

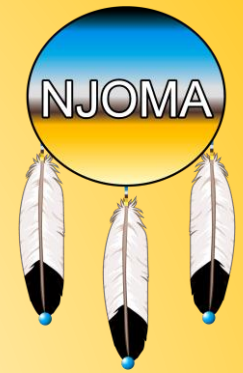


Understanding the New JOM Supplemental Education Modernization Act: The Good, Bad and the Reality



***Steven Pruitt
Managing Partner
Watts Partners
601 Pennsylvania Ave, NW#900
Washington, DC 20004
spruitt@jcwatts.com***

**2019 NJOMA Conference
"Bet on Our JOM Students...for Success!"
Las Vegas, NV**



JOM MODERNIZATION IMPLEMENTATION DISCUSSION AGENDA

- ❑ **IMPLEMENTATION TIMELINE**
- ❑ **KEY IMPLEMENTATION ISSUES**
 - ❖ Initial Student Count Determination
 - ❖ Count Data Reconciliation
 - ❖ Comment Period
 - ❖ Final Count Report
 - ❖ Annual Student Count
 - ❖ Contracting Party Student Count Reporting & Compliance
 - ❖ Technical Assistance
 - ❖ BIE JOM Annual Report
 - ❖ Annual Program Funding Concerns
 - ❖ Funding Allocations and Reform
 - ❖ Rulemaking and Consultation
 - ❖ Student Privacy
- ❑ **JOM MODERNIZATION WORKING GROUP**
 - ❖ Working Group Composition and Appointment
 - ❖ Working Group Meeting Schedule
 - ❖ Working Group Product/Report
- ❑ **IMPLEMENTATION AND OPERATIONAL ASSESSMENTS**
 - ❖ BIE Annual Report to Congress
 - ❖ GAO Reporting
- ❑ **SPECIAL MODERNIZATION EFFORTS FUNDING CAMPAIGN**
 - ❖ Purpose
 - ❖ \$2.5 million 2-year operating budget target
 - ❖ Identified Funders/Funding Sources

The Johnson O'Malley Supplemental Education Modernization Act: What does the bill do?

- ❑ This bill requires the Department of the Interior to annually update the count of Indian students eligible for the Johnson-O'Malley Program (JOM Program). The JOM Program awards contracts to tribal organizations, schools, states, and others to support the cultural and academic needs of Indian students. The contract amounts are based on the number of students served.
- ❑ Contracting parties must annually report to Interior on the number of students they serve. If they fail to submit the report, then Interior may not give them program funds for the next fiscal year.
- ❑ The bill sets forth a process to revise funding allocations provided under the program. Interior must consult with Indian tribes and state and local education agencies that have not participated in the program to determine their interest in entering into contracts.

The Johnson O'Malley Supplemental Education Modernization Act: What does the bill do?

- ❑ The Bureau of Indian Education must determine how: (1) the regulatory definition of eligible student may be clarified for contracting parties, and (2) the program funding formula may be updated to ensure the full participation of contracting parties and provide clarity on the funding process.
- ❑ The Johnson-O'Malley Program is authorized by the Johnson-O'Malley Act of 1934 and the implementing regulations are provided in Part 273 of Title 25 of the Code of Federal Regulations. As amended, this Act authorizes contracts for the education of eligible Indian students enrolled in public schools and previously private schools. This local program is operated under an educational plan, approved by the BIE, which contains educational objectives to address the needs of the eligible American Indian and Alaska Native students.
- ❑ Johnson O'Malley programs offered to American Indian and Alaska Native students vary and may include such programs as culture, language, academics and dropout prevention.

IMPLEMENTATION TIMELINE

Preliminary report

Not later than 180 days after the date of enactment of the JOM Modernization Act, the Secretary shall publish a preliminary report describing the number of eligible Indian students served or potentially served by each eligible entity, using the most applicable and accurate data (as determined by the Secretary in consultation with eligible entities) from the fiscal year preceding the fiscal year for which the initial determination is made.

Comment period

After publishing the preliminary report under clause (i) in accordance with clause (ii), the Secretary shall establish a 60-day comment period to gain feedback about the preliminary report from eligible entities, which the Secretary shall take into consideration in preparing the final report.

Final report

Not later than 120 days after concluding the consultation described in clause (iii), the Secretary shall publish a final report on the initial determination of the number of eligible Indian students served or potentially served by each eligible entity, including justification for not including any feedback gained during such consultation.

Rulemaking

Not later than 1 year after the date of enactment of the JOM Modernization Act, the Secretary, acting through the Director of the Bureau of Indian Education, shall undertake and complete rulemaking process.

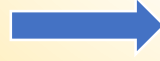
Subsequent academic years

For each academic year following the fiscal year for which an initial determination is made determining the number of eligible Indian students served or potentially served by a contracting party, the Secretary shall determine the number of eligible Indian students served by the contracting party based on the reported eligible Indian student count numbers identified through an annual reporting process.

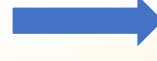
180



60



120



1-Year



2-Year and Beyond

KEY IMPLEMENTATION ISSUES

Initial Student Count Determination

- Process for making the initial determination

The Secretary shall publish a preliminary report describing the number of eligible Indian students served or potentially served by each eligible entity, using the most applicable and accurate data (as determined by the Secretary in consultation with eligible entities) from the fiscal year preceding the fiscal year for which the initial determination is to be made from—

- (I) the Bureau of the Census;
- (II) the National Center for Education Statistics; or
- (III) the Office of Indian Education of the Department of Education.

Change from Current BIE Policy

- Statistical Modeling to be used verses historic BIE student count procedure

To improve the accuracy of the preliminary report, prior to publishing, the Secretary shall reconcile the data described in the preliminary report with:

- (I) each existing contracting party's data regarding the number of eligible Indian students served by the existing contracting party for the fiscal year preceding the fiscal year for which the initial determination is made;
- (II) identifiable tribal enrollment information.

KEY IMPLEMENTATION ISSUES

Count Data Reconciliation

To improve the accuracy of the preliminary report, the Secretary shall reconcile the data described in the preliminary report with:

- (I) each existing contracting party's data regarding the number of eligible Indian students served by the existing contracting party for the fiscal year preceding the fiscal year for which the initial determination is made; and
- (II) identifiable tribal enrollment information.

Change from Current BIE Policy

- Reconciliation will improve accuracy and speed of implementation of a new student count.
- BIE's historic student count procedure lacked any means of reconciling student count numbers which were found to have higher error levels than would be statistically acceptable.

Comment Period

After publishing the preliminary report, the Secretary shall establish a 60-day comment period to gain feedback about the preliminary report from eligible entities, which the Secretary shall take into consideration in preparing the final report.

Change from Current BIE Policy

- BIE's historic student count procedure lacked any means to comment, challenge or redress count numbers due to inadvertent mistakes in reporting.

KEY IMPLEMENTATION ISSUES

Final Count Report

Not later than 120 days after concluding consultation as detailed in the Act, the Secretary shall publish a final report on the initial determination of the number of eligible Indian students served or potentially to be served by each eligible entity, including justification for not including any feedback gained during consultations.

Change from Current BIE Policy

- BIE's historic student count did not consider and identify the existence of any potential JOM students (i.e., students being denied JOM services).
- Student count numbers showing the higher numbers of students that are validated by BIE strengthen arguments for increased program funding to meet the needs of all the eligible students.

Annual Student Count

For each academic year following the fiscal year for which an initial determination is made that identifies the number of eligible Indian students served or potentially served by a contracting party, the Secretary shall determine the number of eligible Indian students served by the contracting party based on the reported eligible Indian student count numbers identified through the reporting process the contracting party shall submit to the Secretary a report describing the number of eligible Indian students who were served using amounts allocated to such party.

Change from Current BIE Policy

Required restart of annual reporting by program contractors.

KEY IMPLEMENTATION ISSUES

Contracting Party Student Count Reporting & Compliance

For each academic year following the fiscal year for which an initial determination is made to determine the number of eligible Indian students served or potentially served by a contracting party, the contracting party shall submit to the Secretary a report describing the number of eligible Indian students who were served using amounts allocated to such party. The report shall also include an accounting of the amounts and purposes for which the contract funds were expended.

A contracting party that fails to submit a report shall receive no amounts under this Act for the fiscal year following the academic year for which the report should have been submitted.

Change from Current BIE Policy

- From 1996 to 2014, BIE did not collect student count or program spending data from contractors.
- Failure to report count and spending data results in the loss of annual funding.

Technical Assistance

The Secretary, acting through the Director of the Bureau of Indian Education, shall provide technical assistance and training on compliance with the reporting requirements.

Change from Current BIE Policy

- BIE provision of reporting or program technical assistance to contractors has never been a service offered.

KEY IMPLEMENTATION ISSUES

BIE JOM Annual Report

The Secretary shall prepare an annual report, including the most recent determination of the number of eligible Indian students served by each contracting party, recommendations on appropriate funding levels for the program based on such determination, and an assessment of the contracts under the Act. This report is to be included in the budget request of the Department of the Interior for each fiscal year.

Change from Current BIE Policy

- BIE has not historically been required to report JOM student count or program spending data to Congress, make this information publicly available or identify spending for JOM within the President's annual budget submission.
- The lack of reporting of student count and spending data has resulted in the loss of millions in annual funding since 1996.

Funding Allocations and Reform

BIE's annual report is required to provide the most recent determination of the number of eligible Indian students served by each contracting party and recommendations on appropriate funding levels for the program based on such student count. The Secretary may make recommendations for legislation to increase the amount of funds available per eligible Indian student through contracts under this Act to equal to or greater than the amount of funds that were available per eligible Indian student through contracts under this Act for fiscal year 1995, and attempt to identify additional sources of funding that do not reallocate existing funds otherwise utilized by Indian students served.

Funding Allocations and Reform (Cont.)

Increases in program funding

For any fiscal year for which the amount appropriated to carry out this Act exceeds the amount appropriated to carry out this Act for the preceding fiscal year, the excess amounts shall—

- (i) be **allocated only to those contracting parties that did not receive their full per student funding allocation for the previous fiscal year**; and
- (ii) be **allocated first to new contracting parties that did not receive their full per student funding allocation for the previous fiscal year**.

Change from Current BIE Policy

Funding increases for programs showing **“increases in student count”** or **“new contracting parties”** given priority allocation status verses “across-the-board increases” allocated on a percentage basis. (**See Parity below**)

Parity in funding

There is no effect after the first fiscal year for which each contracting party receives their full per student funding allocation.

Change from Current BIE Policy

Funding increases for programs showing **“increases in student count”** or **“new contracting parties”** given priority allocation status verses “across-the-board increases” allocated on a percentage basis.

Funding Allocations and Reform (Cont.)

Increased geographical and tribal participation in the Johnson-O'Malley Supplementary Education Program

To the maximum extent practicable, the Secretary shall consult with Indian tribes and contact State educational agencies, local educational agencies, and Alaska Native organizations that have not previously entered into a contract to:

- (1) **determine the interest** of the Indian tribes, State educational agencies, local educational agencies, and Alaska Native organizations, in entering into contracts; and
- (2) **share information** relating to the process for entering into a contract under this Act.

Change from Current BIE Policy

- BIE has never been directed to conduct any form of outreach to “non-JOM tribes or State and Local school agencies.”
- This mandate also opens the door for new programs to join the JOM family.



CRITICALLY IMPORTANT FUNDING CHANGES



Hold harmless [from funding reductions]

(1) **Initial hold harmless**

In general, for a fiscal year, an existing contracting party shall not receive an amount that is less than the amount the existing contracting party received for the fiscal year preceding the date of enactment of the JOM Modernization Act.

(2) **Exceptions**

A contracting party could receive less than the amount that they received for the fiscal year preceding the date of enactment of the JOM Modernization Act, if one or more of the following conditions is met:

- (I) Failure to report .

Funding Allocations and Reform (Cont.)

Exceptions (Cont)

(II) Violations of contract or law.

If the Secretary finds that the existing contracting party has violated the terms of a contract entered into or has otherwise violated Federal law.

(III) Student count decrease

The number of eligible Indian students reported by the existing contracting party has decreased below the number of eligible Indian students served by the existing contracting party in the fiscal year preceding the date of enactment of the JOM Modernization Act.

(IV) Amount of funding reduction for existing contracting parties reporting decreased student counts.

A reduction in an amount shall not be done in such a manner that the existing contracting party receives an amount of funding per eligible Indian student that is less than the amount of funding per eligible Indian student such party received for the fiscal year preceding the date of enactment of the JOM Modernization Act.

(3) Ratable reductions in appropriations

If the funds available for a fiscal year are insufficient to pay the full amounts that all existing contracting parties are eligible to receive, the Secretary shall ratably reduce those amounts for the fiscal year.

(4) Sunset

These protections cease to be effective 4 years after the date of enactment of the JOM Modernization Act.

(5) Maximum decrease after 4 years

Beginning 4 years after the date of enactment of the JOM Modernization Act, no contracting party shall receive for a fiscal year more than a 10 percent decrease in funding per eligible Indian student from the previous fiscal year.

IMPLEMENTATION AND OPERATIONAL ASSESSMENTS

❖ BIE Annual Report to Congress

The Secretary of Interior is now required to prepare and submit an annual report for Congress, including the most recent determination of the number of eligible Indian students served by each contracting party, recommendations on appropriate funding levels for the program based on such determination, and an assessment of the contracts under the JOM Program to be included in the budget request of the Department of the Interior for each fiscal year;

❖ GAO Reporting

Not later than 18 months after the BIE's first report to Congress, the Comptroller General shall—

- (1) conduct a review of the implementation of this section during the preceding 2-year period, including any factors impacting—
 - (A) the accuracy of the determinations of the number of eligible Indian students under this section;
 - (B) the communication between the Bureau of Indian Education and contracting parties; and
 - (C) the efforts by the Bureau of Indian Education to ensure accurate and sufficient distribution of funding for Indian students; and
- (2) submit a report describing the results of GAO's review to—
 - (A) the Committee on Indian Affairs of the Senate;
 - (B) the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the Senate;
 - (C) the Subcommittee on Indian, Insular and Alaska Native Affairs of the Committee on Natural Resources of the House of Representatives; and
 - (D) the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the House of Representatives; and
- (3) make this report publicly available.

JOM MODERNIZATION WORKING GROUP

❖ Working Group Composition and Appointment

- ❑ The Modernization Act requires the BIE to conduct a “Rulemaking Process” to update and modernization JOM’s Program Rules and Regulations which have been in effect since 1996.
- ❑ The BIE committed to Congress to a process where development and writing the new Rules and Regulations would be conducted via a collaborative process that engages JOM Stakeholders on the “front-end” of the Rulemaking process- with and through a Working Group.
- ❑ The bill is silent on who and how the Working Group is to be composed; who and how Stakeholders are identified; and how many representatives from the each of the Stakeholder organizations are to be appointed to serve.

NJOMA assumptions/proposals/recommendations to BIE:

- Stakeholder organizations participating in the **Working Group would be: BIE, NCAI, NIEA, NEA and NJOMA.**
- Working Group size would be 13-15 Members in size.
- **Appointees per Stakeholder organization would be: BIE-4/5; NJOMA-4/5; NCAI-2; NIEA-2; NEA-1 .**

❖ Working Group Meeting Schedule

- ❑ The Modernization Act requires that BIE “....**not later than 1 year after the date of enactment of the JOM Modernization Act**, the Secretary, acting through the Director of the Bureau of Indian Education, **undertake and complete a rulemaking process.**”
- ❑ **We envision the Working Group schedule as follows:**
 - March 2019- Letters of Invitation to Serve extended by BIE.
 - April 2019- Working Group “Organizational Meeting”.
 - May-August 2019- Working Group meetings and working sessions.
 - September-October 2019- Drafting/Production of New Rules and Regulations.
 - November 2019- Consultations on Working Group Proposed Rules and Regulations.
 - December 2019- Publish Proposed Rules and Regulations, Comment Period.
 - January 2020- Present required Report on new Rules and Regulations to US Congress.

JOM MODERNIZATION WORKING GROUP (Cont.)

Working Group Product/Report

- ❖ NJOMA's Board has begun a comprehensive review and assessment of the current JOM Rules and Regulations as authorized by the Johnson-O'Malley Act of 1934 and implementing regulations are provided in Part 273 of Title 25 of the Code of Federal Regulations.
- ❖ NJOMA's Board is preparing for presentation to the Working Group, a package of desired Rule and Regulation changes, enhancements and reforms.
- ❖ NJOMA's primary Working Group outcome objectives:
 - 1) Simplification;
 - 2) Updates to Per Student Allocation;
 - 3) Development of 21st century Curriculum guidelines; and
 - 4) Continuation of Eligible Student definition as established by 1986 Zarr v. Barlow Ninth Circuit Federal District Court decision.

“Partners in Improving the Education of Indian Children”

