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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 30

[167A2100DD/AAKC001030 /A0A501010.999900 253G]

Notice of Intent to Establish a Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Reopening of comment period.

SUMMARY: On November 9, 2015, the Bureau of Indian Education (BIE) published a notice of intent requesting comments and nominations for Tribal representatives for the Accountability Negotiated Rulemaking Committee (Committee). The comment period for this notice of intent closed December 24, 2015. The BIE is reopening the comment period for Tribes to nominate individuals for membership on the Committee and is expanding the scope of what the Committee will address. The BIE also solicits comments on the proposal to establish the Committee, including comments on additional interests not identified in this notice of intent and comments on the expansion of the scope of the Committee.

DATES: Submit nominations for Committee members or written comments on this notice of intent on or before [Insert date 45 days after publication in the FEDERAL REGISTER].

ADDRESSES: You may submit nominations for Committee members or written comments on this notice of intent by any of the following methods:

- Send comments or nominations to Ms. Sue Bement, Designated Federal Officer, Bureau of Indian Education, 1011 Indian School Road NW., Suite 332, Albuquerque, New Mexico, 87104; email: AYPcomments@bia.gov; Telephone: (505) 563-5274; Fax: (505) 563-5281; or
- Hand-carry comments or use an overnight courier service to Manuel Lujan Jr. Building, Building II, Suite 332, 1011 Indian School Road N.W., Suite 332, Albuquerque, New Mexico 87104.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Bement, Designated Federal Officer; Telephone: (505) 563-5274; Fax (505) 563-5281.

SUPPLEMENTARY INFORMATION:

I. Background

On November 9, 2015, we published a notice of intent requesting nominations for a negotiated rulemaking committee to recommend revisions to the existing regulations for BIE's accountability system (80 FR 69161). In that notice of intent, the BIE solicited nominations from Tribes whose students attend BIE-funded schools operated either by BIE or by the Tribe through a contract or grant, to nominate Tribal representatives to serve on the Committee and Tribal alternates to serve when the representative is unavailable.

Since that time, the Every Student Succeeds Act (ESSA), P.L. 114-95, has become law requiring an update to the subject, scope, and issues that the Committee will address.

II. Every Student Succeeds Act (ESSA)

The ESSA reauthorizes and amends the Elementary and Secondary Education Act of 1965 (ESEA). ESSA Section 8007(2) directs the Secretary of the Interior, in consultation

with the Secretary of Education, if so requested, to use a negotiated rulemaking process to develop regulations for implementation no later than the 2017-2018 academic year. The regulations will define the standards, assessments, and accountability system consistent with Section 1111 of the ESEA, for BIE-funded schools on a national, regional, or Tribal basis. The regulations will be developed in a manner that considers the unique circumstances and needs of such schools and the students served by such schools.

ESSA Section 8007(2) also provides that if a Tribal governing body or school board of a BIE-funded school determines the requirements established by the Secretary of the Interior are inappropriate, they may waive, in part or in whole, such requirements. Where such requirements are waived, the Tribal governing body or school board shall, within 60 days, submit to the Secretary of the Interior a proposal for alternative standards, assessments, and an accountability system, if applicable, consistent with ESEA Section 1111. The proposal must take into account the unique circumstances and needs of the school or schools and the students served. The proposal will be approved by the Secretary of the Interior and the Secretary of Education, unless the Secretary of Education determines that the standards, assessments, and accountability system do not meet the requirements of ESEA Section 1111. Additionally, a Tribal governing body or school board of a BIE-funded school seeking a waiver may request, and the Secretary of the Interior and the Secretary of Education will provide, technical assistance.

Due to the statutory changes described above, we are expanding the scope of the negotiated rulemaking committee to receive recommendations and revise our current regulations (25 CFR part 30). This document provides notice that we are expanding the

scope and reopens the comment period for: (1) nominations of individuals for membership on the Committee and (2) comments on the proposal to establish the Committee, including comments on additional interests not identified in this notice of intent and comments on the expansion of the scope of the Committee.

III. The Committee and its Process

The BIE encourages Tribal self-determination in Native education, encouraging Tribes to develop alternative standards, assessments, and an accountability system and providing technical assistance.

The negotiated rulemaking committee would be charged, consistent with Section 8007, to provide recommendations that encourage the exercise of the authority of Tribes to adopt their own standards, assessments, and an accountability system. Additionally, the Committee will be asked to provide recommendations on how BIE could best provide technical assistance under Section 8007(2).

IV. Nominations

Each nomination is expected to include a nomination for a representative and an alternate who can fulfill the obligations of membership should the representative be unable to attend. The Committee membership should also reflect the diversity of Tribal interests, and Tribes should nominate representatives and alternates who will:

- Have knowledge of school assessments and accountability systems;
- Have relevant experience as past or present superintendents, principals, teachers, or school board members, or possess direct experience with Adequate Yearly Progress (AYP);

- Be able to coordinate, to the extent possible, with other Tribes and schools who may not be represented on the Committee;
- Be able to represent the Tribe(s) with the authority to embody Tribal views, communicate with Tribal constituents, and have a clear means to reach agreement on behalf of the Tribe(s);
- Be able to negotiate effectively on behalf of the Tribe(s) represented;
- Be able to commit the time and effort required to attend and prepare for meetings; and
- Be able to collaborate among diverse parties in a consensus-seeking process.

We will consider nominations for Tribal committee representatives only if they are nominated through the process identified in this notice of intent and in the *Federal Register* notice of intent at 80 FR 69161. We will not consider any nominations that we receive in any other manner. We will also not consider nominations for Federal representatives. Only the Secretary may nominate Federal employees to the Committee.

Based upon the proportionate share of students (see Section V of *Federal Register* notice of intent at 80 FR 69161), some Tribes similar in affiliation or geography are grouped together for one seat. It will be necessary for such nominating Tribes either to co-nominate a single tribal representative to represent the multi-tribal jurisdiction or for each Tribe in the multi-tribal jurisdiction to nominate a representative with the knowledge that BIE will be able to appoint only one of the nominees who will then be responsible for representing the entire multi-tribal jurisdiction on the Committee.

Nominations must include the following information about each nominee:

- (1) A letter from the Tribe supporting the nomination of the individual to serve as a Tribal representative for the Committee;
- (2) A resume reflecting the nominee's qualifications and experience in Indian education; resume to include the nominee's name, Tribal affiliation, job title, major job duties, employer, business address, business telephone and fax numbers (and business email address, if applicable);
- (3) The Tribal interest(s) to be represented by the nominee (see Section IV, Part F of *Federal Register* notice of intent at 80 FR 69161) and whether the nominee will represent other interest(s) related to this rulemaking, as the Tribe may designate; and
- (4) A brief description of how the nominee will represent Tribal views, communicate with Tribal constituents, and have a clear means to reach agreement on behalf of the Tribe(s) they are representing.
- (5) A statement on whether the nominee is only representing one Tribe's views or whether the expectation is that the nominee represents a specific group of Tribes.

To be considered, nominations must be received by the close of business on the date listed in the **DATES** section, at the location indicated in the **ADDRESSES** section.

If you already submitted a nomination prior to the December 24, 2015, deadline, your application will still be considered.

Certification

For the above reasons, I hereby certify that the Accountability Negotiated Rulemaking Committee is in the public interest.

Dated: April 6, 2016

Lawrence S. Roberts,

Acting Assistant Secretary – Indian Affairs.

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