Agreement Between
THE DEPARTMENT OF THE INTERIOR - BUREAU OF INDIAN EDUCATION
and
THE DEPARTMENT OF EDUCATION
(Draft for Tribal Consultation)

Under Executive Order 13592
and
Section 9204 of the
Elementary and Secondary Education Act, as amended by the
No Child Left Behind Act of 2001

I. Background

The Department of Education's (ED) mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access. The mission of the Department of the Interior's (DOI) Bureau of Indian Education (BIE) is to provide quality education opportunities from early childhood through life in accordance with a tribe's needs for cultural and economic well-being, in keeping with the wide diversity of Indian tribes as distinct cultural and governmental entities. Further, BIE is to manifest consideration of the whole person by taking into account the spiritual, mental, physical, and cultural aspects of the individual within his or her family and tribal context.

Both Departments share a mutual goal of enhancing education opportunities for Indian students. ED has specific experience with federally funded education programs and a responsibility to work with the BIE funded school system to ensure excellence in education. The BIE has an interest in access to funding programs, expertise, and other opportunities available through ED.

On December 2, 2011, President Obama signed Executive Order 13592, which established the White House Initiative on American Indian and Alaska Native Education (Initiative) to help expand educational opportunities and improve educational outcomes for all American Indian and Alaska Native students. The Executive Order addresses opportunities for students to learn their native languages, cultures, and histories and receive a complete and competitive education that prepares them for college and a career. It also includes a commitment to improve educational opportunities for students attending tribal colleges and universities (TCUs). The Executive Order requires a Memorandum of Understanding (MOU) between ED and DOI "to facilitate a new partnership...to improve [American Indian and Alaska Native] education." The MOU is to "take advantage of both Departments' expertise, resources, and facilities" and "address how the Departments will collaborate in carrying out the policy" set out in the Executive Order.

II. Purposes and Duration of Agreement

The draft of this Agreement shall be subject to tribal consultation and any appropriate revisions that result from such consultation.

The purposes of this Agreement are to implement Executive Order 13592 (Executive Order), as described in section III below, and to govern the transfer of grant funds from ED to DOI under the Elementary and Secondary Education Act of 1965, as amended (ESEA), and the McKinney-Vento Homeless Assistance Act of 1987, as amended, as described in section IV, below.

Any transfers of funds between the agencies will be made through transfer of funds documents that incorporate the terms of this Agreement. Each party to this agreement will bear their own costs of performing their respective duties under this MOU.

This Agreement shall remain in effect until modified by agreement of the parties. With regard to the programs under section IV, the Agreement shall remain in effect for the duration of the period of these programs' current authorization under their relevant statutes. The Agreement may be modified at any time, following tribal consultation as needed, with the written consent of ED and BIE.

In the event of any conflict between terms of this final Agreement, and terms of any previously approved plan or application that BIE provided to ED, the terms of this final Agreement (as ED and BIE may subsequently modify) shall control.

III. The Initiative

A. Structure

The Secretary of the Interior and the Secretary of Education are the co-chairs of the Initiative. The Initiative's Executive Director is appointed by the Secretary of Education and will serve as liaison between the two Secretaries. The Executive Director will work closely with the BIE Director and will provide periodic reports to both Secretaries regarding progress achieved under the Initiative.

The Secretaries of the Interior and Education also are co-chairs of the Interagency Working Group on American Indian and Alaska Native Education and Tribal Colleges and Universities (Working Group); the Working Group includes many other Federal agencies as well. To implement this section of this MOU and to facilitate communication between BIE and ED, representatives from both Agencies that serve on the Working Group will meet as the BIE-ED Committee. The BIE and ED may jointly agree to name additional members to the BIE-ED Committee who are not members of the larger Working Group. The BIE-ED Committee will meet quarterly. Subcommittees may be formed to work on specific issues, and may meet more frequently. For example, there will be a Data Subcommittee that will work to resolve issues concerning BIE's submission of data to ED, as described in section IV(B)(6) below.

B. Goals

In accordance with the Executive Order, the parties agree to:

1. Work to improve educational opportunities and educational outcomes of all American Indian and Alaska Native students, including students attending public schools in cities and in rural areas, students attending schools operated and funded by BIE, and students attending postsecondary institutions, including TCUs;

2. Enhance tribal sovereignty by supporting efforts, consistent with applicable law, to build the capacity of tribal educational agencies (TEAs) and TCUs to provide high quality education services to American Indian and Alaska Native children;

3. Develop in partnership with tribal educational agencies a more routine and streamlined process for entering into agreements for educational studies conducted on tribal lands;

4. Develop sufficient data resources to inform progress on Federal performance indicators, in close collaboration with ED's National Center for Education Statistics, and collect and study information on the education of American Indian and Alaska Native students;

5. Encourage and coordinate Federal partnerships with public, private, philanthropic, and nonprofit entities to help increase the readiness of American Indian and Alaska Native students for school, college, and careers, and to help increase the number and percentage of American Indian and Alaska Native students completing college;

6. Develop a national network of individuals, organizations, and communities to share best practices in education and encourage them to implement these practices; and

7. Strengthen the relationship between ED and BIE to help improve primary, secondary, and postsecondary education for American Indian and Alaska Native children and young adults.

C. Specific Activities Designed to Reach the Stated Goals

1. The two Agencies will, subject to available funding, conduct joint training sessions or workshops for TEAs, tribal schools, BIE funded schools, TCUs, and related entities, to increase the capacity of those entities to compete for and implement Federal education grants for which they are eligible.

2. The two Agencies will consult regularly with tribes in accordance with Executive Order 13175 and President Obama's 2009 Memorandum on Tribal Consultation. The agencies will each implement their own Tribal Consultation Policies, but in so doing will consult with each other as to whether to conduct joint or independent consultation activities for various issues as they arise.

3. The fiscal year 2012 appropriation for ED includes funding for a pilot program under the Indian Education National Activities authority. Under the pilot, ED will award competitive grants to tribal education agencies (TEAs) to increase their role in the education of American Indian and Alaska Native students, including education to meet the unique educational and culturally related academic needs of American Indian and Alaska Native students, improve their academic achievement, and enhance tribal sovereignty. Under this pilot, TEAs would enter into collaborative agreements with state educational agencies (SEAs) to perform certain state-level functions under ESEA formula grant programs for schools located on reservations (or, in Oklahoma, former reservations).

4. The BIE-ED Committee described in section III.A. above will conduct regular meetings to advance the goals of this Agreement. In addition, both Agencies will informally work together to further those goals. Such informal work will include regular communication and consultation between each specific ED program office listed under section IV and the corresponding office in BIE.

The BIE and ED will collaborate through the BIE-ED Committee, and other means, to explore:

a) resolution of statutory and other barriers to –
   1) the eligibility of BIE for funds from ED, and other Federal agencies, that currently are provided to SEAs;
   2) BIE's ability to monitor and enforce compliance, as well as other SEA responsibilities, with respect to the funding ED provides to BIE under section IV for BIE funded schools, in particular with respect to tribally controlled grant and contract schools. The Committee will explore options to support these BIE responsibilities, including the option of having ED establish conditions to the funding it provides to BIE; and

b) effective reform efforts designed to address critical issues and unique challenges affecting quality of instruction, student achievement, and educational improvement in BIE funded schools.

5. ED will work with SEAs to promote greater communication between SEAs and tribes, between SEAs and Bureau funded schools, and between tribal governments and BIE funded schools concerning tribal access to educational records of students who are tribal members, consistent with the Family Educational Rights and Privacy Act of 1974, as amended (FERPA) and other privacy protections. The BIE will likewise work to promote greater communication between BIE operated schools and tribes concerning tribal access to educational records of students who are tribal members.

6. ED and BIE will work proactively to notify tribes of funding opportunities at the Federal level.

7. ED and BIE will engage in discussions, between themselves and with tribes, LEAs, SEAs and other stakeholders, to look for ways to break down barriers to effective coordination and cooperation among all who provide education to Indian

students. Discussions will address the situation of many Indian students moving from one school to another under a variety of jurisdictions (BIE, local, and tribal) and how to achieve adequate coordination and communication among those entities.

IV. ESEA/NCLB Program Funding

A. Purpose of Agreement and Programs Covered

This Agreement presents terms and conditions that set the framework for future transfers of funds that Congress appropriates to ED and that ED transfers to DOI for use by BIE and BIE funded schools under the following programs that Congress has authorized in the ESEA and the McKinney-Vento Homeless Assistance Act:

1. ESEA Programs

- Section 1003(g), School Improvement Grants
- Title I, part A (Improving Basic Programs Operated by Local Educational Agencies)
- Title II, part A (Teacher Quality Improvement Formula Grants)
- Title IV, part B (21st Century Community Learning Centers)
- Title VI, part B (Rural Education)
- Title VII, part A, subpart 1 (Indian Education)

2. McKinney-Vento Homeless Assistance Act Programs

- Title VII, subtitle B (Education for Homeless Children and Youths)

B. Key Components of Agreement Regarding Use and Responsibilities for Funds Provided by ED to BIE

The Appendix to this Agreement contains details governing payment, fiscal matters, and specific requirements for each program covered by this Agreement.

1. Accountability System.

Consistent with: (a) ESEA section 9204(a); (b) ED's general requirements for ESEA consolidated state applications under ESEA section 9302 (see, generally, ED's notice published in the Federal Register on May 22, 2002); and (c) ED's procedures for securing from all states information on standards, assessments, and accountability determinations and systems under Title I, part A –

The BIE will comply with the provisions of the Consolidated State Application Accountability Workbook approved by ED.

2. Ability of BIE Schools to Apply for ED funds as LEAs.

The BIE funded schools are eligible to apply to ED for any discretionary grant program under the ESEA for which a "local educational agency" is eligible. In this regard, section

9101 of the ESEA provides that the term "local educational agency" includes a school funded by BIE under certain conditions, and section 9103 of the ESEA provides that a consortium that includes a BIE funded school is given the same consideration as a local educational agency (LEA) for competitive grant programs.

ED and BIE agree to work to increase the awareness, among BIE funded schools, of the availability of funding under competitive ED grant programs.

3. BIE and ED Responsibilities to include Monitoring and Enforcement.

BIE Responsibilities. Consistent with 25 U.S.C. § 2006(a), the Secretary of the Interior has vested in the Assistant Secretary – Indian Affairs all functions with respect to formulation and establishment of policy and procedures and supervision of programs and expenditures of Federal funds for the purpose of American Indian education administered by BIE. Consistent with 25 U.S.C. § 2006(a), the Assistant Secretary carries out such functions through the BIE Director. For the purposes of this Agreement, BIE's responsibilities are comparable to those of a state educational agency (SEA) to:

- Provide assistance to BIE funded schools (including those schools that adopt their own Adequate Yearly Progress (AYP) definitions under the waiver provision in ESEA section 1116(g)) to help them implement AYP definitions, and the Title I, part A accountability system applicable to BIE funded schools; and

- More generally, (a) monitor the activities and record keeping of all BIE funded schools for compliance with applicable programmatic and fiscal requirements; (b) document the purpose, scope, and results of such monitoring; (c) provide appropriate technical assistance and take appropriate enforcement actions, as necessary; (d) systematically analyze the results of the LEA audits and other oversight activities to identify trends in findings and improvements in monitoring and technical assistance strategies; and (e) submit performance reports and other information to ED required of all states. These responsibilities are undertaken by BIE with the goal of improving education for American Indian and Alaska Native students.

ED Responsibilities. ED may monitor and receive the information necessary to conduct such monitoring of BIE and BIE funded schools to ensure, to the extent permitted by law, that subsequent transfers of funds for the activities outlined in this Agreement are utilized properly. ED may monitor BIE for compliance with this Agreement and ESEA requirements in areas that include:

- Accountability determination for each school and wide dissemination of the results of that determination as well as the individual components that comprise that determination (*e.g.*, performance against annual measurable objectives, proficiency rates, and graduation rates or performance on the other academic indicator);

- Development of School Improvement Plans developed by BIE funded schools; and

- BIE oversight, technical assistance, and administration, consistent with oversight responsibilities of SEAs, under ESEA programs, the Tribally Controlled Schools Act of 1988, as amended, and the Indian Self-Determination and Education Assistance Act of 1975, as amended.

ED will schedule any monitoring of BIE funded schools in coordination with BIE. These responsibilities are undertaken by ED with the goal of improving education for American Indian and Alaska Native students.

4. Other Responsibilities of BIE, ED, and BIE funded Schools

a. BIE

i. For purposes of this Agreement, BIE assumes the responsibility of an SEA with respect to BIE funded schools. Hence, except as exempted by statute or modified by this Agreement or by subsequent agreement of ED and BIE, all provisions of the ESEA or the McKinney-Vento Act governing programs identified in Part IV, A that apply to SEAs, as well as any applicable regulations, apply to BIE.

ii. The ESEA generally sets forth three types of statutory requirements that govern these programs: (1) affirmative operational requirements; (2) descriptions to be included in individual program applications or plans that SEAs or subrecipients respectively prepare and submit for ED or SEA review and approval; and (3) assurances to be included in those applications or plans. The BIE (like other SEAs) has submitted to ED a consolidated state application rather than individual program applications or plans and has had BIE funded schools (like LEAs in many states) submit to BIE consolidated local applications rather than individual program applications or plans. Consistent with ESEA Sections 9302 and 9305, these consolidated applications do not contain many of the programmatic descriptions and assurances that BIE and BIE funded schools would otherwise include in individual program applications or plans.

The BIE will implement all ESEA statutory responsibilities of SEAs (including data collection, reviewing LEA funding applications, coordinating programs covered by this Agreement with other programs disbursing funds to LEAs with approved applications, monitoring program improvement, and technical assistance) – whether or not these responsibilities are set forth in individual program applications or plans. Likewise, BIE will implement all responsibilities of SEAs set forth in applicable program regulations contained in 34 CFR Part 200, except where provisions of the Tribally Controlled Schools Act of 1988, as amended, other statutes, or the Department of the Interior's regulations control. In determining a course of action, BIE will hold paramount the goal of improving education for American Indian and Alaska Native students.

iii. Except as modified by this Agreement, BIE will implement all activities and strategies with regard to all included programs as described in the consolidated application submitted to ED for review in June 2002 – subject to modifications

proposed by BIE and approved by ED.

b. ED

i. ED considers BIE to be responsible, similar to other SEAs, for ensuring that all funds it receives from ED under separate documents that are subject to this Agreement are properly spent – whether by BIE, BIE operated schools, or tribally controlled grant schools or contract schools funded by BIE. Through the Initiative established by the Executive Order and the BIE-ED Committee established in section III(A) of this Agreement, ED and BIE will collaborate to explore BIE's legal authority for both the monitoring of tribally controlled grant schools' or contract schools' compliance with all statutory and regulatory requirements applicable to these programs, as well as ensuring the proper expenditure of all funds transferred to tribally controlled grant schools or contract schools. ED will provide targeted technical assistance to BIE to resolve these issues regarding programmatic and fiscal monitoring of BIE funded grant schools and contract schools.

ii. ED expects BIE to undertake such monitoring and other administrative responsibilities with regard to its activities and the activities of all BIE funded schools to ensure compliance with all statutory and regulatory requirements applicable to these programs.

iii. ED may take such actions as may be proper, including withholding of funds and requiring corrective action, in the event of any noncompliance with such statutory and regulatory requirements.

iv. In determining a course of action, ED will hold paramount the goal of improving education for American Indian and Alaska Native students.

c. BIE funded schools

i. For purposes of this Agreement, all BIE funded schools assume the responsibility of both LEAs and schools, except with regard to requirements governing public school choice and supplemental educational services in ESEA sections 1116(b) and (e). *See* section 1116(g)(2). Hence, except as exempted by statute or modified by this Agreement or by subsequent agreement of ED and BIE, all provisions of the ESEA or the McKinney-Vento Act governing programs identified in Part A that apply to LEAs or schools apply to BIE funded schools.

ii. Consistent with the principles identified in section B.3 and B.4 above that concern BIE responsibilities, BIE funded schools are to implement all ESEA statutory responsibilities of LEAs or schools (including data collection, coordinating programs covered by this Agreement with other programs, and expanding program funds provided by BIE consistent with approved applications) – whether or not these responsibilities are set forth in individual applications or plans. Likewise, BIE funded schools will implement all responsibilities of LEAs or schools set forth in applicable program regulations contained in 34 CFR Part 200,

except where provisions of the Tribally Controlled Schools Act of 1988, as amended, other statutes, or the Department of the Interior's regulations control.

iii. All program funds provided to LEAs under separate documents subject to the terms of this Agreement must be expended pursuant to applicable ESEA or McKinney-Vento Act requirements.

5. BIE Competitive Subgrants

When the state in which a BIE funded school is located considers the school to be an LEA in its own right, the BIE funded school may compete for competitive subgrant funds under both BIE and SEA competitions. However, the school may only receive a subgrant from either BIE or the state in which the school is located. To ensure compliance with this provision, BIE may require schools to certify in their applications that they will not accept subgrant funds awarded from the same program under both BIE and SEA competitions.

The BIE will annually submit to ED a summary of its annual program evaluations.

6. Submission of Data

The parties recognize that ED has an interest in obtaining data submissions from BIE that are timely, complete, and accurate; the parties also recognize that factors, including BIE's multi-state system, make such submissions difficult for BIE. The parties agree to work cooperatively through the Data Subcommittee set forth in Section III(A) above to resolve issues and problems involving data submissions.

V. Miscellaneous

1. BIE agrees to the assurances contained in section 9304 of the ESEA.

2. The maintenance-of-effort requirement in section 9521 of the ESEA does not apply.

3. Applicable provisions of EDGAR are those in parts 76, 77, 80, 81, 82, 85, 86, 97, 98, and 99 except where provisions of the Tribally Controlled Schools Act of 1988, as amended, other statutes, or the Department of the Interior's regulations control.

4. This Agreement extends to BIE the same right to seek waivers of ESEA requirements that section 9401 extends to SEAs, LEAs, Indian tribes, and schools.

5. The contents of the Appendix to this document are incorporated herein and the undersigned agree to comply with their provisions.

Ken Salazar
Secretary
Department of the Interior

Date:

Arne Duncan
Secretary
Department of Education

Date:

Appendix to Agreement Between the Department of the Interior – Bureau of Indian Education and the Department of Education (Subject to Tribal Consultation) Under Executive Order 13592 and Section 9204 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001

Programmatic Responsibilities Under this Agreement

Any subsequent transfers of funds between the agencies shall be made through transfer of funds documents in accordance with applicable laws and regulations. The informational details in this appendix contain the framework for any subsequent documents transferring funds. If there is any conflict between this document and the terms of any document that transfers funds, the funds transfer document will govern the use of the funding transferred therein. For each program included in this Agreement, Section A below identifies the percentages of each fiscal year's funds that BIE may reserve for administration, "state-level" activities and other "SEA-level" uses, and the percentage that BIE awards to BIE funded schools through formula or competitive subgrants, and in the case of the McKinney-Vento Homeless Assistance Act of 1987, as amended, through procedures described in BIE's consolidated application. Except as may otherwise be specified in this Agreement, any subsequent funds transfer document, or in the approved BIE consolidated State application, BIE will calculate the formula-grant allocation to be provided each year to BIE funded schools using provisions of the formula that was created and consulted upon in 1991 and has been used since, rather than the subgrant formulas in the ESEA program statutes.

The content of this Agreement and subsequent funds transfer documents govern fiscal year (FY) 2012 and subsequent-year funds that Congress makes available for administration and operation of BIE and BIE funded schools under all programs identified in Part IV, A of the Agreement, and funds that ED previously provided to DOI under these programs that are still available for obligation when this Agreement becomes final.

Funds provided for all programs under Part IV, A, with the exception of ESEA Title VII, part A, are forward-funded.

A. Specific Program Requirements

1. ESEA Title I, part A (Improving Basic Programs Operated by LEAs)

Planned Use of Amount Transferred

- After reserving 1.5 percent for administration, BIE reserves an additional four percent, subject to any limitation in section 1003(e) of the ESEA, to carry out State responsibilities with regard to school improvement and other activities identified in ESEA sections 1116 and 1117.

- BIE will award all other funds by formula to BIE funded schools.

Achievement Measures

- BIE will establish performance measures based on the percentage of students who achieve proficiency in at least reading or language arts and mathematics, based on state assessments and proficiency levels.

2. ESEA Title II, part A (Teacher Quality Improvement Formula Grants)

Planned Use of Amount Transferred

After reserving up to 1.5 percent of funds for administration, BIE will --

- Reserve 2.5 percent for State-level activities;
- Reserve 2.5 percent for subgrants to partnerships of BIE funded schools and higher education institutions (see ESEA section 2113(a)) and
- Award 95 percent by formula to BIE funded schools;

Achievement Measures

- Performance will be measured according to the percent of highly qualified teachers, including specialists in core academic subjects, based on a performance target of 100 percent.

3. ESEA Section 1003(g), School Improvement Grants (SIG)

Planned Use of Amount Transferred

- BIE can reserve up to 5 percent of School Improvement Grant funds for activities, as outlined in the final requirements and guidance.
- BIE will award all other funds as subgrants on a competitive basis.

Achievement Measures

- BIE will collect, report, and utilize the achievement measures and leading indicators described in the SIG regulations.

4. ESEA Title IV, part B (21st Century Community Learning Centers)

Planned Use of Amount Transferred

- In addition to the 1.5 percent of funds that BIE may reserve for administration, BIE may reserve up to 3 percent for State-level activities described under ESEA Section 4202(c)(3).
- All other funds must be provided to BIE funded schools on a

competitive basis (see ESEA section 4204).

Achievement Measures

The BIE 21st CCLC program will utilize State Assessment Scores, Adequate Yearly Progress, and proficiency levels in the core areas of Language Arts and Mathematics as performance measures for BIE funded schools receiving 21st CCLC Competitive Grant Funds.

5. ESEA Title VI, part B (Rural Education)

Planned Use of Amount Transferred

- In addition to reserving up to 1.5 percent of funds for administration, the BIE may reserve up to an additional 3.5 percent to provide technical assistance to BIE funded schools that meet the eligibility requirements of section 6221(b)(1) of the ESEA.

- BIE will distribute the remaining funds to schools eligible under section 6221(b)(1) on either a competitive or formula basis.

Achievement Measures

BIE will examine whether all schools participating in the Rural and Low-Income Schools program for three or more years are making adequate yearly progress.

6. McKinney-Vento Homeless Assistance Act of 1978, Title VII, subtitle B, as amended (Education for Homeless Children and Youth)

Planned Use of Amount Transferred

- After reserving up to 1.5 percent of funds for administration, BIE may allot up to 23.5 percent for state-level activities.

- All remaining funds are to be distributed to LEAs as provided in the approved BIE consolidated application.

- The BIE program shall provide "Homeless" services to all students indentified in need of such services. The BIE shall utilize the reporting format proposed by ED to report these numbers.

Achievement Measures

- Performance will be measured according to (1) the percentage of homeless children and youth included in statewide assessments in reading and mathematics and (2) the percentage of assessed homeless

students who meet or exceed proficiency on state assessments in reading and mathematics.

7. ESEA Title VII, Part A, Subpart 1 (Indian Education)

a. Provisions Other Than Section 7116

- Until ED and BIE agree otherwise, in order to ensure the orderly operation of the program, ED/Office of Indian Education (OIE) will administer the formula program (i.e., prepare the application package, solicit, review, prepare, and approve applications, determine the size of awards, and monitor projects).

- ED will work with BIE to ensure that all BIE funded schools apply for program funds. All BIE funded schools apply directly to ED; ED funds BIE grant and contract schools directly.

- For schools using the Indian Student Equalization Program (ISEP) count as the basis for their Indian student counts, BIE will furnish ED/OIE timely and accurate child counts of Indian students attending schools to receive program funds on the basis of approved applications.

- As soon as possible after determining the amount of funds to be awarded to BIE operated schools, ED will provide to BIE the total funds to be awarded to BIE operated schools. BIE will distribute funds to these schools in the amounts provided by ED.

- ED will be responsible for conducting onsite monitoring of Title VII Indian Education formula grants. ED will invite BIE to accompany ED on monitoring of BIE funded schools with those grants.

- When BIE exercises its authority to reserve for the administration of this program up to 1.5 percent of the funds provided to it for awards to BIE operated schools, it must reduce all awards it will make to these schools under this program by this same percentage.

- Funds provided under Title VII, Part A subpart 1 may be included in a school-wide program, subject to the conditions in Section 7115(c).

b. Special terms for Section 7116:

All of the provisions in section 7116 apply generally. In implementing section 7116, ED and BIE agree to the following:

- ED and DOI are the lead agencies under Sec. 7116(g) and the Departments are implementing this Agreement pursuant to section 7116(g).

- ED and BIE will cooperate in the implementation of section 7116, including the transfer of funds between the two agencies in a manner to ensure that ED and BIE can meet the requirements of this section. These requirements include the timely issuance of awards and consideration of waiver requests.

- Pursuant to section 7116, DOI is the lead agency for all BIE funded schools, and ED is the lead agency for all other applicants.

- ED will receive and review all applications (including those from BIE-funded schools) to determine that applications meet the requirements of Title VII, part A, subpart 1, as well as for any other ED programs listed in the application.

- ED will transfer applications from BIE funded schools to DOI, indicating those applications that meet the requirements of ED programs listed in the application package.

- ED will transfer funds to DOI for those BIE funded schools that are eligible applicants under this provision.

B. State-Level Activities and Reporting

1. State-Level Activities

Unless it requests a change, BIE will continue to implement the proposal it presented to ED, for the use of FY 2002 funds, describing its plans for using funds reserved for BIE "state-level" activities under:

Title I, part A (Improving Basic Programs Operated by LEAs, funds reserved for school improvement); and
Title II, part A (Teacher Quality Improvement Formula Grants).

BIE must submit a year-end grant performance report by October 1 each year while this Agreement is in effect that describes, for the preceding school year, the activities conducted with funds reserved for State-level activities and the amounts expended for those activities. ED program staff will conduct quarterly performance reports by phone with BIE staff during the year.

2. Program Evaluations

BIE will annually submit to ED a summary of its annual program evaluations.

3. Data Submissions

As set forth in Section IV(B)(6) of the Agreement, the parties recognize that ED has an interest in obtaining data submissions from BIE that are timely, complete, and accurate; and the parties also recognize that factors, including BIE's multi-state system, make such submissions difficult for BIE. The parties have agreed to work cooperatively through the Data Subcommittee set forth in Section III(A) of the Agreement to resolve issues and

problems involving data submissions.

C. Period during which Funds may be Obligated

BIE or BIE funded schools may obligate all program funds provided annually that are subject to the terms under this Agreement through the end of the second succeeding fiscal year except for funds provided under Title VII, part A, Subpart 1 of the ESEA (Indian Education). BIE or BIE funded schools may obligate all funds provided under Title I, Part A and Title II, Part A through September 30 of the fiscal year for which the funds are received.

Funds made available under Title VII, Part A, subpart 1 are available for obligation through the end of the first succeeding fiscal year.

Funds are obligated only when they are committed for specific activities. See Section 76.707 of the Education Department General Administrative Regulations (EDGAR). The award of funds through subgrants to BIE funded schools is not an obligation.

D. Fiscal Matters

Pursuant to ESEA section 9204(b), notwithstanding provisions of individual program statutes, BIE is permitted to reserve up to 1.5 percent of funds provided under the programs identified in Part IV.A of this Agreement for BIE's costs of administering these programs, including the costs of evaluation and provision of technical assistance. The BIE will use these funds to meet administrative responsibilities similar to those performed by SEAs under those programs.