

Department of the Interior
Bureau of Indian Education



Proposed Rule:
Leases of BIE-Operated School Facilities and
Fundraising Activities at BIE-Operated Schools
Proposed Rule - 25 CFR 48

Background

- Bureau of Indian Education (BIE) currently operates 54 schools
- Congress provided authority* for –
 - Leasing: BIE-operated schools to enter into agreements with persons/entities allowing them to lease the school's land or facilities in exchange for funds that benefit the school
 - Fundraising: Personnel of BIE-operated schools to participate in fundraising activity, in their official capacity and as part of their official duties, for the benefit of the school
- This proposed rule implements that statutory authority.

*See Public Laws 112-74, 113-235, 114-113

History of Regulation Development

- July 22, 2013 and June 19, 2014 – Dear Tribal Leader letters requesting comment
- June 21, 2016 – Proposed rule published
- August 22, 2016 – Comment period completed
- October 14, 2020 – New proposed rule published (85 FR 65000)
- December 14, 2020 – Comment period end
- Goal: Final rule by January 2021

Overview of Rule

- 25 CFR 48 (Leases Covering Bureau-Operated Schools and Fundraising Activities at Bureau-Operated Schools)
 - Subpart A – General Provisions
 - Subpart B – Leasing of Bureau-Operated Facilities
 - Subpart C – Fundraising Activities

Subpart A: GENERAL PROVISIONS

Purpose

- The proposed rule:
 - Implements authorization for BIE to lease or rent BIE-operated school facilities in exchange for funds;
 - Establishes mechanisms and standards for leasing BIE-operated facilities, and management and use of the funds received as consideration;
 - Describes allowable fundraising activities by the employees of Bureau-operated schools; and
 - Establishes provisions for monitoring the amount and terms of consideration received, the manner in which the consideration is used, and any results achieved by such use.

§ 48.1

Purpose (continued)

- The proposed rule does not affect:
 - 25 CFR 31.2, allowing for use of school facilities for community activities and adult education activities, where *no consideration* is received in exchange
 - 26 CFR 31.7 and 36.43(g), establishing guidelines for *student* fundraising
 - The implementing regulations for the Federal Employees Quarters Facilities Act, 5 U.S.C. 5911, at 41 CFR 114-51 and policies at Departmental Manual part 400, chapter 3
 - Use of BIE-operated school facilities or lands by other Federal agencies, so long as the use is memorialized in a written agreement

§ 48.1

Scope of Rule

- Leasing provisions apply only to **BIE-operated schools**:
 - BIE-operated day or boarding schools, dormitories for students attending a school other than a BIE school, institutions of higher learning and associated facilities operated by BIE
- Fundraising provisions apply only to **employees of BIE-operated schools**
- The **rule does not** apply to Tribally controlled grant schools or:
 - Public schools
 - Public Law 100-297 Tribally controlled schools, or
 - Public Law 93-638 contract or grant schools

§ 48.2

**Subpart B:
LEASING OF BUREAU-OPERATED
SCHOOL FACILITIES**

Subpart B – Leasing: Contents

- Who and may lease what, and under what conditions
- Required lease provisions
- Permanent improvements
- Lease consideration
- Use of funds received as consideration
- Results from use of funds
- Lease enforcement/violations

Who & What May Be Leased

- **Who may lease?**
 - Only the BIE Director or his/her designee (Associate Deputy Director and/or Education Program Administrator) may lease a BIE-operated school facility to public or private entities
- **What may be leased?**
 - Any portion of a Bureau-operated school facility may be leased **as long as** the lease does not interfere with the normal operations of the Bureau-operated school, student body, or staff

§§ 48.101 - 48.103

Head of the School

- The Head of the BIE-Operated School has certain responsibilities, including:
 - Consult with the school board or board of regents on proposed leases and provide certification to the Director (or designee) that the proposed lease meets certain standards (see next slide)
 - Submit annual reports on leases;
 - Enforce the lease, where required
- Head of School is defined as:
 - The Principal, President, School Supervisor, Residential Life Director, Superintendent of the School, or equivalent head of a Bureau-operated school where facilities are being leased

Deciding Whether to Lease

- **How does BIE Director (or Designee) decide whether to lease?**
 - Lease must provide appropriate consideration that benefits the school and
 - Head of the School must certify, after consultation with the school board or board of regents, that the lease:
 1. Complies with the mission of the school;
 2. Conforms to principles of good order and discipline;
 3. Does not interfere with existing or planned school activities or programs;
 4. Does not interfere with school board staff and/or community access to the school;
 5. Does not allow contact or access to students inconsistent with applicable law;
 6. Does not result in any Bureau commitments after the lease expires; and
 7. Does not compromise the safety and security of students and staff or damage facilities.

Required Lease Provisions

- **Leases must identify:**
 - The facility (or portion thereof) being leased
 - The purpose of the lease and authorized uses
 - Parties to the lease
 - Term and any renewal term, if applicable
 - Ownership of, and responsibility for, permanent improvements
 - Payment requirements and late payment charges, including interest
 - That lessee will maintain insurance
 - Any bonding requirements, as required in the discretion of the Director

§ 48.105

Required Lease Provisions (continued)

- **Leases must also include these provisions:**
 - (1) No unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;
 - (2) The lessee must comply with all applicable laws, etc.
 - (3) The Bureau has the right, at any reasonable time during the term of the lease and upon reasonable notice to enter the leased premises for inspection and to ensure compliance; and
 - (4) The Bureau may, at its discretion, treat as a lease violation any failure by the lessee to cooperate with a request to make appropriate records, reports, or information available for inspection and duplication.
- **And include these provisions, unless the lessee is prohibited by law from doing so:**
 - “Hold harmless” clause
 - Indemnification clause

§ 48.105

Permanent Improvements

- **Lessee may construct permanent improvements** under a lease of a BIE-operated facility **only if the lease contains:**
 - A description of the type and location of any permanent improvements
 - General schedule for construction of the permanent improvements, including dates for commencement and completion of construction;
 - Specification of who owns the permanent improvements the lessee constructs during the lease term and what happens at the end of the lease term, including restoration of leased premises to original condition
 - Due diligence requirements for construction schedule
- Lessee must also:
 - Prepare any required environmental, cultural resource analyses for the permanent improvement
 - Remove the permanent improvement and restore the premises after leasing

§ 48.106

Lease Consideration

- BIE-operated school may accept **only funds** as consideration for a lease
- BIE will determine what amount is appropriate by considering, at a minimum:
 - Fair Market Value or the indirect and direct costs of the lease **and**
 - Whether there will be a net financial benefit to the school

§§ 48.107 - 48.109

Lease Consideration (continued)

- Lessee must pay consideration to BIE by:
 - Certified check;
 - Money order; or
 - Electronic funds transfer (ETF)
- Processing
 - Must first send funds to the Bureau official as provided for in the lease
 - Bureau official deposits funds into the designated Treasury account and then will work with the school to make the funds available for school purposes
- BIE will charge fees for late payments, dishonored checks, processing demand letters, and Treasury processing after referral for collection of delinquent debt

§§ 48.111 - 48.113

Use of Funds from Leasing

- BIE-Operated School
 - Must use the remaining funds for **any school purposes**
 - Lawful activities and purchases for the benefit of students and school operations including, but not limited to:
 - Academic, residential, and extra-curricular programs during or outside of the normal school day and year;
 - Books, supplies or equipment for school use;
 - Building construction, maintenance and/or operations;
 - Landscape construction, modifications, or maintenance on the school grounds.
- Funds are available until expended

§§ 48.110, 48.114

Results Achieved from Funds

- The Head of the BIE-Operated School with an active lease must:
 - Submit an **annual report** to the Director of BIE (or designee), and the Office of Facilities Management and Construction, including:
 - A list of leases and the facilities covered by each lease;
 - An accounting of receipts from each lease;
 - An accounting of all expenditures and the supporting documentation showing that expenditures were made for school purposes;
 - A report of the benefits provided by the leasing program as a whole;
 - A certification that the terms of each lease were met or, if the terms of a lease were not met, the actions taken as a result of the noncompliance; and
 - Any unexpected expenses incurred.

Lease Enforcement

- Head of the school (or designee) or any Bureau official may enter the leased facility to determine if the lessee is in compliance
 - At any reasonable time,
 - Upon reasonable notice, and
 - Consistent with any notice requirements under the lease

§ 48.116

Lease Violations

- BIE sends a notice of violation
 - May include an order for lessee to cease operations
- Lessee has 10 days from receipt to:
 - Cure the violation
 - Dispute
 - Request additional time to cure the violation
- If Lessee fails to cure the violation, BIE will do one of the following
 - Cancel the lease
 - Invoke other remedies available under the lease or applicable law
 - E.g., collection on any available performance bond
 - E.g., for failure to pay compensation, referral of the debt to the Department of the Treasury for collection
 - Grant the lessee additional time in which to cure the violation

§§ 48.117 – 48.118

**Subpart C:
FUNDRAISING ACTIVITIES AT
BUREAU-OPERATED SCHOOLS**

Subpart C – Fundraising: Contents

- Scope of fundraising provisions
- Permissible fundraising
- Purpose of fundraising
- Limits on fundraising
- Acceptance of donations
- Use of donations
- Results achieved from donations

Scope of Fundraising Provisions

- Fundraising provisions
 - Apply to **employees** under the direction and supervision of the Director that fundraise for a Bureau-operated school
 - **Do not apply to students** who fundraise
- “Fundraising” means requesting donations, selling items, or providing a service, activity, or event to raise funds
- Fundraising **does not** include:
 - Writing a grant proposal to secure resources to support school purposes
 - Requests for donated supplies, materials, in-kind services, or funds (e.g., fees for school activities) that schools traditionally require or request parents and guardians of students to provide

§ 48.201, § 48.3

Permissible Fundraising

- BIE school employees may fundraise for school purposes as part of their official duties using their official title, position and authority, or in a personal capacity, so long as:
 - BIE Director (or designee) approves the fundraising in advance and certifies that it complies with this subpart
 - The employees ensure the fundraising conforms to the requirements of this subpart
 - Each employee spends no more than a reasonable portion of his or her official duties as an employee in any calendar year fundraising
 - Note: There is no limit to the time employees may spend fundraising in a personal capacity when not on duty

§ 48.202, § 48.203

Purpose of Fundraising

- BIE school employees may fundraise for any “**school purposes**”
 - Lawful activities and purchases for the benefit of students and school operations including, but not limited to:
 - Academic, residential, and extra-curricular programs during or outside of the normal school day and year;
 - Books, supplies or equipment for school use;
 - Building construction, maintenance and/or operations;
 - Landscape construction, modifications, or maintenance on the school grounds.

§§ 48.204, 48.3

Limits on Fundraising

- **Fundraising may not:**
 - Include any gaming or gambling activity
 - Violate, or create an appearance of violating, any applicable ethical statutes or regulations
- **Fundraising and donations must:**
 - Maintain the integrity of the Bureau-operated school programs and operations (including listed considerations)
 - Maintain the impartiality, and appearance of impartiality, of BIE, BIE-operated school, and its employees (including listed considerations)
 - Maintain public confidence in BIE and the BIE-operated school, its programs, and its personnel (including listed considerations)

§ 48.205

Limits on Fundraising (continued)

- **Participation in fundraising is voluntary**
 - No student, community member, or organization shall be forced, coerced or otherwise unduly pressured to participate in fundraising
 - No reprimand, condemnation, nor criticism shall be made of, nor any retaliatory action taken against, any student, community member, or organization for failure to participate or succeed in fundraising

§ 48.205

Acceptance of Donations

- Prior to accepting a donation of \$5,000 or more, the BIE Director (or designee) must:
 - Approve the acceptance and
 - Certify that it complies with:
 - 25 CFR 48 (including limitations on fundraising)
 - Departmental policy, and
 - Any applicable statute or regulation.

§ 48.206

Use of Donations

- Processing
 - BIE Director (or designee) must deposit all income from the fundraising into the designated Treasury account
 - The BIE-operated school must:
 - First use the funds to pay documented costs of the fundraising activity
 - Use the remaining funds for the school purposes identified in the solicitation
 - If the solicitation did not identify the school purposes, the funds and in-kind donations may be used for “any school purposes” (as defined)

§ 48.207

Results Achieved From Donations

- Each BIE-operated school that received donations must submit an **annual report** to the BIE Director containing:
 - A list of donors, donation amounts, and estimated values of donated goods and services;
 - An accounting of all costs of fundraising activities;
 - Supporting documentation showing the donations were used for school purposes; and
 - A report of the results achieved by use of donations.

§ 48.208

Next Steps

- Comments due **December 14, 2020**
 - To consultation@bia.gov or through www.regulations.gov
 - No need to send duplicate hard copy
- Goal: Publication of final rule in January 2021

Questions?

- For further information contact

Liz Appel

Office of Regulatory Affairs & Collaborative Action

Office of the Assistant Secretary – Indian Affairs

(202) 738-6065

Elizabeth.appel@bia.gov