

**The No Child Left Behind School Facilities and Construction Negotiated Rulemaking
Committee Meeting 2 –April 12-15, 2010
Seattle, WA**

Draft Meeting Summary

Consensus Agreements

The No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee reached consensus on the following during the meeting:

1. The Committee unanimously approved the Committee Operating Procedures;
2. The Committee formed two additional subcommittees: formula and education;
3. The Committee unanimously approved a framework for a policy for Committee Conference and Caucus Travel Funds;
4. The Committee indicated preliminary support for the concepts recommended by the Dormitory Standards Subcommittee. Full endorsement by Committee members is contingent on review of suggested language changes. All decisions will remain tentative until the Committee reaches formal consensus of the final report in its entirety; and
5. The Committee unanimously approved language for Committee members to present on behalf of the Committee at Elementary and Secondary Education Act (ESEA) Consultations.

INVOCATION

Jerry Brown, Committee Member and Committee Co-Chair, opened the meeting with an invocation.

WELCOME AND INTRODUCTIONS OF COMMITTEE MEMBERS

Patrick Field, Facilitator, welcomed participants to the second meeting of the No Child Left Behind School Facilities and Construction Negotiated Rulemaking (NCLB). He thanked NCLB Committee Members (the Committee) for their continued dedication to the process and reviewed the agenda for the three-and-a-half day meeting. A list of meeting participants is found in Attachment A.

REVIEW OF COMMITTEE OPERATING PROCEDURES

The Committee reviewed the revised Operating Procedures prepared by the Designated Federal Officer (DFO) and CBI facilitators, which included revisions suggested by the Committee and the Co-Chairs at the first Committee meeting. Mr. Field noted that since the last meeting, CBI added a section to address how Committee meetings will be run in an orderly fashion, including: start and end times, breaks, and expectations for Committee member participation during meetings. Committee members raised the following issue for further discussion:

- *Do the Operating Procedures provide for legal representation for the Committee?*
Michele Singer, DFO, explained that the legal representation issue was not fully resolved and required further input from the Committee and follow-up by the Co-Chairs. As a result, Operating Procedures do not include language on the legal representation. The

Committee agreed to discuss the legal representation issue later in the meeting.

Final approval of Operating Procedures

The Committee unanimously approved the Committee Operating Procedures. Committee members can find the Operating Procedures at: <https://nclb.consensusbuildingworkspace.org/> (under Materials By Meeting).

REVIEW AND DISCUSSION OF COMMITTEE CRITERIA FOR DECISION-MAKING

The Committee members reviewed the “Criteria for Guiding the Work of the Committee” document that guides the development of options and recommendations by the Committee. The criteria listed in the draft document were developed during a brainstorming session at the First Committee meeting in January 2010. Committee members offered the following additions:

- Tribal policies and procedures should also be considered in the Committee’s decision-making process (i.e., taxes, contract requirements, or others that impact implementation);
- The process should be consistent with and incorporate the Education Space Criteria Handbook and educational requirements;
- Successful implementation would lead to buildings with longer lifecycles (such as 50 years or more) and more sustainability principles put into practice;
- Successful implementation would secure buy-in from Indian country; and
- Successful implementation would allow for more local input on change orders.

The Committee members can find a revised draft of Committee Criteria for Decision-Making at: <https://nclb.consensusbuildingworkspace.org/> (under Materials By Meeting).

The Committee members also asked the following questions:

- *Can educational programs at Bureau of Indian Education (BIE) schools be expanded when a nearby public school closes?* Mr. David Talayumptewa, BIE, explained that since 1995 Congress has imposed a moratorium on space (i.e., new dormitory or classroom construction) and grade expansions. He added that Tribal governing bodies, in agreement with the Federal government, must approve all school closures.
- *How should schools consolidation impact schools funding decision-making?* The Committee agreed that this is an issue that should be explored further by the Formula Subcommittee and later the full Committee.
- *Is the quality of construction at BIE schools equivalent to public school construction quality?* OFMC responded that BIE schools and public schools follow the same minimum standards for materials and building codes. A Committee member observed that some BIE schools seem to use lesser quality materials. OFMC responded that their standards should not allow for lesser quality materials and that schools should be built to last for 40 years. However, it was noted that these standards do not allow for brick buildings, and that adequate, regular maintenance is required in order for the buildings to last.

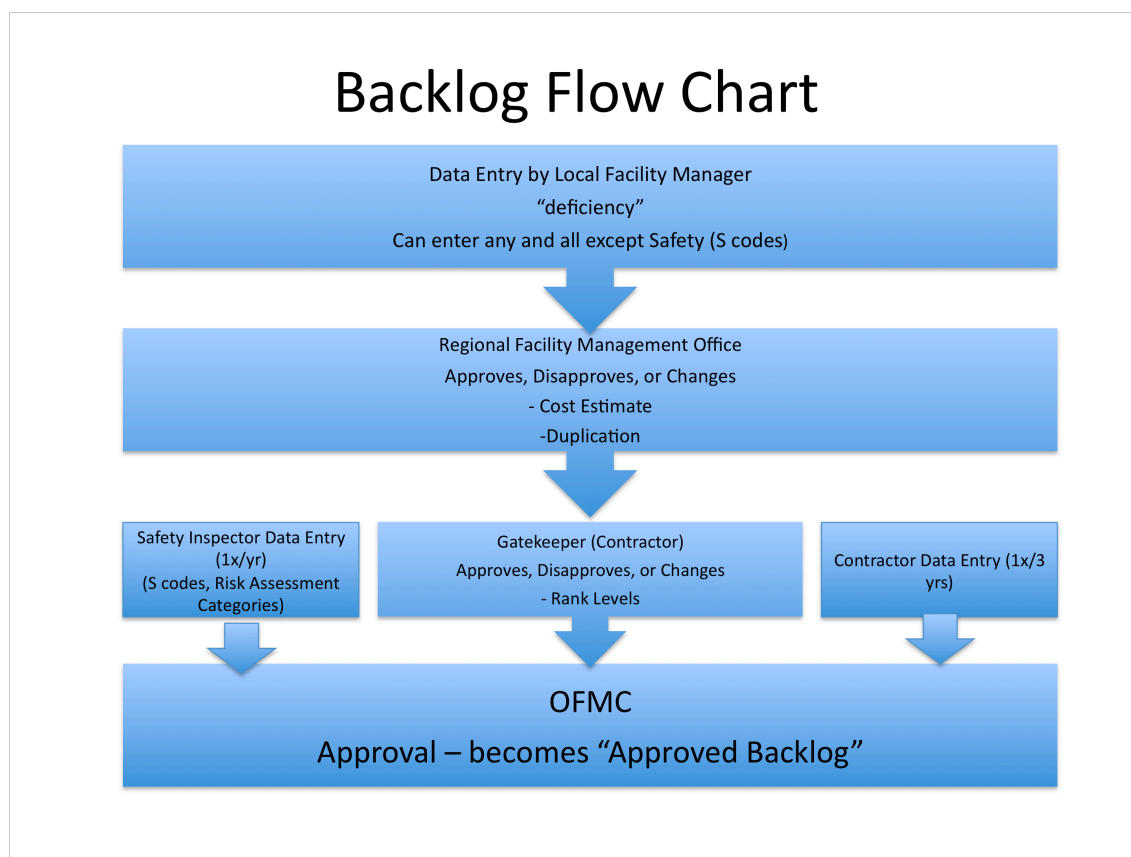
REVIEW AND DISCUSSION OF KEY FMIS FORMULAS

Margie Morin, OFMC, reviewed the FI&R formula and processes for MI&R and new construction that were presented to Committee participants at the March 2010 FMIS Training in Albuquerque, NM. Her presentation is available at:

<https://nclb.consensusbuildingworkspace.org/> (under Materials By Meeting).

Facilities Improvement and Repair (FI&R)

Ms. Morin explained that backlogs are the foundation of the data that FMIS uses to evaluate FI&R allocation. Each individual backlog is a specific work item with an estimate cost of more than \$2,500, the threshold for FI&R projects. Backlogs can be entered by category and rank into FMIS by local facilities managers, regional safety inspectors, or an OFMC contractor who visits each school once every three years. An OFMC contractor (gatekeeper) approves, disapproves, or modifies each backlog entered. The gatekeeper may disapprove a backlog if it is a duplicate entry or it is an unnecessary work item. The gatekeeper may alter a backlog if the cost estimate is inaccurate or the code or rank applied is incorrect. Only the safety officer can enter safety backlogs, which are ranked among the highest of all backlogs. Once the condition assessment file is loaded in FMIS, an automatic notification that the backlog is awaiting approval goes to the school staff person with approval authority. If the school does not respond in 90 days to dispute the change, the backlogs are then approved by OFMC. Ms. Morin explained that most schools do not dispute changes. (The facilitators developed a flowchart to help explain this process, which is below).



Ms. Morin explained that for prioritization, backlogs must be weighted based on the Department of the Interior's (DOI) weighted relative factor. To do this, OFMC categorizes and ranks the type of backlogs into a DOI category, which are given a DOI weighted relative factor. For example, a backlog categorized as a Critical Health or Safety Deferred Maintenance, is given a DOI weighed relative factor of 10, and a backlog categorized as a Code Compliance Capital Improvement, is given a DOI weighted relative factor of 4. All of a school's individual backlogs are given a weighted relative factor. To calculate the "weighted relative cost", each individual backlog cost is divided by the school's total backlog cost and multiplied by the weighted relative score. The sum of the school's weighted relative costs is multiplied by 75% to calculate a "total weighted score". Ms. Morin referred to charts in her presentation, which illustrate this process. Her presentation is found at: <https://nclb.consensusbuildingworkspace.org/> (Materials by Meeting).

Ms. Morin explained that the total weighted score is then combined with the Asset Priority Index (API) score to calculate the school's "final project score." API is determined by using a ranking system of the importance of each building to the mission of the school. For example, academic buildings and dormitories are ranked higher than storage facilities. To calculate the total API score, the average of a school's total API is multiplied by 25%. FMIS then prioritizes schools based on their final project score, also known as the "project ranking score." Projects are selected, starting at the top of the list (or projects with the highest project ranking score), based upon available funding. Ms. Morin explained that a "project" is all the important work (backlogs) to be completed at a single location (school). This distinction is made because it is Bureau practice to fund the whole project, which is more cost effective than to complete individual components of the project over time.

Ms. Morin also explained the process for determining Minor Improvement & Repairs (MI&R) priorities with an estimated cost of more than \$2,500. She explained that each year, OFMC makes a "data call" and asks schools to prioritize their top (approximately ten) critical MI&R needs. She noted that schools do not always identify the most critical items, such as mission critical or safety items, rather some schools prioritize items that they would like funded. The regions then either approve or select the highest priority projects within their regions. Those identified projects are then referred to OFMC for final selection based on the amount of funding available.

Committee members discussed the following issues:

- *Who is the gatekeeper?* The gatekeeper is a condition assessment contractor hired by OFMC. The contractor firm includes all necessary professional expertise, including cost estimators.
- *How was the weighting formula determined?* It was determined by DOI.
- *If a BIA school is converted to a grant school, is it still eligible for Operation and Maintenance funding (O&M) and OFMC programs?* Yes, all OFMC programs apply equally to BIE, grant, and tribal schools. The one difference is that if a tribe assumes ownership of the building, the tribe must insure the building.
- *Are regional differences reflected in the scores (e.g., in cold climates, are bus barns considered more critical than they would be in warm climates)?* No they are not.

- *How are backlog costs determined?* Ms. Morin explained that the school or OFMC contractor estimates costs. If the school does not agree with the estimate they have the ability to re-estimate the cost based on prior history cost or show why they believe the estimate is inaccurate.
- *Is remoteness factored into the cost estimates?* Yes. If using RS Means cost estimating (in FMIS) backlog costs are calculated to the nearest metropolitan area. FMIS also includes remoteness factors that can be added to the estimate by just checking a box “add remoteness factor”. If a school does this, then remoteness is automatically added to the cost estimate.
- *Is there a construction cost index per region?* Yes.
- *Are most schools’ backlogs entered by their facilities managers or after a site visitation by an OFMC condition assessment contractor?* Schools are inspected every three years. If a school’s conditions are up-to-date in FMIS, school facilities managers need to enter items they find as conditions change in the building or site. Facility managers should also conduct routine inspections and enter new backlogs into FMIS, as needed.
- *How were API scores determined?* All school buildings have API scores, which were determined by OFMC and BIE during a single process. All Federal buildings are required to have a building criticality score under the Federal Asset Management Plan.
- *Do tribes have an opportunity to question their API scores?* No, these scores were never published for comment.
- *Are underground utilities tied to the building score?* Underground utilities are not ranked with API scores across all schools. Some schools include this information in their backlogs.
- *Does the Assistant Secretary -Indian Affairs have the discretion to add schools to the new construction priority list?* Yes, the Assistant Secretary does have the authority to add schools to the new construction priority list, but it is rarely, if ever, exercised.
- *How does FMIS evaluate the impacts of projects at BIE funded schools on other systems in a community, such as impacts on public schools, on economic development, etc.?* It currently does not.
- *Is there a timeline of deadlines for the MI&R data call?* Typically the data call is in late summer so that OFMC can prepare priorities for funding at the start of the new fiscal year (October).
- *Can FI&R funds be used to build a new school?* No. However FI&R can help to repair some buildings when combined with funding from the Replacement Facility Construction Program. The Replacement Facility Construction program funds will cover the new building construction component, while FI&R funds will cover renovations to existing structures. A school often ranks for replacement facility construction, if repair of existing buildings will cost more than 66% of the value of the school (this is known as the Facility Condition Index - FCI). FI&R funds may only be used for school expansion if the school is expanding so that it will in compliance with regulations such as ADA compliance. In these cases, the school cannot expand the envelope of the building by more than 25%.
- *How are programmatic requirements incorporated into this process?* This is one of the key issues that the Committee should consider.
- *Why are some projects “locked down” in FMIS?* If a project is in lock mode, it is either in queue for funding, under construction, or completed.

- *Is an educational professional involved in ranking a school's backlogs and priorities?*
School educational personnel should be involved in ranking a school's backlogs and priorities on the local school level, but OFMC does not know if this is done in all schools. The official ranking process does not include a formal role for education personnel.

OFMC programs

The Committee discussed OFMC's funding programs, which include:

<ul style="list-style-type: none"> • O&M, which is a separate line item in OFMC's budget but is tied to the data in FMIS
<ul style="list-style-type: none"> • FI&R, which combines all of a school's backlogs into a single "project" and is ranked and prioritized through FMIS as described above. FI&R includes funding programs for special programs including: <ul style="list-style-type: none"> ○ MI&R (Minor Improvement & Repair (MI&R), which is for one backlog (over \$2500), should not require design work) ○ Portable program ○ Energy/Environmental program ○ Boiler program ○ Quarters ○ Roofing ○ Condition Assessment ○ Demolition ○ Seismic ○ Emergencies
<ul style="list-style-type: none"> • Facility Replacement, which is allocated using the above FMIS ranking but is used for individual buildings on a campus that are over the 66% threshold (where repairs would cost more than 66% of the cost of a new building).
<ul style="list-style-type: none"> • New School Construction, there is currently no process for adding to the new school construction list.

Committee members also discussed the following issues:

MI&R: Committee members questioned if the current MI&R prioritization system also needs to be changed because it is not transparent and may create perverse incentives for schools. They questioned if it would be possible to eliminate these perverse incentives so that if a school avoids fixing the most critical items through MI&R, then the school's ranking for FI&R or a full school repair project would somehow be lowered. Some also questioned if schools and OFMC's definitions of "priorities" are aligned, indicating that a critical backlog item identified for a school might not be seen as a priority by OFMC and visa versa. It was suggested that MI&R could be ranked like FI&R.

Communication: Committee members noted the importance of effective communication between the facility manager at regional level, schools, and OFMC. Many observed communication gaps about FMIS noting that schools are unaware of the importance of FMIS or

how the system works. For example, some members noted that their schools' were unaware of the MI&R data call.

Universal FMIS access and use: Committee members observed that if a school does not use FMIS effectively, that school would be adversely impacted when it comes to funding decisions. They commented that every school must be on FMIS and use it effectively; however, this is not currently the case. Some added that there are technical barriers to using FMIS (such as complications with BIE email system or inconsistent Internet connectivity), in addition to knowledge barriers. OFMC noted that their office is working to ensure that all schools have access to FMIS and that OFMC works to resolve technical glitches as they arise. A Committee member suggested that OFMC establish a FMIS Users Committee to assist schools with FMIS input, technical assistance, and information sharing.

Fairness: Committee members discussed the need to make the funding allocation system fair so that old schools are replaced, good schools are rewarded, and failing schools have a chance to succeed.

Relationship between O&M, MI&R, and FI&R: The Committee discussed if additional funding should be added to the O&M budget because if a school falls behind on its O&M, then it is more likely to need FI&R in the future. Currently, operations funds are constrained at close to 50% of need. OFMC explained that Congress prefers to see funding allocated to projects, rather than O&M, adding that O&M funding is an easy target for budget cuts and shifted spending. Others questioned if additional funding should be added to MI&R so that schools can address issues before they become FI&R projects. Some commented that there are perverse incentives which reward schools for not keeping up with regular repairs.

Education requirements and facilities: Committee members noted the importance of including education requirements with facilities construction funds. They commented that the two are complementary and must be considered together. Further discussion of this topic is summarized below.

Additional Backlog Information

At the request of the Committee, Margie Morin, OFMC, presented additional data on current FMIS backlogs.

<i>Type of School</i>	<i># Schools</i>	<i># of backlogs entered in FMIS</i>	<i>Estimate \$ of backlogs</i>
BIE	59	13,906	\$ 721,000,000
Grant	121	14,662	\$ 873,400,000
Contract	4	841	\$13,900,000
<i>Totals</i>		29,409	\$ 1,608,300,000

The Committee observed a difference in the number of backlogs between BIE and grant schools and, based on the number of schools, the expected number of backlogs. Committee members offered possible interpretations of the data:

- Grant schools are not entering data into FMIS;
- BIE schools have more capacity than grant schools to enter data into FMIS; and
- Grant schools are in better condition and do not have as many backlogs as BIE schools.

Committee members requested the following additional information

- A list of each school's regional facility manager;
- FCI scores for all schools;
- Additional detail on the weighted relative cost formula, relative score factor, and project score;
- List of schools actively and not actively entering data into FMIS;
- A chart showing the API score for different buildings; and
- Access to the FMIS backlog data.

DISCUSSION OF EDUCATION REQUIREMENTS

Committee members emphasized the importance of updating the system to include educational requirements. OFMC explained that currently FMIS does not include data on educational needs. OFMC also explained that the 2005 Education Space Criteria Handbook are not regulations, just guidelines, and that OFMC will negotiate with schools on a case-by-case basis to determine how the guidelines are applied. OFMC clarified that a school can opt to follow its State's Education Guidelines or the BIA 2005 Education Space Criteria Handbook, though it cannot pick and choose components from both.

Committee members discussed options for incorporating education and programmatic requirements into the school construction funding allocation process. They raised the following ideas and considerations:

- Reintroducing a narrative component to the school replacement application, which allows schools to justify their facilities based on educational programming needs.
- Updating the 2005 Education Space Criteria Handbook to reflect current education best practices and NCLB requirements, not just education enrollment projections.
- How to include and/or weigh additional education criteria in the FMIS formulas so that it is equitable and appropriate to diverse schools. Committee members noted that educational program requirements may be unique to schools and not included in OFMC guidelines, such as vocational, cultural, or special education programs. Committee members brainstormed criteria options, including:
 - Number of buildings
 - Size of classrooms
 - Faculty housing needs
 - AYP performance
 - Conformity with state education guidelines
 - Conformity with NCLB requirements
 - Conformity with civil rights laws
 - Technology or education needs, such as group learning spaces, reading labs, math labs

- Hire an independent contractor to conduct a baseline survey of schools' conformity with current Education Space Criteria Handbook and give priority to ones who do not conform.
- Give priority to schools that have meet AYP for a consecutive number of years.

Committee members requested the following additional information

- U.S. Department of Education report: Blueprint for Native Education;
- Education criteria evaluated by OFMC cited on p. 8 of the 2005 Education Space Criteria Handbook;
- A demonstration of how the Education Space Criteria Handbook are used by OFMC; and
- Details of the 64 schools in poor condition and general data on their educational performance.

DISCUSSION OF BUDGET FOR SCHOOL FACILITIES AND CONSTRUCTION

Jack Rever, AS-IA, Office of Facilities, Environmental and Cultural Resources, provided an overview of the current OFMC budget for school facilities and construction. He presented the following figures:

	Replacement Schools	Replacement Facility Construction	Employee Housing	FI&R	Total Education Funding
FY 2009	\$22,405,000	\$17,013,000	\$4,445,000	\$84,974,000	\$128,837,000
FY 2010	\$5,964,000	\$17,013,000	\$4,451,000	\$85,566,000	\$112,994,000
FY 2011*	\$5,775,000	\$8,085,000	\$4,447,000	\$34,567,000	\$52,854,000

* 2011 Presidents Budget Request

Mr. Rever explained that the budget for replacement schools is not enough to allow for new school construction in 2011. He indicated that some of the funding will be used for design work for three projects on the original School Replacement list, so that OFMC will be prepared if new funds become available. The rest of the Replacement Schools funding will be allocated to MI&R. Committee members questioned if OFMC funding was cut because the office received American Reinvestment and Recovery Act funds (ARRA), which it used for 14 FI&R projects and several MI&R projects. Mr. Rever agreed that this was the case. In testimony to Congress, Mr. Rever estimated the funding required to bring all of the schools in poor condition up to current standards would be \$1.3 billion. This is more than the amount just to complete all of the backlogs because some of the schools require replacement, which will cost more than just correcting all of the deficiencies.

In response to a question, David Talayumptewa, BIE, added that Johnson O'Malley funds for public schools and Tribal Headstart programs are no longer formula based but are based on October 1995 Johnson O'Malley school enrollment data. He explained that tribes set priorities with their tribal-priority-allocation (TPA) funds and included in TPA is Johnson O'Malley funds. Tribes can increase Johnson O'Malley funds, however, equivalent funds must be subtracted from other tribal budgets (such as social services, etc). A Committee member added that Johnson O'Malley funds are considered by many to be a diminishing resource and not a reliable source of education funding.

Committee recommendations

- Committee members recommend attending the next Tribal Budget Advisory Council (TBAC) quarterly meeting to share the current funding deficits for school facilities construction and ask the Council to consider Indian Education construction as a priority. CBI, Co-Chairs, and the Federal team agreed to draft a fact sheet on the Committee's work and the funding needs to present to the Council, and Michele agreed to try to get this issue onto the agenda for the next TBAC meeting in May 2010.
- Committee members also recommended that Committee representatives present a prepared statement on the importance of Indian Education construction funding at the ESEA reauthorization consultation sessions being held around Indian Country by the U.S. Department of Education.

DISCUSSION OF COMMITTEE REPORT OUTLINE

Committee members reviewed a draft outline for the Committee report, prepared by CBI for discussion. Committee members offered the following suggestions:

- Include a glossary of terms;
- Emphasize Indian Education construction funding;
- Include a communications section highlighting improvements in communications between BIE, BIA, schools, and contractors;
- State need for formula;
- Reorder the priorities as they appear in the report so that most important issues are discussed first in the report (such as formula); and
- Add a section on issues related to implementing school facilities and construction projects.

An updated draft report outline for Committee members is found at:

<https://nclb.consensusbuildingworkspace.org/> (under Materials By Meeting)

COMMITTEE LEGAL ASSISTANCE

Committee members discussed options for securing legal assistance for Tribal Committee members. Committee members offered the following suggestions:

Scope of Work: The NCLB Legal Representation would work on behalf of the tribal Committee members as a whole to:

- Answer legal questions raised by the Committee or Subcommittees, in writing and/or via conference call, such as interpretation of the NCLB statute related to Committee work; role of law, rules, regulations, and guidelines in implementing programs; legal issues related to budgets;
- Be available to review documents or materials developed by the Committee, upon request; and
- Attend a Committee meeting(s), pending travel expenses, to provide advice and consultation on final Committee products.

Contract Options

- Select one attorney to contract on retainer for X number of hours to be available to advise the Committee; or
- Maintain a roster of attorneys and ask one to participate as a technical advisor in Committee meetings, when geographically appropriate, on a voluntary or reduced cost basis.

Process Suggestions:

- Co-Chairs will be responsible for ensuring an effective and efficient use of the legal advisor;
- All questions or documents relayed to the advisor must be shared with the Committee as a whole;
- All answers or replies from the advisor must be shared with the Committee as a whole; and
- The contracting agent will have ultimate fiduciary responsibility for the advisor.

Potential Attorneys

- Carole Barbaro (DC)
- Greg Smith (DC)
- Bryant Rogers (Santa Fe)

COMMITTEE SCOPE OF WORK

Committee members reviewed the Committee's scope of work, as mandated by Congress. Specifically, the Committee must submit a report with:

- A catalog of school facilities;
- A report on the school replacement and new construction needs of Bureau-funded schools, and a formula for the equitable distribution of funds to address those needs;
- A report on the major and minor renovation needs of Bureau-funded schools, and a formula for the equitable distribution of funds to address such needs; and
- Revised national standards for heating, lighting, and cooling in home-living (dormitory) situations.

A Committee member reflected that it seems as though Congress acknowledged that the current process for adding schools to the replacement school facilities list is not fair and formed the Committee to determine a more equitable process. Some Committee members commented that while equity is needed, they must be realistic about the current funding constraints. A Committee member noted that in reality every community will not receive a new school, and questioned if the Committee should consider recommendations that will impact the whole Indian Education landscape. For example, given the current funding challenges, should schools be incentivized to consolidate? Should the Committee consider a realistic Master plan for Bureau-funded schools and strategies for implementing that Master Plan?

Other Committee members noted that the Committee should not make a recommendation that drives school closures. Another comment is that local control is paramount, and the tribes are

bound by Treaty obligations; adding that this Committee member does not want the Committee's recommendations to take schools away from communities. Others commented that they do not want to shape specific outcomes, but they want to ensure the new process is fair and transparent.

COMMITTEE CAUCUS

Committee members caucused without the facilitators, technical advisors, or members of the public.

SUBCOMMITTEES

Forming Additional Subcommittees

The Committee unanimously approved forming an Education and Formula Subcommittee.

Education Subcommittee members include:

- *Co-Chair:* Greg Anderson
- *Co-Chair:* Jerry Brown
- *Co-Chair:* Lorena Zah Bahe
- Jimmy Begay
- Jackie Cheek
- Emerson Eskeets
- Betty Ojaye
- Albert Yazzie
- *Facilitator:* Kate Harvey

Formula Subcommittee members include:

- *Co-Chair:* Monty Roessel
- Bryce in the Woods
- Frank Lujan
- Lester Hudson
- Janice Azure
- Regina Gilbert
- Jim Porter
- Technical Liaison: Margie Moran, OFMC
- *Facilitator:* Patrick Field

Dormitory Standards Subcommittee Report to the Committee

- Co-Chair: Greg Anderson
- *Co-Chair:* Jerry Brown
- Fred Leader Charge
- James Hogan
- Betty Ojaye
- Jim Porter
- Emerson Eskeets
- Joy Culbreath
- Margie Begay
- Jimmy Begay
- *Facilitator:* Stacie Smith

The Dormitory Standards Subcommittee met in Albuquerque, NM in March 2010 and convened by conference calls three times from March-April. The Subcommittee also met during a two hour session during the Committee meeting in Seattle, WA.

Emerson Eskeets, OFMC, presented an overview of the current dormitory codes used by OFMC. Betty Ojaye, Committee member, described how the codes were applied to a new dormitory construction project at Navajo Preparatory School and Greg Anderson, Committee member and Co-Chair, explained how Eufaula Dormitory, an older school, updates its codes under the current system. The presentation is found at: <https://nclb.consensusbuildingworkspace.org/> (under Materials By Meeting).

The recommendation of the Subcommittee to the Committee was to maintain the status quo: BIA must continue to comply with national construction standards that are appropriate for Peripheral Dormitories. The Subcommittee explained that they could not think of a reason why Peripheral Dormitories should have different requirements than any other facilities.

Committee members raised the following questions and concerns for the Subcommittee to consider:

- *When a conflict with local regulations arises, which regulation takes precedent?* OFMC explained that currently the more stringent regulation takes precedent.
- Achievement of Leadership and Energy Environment Design (LEED) silver standard is currently OFMC's "goal", is this reasonable? How should that standard be applied? Are there exemptions?

The Subcommittee concluded that LEED Silver was the appropriate goal because the precedent has already been set in the BIA School Facilities Design Handbook, and it is becoming a more widespread requirement for government-funded projects.

The Subcommittee also noted that transparency in the OFMC decision-making process is very important. They noted that there might be cases where a school could not meet LEED Silver standard. In those cases, the Subcommittee recommended that the school would be required to demonstrate which standards it could meet and which it could not meet and to explain why the cost of meeting Silver would impose an unreasonable burden. OFMC would then have to explain its decision to waive or not waive the requirement to obtain LEED Silver designation.

These thoughts were incorporated into draft language, which the Subcommittee presented to the Committee:

Draft regulation under 25 U.S.C § 2002(a) for heating, lighting, and ventilation:

All dormitory and home-living facilities shall be constructed in conformity with relevant codes and standards set out in the Bureau of Indian Affairs School Facilities Design Handbook, or successor document. Any changes the codes and standards applicable to heating, lighting, and ventilation in dormitory or home-living facilities shall be published in the Federal Register, with a 60-day comment period. The Bureau shall respond to any comments in a final rule published in the Federal Register announcing the adoption or rejection of new codes and standards.

Application of LEED to new dormitory construction:

(We may prefer to have this language adopted into OFMC policy documents versus regulation.)

As set forth in BIA's School Facilities Design Handbook, new dormitories shall be designed to meet LEED Silver standards. Recognizing that the conditions under which Indian school facilities are constructed can present exceptional challenges for compliance with LEED, it shall be available to a [tribal entity proposing a construction project] to request BIA approval for a project that only meets the requirements for LEED

basic certification, not Silver standard. Such a proposal must show how the project addresses each of the point-earning components of LEED Silver, and explain how it would impose unacceptable costs on the proponent to earn sufficient points to meet Silver.

OFMC shall issue a response within 30 days of receipt. In BIA's decision, the Office shall state its determination on whether it accepts the proponent's assessment of the burden of meeting Silver, and whether the Office agrees that the burden would constitute an unreasonable cost.

The Committee offered the following comments on the draft language:

- The language should clarify “any changes in the codes and standards applicable” means substantive changes, not regular updates;
- The language should clarify the Federal Register notification process, which may not be correctly sequenced in the language; and
- OFMC should issue a response within 30 days, but not a decision. A requirement to issue a decision would not be practical given time constraints, documentation requirements, and current processes.

Committee Agreement on Dormitory Standards Language

The Committee indicated preliminary support for the concepts recommended by the Dormitory Standards Subcommittee. Full endorsement by Committee members is contingent on review of suggested language changes. All decisions will remain tentative until the Committee reaches formal consensus of the final report in its entirety.

Catalog Subcommittee Report to the Committee

- | | |
|-------------------------|------------------------------------|
| • Shirley Gross | • Catherine Wright |
| • Arthur Maxwell Taylor | • Scott House |
| • Jerome Wayne Witt | • Fred Leader Charge |
| • Dr. Kenneth York | • Michele Singer |
| • Judy DeHose | • Jack Rever |
| • Fred Colhoff | • <i>Facilitator: Stacie Smith</i> |

The Catalog Subcommittee met in Albuquerque, NM in March 2010. The Subcommittee also met twice in two hour sessions during the Committee meeting in Seattle, WA.

Shirley Gross, Committee member, offered a presentation summarizing their sessions. The presentation is found at: <https://nclb.consensusbuildingworkspace.org/> (under Materials By Meeting). She reviewed the scope of work, which is to develop a catalog of the condition of school facilities at all Bureau-funded schools that:

- (I) Incorporates the findings from the Government Accountability Office study evaluating and comparing school systems of the Department of Defense and the Bureau of Indian Affairs;

- (II) Rates such facilities with respect to the rate of deterioration and useful life of structures and major systems;
- (III) Establishes a routine maintenance schedule for each facility;
- (IV) Identifies the complementary educational facilities that do not exist but are needed; and
- (V) Makes projections on the amount of funds needed to keep each school viable, consistent with the accreditation standards required pursuant to this Act.

She explained that the Subcommittee discussed possible responses to the scope, which include:

- A statement about the Committee's interpretation and approach to the task, and limitations in completing the task;
- A synopsis of conditions of the 184 schools—backlogs, estimated costs, etc;
- A complete print-out of the condition of the 184 schools from FMIS, as an appendix.

The Subcommittee also discussed key changes to FMIS, including:

- *Access:* There is a need to highlight the responsibility of school administrators to ensure FMIS is updated, in partnership with school facility staff. There is also a need for Regional FMIS Support Groups and regional training to ensure schools have staff able to use FMIS. For FMIS to work effectively the entire backlog data must be entered into the system, and the Subcommittee requested information from OFMC to identify which schools are not using the system. Finally, the Subcommittee discussed the role of BIE and Education Line Officers (ELO) in this process, noting that the ELO should be involved in the process.
 - The Committee discussed the evolving role of the ELO, which is focusing more on education and less on facilities, and requested additional information on the job description of the ELO. OFMC noted that the OFMC office has been filling the gap left by the ELOs' shifting job descriptions. The Committee questioned if the shifting attention of ELOs is a breach of their statutory requirements. The Committee agreed that more information on this situation would be needed to evaluate the current ELO roles and responsibilities effectively.
- *Technical Issues:* The Subcommittee discussed the need for easy and reliable access to FMIS, observing that OFMC should be able to respond to technical problems more efficiently.
- *Contractors:* Since OFMC contractors are an integral part of ensuring FMIS data's accuracy, the Subcommittee highlighted a need to improve access to and communication between OFMC contractors and schools. Ms. Gross explained that not all schools understand the role of the contractor or receive sufficient follow-up information, including notification of changes to backlog entries, copies of reports, and findings.
- *Inconsistency in Roles and Responsibilities:* The Subcommittee identified a need for greater clarity about the facilities support roles and responsibilities of OFMC, BIE, regional agencies, and schools.

- Accounting for Educational Needs: The Subcommittee also suggested that FMIS and/or the funding decision-making process incorporate educational needs into its evaluation of funding needs.

Education Subcommittee Report to the Committee

The Education Subcommittee met during a two hour session during the Committee meeting in Seattle, WA.

Greg Anderson, Committee member and Co-Chair, provided an overview of the Subcommittee's discussion on their scope of work and deliverables. The Education Subcommittee will offer recommendations to the Committee on how to update school facilities construction guidelines so they reflect current educational requirements. To assist the committee, this subcommittee will:

- Explore the 2005 Education Space Criteria Handbook and recommend updates to the Guidelines;
- Explore NCLB and re-authorization core education priorities;
- Explore BIE, tribal, and state educational requirements;
- Anticipate trends in educational requirements; and
- Explore how current educational requirements drive the Program of Requirements and determine, consequently, what facilities BIE schools need.

Possible Subcommittee Deliverables include:

- Recommendations for bridging BIE and OFMC and fostering greater collaboration (i.e., staff liaison in both BIE & OFMC, officer or agency, protocol);
- Statement that NCLB must link education with construction and/or language recommendations for linking education to construction;
 - With legal consultation
- Recommendations for changes in Space Guidelines (i.e., core programs, quality of school, program of requirements);
- Recommendation to Formula Subcommittee on academic achievement criteria that should be included in FMIS decision-making (i.e., AYP success is weighted more heavily in FMIS, educational components, parent involvement, graduation rate, enrollment projection & stability, reintroduce narrative into application, school climate, accreditation) and how they should be balanced to ensure fairness, equity, and workability; and
- Modify Language in existing laws.

Data/Processes/Things Subcommittee Needs to Do

- Understand the current process for communication/collaboration between BIE and OFMC;
- Understand how information on student enrollment is developed and communicated between BIE and OFMC;
- Understand how OFMC incorporates enrollment data; and
- Understand how OFMC is guided by NCLB.

ESEA Consultation Language

The Education Subcommittee also drafted language for Committee representatives to submit at the ESEA Tribal Consultations. The Committee unanimously approved the language as follows:

To achieve the benchmarks identified in NCLBA, and thereby to ensure the success of our children, quality educational facilities and exemplary educational programs must be provided for Indian, Native Hawaiian, and Alaska Native children. Research shows that there is a direct correlation between facility environment and student achievement. Congress must provide the necessary funding to provide such facilities and programs – otherwise, the goals and mandates set out in NCLBA cannot be achieved, and the Act itself becomes an empty promise.

Formula Subcommittee Report to the Committee

The Formula Subcommittee met twice in a two-hour session during the Committee meeting in Seattle, WA.

Monty Roessel, Co-Chair, Formula Subcommittee, reported that the Subcommittee spent time understanding the formula used in FMIS. He also explained that the charge of the Subcommittee is to: prepare and submit “a formula for the equitable distribution of funds to address school replacement, new construction, and major and minor renovation needs.” To assist the Committee, this subcommittee will:

- Explore formulas, processes, and communication issues related to “minor improvement and repair” (MI&R);
- Explore formulas, processes, and communication issues related to “facility improvement and repair” (FI&R);
- Explore formulas, processes, and communication issues related to facility and school replacement; and
- The interaction and appropriate balance and management among these different kinds of funding and programs.

The sense of the Subcommittee is that FMIS is a workable system, and the Committee should improve and build on the existing system. However, the current application of the formula is unfair and there are many factors that must be addressed to level the playing field for schools, including:

- The formula must quantify and incorporate human factors, such as program needs and enrollment;
- The data must be quality and complete;
- The priority list is a living document and its creation and modification must be a more transparent process;
- The “human factor” in the decision-making process is important and must be clarified;
- Ensure the system does not create perverse incentives; and
- Coordination and responsibility across the system are important and may need to be clarified and improved.

Mr. Roessel explained the task of the Subcommittee is to refine the FI&R formula and develop two formulas one for replacement facility construction and one for new school construction.

During the next Committee meetings, the Subcommittee will discuss how to prioritize criteria and to test which impacts specific criteria have on decision-making outcomes.

COMMITTEE MEMBER CONFERENCE AND CAUCUS TRAVEL FUNDS

Patrick Field, Facilitator, explained the Committee budget includes \$25,000, which may be allocated to authorized tribal Negotiated Rulemaking Committee members to assist them in undertaking caucusing and outreach activities. Each Committee member may receive support for authorized direct expenses to include: conference calls, materials costs and travel costs consistent with Federal guidelines. This money is in addition to Committee members' Committee Meeting travel expenses and the formal Consultations that will be scheduled at the end of the process.

He explained that the Co-Chairs recommended:

- Setting aside up to \$5,000 for support for travel on behalf of Committee to conferences/meetings that cannot otherwise be funded
- \$20,000 allocated among the 22 tribal members for up to \$900 each for caucusing/outreach in their respective regions.

Committee members discussed the purpose of attending conferences and they would share information on the Committee's work and to receive input from stakeholders and constituents. Committee members suggested that Co-Chairs should determine who is scheduled to attend meetings and only to reimburse for travel to meetings or conferences where 1) a Committee member is not already attending, and 2) it is directly relevant to the Committee's work. Committee members also suggested that Committee representatives at conferences and meetings must speak for the Committee, not themselves.

The facilitation team with the Co-Chairs agreed to develop a facts sheet and options for conference participation. Committee members also discussed the types of conferences they might attend and agreed the Co-Chairs should consider the following:

<i>Meeting</i>	<i>Location</i>	<i>Dates</i>	<i>Already attending</i>	
ESEA Consultation Meeting	Oklahoma City	April 19	Greg Anderson	Prepared language from Committee
ESEA Consultation Meeting	Pine Ridge	April 28	Shirley Gross, Bryce In the Woods	Prepared language from Committee
ESEA Consultation Meeting	Albuquerque, NM	May 3	Lorena Zah Bahe, Michele Singer, Catherine Wright	Prepared language from Committee
Construction in Indian Country	Phoenix	May 16-17, 18-19	Monty Roessel, Frank Lujan	Fact sheets
Tribal Budget Advisory	Washington, DC	May 17-19	Michele Singer	Update on committee,

Council				information on schools
BIE national conference	St Louis	June 22-25	Greg Anderson, Jackie Cheek, Frank Lujan	Fact sheets
National Indian School Board Conference	Scottsdale	July 18-22	Frank Lujan, Janice Azure	Fact sheets

Committee Member Conference and Caucus Travel Funds Policy Approval

Committee members unanimously agreed to the following policy on member conference and caucus travel funds:

- \$5,000 for support for travel on behalf of Committee to conferences/meetings that cannot otherwise be funded;
- Co-Chairs will approve conference attendance and attendees;
- \$20,000 to be allocated across 22 tribal members for up to \$900 each for caucusing/outreach in region;
- Reimbursement requirements are the same as Committee meeting requirements, including receipts for travel and expenses. All receipts must be submitted to CBI for processing;
- Committee members will represent the perspective of the Committee;
- Committee members must share their findings with the Committee.

UPCOMING COMMITTEE MEETINGS

Committee members discussed upcoming Committee meetings. Meeting dates and locations suggested by the facilitators, based on availability schedules provided by participants at the first meeting, include:

Meeting 3: July 12-16 in Rapid City, SD

Meeting 4: October 11-14 in Minneapolis, MN or Nashville, TN

Meeting 5: January 10-13 in Phoenix, AZ

Michele Singer, DFO, explained that the goals of selection of future meeting locations were to facilitate attendance of surrounding schools and tribes who are being affected by this process in this process. Committee members agreed that it is important for the Committee to see schools and to encourage school and tribal participation during Committee meetings. Several Committee members requested coordinating a visit to a school in poor condition, so Committee members can visualize the backlogs. Other Committee members commented that the Committee should focus its time on producing the items requested by Congress. A Committee member also suggested Committee meetings be held on reservations, so the Committee can support local economies. Another Committee member suggested that selection of location should consider convenience of travel, making use of hub airports and considering the time required for travel.

The Committee discussed holding a Committee meeting Rapid City, SD. Some Committee members questioned the additional travel time that would be required to travel to Rapid City. Several Committee members indicated it would be important to have a meeting in the Plains

areas, since there are multiple tribes and schools in that region. Committee members discussed the importance of visiting different regions and schools to demonstrate the Committee's commitment to reaching out to the tribes that do not have direct representation on the Committee.

Committee members also commented that it is important for all Committee members, facilitators, and Federal representatives to attend the whole meeting. They asked that Committee meeting participants stay through the entire meeting.

Decision on Committee Meeting 3

Committee members agreed that Meeting 3 would be held in Rapid City, SD from Monday July 12-Thursday, July 16. Committee members from the area will help to coordinate a school visit and local logistics.

PUBLIC COMMENTS

Ralph Honhongva, Tribal Director of the Tribal Administration Office, Yakama Nation, extended an invitation to the Committee members to visit the Yakama school facilities. He explained that "the school, built in 1958, currently operates in three modular classrooms and they deal with health, safety, and welfare issues on a regular basis. The school has water and sewer infrastructure problems on a regular basis, which forces school officials to close the school. School closure adversely impacts the 115 students in grades eight-twelve that the school serves." He noted that the school is fixing things that might not be fixable.

Mr. Honhongva commented that "the school has big ambitions. There are many students who attend the public school but would prefer to come to the Yakama School; however, the tribe does not have funding for additional teachers (there are currently 10 teachers). We need a total school, and teachers cannot continue to do a good job in modular classrooms." He noted that, "our mission is to protect our sovereignty and that this is done through education. We need to educate our young people to be leaders and we cannot do this without good facilities." He explained that, "Yakama is a treaty tribe and what was promised to Indian tribes needs to be delivered. We were left behind. NCLB has a good purpose and we need to begin to recover."

Mr. Honhongva asked the Committee to help the tribe to accomplish these goals. He noted that, "We would like to see that transparency and accountability are realized. We want to demonstrate to our people that these Committees are communicating with us. The Committee needs to come to us to communicate with us and to learn about us. Each nation is different and those are things that you need to learn to be consistent with our policies. We operate in a political environment and we need to educate each other."

He emphasized that, "If you are going to get buy-in, you must to speak with tribes and listen to their staff. We need to know what you are doing. This is very important to us." He invited Committee members to attend a tribal council meeting. He also thanked the Committee for their hard work and noted that, "We look to your leadership. We need to look for solutions. Thank you and we wish you a safe trip home."

Committee members asked Mr. Honhongva the following questions:

- *What is the distance from the Committee meeting to the Yakama reservation?* 180 miles.
- *Why is Yakama not on the list of schools in poor condition?* OFMC answered that they are currently doing some work on the school.
- *How many students would attend the school if it were a total school?* An estimated 20% of 10,000 students (2,000) would come for cultural classes, GED programs, and five year, post high-school planning exercises that we do with all students.

Committee members thanked Mr. Honhongva for attending the meeting and sharing his comments with the Committee. They noted the importance of his input and the value of his participation.

Convocation

Albert Yazzie, Committee Member, closed the meeting with a convocation.

Attachments

Attachment A: Meeting participants

Attachment B: Action Items

Attachment C: List of Handouts Distributed at Meeting

Attachment A: List of Meeting 1 Attendees

<i>L Name</i>	<i>F Name</i>	<i>Representing</i>	<i>Alt/PriM</i>	<i>Attended</i>
Anderson	Gregory	Muscogee (Creek) Nation of Oklahoma	Primary	12,13,14,15
Azure	Janice	Turtle Mountain Band of Chippewa	Primary	12,13,14,15
Begay	Jimmy	Navajo Nation	Primary	12,13,14,15
Brown	Gerald	Confederated Salish and Kootenai Tribe	Primary	12,13,14,15
Cheek	Jacqueline	Bureau of Indian Education	Alternate	12,13,14,15
Colhoff	Fred	Oglala Sioux Tribe	Primary	12,13,14,15
Eskeets	Emerson	Office of Facilities Management and Construction	Alternate	12,13,14,15
Gross	Shirley	15 Tribes of ND, SD and NE	Primary	12,13,14,15
Hogan	James	Rosebud Sioux Tribe	Primary	Designated Fred Leader Charge
Hudson	Lester	Navajo Nation	Primary	12,13,14,15
Gilbert	Regina	AS-IA, Office of Regulatory Affairs and Collaborative Action	Alternate	12,13,14,15
In the Woods	Bryce	Cheyenne River Sioux Tribe	Alternate	13,14,15
Leader Charge	Fred	Rosebud Sioux Tribe	Alternate	12,13,14,15
Lujan	Frank	Pueblo of Isleta	Primary	12,13,14,15
Martine-Alonzo	Nancy	Navajo Nation	Alternate	
Taylor	Arthur	Nez Perce Tribe	Primary	12,13,14,15
Miller White Bull	Merrie	Cheyenne River Sioux Tribe	Primary	Designated Bryce in the Woods
Ojaye	Betty	Navajo Nation	Primary	12,13,14,15
Porter	Jim	Office of the Solicitor	Primary	12,13,14,15
Redman, Sr.	Alfred	Northern Arapaho Tribe	Primary	
Rever	Jack	AS-IA, Office of Facilities, Environmental and Cultural Resources	Primary	12,13,14,15
Roessel	Monty	Navajo Nation	Primary	13,14,15
Singer	Michele	DFO/ AS-IA, Office of Regulatory Affairs and Collaborative Action	Primary	12,13,14,15
Talayumptewa	David	Bureau of Indian Education	Primary	12,13
Tracey, Jr.	Willie	Navajo Nation	Alternate	14 (pm only)
Witt	Jerome Wayne	Oglala Sioux Tribe	Primary	12,13,14,15
Wright	Catherine	Hopi Tribe	Primary	12,13,14,15
Yazzie	Albert	Navajo Nation	Primary	12,13,14,15
York	Kennith	Mississippi Band of Choctaw Indians	Primary	12,13,14,15
Zah Bahe	Lorena	Navajo Nation	Primary	12,13,14,15

Other Participants

<i>L Name</i>	<i>F Name</i>	<i>Representing</i>		<i>Attended</i>
Coffland	Don	Bureau of Indian Education	Public	12,13

Field	Patrick	Consensus Building Institute	Facilitator	12,13,14
Harvey	Kate	Consensus Building Institute	Facilitator	12,13,14,15
Honhongva	Ralph	Yakama Nation	Public	14,15
Morin	Margie	Office of Facilities Management and Construction	Technical Expert	12,13,14,15
Smith	Stacie	Consensus Building Institute	Facilitator	12,13,14,15
Spears	Brad	Choctaw Nation of Oklahoma; Jones Academy	Public	12,13
Stortz	Sasha	U.S. Institute for Environmental Conflict Resolution		12,13,14,15
Tubby	Julia	Mississippi Band of Choctaw Indians	Public	12,13,14,15
Wolfe	Althea	Confederated Tribes of Umatilla Indian Reservation, Board of Trustees	Public	12

Attachment B: Action Items from Meeting 2 (last updated April 28, 2010)

<i>Action Item</i>	<i>Who</i>
Explain weighted relative cost formula, relative score factor, project score	OFMC (Margie)
Find out if DOI ranking categories can be modified	Jim Porter
API scores for all schools	OFMC
Formula for maintenance funds	Margie to David
List of each school's regional facilities manager	OFMC
Ask to be added to Tribal Budget Council May meeting agenda	Michele
Coordinate legal representation	Michele
Follow up with legal representation candidates	Co-Chairs
Find report cited on p.8 of Construction Guidelines	OFMC
Send committee copy of DOE blueprint for native education	CBI
Demonstration of how space guidelines are used by OFMC	OFMC
Description of 64 schools/general data	OFMC
Copy of Margie's grant/BIE school backlog data	CBI
Post Handouts to NCLB workspace (see list below)	CBI
Confirm next Committee meeting dates/locations	CBI with Co-Chairs and ECR
Check on conference participation opportunities (table, hospitality room, attendance)	Regina
Fact Sheet and powerpoint on schools and need for Tribal Budget Council and other conferences	DFO with CoChairs & CBI
Prepare message "construction and education" for ESEA	Committee
Travel reimbursement language to Committee	CBI
Caucusing activities ideas	CBI
Update draft dormitory standards language	DOI (Jim)
Catalog Committee: FMIS Communications org/flow chart (including ELO responsibilities)	Jackie w/committee
List of schools that made AYP with school facility data	BIE/OFMC
Email ESEA Consultation Committee language to Committee	CBI
FCI projected for all schools	OFMC
List of schools not actively using FMIS	OFMC
Copy of backlog – access to FMIS for all Committee members	OFMC
List of names of Tribal Budget Advisory Committee	Michele
Set up FMIS users committees in each region	Margie
Comments on draft meeting summaries (Jan 2010 & FMIS) by 5/1	CBI/All
Set up subcommittee calls	CBI w/Co-Chairs
Appropriation language document: rescan	Michele
Meeting Summary for Committee meeting (2 weeks)	CBI
NASIS document to Emerson	Jackie/Emerson
Provide greater clarity/presentation on FI&R formula approach through slides	CBI with OFMC

FUTURE AGENDA ITEM SUGGESTIONS

3 year budget process and status	
Dept Education representative to present on ESEA	
Numerous Construction issues (inspections, tribal requirements, Federal and local requirements, change orders, etc)	
Space guidelines (see school that implemented space guidelines)	
Visit one of the schools on list of 64 (to see backlogs)	
Guidelines for work outside of Committee meetings	
Additional language suggestions for ESEA or other legislation	

Attachment C: Handouts Distributed at Meeting

- Report outline (updated)
- Criteria for Guiding the Work of the Committee (updated)
- Revised Groundrules
- OFMC Spreadsheet of 64 school list data
- DOE : Footprint for Native Education report (to Education Subcommittee)
- OFMC backlogs data overview
- OFMC FI&R overview (powerpoint)
- Dormitory standards subcommittee presentation (powerpoint)
- Legal Representation Scope (draft)
- 2011 Budget Guidance Attachment G
- Committee Meeting 1 Summary
- FMIS Training Summary