

**DEPARTMENT OF EDUCATION****34 CFR Part 371**

[Docket ID ED-2009-OSERS-0008]

RIN 1820-AB63

**Vocational Rehabilitation Service  
Projects for American Indians With  
Disabilities****AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.**ACTION:** Final regulations.

**SUMMARY:** The Secretary is adopting as final, without changes, interim final regulations for the American Indian Vocational Rehabilitation Services (AIVRS) program to permit a consortium of Indian tribes to establish a separate legal entity to apply for a grant under this program. These final regulations are needed to enable the Department to make grants to Indian tribes that choose to form a consortium and, rather than authorizing one of the Indian tribes of the consortium to serve as the grantee, create a separate legal entity that serves as the grantee on behalf of the consortium and that is responsible for using the grant funds to provide services to all the Indian tribes in the consortium.

**DATES:** These regulations are effective June 16, 2010.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 5147, Potomac Center Plaza (PCP), Washington, DC 20202-2800. Telephone: 202-245-7343 or via the Internet: [tom.finch@ed.gov](mailto:tom.finch@ed.gov).

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

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**SUPPLEMENTARY INFORMATION:**

On August 12, 2009, the Secretary published interim final regulations for the AIVRS program in the **Federal Register** (74 FR 40495). The interim final regulations became effective August 12, 2009. At the time the interim final regulations were published, the Secretary requested public comment on whether changes to the regulations were warranted. Pursuant to Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"), the

Secretary specifically invited input from Indian tribal officials concerning the changes made in the interim final regulations.

In the interim final regulations, the Secretary amended the definition of the term *consortium* in § 371.4 to provide that a consortium means two or more eligible governing bodies of Indian Tribes that apply for an award under the AIVRS program by either: (1) Designating one governing body to apply for the grant; or (2) establishing and designating a separate legal entity to apply for the grant.

As explained in the preamble to the interim final regulations, the Secretary made this change to the definition of the term *consortium* because Indian Tribes have evolved in the ways that they have chosen to procure and deliver social services. Specifically, many Indian Tribes have found it more effective to join together and create one separate legal organization to apply for Federal funds on their behalf and to deliver services to the members of those Indian Tribes because they share the need for such services. This separate legal organization is generally a nonprofit association that provides health, social and welfare services (in this case, vocational rehabilitation services) to the members of the Indian Tribes that created this association.

Because the former definition of the term *consortium* did not permit a nonprofit organization to serve as the grantee for a consortium of Indian Tribes under the AIVRS program, the Secretary determined that it was essential to amend the regulatory definition of the term *consortium* so that a group of governing bodies of Indian Tribes may establish a separate legal entity to serve as the applicant and grantee on behalf of eligible Indian Tribes applying for a grant as part of a consortium.

There are no differences between the interim final regulations and these final regulations.

**Public Comment:** In response to our invitation in the interim final rule, one commenter submitted comments.

Generally we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition we do not address general comments that raised concerns not directly related to the proposed priority.

**Analysis of Comments and Changes:**

**Comment:** The commenter recommended that we revise the part of the new definition of *consortium* that provides for establishing and designating a separate legal entity to

apply for the grant. Specifically, the commenter requested that the definition be revised to provide that the governing bodies of Indian Tribes may create, work with, or delegate to a separate legal entity the authority to apply for a grant under the AIVRS program. The commenter suggested that this change would clarify that consortia may partner with an entity currently in existence to apply for funds and deliver agreed upon services.

**Discussion:** The Department does not believe that the specific change proposed by the commenter is consistent with the control over the separate legal entity that is required by the consortium's establishment of that entity. Because section 121 of the Rehabilitation Act of 1973, as amended (the Rehabilitation Act), provides that grants may only be awarded to "the governing bodies of Indian tribes located on Federal and State reservations (and consortia of such governing bodies)," the governing bodies of the Indian tribes must have some control over any separate legal entity they establish to apply for the grant. Therefore, a separate legal entity that applies on behalf of a consortium of tribes under the AIVRS program must be controlled, sanctioned, or chartered by the tribes. It is not sufficient for the tribes to merely work with or delegate to a separate legal entity the authority to apply for and oversee an AIVRS grant, because the tribes would not have the requisite control over the management of that entity. Grantee tribes or consortia of such tribes are already permitted to contract with or otherwise enter into an agreement with another agency to assist in the implementation of the AIVRS program in accordance with 34 CFR 371.42(a). However, in order to be eligible to apply for and receive a grant under the AIVRS program, the separate legal entity must have a relationship with the tribes wherein the tribes have administrative control over the entity rather than merely working with or delegating authority to it to implement the program. It is the establishment of these entities within the control of the tribes and the tribes designating these entities to apply under the AIVRS program that makes the separate legal entities eligible applicants for a grant under the program.

While the separate legal entity can already exist and does not have to be established solely for the purpose of applying for an AIVRS grant, its application for the grant must be consistent with the purpose for which the entity was established by the tribes. For example, a nonprofit association of tribes is established by its member tribes

when all the tribes it serves are represented on the board and have been a part of its formation and administration, and its purpose, among others, is to apply for and administer social welfare programs, such as the AIVRS, on behalf of, and to benefit, its member tribes. On the other hand, we would most likely not view a tribal college, for example, as a separate legal entity established by the tribes because the tribes would not have control over all aspects of the tribal college's administration and programs, and application for social welfare programs, such as the AIVRS program, is not the purpose for which a tribal college is established.

*Changes:* None.

#### **Executive Order 12866**

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a

material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. Pursuant to the terms of the Executive order, it has been determined that this regulatory action is not a significant regulatory action subject to OMB review under section 3(f) of Executive Order 12866.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the interim final regulations at 74 FR 40495, 40497.

#### **Paperwork Reduction Act of 1995**

These regulations do not contain any information collection requirements.

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(Catalog of Federal Domestic Assistance Number: 84.250 AIVRS Program.)

#### **List of Subjects in 34 CFR Part 371**

Grant programs—Indians, Grant programs—social programs, Indians vocational rehabilitation.

Dated: June 9, 2010.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

#### **PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES**

■ For the reasons discussed in the preamble, the interim final regulations amending part 371 of title 34 of the Code of Federal Regulations that were published in the **Federal Register** on August 12, 2009 (74 FR 40495) are adopted as final.

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