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PART 48—LEASES OF LAND OR FACILITIES OF BUREAU-OPERATED SCHOOLS AND FUNDRAISING ACTIVITIES AT BUREAU-OPERATED SCHOOLS

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Subpart A—General Provisions

§ 48.1 What is the purpose of this part?

(a) The purpose of this part is to set forth processes and procedures to:

(1) Implement authorization for the Director or his or her designee to lease or rent Bureau-operated school facilities in exchange for consideration in the form of funds;

(2) Establish mechanisms and standards for leasing or renting of Bureau-operated facilities, and management and use of the funds received as consideration;

(3) Describe allowable fundraising activities by the employees of Bureau-operated schools;

(4) Set accountability standards to ensure ethical conduct; and

(5) Establish 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.

(b) Nothing in this part affects:

(1) 25 CFR 31.2, allowing for use of Federal Indian school facilities for community activities and adult education activities upon approval by the superintendent or officer-in-charge, where no consideration is received in exchange for the use of the facilities;

(2) 25 CFR 31.7 and 36.43(g), establishing guidelines for student fundraising; or

(3) The implementing regulations for the Federal Employees Quarters Facilities Act, 5 U.S.C. 5911, at 41 CFR part

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114-51 and policies at Departmental Manual part 400, chapter 3; or

(4) The use of Bureau-operated school facilities or lands by other Federal agencies so long as the use is memorialized in a written agreement between the Bureau and the other Federal agency.

§ 48.2 What is the scope of this part?

The leasing provisions of this part apply only to facilities of schools operated by the Bureau and the fundraising provisions of this part apply only to employees of schools operated by the Bureau. This part does not apply to public schools, Public Law 100-297 Tribally controlled schools, or Public Law 93-638 contract or grant schools.

§ 48.3 What definitions apply to terms in this part?

Assistant Secretary means the Assistant Secretary—Indian Affairs or his or her designee.

Bureau means the Bureau of Indian Education.

Bureau-operated school means a day or boarding school, a dormitory for students attending a school other than a Bureau school, or an institution of higher learning and associated facilities operated by the Bureau. This term does not include public schools, Public Law 100-297 Tribally controlled schools, or Public Law 93-638 contract or grant schools.

Construction means construction of new facilities, modification, or alteration of existing grounds or building structures.

Days means calendar days unless otherwise specified.

Director means the Director, Bureau of Indian Education.

Director's designee or designee means the Associate Deputy Director—Navajo Schools or Associate Deputy Director—Bureau-Operated Schools.

Department means the Department of the Interior.

Donation means something of value (e.g., funds, land, personal property) received from a non-Federal source without consideration or an exchange of value.

Employee means an employee of the Bureau working at a Bureau-operated school.

Facilities means land or facilities authorized for use by a Bureau-operated school.

Funds means money.

Fundraising means requesting donations, selling items, or providing a service, activity, or event to raise funds, except that writing a grant proposal to secure resources to support school purposes is not fundraising. Fundraising does not include 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.

Head of the School means the Principal, President, School Supervisor, Residential Life Director, Superintendent of the School, or equivalent head of a Bureau-operated school.

Lease means a written contract or rental agreement executed in accordance with this part, granting the possession and use of facilities at a Bureau-operated school to a private or public person or entity in return for funds.

Private person or entity means an individual who is not acting on behalf of a public person or entity and includes, but is not limited to, private companies, nonprofit organizations and any other entity not included in the definition of public person or entity.

Public person or entity means a State, local, Federal, or Tribal governmental agency or unit thereof.

School purposes means 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.

§ 48.4 What accounting standards will the Bureau use in monitoring the receipt, holding, and use of funds?

The Bureau will use applicable Federal financial accounting rules in monitoring the receipt, holding, and use of funds.

§ 48.5 How does the Paperwork Reduction Act affect this part?

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076-NEW and OMB Control Number 1090-0009. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Subpart B—Leasing of Bureau-operated Facilities

§ 48.101 Who may enter into a lease on behalf of a Bureau-operated school?

Only the Director or the Director’s designee may enter into leases.

§ 48.102 With whom may the Director enter into a lease?

The Director or designee may lease to public or private persons or entities who meet the requirements of this part that are applicable to leasing activities.

§ 48.103 What facilities 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, and otherwise meets applicable requirements of this part.

§ 48.104 What standards will the Director use in determining whether to enter into a lease?

(a) The Director or designee will make the final decision regarding approval of a proposed lease. The Director or designee must ensure that the lease provides appropriate consideration that benefits the school and that the Head of the School where facilities are being leased has certified, after consultation with the school board or board of regents, that the lease meets the standards in paragraph (b) of this section.

(b) The lease must:

(1) Comply with the mission of the school;

(2) Conform to principles of good order and discipline;

(3) Not interfere with existing or planned school activities or programs;

(4) Not interfere with school board staff and/or community access to the school;

(5) Not allow contact or access to students inconsistent with applicable law;

(6) Not result in any Bureau commitments after the lease expires; and

(7) Not compromise the safety and security of students and staff or damage facilities.

(c) The Director’s or designee’s decision on a proposed lease is discretionary and is not subject to review or appeal under part 2 of this chapter or otherwise.

§ 48.105 What provisions must a lease contain?

(a) All leases of Bureau-operated school facilities must identify at a minimum:

(1) The facility, or portion thereof, being leased;

(2) The purpose of the lease and authorized uses of the leased facility;

(3) The parties to the lease;

(4) The term of the lease, and any renewal term, if applicable;

(5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements, and meeting due diligence requirements under § 48.106;

(6) Payment requirements and late payment charges, including interest;

(7) That lessee will maintain insurance sufficient to cover negligence or intentional misconduct occurring on the leasehold; and

(8) Any bonding requirements, as required in the discretion of the Director. If a performance bond is required, the lease must state that the lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.

(b) All leases of Bureau-operated facilities must include, at a minimum, the following provisions:

(1) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;

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(2) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements;

(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.

(c) Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions:

(1) The lessee holds the United States harmless from any loss, liability, or damages resulting from the lessee's, its invitees', and licensees' use or occupation of the leased facility; and

(2) The lessee indemnifies the United States against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault with the exception that the lessee is not required to indemnify the United States for liability or cost arising from the United States' negligence or willful misconduct

§ 48.106 May a lessee construct permanent improvements under a lease?

(a) The lessee may construct permanent improvements under a lease of a Bureau-operated facility only if the lease contains the following provisions:

(1) A description of the type and location of any permanent improvements to be constructed by the lessee and a general schedule for construction of the permanent improvements, including dates for commencement and completion of construction;

(2) Specification of who owns the permanent improvements the lessee constructs during the lease term and specifies whether each specific permanent improvement the lessee constructs will:

(i) Remain on the leased premises, upon the expiration, cancellation, or

termination of the lease, in a condition satisfactory to the Director, and become the property of the Bureau-operated school;

(ii) Be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as closely as possible to their condition before construction of the permanent improvements; or

(iii) Be disposed of by other specified means.

(3) Due diligence requirements that require the lessee to complete construction of any permanent improvements within the schedule specified in the lease or general schedule of construction, and a process for changing the schedule by mutual consent of the parties.

(i) If construction does not occur, or is not expected to be completed, within the time period specified in the lease, the lessee must provide the Director with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.

(ii) Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease.

(b) The lessee must prepare the required information and analyses, including information to facilitate the Bureau's analysis under applicable environmental and cultural resource requirements.

(c) The Bureau may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the lessee's expense before or after expiration, termination, or cancellation of the lease. The Bureau may collect and hold the performance bond or alternative form of security until removal and restoration are completed.

§ 48.107 What consideration may a Bureau-operated school accept in exchange for a lease?

A Bureau-operated school may accept only funds as consideration for a lease.

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25 CFR Ch. I (4-1-22 Edition)

§ 48.108 How will the Bureau determine appropriate consideration for a lease?

The Bureau will determine what consideration is appropriate for a lease by considering, at a minimum, the following factors:

- (a) Fair market value and the indirect and direct costs of the lease; and
- (b) Whether there will be a net financial benefit to the school.

§ 48.109 Who may use the funds?

The Bureau-operated school may use funds, including late payment charges, received as compensation for leasing that school's facilities.

§ 48.110 For what purposes may a Bureau-operated school use the funds?

The Bureau-operated school must use the funds for school purposes.

§ 48.111 How does a lessee pay the Bureau-operated school under a lease?

A lessee must pay consideration and any late payment charges due under the lease to the Bureau by certified check, money order, or electronic funds transfer made out to the Bureau and

containing identifying information as provided for in the lease.

§ 48.112 How are lease payments processed?

The Bureau will deposit all funds received as lease consideration or late payment charge into the designated Treasury account. Once the Bureau deposits the funds, the Bureau will work with the Bureau-operated school to make the funds available for school purposes.

§ 48.113 Will late payment charges or special fees apply to delinquent lease payments?

(a) Late payment charges will apply as specified in the lease. The failure to pay these amounts will be treated as a lease violation.

(b) The Bureau may assess the following special fees to cover administrative costs incurred by the United States in the collection of the debt, if rent is not paid in the time and manner required, in addition to late payment charges that must be paid under the terms of the lease:

TABLE 1 TO PARAGRAPH (b)

The lessee will pay . . .	For . . .
(1) \$50.00	Any dishonored check.
(2) \$15.00	Processing of each notice or demand letter.
(3) 18 percent of balance due	Treasury processing following referral for collection of delinquent debt.

§ 48.114 How long will the funds be available?

Funds generated under these regulations remain available to the recipient school until expended, notwithstanding 31 U.S.C. 3302, in accordance with the Bureau-operated school's plan for expending the funds for school purposes.

§ 48.115 How will the Bureau monitor the results achieved by the use of funds received from leases?

The Head of the School for each Bureau-operated school that has active leases under this part must submit an annual report to the Director, the designee, and the Office of Facilities Management and Construction. The report

must contain the following information:

- (a) A list of leases and the facilities covered by each lease;
- (b) An accounting of receipts from each lease;
- (c) An accounting of all expenditures and the supporting documentation showing that expenditures were made for school purposes;
- (d) A report of the benefits provided by the leasing program as a whole;
- (e) 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
- (f) Any unexpected expenses incurred.

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§ 48.116 Who may investigate compliance with a lease?

The Head of the School or his or her designee or any Bureau employee may enter the leased facility at any reasonable time, upon reasonable notice, and consistent with any notice requirements under the lease to determine if the lessee is in compliance with the requirements of the lease.

§ 48.117 What will the Bureau do about a violation of a lease?

(a) If the Bureau determines there has been a violation of the conditions of a lease, it will promptly send the lessee and any surety and mortgagee a notice of violation, by certified mail, return receipt requested.

(1) The notice of violation will advise the lessee that, within 10 business days of the receipt of a notice of violation, the lessee must:

(i) Cure the violation and notify the Bureau in writing that the violation has been cured;

(ii) Dispute the determination that a violation has occurred; or

(iii) Request additional time to cure the violation.

(2) The notice of violation may order the lessee to cease operations under the lease.

(b) A lessee's failure to pay compensation in the time and manner required by the lease is a violation of the lease, and the Bureau will issue a notice of violation in accordance with this section requiring the lessee to provide adequate proof of payment.

(c) The lessee and its sureties will continue to be responsible for the obligations in the lease until the lease expires, or is terminated or cancelled.

§ 48.118 What will the Bureau do if a lessee does not cure a lease violation on time?

(a) If the lessee does not cure a violation of a lease within the required time period, or provide adequate proof of payment as required in the notice of violation, the Bureau will take one or more of the following actions:

(1) Cancel the lease;

(2) Invoke other remedies available under the lease or applicable law, including collection on any available per-

formance bond or, for failure to pay compensation, referral of the debt to the Department of the Treasury for collection; or

(3) Grant the lessee additional time in which to cure the violation.

(b) The Bureau may take action to recover unpaid compensation and any associated late payment charges under § 48.113, and does not have to cancel the lease or give any further notice to the lessee before taking action to recover unpaid compensation. The Bureau may still take action to recover any unpaid compensation if it cancels the lease.

(c) If the Bureau decides to cancel the lease, it will send the lessee and any surety and mortgagee a cancellation letter by certified mail, return receipt requested, within 5 business days of its decision. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) If applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the lease;

(3) Notify the lessee of the lessee's right to appeal to the Director if the decision is made by the Director's designee, or to the Interior Board of Indian Appeals if the decision is made by the Director, including the possibility that the official to whom the appeal is made may require the lessee to post an appeal bond;

(4) Order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and

(5) Order the lessee to take any other action the Bureau deems necessary to protect the facility.

(d) The Bureau may invoke any other remedies available under the lease, including collecting on any available performance bond.

§ 48.119 May a lease be assigned, subleased, or mortgaged?

A lessee may assign, sublease, or mortgage a lease only with the approval of the Director.

Subpart C—Fundraising Activities

§ 48.201 To whom does this subpart apply?

This subpart applies to employees that fundraise for a Bureau-operated school. This subpart does not apply to students who fundraise.

§ 48.202 May employees fundraise?

(a) Employees may fundraise for school purposes as part of their official duties using their official title, position and authority, so long as:

(1) The Director or the Director’s designee or the Head of the School approves the fundraising in advance and certifies that it complies with this subpart; and

(2) The employees ensure the fundraising conforms to the requirements of this subpart.

(b) Nothing in this part allows participation in political or other activities prohibited by law.

§ 48.203 How much time may employees spend fundraising?

Each authorized employee may spend no more than a reasonable portion of his or her official duty time as an employee in any calendar year fundraising.

§ 48.204 For what school purposes may employees fundraise?

Employees may fundraise for school purposes as defined in § 48.3.

§ 48.205 What are the limitations on fundraising?

(a) Fundraising may not include any gaming or gambling activity.

(b) Fundraising may not violate, or create an appearance of violating, any applicable ethics statutes or regulations.

(c) Donations from fundraising must maintain the integrity of the Bureau-operated school programs and operations, including but not limited to the following considerations:

(1) The donation may not, and may not appear, to be an attempt to influence the exercise of any regulatory or other authority of the Bureau;

(2) The donation may not require commitment of current or future funding that is not planned or available;

(3) The donation must be consistent with, and may not otherwise circumvent, law, regulation, or policy;

(4) The Bureau-operated school must be able to properly utilize or manage any donated real or personal property within policy, programmatic, and management goals;

(5) Any conditions on the donation must be consistent with authorized school purposes and any relevant policy or planning documents;

(6) The donation may not be used by the donor to state or imply endorsement by the Bureau or Bureau-operated school of the donor or the donor’s products or services;

(7) The donation, if it consists of personnel or funding to hire personnel, must be structured such that the donated or funded personnel do not inappropriately influence any Bureau regulatory action or other significant decision.

(d) The fundraising and donation must maintain the impartiality, and appearance of impartiality, of the Bureau, Bureau-operated school, and its employees, including but not limited to the following considerations:

(1) The proposed donation may be only in an amount that would not influence or appear to influence any pending Bureau decision or action involving the donor’s interests;

(2) There may be no actual or implied commitment to take an action favorable to the donor in exchange for the donation;

(3) The donor may not obtain or appear to obtain special treatment dealing with the Bureau or Bureau-operated school.

(e) The fundraising and donation must maintain public confidence in the Bureau and Bureau-operated school, its programs, and its personnel, including but not limited to the following considerations:

(1) The fundraising and acceptance of the donation would not likely result in public controversy;

(2) Any conditions on donations must be consistent with the Bureau and Bureau-operated school’s policy, goals, and programs; and

(3) The fundraising and donation may not involve any inappropriate goods or services.

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(f) Participation in fundraising is voluntary. No student, community member, or organization shall be forced, coerced or otherwise unduly pressured to participate in fundraising. No criticism nor any retaliatory action may be taken against, any student, community member, or organization for failure to participate or succeed in fundraising.

§ 48.206 What approvals are necessary to accept a donation under this subpart?

Prior to accepting a donation valued at \$5,000 or more under this subpart, the Director's designee must approve the acceptance and certify that it complies with this subpart, including the considerations of § 48.205, Departmental policy, and any applicable statute or regulation.

§ 48.207 How may donations solicited under this subpart be used?

(a) The Bureau-operated school must first use the funds to pay documented costs of the fundraising activity and must use the remaining funds in accordance with paragraph (b) of this section.

(b) Funds and in-kind donations solicited under this subpart may be used

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 defined in § 48.3 of this part.

§ 48.208 How does a Bureau-operated school process donated funds?

The Bureau will deposit all funds received as donations into the designated Treasury account. Once the Bureau deposits the funds, the Bureau will work with the Bureau-operated school to make the funds available for school purposes.

§ 48.209 How must the Bureau-operated school report donations?

Each Bureau-operated school that has received donations must submit an annual report to the Director containing the following information:

(a) A list of donors, donation amounts, and estimated values of donated goods and services;

(b) An accounting of all costs of fundraising activities;

(c) Supporting documentation showing the donations were used for school purposes; and

(d) A report of the results achieved by use of donations.