

tion 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

### § 1812. Report on facilities

#### (a) Study on condition of currently existing facilities; submission of report; contents

The Secretary shall provide for the conduct of a study of facilities available for use by tribally controlled colleges or universities. Such study shall consider the condition of currently existing Bureau of Indian Affairs facilities which are vacant or underutilized and shall consider available alternatives for renovation, alteration, repair, and reconstruction of such facilities (including renovation, alteration, repair, and reconstruction necessary to bring such facilities into compliance with local building codes). Such study shall also identify the need for new construction. A report on the results of such study shall be submitted to the Congress not later than eighteen months after September 30, 1986. Such report shall also include an identification of property—

(1) on which structurally sound buildings suitable for use as educational facilities are located, and

(2) which is available for use by tribally controlled colleges or universities under section 523 of title 40 and under the Act of August 6, 1956 (70 Stat. 1057; 25 U.S.C. 443a).<sup>1</sup>

#### (b) Renovation program

The Secretary, in consultation with the Bureau of Indian Affairs, shall initiate a program to conduct necessary renovations, alterations, repairs, and reconstruction identified pursuant to subsection (a) of this section.

#### (c) Determination and prioritization of construction and renovation needs

(1) The Secretary shall enter into a contract with an organization described in paragraph (2) to establish and provide on an annual basis criteria for the determination and prioritization in a consistent and equitable manner of the facilities construction and renovation needs of colleges or universities that receive funding under this chapter or the Navajo Community College Act.

(2) An organization described in this section is any organization that—

(A) is eligible to receive a contract under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 et seq.]; and

(B) has demonstrated expertise in areas and issues dealing with tribally controlled colleges or universities.

(3) The Secretary shall include the priority list established pursuant to this subsection in the budget submitted annually to the Congress.

#### (d) "Reconstruction" defined

For the purposes of this section, the term "reconstruction" has the meaning provided in the first sentence of subparagraph (B) of section 1132e-1(2)<sup>1</sup> of title 20.

(Pub. L. 95-471, title I, §112, formerly §111, Oct. 17, 1978, 92 Stat. 1328; renumbered §112 and amended Pub. L. 98-192, §§4(a)(1), 11, Dec. 1, 1983,

97 Stat. 1336, 1339; Pub. L. 99-428, §6(a), Sept. 30, 1986, 100 Stat. 983; Pub. L. 101-392, title III, §313, Sept. 25, 1990, 104 Stat. 805; Pub. L. 105-244, title IX, §901(b)(6), (13), Oct. 7, 1998, 112 Stat. 1828.)

#### REFERENCES IN TEXT

The Act of August 6, 1956 (70 Stat. 1057; 25 U.S.C. 443a), referred to in subsec. (a)(2), is act Aug. 6, 1956, ch. 979, 70 Stat. 1057, which was formerly classified to section 443a of this title prior to editorial reclassification as a note under section 1457 of Title 43, Public Lands.

The Navajo Community College Act, referred to in subsec. (c)(1), is Pub. L. 92-189, Dec. 15, 1971, 85 Stat. 646, which was classified to section 640a et seq. of this title and was omitted from the Code as being of special and not general application.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(2)(A), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to chapter 46 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 1132e-1 of title 20, referred to in subsec. (d), was omitted in the general revision of subchapter VII (§1132a et seq.) of chapter 28 of Title 20, Education, by Pub. L. 99-498, title VII, §701, Oct. 17, 1986, 100 Stat. 1520. See section 1132i-1 of Title 20.

#### CODIFICATION

"Section 523 of title 40" substituted in subsec. (a)(2) for "section 202(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(a)(2))" on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-244, §901(b)(6), substituted "colleges or universities" for "community colleges" in introductory provisions and par. (2).

Subsec. (c)(1). Pub. L. 105-244, §901(b)(13), substituted "colleges or universities" for "colleges".

Subsec. (c)(2)(B). Pub. L. 105-244, §901(b)(6), substituted "colleges or universities" for "community colleges".

1990—Subsecs. (c), (d). Pub. L. 101-392 added subsec. (c) and redesignated former subsec. (c) as (d).

1986—Subsec. (a). Pub. L. 99-428, §6(a), substituted "Secretary" for "Administrator of General Services" and "September 30, 1986" for "December 1, 1983".

Subsec. (b). Pub. L. 99-428, §6(a)(1), substituted "Secretary" for "Administrator of General Services".

1983—Pub. L. 98-192 amended section generally, substituting provision requiring a study on the condition of currently existing facilities, submission of a report on the study, contents of the report, establishment of a renovation program, and defining term "reconstruction" for provision which required the Secretary of the Interior, not later than ninety days after Oct. 17, 1978, to prepare and submit a report to the Congress containing a survey of existing and planned physical facilities of tribally controlled community colleges.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-392 effective July 1, 1991, see section 702(a) of Pub. L. 101-392, set out as an Effective Date note under section 3423a of Title 20, Education.

### § 1813. Construction of new facilities

#### (a) Grants

With respect to any tribally controlled college or university for which the report of the Sec-

<sup>1</sup> See References in Text note below.

retary under section 1812(a) of this title identifies a need for new construction, the Secretary shall, subject to appropriations and on the basis of an application submitted in accordance with such requirements as the Secretary may prescribe by regulation, provide grants for such construction in accordance with this section.

**(b) Eligibility requirements**

In order to be eligible for a grant under this section, a tribally controlled college or university—

(1) must be a current recipient of grants under section 1805 or 1807 of this title, and

(2) must be accredited by a nationally recognized accrediting agency listed by the Secretary of Education pursuant to the last sentence of section 1001 of title 20, except that such requirement may be waived if the Secretary determines that there is a reasonable expectation that such college or university will be fully accredited within eighteen months. In any case where such a waiver is granted, grants under this section shall be available only for planning and development of proposals for construction.

**(c) Maximum amount of grant; waiver of restriction**

(1) Except as provided in paragraph (2), grants for construction under this section shall not exceed 80 per centum of the cost of such construction, except that no tribally controlled college or university shall be required to expend more than \$400,000 in fulfillment of the remaining 20 per centum. For the purpose of providing its required portion of the cost of such construction, a tribally controlled college or university may use funds provided under section 13 of this title.

(2) The Secretary may waive, in whole or in part, the requirements of paragraph (1) in the case of any tribally controlled college or university which demonstrates that neither such college or university nor the tribal government with which it is affiliated have sufficient resources to comply with such requirements. The Secretary shall base a decision on whether to grant such a waiver solely on the basis of the following factors: (A) tribal population; (B) potential student population; (C) the rate of unemployment among tribal members; (D) tribal financial resources; and (E) other factors alleged by the college or university to have a bearing on the availability of resources for compliance with the requirements of paragraph (1) and which may include the educational attainment of tribal members.

**(d) Failure to use facility in approved manner; title to vest in United States; settlement**

If, within twenty years after completion of construction of a facility which has been constructed in whole or in part with a grant made available under this section—

(1) the facility ceases to be used by the applicant in a public or nonprofit capacity as an academic facility, unless the Secretary determines that there is good cause for releasing the institution from this obligation, and

(2) the tribe with which the applicant is affiliated fails to use the facility for a public purpose approved by the tribal government in

furtherance of the general welfare of the community served by the tribal government,

title to the facility shall vest in the United States and the applicant (or such tribe if such tribe is the successor in title to the facility) shall be entitled to recover from the United States an amount which bears the same ratio to the present value of the facility as the amount of the applicant's contribution (excluding any funds provided under section 13 of this title) bore to the original cost of the facility. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is located.

**(e) Religious use**

No construction assisted with funds under this section shall be used for religious worship or a sectarian activity or for a school or department of divinity.

**(f) "Construction" and "academic facilities" defined**

For the purposes of this section—

(1) the term "construction" includes reconstruction or renovation (as such terms are defined in the first sentence of subparagraph (B) of section 1132e-1(2)<sup>1</sup> of title 20); and

(2) the term "academic facilities" has the meaning provided such term under section 1132e-1(1)<sup>1</sup> of title 20.

(Pub. L. 95-471, title I, § 113, formerly § 112, Oct. 17, 1978, 92 Stat. 1329; renumbered § 113 and amended Pub. L. 98-192, §§ 4(a)(1), 12, Dec. 1, 1983, 97 Stat. 1336, 1340; Pub. L. 99-428, § 6(b), Sept. 30, 1986, 100 Stat. 983; Pub. L. 105-244, title I, § 102(a)(8)(C), title IX, § 901(b)(5), (7), (12), Oct. 7, 1998, 112 Stat. 1619, 1828.)

REFERENCES IN TEXT

Section 1132e-1 of title 20, referred to in subsec. (f), was omitted in the general revision of subchapter VII (§ 1132a et seq.) of chapter 28 of Title 20, Education, by Pub. L. 99-498, title VII, § 701, Oct. 17, 1986, 100 Stat. 1520.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-244, § 901(b)(5), substituted "college or university" for "community college".

Subsec. (b). Pub. L. 105-244, § 901(b)(5), substituted "college or university" for "community college" in introductory provisions.

Subsec. (b)(2). Pub. L. 105-244, §§ 102(a)(8)(C), 901(b)(7), substituted "section 1001" for "section 1141(a)" and "such college or university" for "such college".

Subsec. (c)(1). Pub. L. 105-244, § 901(b)(5), substituted "college or university" for "community college" in two places.

Subsec. (c)(2). Pub. L. 105-244, § 901(b)(5), (7), (12), in introductory provisions, substituted "controlled college or university" for "controlled community college" and "such college or university" for "such college" and, in subpar. (E), substituted "the college or university" for "the college".

1986—Subsec. (a). Pub. L. 99-428 substituted "Secretary under" for "Administrator of General Services under".

1983—Pub. L. 98-192 amended section generally, substituting provision authorizing grants for construction of new facilities, establishing eligibility requirements

<sup>1</sup> See References in Text note below.

for grants, maximum amounts of grants, waiver of amount restriction, results of failure to use facilities in an approved manner, and prohibition of religious use of such facilities, and defining “construction” and “academic facilities” for provision requiring Secretary of the Interior to conduct a detailed survey and study of academic facilities needs of tribally controlled community colleges and report to Congress not later than Nov. 1, 1979, the results of such survey and study.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

**§ 1814. Miscellaneous provisions**

**(a) Eligibility of Navajo Tribe**

The Navajo Tribe shall not be eligible to participate under the provisions of this subchapter.

**(b) Discriminatory practices prohibited**

(1) The Secretary shall not provide any funds to any institution which denies admission to any Indian student because such individual is not a member of a specific Indian tribe, or which denies admission to any Indian student because such individual is a member of a specific tribe.

(2) The Secretary shall take steps to recover any unexpended and unobligated funds provided under this subchapter held by an institution determined to be in violation of paragraph (1).

(Pub. L. 95-471, title I, §114, formerly §113, Oct. 17, 1978, 92 Stat. 1329; renumbered §114, Pub. L. 98-192, §4(a)(1), Dec. 1, 1983, 97 Stat. 1336.)

**§ 1815. Rules and regulations**

**(a) Consultation with national Indian organizations**

Within four months from October 17, 1978, the Secretary shall, to the extent practicable, consult with national Indian organizations to consider and formulate appropriate rules and regulations for the conduct of the grant program established by this subchapter.

**(b) Publication**

Within six months from October 17, 1978, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

**(c) Promulgation**

Within ten months from October 17, 1978, the Secretary shall promulgate rules and regulations for the conduct of the grant program established by this subchapter.

**(d) Source of appropriations**

Funds to carry out the purposes of this section may be drawn from general administrative appropriations to the Secretary made after October 17, 1978.

(Pub. L. 95-471, title I, §115, formerly §114, Oct. 17, 1978, 92 Stat. 1329; renumbered §115, Pub. L. 98-192, §4(a)(1), Dec. 1, 1983, 97 Stat. 1336.)

PROMULGATION OF REGULATIONS; CONSULTATION

Pub. L. 98-192, §15, Dec. 1, 1983, 97 Stat. 1343, provided that: “In promulgating any regulations to implement the amendments made by this Act [enacting sections 1804a and 1831 to 1836 of this title and amending former

section 640c-1 and sections 1801 to 1803 and 1805 to 1813 of this title], the Secretary of the Interior shall consult with tribally controlled community colleges.”

**SUBCHAPTER II—TRIBALLY CONTROLLED COLLEGE OR UNIVERSITY ENDOWMENT PROGRAM**

**§ 1831. Purpose**

It is the purpose of this subchapter to provide grants for the encouragement of endowment funds for the operation and improvement of tribally controlled colleges or universities.

(Pub. L. 95-471, title III, §301, as added Pub. L. 98-192, §13, Dec. 1, 1983, 97 Stat. 1341; amended Pub. L. 105-244, title IX, §901(b)(6), Oct. 7, 1998, 112 Stat. 1828.)

AMENDMENTS

1998—Pub. L. 105-244 substituted “colleges or universities” for “community colleges”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

**§ 1832. Establishment of program; program agreements**

(a) From the amount appropriated pursuant to section 1836 of this title, the Secretary shall establish a program of making endowment grants to tribally controlled colleges or universities which are current recipients of assistance under section 1807 of this title or under section 3 of the Navajo Community College Act. No such college or university shall be ineligible for such a grant for a fiscal year by reason of the receipt of such a grant for a preceding fiscal year, but no such college or university shall be eligible for such a grant for a fiscal year if such college or university has been awarded a grant under section 1065 of title 20 for such fiscal year.

(b) No grant for the establishment of an endowment fund by a tribally controlled college or university shall be made unless such college or university enters into an agreement with the Secretary which—

(1) provides for the investment and maintenance of a trust fund, the corpus and earnings of which shall be invested in the same manner as funds are invested under paragraph (2) of section 1065(c) of title 20, except that for purposes of this paragraph, the term “trust fund” means a fund established by an institution of higher education or by a foundation that is exempt from taxation and is maintained for the purpose of generating income for the support of the institution, and may include real estate;

(2) provides for the deposit in such trust fund of—

(A) any Federal capital contributions made from funds appropriated under section 1836 of this title;

(B) a capital contribution by such college or university in an amount (or of a value) equal to half of the amount of each Federal capital contribution; and

(C) any earnings of the funds so deposited;