for undergraduate applicants; or

(2) The most current official undergraduate and, if appropriate, graduate transcripts for graduate applicants;

(d) The certification required under 34 CFR 75.61; and

(e) The certification contained within the application regarding agreement to fulfill the requirements of the payback provision that is signed and dated by the applicant.

(Approved by the Office of Management and Budget under control number 1810-0020)

(Authority: 20 U.S.C. 7833; 20 U.S.C. 1221e-3(a)(1) and 3474)

**§ 263.22 How does the Secretary evaluate applications?**

(a) The Secretary reviews and ranks an application with other applications for the same field and related fields of study.

(b) The following criteria, with the total number of points available in parenthesis, are used to evaluate an application for a new fellowship award:

(1) *Official academic record* (60 points). The Secretary considers the quality of the applicant's academic record by reviewing—

- (i) The applicant's grade point average and, if applicable, scores from such standardized tests as the Scholastic Aptitude Test (SAT), American College Testing Assessment Program (ACT), Graduate Record Examination (GRE), Law School Admissions Test (LSAT), Medical College Admission Test (MCAT), and achievement tests; and
- (ii) The applicant's official transcripts and any grade reports.

(2) *Letters of recommendation* (15 points). The Secretary considers the applicant's potential for success in completing the academic requirements for his or her field of study by reviewing one letter of recommendation from each of the following categories:

- (i) A school principal, teacher, academic or non-academic instructor or counselor, a college professor, or academic advisor.
- (ii) A member of the community or civic leader who has observed the applicant in educational, social, or civic activities.
- (iii) A tribal representative or an Indian community member.

(3) *Commitment essay* (25 points). The Secretary considers the applicant's commitment by reviewing an essay,

written by the applicant that addresses—

(i) The applicant's career goals and why the chosen field of study will benefit Indian people;

(ii) The applicant's life experiences and personal and family expectations that will enhance the applicant's anticipated career accomplishments; and

(iii) The applicant's anticipated commitment to providing service to Indian people.

(Approved by the Office of Management and Budget under control number 1810-0020)

(Authority: 20 U.S.C. 7833)

**Subpart C—What Conditions Must be Met by Fellows?**

**§ 263.30 What are the basic requirements of a fellow?**

A fellow shall—

(a) Start school during the first semester of the award at the institution named on the grant award document and complete at least one full academic term;

(b) Submit to the Secretary two copies of his or her official grade report at the close of each academic term and upon completion of the training program at that institution;

(c) Submit an annual continuation application, in the form and timeframes specified by the Secretary, to request funding for each remaining academic year approved under the initial application;

(d) Request from the Secretary a written leave of absence at least 30 days prior to withdrawal, unless an emergency situation has occurred, for any interruption in his or her program of academic studies; and

(e) Sign an agreement with the Department to meet the provisions of the payback requirement.

(Approved by the Office of Management and Budget under control number 1810-0020)

(Authority: 20 U.S.C. 7833)

**§ 263.31 What information must be submitted after a fellowship is awarded?**

To verify further the accuracy of the information provided in the application, the applicant shall provide all information and documents as requested by the Secretary, including information on other financial aid sources for educational purposes. The applicant's failure to provide the requested information and documents invalidates the application, and the Secretary will not consider it for funding.

(Approved by the Office of Management and Budget under control number 1810-0020)

(Authority: 20 U.S.C. 7833)

**§ 263.32 What are the requirements for a leave of absence?**

(a) The Secretary may approve a leave of absence for a period not longer than one academic year if a fellow has successfully completed at least one academic year.

(b) A written request for a leave of absence must be submitted to the Secretary not less than 30 days prior to withdrawal or completion of a grading period, unless an emergency situation has occurred and the Secretary waives the prior notification requirement.

(c) The Secretary permits a leave of absence only if the institution certifies that the fellow is eligible to resume his or her course of study at the end of the leave of absence.

(d) The Secretary withdraws any remaining funds of the fellow's award if a leave of absence occurs prior to the end of an academic term.

(Approved by the Office of Management and Budget under control number 1810-0020)

(Authority: 20 U.S.C. 7833)

**§ 263.33 What is required for continued funding under a fellowship?**

(a) The Secretary reviews the status of each fellow at the end of each year and continues support only if the fellow—

(1) Has complied with requirements under this part;

(2) Has remained a full-time student in good standing in the field in which the fellowship was awarded; and

(3) Has submitted a noncompeting continuation application requesting additional support.

(b) A fellowship terminates when the fellow receives the degree being sought or after the fellow has received the fellowship for the maximum number of years allowed as defined in § 263.6, whichever comes first.

(Approved by the Office of Management and Budget under control number 1810-0020)

(Authority: 20 U.S.C. 7833)

**§ 263.34 When is a fellowship discontinued?**

(a) The Secretary may discontinue the fellowship if the fellow—

(1) Fails to comply with the provisions under this part, including failure to obtain an approved leave of absence under § 263.32, or with the terms and conditions of the fellowship award; or

(2) Fails to report any change in his or her academic status.

(b) The Secretary discontinues a fellowship only after providing reasonable notice and an opportunity for the fellow to rebut, in writing or in an informal meeting with the responsible official in the Department of Education, the basis for the decision.

(Authority: 20 U.S.C. 7833)

**§ 263.35 What are the payback requirements?**

(a) Individuals receiving assistance under the Indian Fellowship Program or the Professional Development Program are required to—

(1) Perform work related to the training received and that benefits Indian people; or

(2) Repay all or a prorated part of the assistance received.

(b) The period of time required for a work-related payback is equivalent to the total period of time for which training was actually received under the Indian Fellowship Program or the Professional Development Program.

(c) The cash payback required must be equivalent to the total amount of funds received and expended for training received under either of these programs and may be prorated based on any approved work-related service the participant performs.

(Approved by the Office of Management and Budget under control number 1810-0020)

(Authority: 20 U.S.C. 7832 and 7833)

**§ 263.36 When does payback begin?**

(a) For all fellows who complete their training under the Indian Fellowship Program or the Professional Development Program, except for medical degree and doctoral degree candidates, payback must begin within six months from the date of completion of the training.

(b) For fellows in a doctoral degree program requiring a dissertation, payback must begin not later than two years after the program's academic course work has been completed or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(1) After academic course work has been completed, fellows in a doctoral degree program shall submit an annual written report to the Secretary on the status of the dissertation.

(2) Within 30 days of completion of the dissertation, fellows in a doctoral degree program shall provide written notification to the Secretary of completion of the dissertation and of the participant's plans for completing a work-related or cash payback.

(c) For fellows in a doctoral degree program with clinical or internship requirements, payback must begin within six months after the clinical or internship requirements have been met or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(1) After academic course work has been completed, fellows in a doctoral degree program with clinical or internship requirements shall submit an annual written report to the Secretary on the status of completion of the clinical or internship requirements.

(2) Within 30 days of completion of the clinical or internship requirements, fellows shall provide written notification to the Secretary of completion of those requirements and the participant's plans for completing a work-related or cash payback.

(d) For fellows in a medical degree program, payback must begin six months from the date that all residency requirements of the program have been met or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(1) After academic course work has been completed, fellows in a medical degree program shall submit an annual written report to the Secretary on the status of completion of the residency requirements of the program.

(2) Within 30 days of completion of the residency requirements, fellows in a medical degree program shall provide written notification to the Secretary of completion of the residency requirements and of the participant's plans for completing a work-related or cash payback.

(e) For fellows who do not complete their training under the Indian Fellowship Program or the Professional Development Program, payback must begin within six months from the date the fellow leaves the Indian Fellowship Program or the Professional Development Program, unless he or she continues as a full-time student, without interruption, in a program leading to a degree in an accredited institution of higher education.

(1) If the fellow leaves the Indian Fellowship Program or the Professional Development Program, but plans to continue his or her education as a full-time student, the Secretary may defer the payback requirement until the participant has completed his or her educational program. Written requests for deferment must be submitted to the Secretary within 30 days of leaving the Indian Fellowship Program or the Professional Development Program and must provide the following information:

(i) The name of the accredited institution the student will be attending.

(ii) A copy of the letter of admission from the institution.

(iii) The degree being sought.

(iv) The projected date of completion.

(2) After approval by the Secretary of the deferment of the payback provision

on the basis of continuing as a full-time student, former fellows are required to submit to the Secretary, after every grading period, a status report from an academic advisor or other authorized representative of the institution of higher education showing verification of enrollment and status.

(Approved by the Office of Management and Budget under control number 1810-0020)  
(Authority: 20 U.S.C. 7832 and 7833)

**§ 263.37 What are the payback reporting requirements?**

(a) *Written notice.* Participants shall submit to the Secretary, within 30 days of completion of their training program, a written notice of intent to complete a work-related or cash payback or to continue in a degree program as a full-time student.

(b) *Work-related payback.* If the participant proposes a work-related payback, the written notice of intent must include information explaining how the work-related service is related to the training received and benefits Indian people.

(1) For work-related service, the Secretary reviews each participant's payback plan to determine if the work-related service is related to the training received and benefits Indian people.

The Secretary approves the payback plan if a determination is made that the work-related service to be performed is related to the training received and benefits Indian people, meets all applicable statutory and regulatory requirements, and is otherwise appropriate.

(2) The payback plan for work-related service must identify where, when, the type of service, and for whom the work will be performed.

(3) A participant shall notify the Secretary in writing of any change in the work-related service being performed within 30 days of such a change.

(4) For work-related payback, individuals shall submit a status report every six months beginning from the date the work-related service is to begin. The reports must include a certification from the participant's employer that the service or services have been performed without interruption.

(5) Upon written request, and if appropriate, the Secretary may extend the period for completing a work-related payback by a total of 18 months.

(6) For participants who initiate, but cannot complete, a work-related payback, the payback reverts to a cash payback.

(c) *Cash payback.* If a cash payback is to be made, the Department will contact

the participant to establish an appropriate schedule for payments.

(Approved by the Office of Management and Budget under control number 1810-0020)  
(Authority: 20 U.S.C. 7832 and 7833)

**Subpart D—How Are Fellowship Payments Made?**

**§ 263.40 How are payments made?**

(a) Fellowship payments are made directly to the institution of higher education where a fellow is enrolled, with stipends provided to the fellow in installments by the institution. No fewer than two installments per academic year may be made.

(b) If a fellow transfers to another institution, the fellowship may also be transferred provided the fellow maintains basic eligibility for the award.

(c) A fellow who officially or unofficially withdraws or is expelled from an institution before completion of a term shall refund a prorated portion of the stipends received, as determined by the Secretary. The Secretary requires the institution to return any unexpended funds.

(Authority: 20 U.S.C. 7833)

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