

**The No Child Left Behind School Facilities and Construction Negotiated Rulemaking
Tribal Consultation Meeting – Rapid City, South Dakota
Wednesday, July 13, 2011**

Ten Committee members were present including Shirley Gross, Monty Roessel, Jackie Cheek, Margie Morin, Regina Gilbert, Merrie Miller White-Bull, Fred Colhoff, Jerome Wayne Witt, Michelle Singer, Bryce in the Woods, and Catherine Wright. Also present were Keith Moore, Glenn Allison, Regina Gilbert, and Seyi Olubadewo.

Merrie Miller White-Bull served as the MC of the consultation. Below is a summary of the audience feedback regarding the catalog and formula recommendations in the draft report:

Overall General Comments:

- Many participants expressed the view that the consultation was not a true consultation because government decision makers such as Jack Rever and Emerson Eskeets were not present. Rather, they regarded it as an information session.
- Several participants expressed appreciation for the hard work of the Committee members and acknowledged their tremendous efforts.
- Participants wondered whether the recommendations in the draft report are implemented yet or would be turned into regulations. *Committee members responded that BIA has already implemented some of the recommendations, and they will recommend that others be turned into regulations or statutes.*
- Several participants lamented the terrible conditions of their facilities and requested that something be done to fix or replace their schools.
- Several participants remarked that schools are fighting over a very small pot of money, which could lead to undue competition. *Committee members emphasized the need to work collaboratively and distribute the available funding equitably.*
- Several participants brought up the need to advocate for funding parity with DOD schools as well as parity among tribal schools; this should be emphasized in the introduction of the report.
- Formulas need to be better tailored to meet individual tribal needs, rather than applying a uniform formula for everyone.
- Poor communication among the schools, BIA, and BIE creates confusion regarding responsibilities and reporting lines, and contributes to bottlenecks in funding and implementation. *Mr. Keith Moore, Director of the Bureau of Indian Education, expressed frustration that policy and funding responsibilities were under different agencies, and emphasized the need for the roles to be consolidated under one office. Committee members pledged to follow up on the letter they had submitted to Secretary regarding the inter-agency communication problems.*
- Participants named specific projects where confusion arose about ARRA funding for housing improvements and citations for certificates of occupancy where there was poor communication between OFMC and schools.

Catalog of Facilities (presented by Catherine Wright & Shirley Gross):

- Many participants felt their school was in much worse shape than their FMIS rating reflected. *Participants were encouraged to input data into FMIS to obtain an accurate rating of their school.*
- Audience members pointed out many challenges of working with the FMIS system including: lack of connectivity, insufficient and poorly timed training, insufficient funding for personnel to input the information into the system, lack of access to training opportunities, an overly complicated procedure, and administrators who feel it is not their duty to learn about FMIS. One told of an eight month process just to get certified to use the system. A concern was raised that personal animosity of Bureau staff was impacting access to FMIS. A question was asked about why all the levels of security and bureaucracy were needed.
- The complexity of the system for developing work tickets was noted as particularly onerous.
- A participant praised the new Facilities Condition Contractor, who met with school leaders for an entry interview and worked with the facility manager throughout the visit.
- Audience members called for an online system, more trained encoders, simpler to use, a less time-consuming qualification process, and a more permissive system that allows personnel to change information as necessary.
- Some felt FMIS is unable to keep up with needs of schools. As a school is getting repaired or replaced, schools often uncover additional things that need to be fixed and input into FMIS, such as outdated safety features that are not up to code.
- Tribal chairs should be in charge of funds for facilities and construction, and replace regional offices. This will eliminate red tape and grant tribes more control over the funds and how they are used. The dissolution of the Aberdeen regional office was recommended.
- The nominations for the FMIS feedback committee should be automatically accepted by OFMC; tribal members should choose whom they want to represent them on the committee. *Audience members were encouraged to write to OFMC and remind them about the committee to make sure it gets set up.*
- FMIS should have broader input options in order to include items like liability insurance, security costs, housing, and certificate of insurance matters. Currently, for example, schools are often left to cover or supplement their own security costs.

Minor Improvements and Repair (presented by Jerome Wayne Witt):

- Many participants thought MI&R regional funds would be divided evenly among schools within each region, and feared this would cause undue competition among schools and unfair distribution to larger schools. *Committee members clarified the process, pointed out the benefits of the new system including transparency and greater local control of funds, and added that schools still have access to 1/3 of the funding and emergency funding. Committee members also responded to audience questions about whether and how the proposed MI&R formula takes into account school age, new schools, and the size of schools.*

- One participant expressed that the new MI&R formula removes politics and manipulation. Under the old formula, those with ability to travel to Albuquerque to lobby for their schools got the most money.
- Lack of communication between administrative agencies and the schools results in buildings that are not being used for their intended purpose and unsatisfactory renovations. *Education director, Keith Moore, responded that BIA and BIE have different responsibilities, so many things he would like to be responsible for do not fall under his jurisdiction including facilities work and human resources, which creates difficulty for his department.*
- Locals are the experts for what their schools need, but BIA does not consult with them before implementing the job. The formula should allow schools to have better control over design and construction of facilities and over the contractor systems.
- BIA operates according to formula, but formulas will work differently with facilities that are located in remote areas; the funding doesn't stretch as far in remote areas as in urban areas.
- Newly constructed schools should have a way to receive support in their old school while the new school is being built.
- New schools (20-30 years old) still tend to have problems and structural issues. Formulas should address the needs of these new schools, not just those in poor condition. *Committee members responded that new schools are usually funded through emergency funding, but under the new formula new schools will be eligible to receive MI&R funds.*

Major Facility Incident and Repair (presented by Monty Roessel):

- *Committee members responded to audience questions regarding how the formulas take modular spaces, unusable spaces, age of schools, and the funding critical items of new schools into consideration.*
- Building codes can be confusing because different agencies have different requirements, which delays OFMC funding.
- BIA, BIE, and OFMC have different academic and structural requirements, which can be manipulated by the agencies to stall or deny funding to schools.

Whole School Replacement (presented by Monty Roessel):

- Schools are confused regarding their location on the replacement school list. Their position on the list changes without notice and seemingly arbitrarily. *Committee members responded that a new list will be generated based on the new formula and will take into account additional factors such as educational deficiencies.*
- Participants offered several suggestions for the committee makeup for the School Replacement Review Committee:
 - Tribes should have sole decision-making power over who they want to represent their schools on the committee, without input or veto power from OFMC.
 - Allow tribal leaders to appoint committee members.

- NCLB Committee should come up with the number and criteria for the committee. Then tribal leaders will recommend people who fit the criteria; recommendations should be automatically accepted as long as they meet the criteria.
- *Monty Roessel warns against having too many members from one tribe represented on the committee. Having a disproportionate number of members from one tribe over another could lead to trading votes. However, an audience member stated that as long as everyone on the committee remains focused on the children's interests, the committee members should be able to work well together.*
- Committee members should rotate every five years with the changing of the replacement school list.
- Select committee members that come from tribes in the regions in which the final schools are located. It's very important that representatives from selected schools are the ones to rate the final schools.
- Schools are not allowed to build new facilities for new programmes that they did not have in the original school. This issue is particularly important with the FACE programme. You cannot get approved for the FACE program without adequate space, but in order to get additional space, you must have a FACE program. *Margie Morin agreed that the process is flawed.*
- One participant asked how the 66% requirement to qualify for replacement schools was determined. *Margie Morin stated that the 66% bar is the DOI industry standard, but schools that do not meet this minimum might also qualify for new school consideration through school age (schools over 50 yrs old).*
- Participants discussed the issue of contributing costs, such as revenue from the casinos, and discussed cost sharing to raise private funding for the schools. *Mr. Keith Moore, Director of Indian Education programs at BIE, stated that Congress would look more favorably on tribal petitions and be more inclined to help them if they see tribes investing in their own community, and encouraged the Committee to consider including a cost-sharing component into the formula.*
- AYP should not be considered in any of the formulas.
- The formula should account for the significantly increased enrollment (sometimes double) that occurs in newly constructed schools.