



**U.S. DEPARTMENT OF THE INTERIOR**  
*Office of Inspector General*

**AUDIT REPORT**

**BUREAU OF INDIAN AFFAIRS**

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Use of  
**Facilities Improvement  
and Repair Funds**



# United States Department of the Interior

## Office of Inspector General

Central Region Audits  
134 Union Boulevard, Suite 510  
Lakewood, Colorado 80228

August 29, 2005

### Memorandum

To: Assistant Secretary for Indian Affairs

From: *for* Jack Rouch *Keith R. Clark*  
Regional Audit Manager

Subject: Final Audit Report on the Bureau of Indian Affairs Use of Facilities  
Improvement and Repair Funds (Report No. C-IN-BIA-0015-2004)

This report presents the results of our audit of the Bureau of Indian Affairs' (BIA) use of facilities improvement and repair (FI&R) funds for new school construction. During our previous audit of the BIA's school construction planning and design process, we noted that BIA was using FI&R monies to fund school construction projects. We concluded that this use of FI&R funds was questionable. This report contains three recommendations to address this matter.

In the response to the draft audit report (Appendix 3), the Acting Assistant Secretary for Indian Affairs concurred with Recommendations 1 and 2 and did not concur with Recommendation 3. Concerning Recommendations 1 and 2, the Assistant Secretary's concurrence was based on BIA's interpretation of the authorizing legislation. BIA, however, did not provide support for its interpretation. Accordingly, we have asked BIA to provide additional support for its conclusions. BIA's response to Recommendation 3 did not specifically address our recommendation for corrective action. Therefore, we consider Recommendation 3 unresolved and are requesting BIA to reconsider its response. We request that BIA provide us with the information indicated in Appendix 4 by September 29, 2005.

The legislation, as amended, creating the Office of Inspector General requires that we report to Congress semiannually on all audit reports issued, actions taken to implement our audit recommendations, and recommendations that have not been implemented.

We appreciate the cooperation provided by the BIA staff during our audit. If you have questions regarding this report, please call me at (303) 236-9243.

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# INTRODUCTION

During our audit of the Bureau of Indian Affairs' (BIA) process to plan and design replacement schools (Report No. 2003-I-0070), we concluded that BIA was inappropriately using facilities improvement and repair (FI&R) program funds for school construction projects. This report presents our findings and recommendations about this matter.

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## BACKGROUND

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BIA's Office of Facilities Management and Construction (OFMC) is responsible for maintaining, constructing, and renovating about 187 schools with over 2,100 buildings. OFMC carries out the major renovation, upgrade, and repair of schools through its FI&R program. When renovation, upgrade, or repair is deemed impractical due to cost constraints or other issues, OFMC can provide funds for the replacement construction of an entire school facility or major portions of existing schools. OFMC uses a separate funding process and Congressionally mandated prioritization process for school construction. OFMC provides FI&R and construction funds to both BIA-operated and tribal-controlled schools.

BIA delivers funds appropriated for FI&R and construction to tribal-controlled schools either through contracts or grants authorized by the Indian Self Determination Act (Public Law 93-638) or the Tribally Controlled School Grants Act (Public Law 100-297). Congress amended the Tribally Controlled School Grants Act on two occasions to address the use of FI&R funds. The first amendment required grantees to maintain separate and distinct accounts for FI&R and for school construction. It also stipulated that FI&R funds and school construction funds cannot be used for purposes other than originally intended. The second amendment authorized the use of FI&R funds for school construction at tribal-controlled schools if the schools provided at least 25 percent of the construction costs. Congress subsequently included these requirements in the No Child Left Behind Act of 2001, as amended (25 U.S.C. § 2504(a)(1)). There was no authority granted to BIA-operated schools for using FI&R funds for school construction.

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## RESULTS OF AUDIT

We found that BIA:

- Used FI&R funds for school construction projects at BIA-operated schools.
- Failed to collect the required cost-share contributions from tribal-controlled schools which received FI&R funds for school construction projects.

During fiscal years 2000 through 2002, we believe that BIA violated statutory requirements by funding about \$52 million in new or replacement school facility construction with major FI&R funds.

### BIA-Operated Schools

BIA used \$11.6 million of FI&R funds for school construction projects at four BIA-operated schools. However, the Congress authorized<sup>1</sup> the use of FI&R funds for school construction projects only for “tribally-controlled” schools. BIA used FI&R funds for construction projects at the following BIA-operated schools.

<u>School</u>	<u>Amount Used For Construction (In Thousands)</u>	<u>Project Description</u>
Mariano Lake Community School	\$ 2,904	New (not replacement) gymnasium and library
Riverside Indian School <i>Project #1</i>	2,708	New (not replacement) residential facility and replacement science laboratory and vocational shop
Riverside Indian School <i>Project # 2</i>	4,184	Replace a gymnasium
Bread Springs Day School	55	Replace multi-purpose space
Chinle Boarding School	1,708	Replace two dormitory buildings
Total	<u>\$11,631</u>	

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<sup>1</sup>25 U.S.C. § 2504(a)(1).

## Tribal-Controlled Schools

BIA did not request or collect the required 25 percent cost-share of \$10.2 million<sup>2</sup> from tribal-controlled schools that received \$40.6 million of FI&R funds to pay the total costs of the construction projects. BIA and Department officials told us that they believed the use of FI&R funds for construction was justified on some projects because:

- The projects were already approved through the budget process. That is, the budget justification identified these projects as construction to be built with FI&R funds.
- It would be more economical to replace some facilities than repair them.
- The 25 percent cost share requirement would unfairly favor tribes with more abundant resources.

While these reasons may have merit, BIA did not seek or obtain relief from the statutory requirements. According to our Office of General Counsel, the statute is clear and unambiguous on this issue:

...based upon the plain language of the statute...  
FI&R funds may not be used for new construction for **any** BIA funded schools<sup>3</sup> absent the one-quarter contribution. Section 2504(b)(4) specifically states that “**a school receiving a grant under this chapter** for facilities improvement and repair may use such grant funds for new construction if the tribal government or other organization provides funding for new construction equal to at least one-fourth of the total costs of such new construction.” [Emphasis added.]

During the audit, BIA provided us with a program review titled “Plan to Ensure the Integrity of School Construction Grants,” which demonstrates that BIA knew of the restrictions on the use of the FI&R funds. In the plan, BIA recommended that Congress delete the 25 percent cost share requirement. However, BIA continued to use the funds without obtaining relief from the requirement or contributions from the tribes.

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<sup>2</sup>25 percent of \$40.6 million

<sup>3</sup>25 U.S.C. § 2021(3) defines the term “Bureau funded school” as (A) a Bureau school; (B) a contract or grant school; or (C) a school for which assistance is provided under the Tribally Controlled Schools Act of 1988, 25 U.S.C. § 2501 *et seq.*



BIA provided FI&R funds to the following tribal-controlled schools for construction projects:

<b>School</b>	<b>Amount Used for Construction (In Thousands)</b>	<b>Project Description</b>
Tiospa Zina Tribal School	\$ 6,700	13 new (not replacement) classrooms plus library, garage, and athletic facilities to alleviate overcrowding
Hopi High School	344	New addition to the welding shop
Cherokee Central Elementary School	4,571	Replacement of a gymnasium and two other school buildings
Quileute Tribal School	4,000	Replace a gymnasium
Jicarilla Dormitory	4,750	Replace a dormitory
Ramah Dormitory	2,614	Replace a dormitory
Navajo Preparatory School	4,874	Replace a shop building and an addition to existing gymnasium
Baclabito Day School	2,921	Replacement of six classrooms, kitchen/dining facility, library, multi-purpose space, and administrative offices
Santa Fe Indian School	3,847	Replace a math, science, and technology building
Kayenta Community Boarding School	6,000	Replace a dormitory
<b>Total</b>	<b>\$40,621</b>	

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## RECOMMENDATIONS

We recommend that the Assistant Secretary for Indian Affairs:

1. Discontinue the practice of using FI&R funds for school construction at BIA-operated schools.
2. Discontinue the practice of funding school construction with FI&R funds at grant and contract schools without the required 25 percent funding contribution.

### ***BIA Response***

BIA agreed with Recommendations 1 and 2. However, BIA caveated its agreement based on its interpretation of 25 U.S.C. § 2503(b)(4)(A) that it is appropriate to use FI&R funds for:

- Replacing a building or other component of a BIA

- operated school.
- Replacing a building or other component of a tribal operated school without requiring cost sharing, and
- Replacing all major buildings that house the entire academic and residential program of a ranked FI&R project at a tribal operated school, “provided that the tribe agrees to pay at least one quarter of the total cost of the replacement school project, and the BIA is able to obtain the remaining three-quarters of the cost.”

### ***OIG Reply***

BIA’s interpretation is that school construction means replacing an entire school complex, not components of a school campus. For example, replacing a gymnasium would not be new school construction because the other school buildings were not replaced. We understand that there are going to be instances where it is more economical to replace a building rather than repair it. BIA, however, has not provided sufficient basis for its interpretation that FI&R funds may be used in the manner it has described.

**3.** Determine whether BIA has the authority to collect the required 25 percent cost share contributions from Indian tribes that used FI&R funds for replacement school construction. If BIA has the authority, seek payment of the \$10.2 million.

### ***BIA Response***

BIA did not concur with this recommendation. Instead, BIA offered the following two reasons for not collecting the 25 percent contributions for five schools it identified as being subject to potential collection as follows:

- BIA identified three tribal-controlled schools as being in compliance with the provisions of the United States Code (25 U.S.C. § 2503(b)(4)). BIA noted those schools’ compliance was based on the fact that, of the three projects, a tribe had made 25 percent cost contribution commitments on two projects and that the third project was never approved for construction.
- BIA noted for the remaining two schools that any attempt by BIA to seek repayment of the tribal share would result in an extreme hardship on the Indian tribes and school boards. BIA stated construction had already commenced and that these grants were provided by BIA and received by the tribes in good faith and with reasonable expectation of using the funds as agreed.

***OIG Reply***

We consider this recommendation unresolved. BIA did not specifically address the recommendation to determine whether it had the authority to collect the required 25 percent cost share contributions from Indian tribes that used FI&R funds for replacement school construction. Our review identified 10 tribal-controlled schools that received FI&R funds for new school construction. As stated in our reply to Recommendations to 1 and 2, BIA has not adequately supported its position on the use of FI&R funds. Concerning potential tribal or school board hardship, in the event BIA does not wish to seek cost recovery, it must follow the appropriate procedures for establishing and forgiving the debts. We are requesting the BIA reconsider the recommendation and provide the information requested in Appendix 4.

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## SCOPE AND METHODOLOGY

We performed a limited management control review of the FI&R program at the Office of Indian Education Programs (OIEP) and the Office of Facilities Management and Construction (OFMC). We limited the scope of this review because available staff resources at the time were primarily focused on our original audit objective to evaluate BIA's process to plan and design replacement schools. We reviewed the use of FI&R funds for fiscal years 2000 through 2002. During this period, we identified 16 major FI&R projects with funding totaling about \$94 million. Of this amount, we estimated that \$52 million was used for 15 replacement construction projects (14 schools, 1 school had two projects). We interviewed BIA and Department officials about the use of FI&R funds. We obtained a legal opinion from our Office of General Counsel on the specific prohibitions and exceptions for using FI&R funds for replacement school construction.

Except for the limited scope, we conducted the audit in accordance with the *Government Auditing Standards* issued by the Comptroller General of the United States. We included such tests of records and other auditing procedures as we considered necessary under the circumstances.

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## PRIOR AUDIT COVERAGE

During the past 5 years, the Government Accountability Office (GAO) issued two audit reports and the Office of Inspector General (OIG) issued three audit reports related to the construction of Indian schools.

The GAO issued *BIA and DOD Schools: Student Achievement and Other Characteristics Often Differ from Public School*, Report No. GAO-01-934, September 2001. A key issue identified in this report was that BIA funding for maintenance and repair is less than national guidelines. The GAO made no recommendations in this report.

The GAO issued *School Facilities: Construction Expenditures Have Grown Significantly in Recent Years*, Report No. GAO/HEHS-00-41, March 2000. A key issue in this report was that most of the increase in expenditures was for the construction of buildings. The GAO made no recommendations in this report.

The OIG issued *Construction Costs for Chief Leschi School, Puyallup Tribe, Puyallup, Washington, Bureau of Indian Affairs*, Report No. 01-I-237, March 2001. A key issue identified in this report was that the school was constructed with \$28.9 million of contract and grant monies provided by BIA, but the Facilities Management and Construction Center did not sufficiently monitor construction planning to identify variances between the Program of Requirements (POR) prepared for the School and the construction design specifications. The report made two recommendations: appropriate BIA officials (1) monitor construction planning to ensure that the design specifications of schools comply with the POR and (2) make a final determination on the allowability of the \$785,310 erroneously paid for operation and maintenance for fiscal year 1997 through 2000 and recover amounts determined to be unallowable. BIA concurred with both recommendations.

The OIG issued *Bureau of Indian Affairs School Construction Planning and Design Process*, Report No. 2003-I-0070, September 2003. OIG concluded BIA's student enrollment projection process generally produced inflated estimates. This occurred because BIA had not developed or implemented adequate policies and procedures on how to prepare, document, or review enrollment projections. Using inflated enrollment projections to determine school size resulted in building schools that are too large. We estimated that \$37 million has been spent to build excess space at schools between 1993 and 1999 and another \$74 million may be spent for excess space at schools currently being planned and designed. We made six recommendations to correct the deficiencies we identified. BIA concurred with all six recommendations and is taking actions to correct and strengthen its planning and design process. BIA has implemented interim guidelines for calculating enrollment projections for future replacement school construction and has agreed to determine whether these guidelines can be applied to

projects currently in the design and planning phase. In addition, BIA agreed to clarify the enrollment projection process and develop, with tribal consultation, specific guidance on how to review and document student enrollment projections.

The OIG issued *Maintaining the Department of the Interior's Facilities, A Framework for Action*, Report No. 2002-I-0008, December 2001. Two of the key issues in this report were to implement actions to (1) take immediate steps to reduce the maintenance backlog and (2) manage facilities proactively. The report stated that "the Bureau of Indian Affairs has completed its initial round of condition assessments and has implemented a facilities management information system for its education and administrative facilities."





# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



APR 27 2004

## Memorandum

To: Assistant Inspector General for Audits  
Office of Inspector General

From: *Acting* Assistant Secretary – Indian Affairs *Dorene M. Martin*

Subject: Draft Audit Report, Bureau of Indian Affairs, Use of Facilities Improvement and Repair Funds, (C-IN-BIA-0015-2004)

Thank you for the opportunity to provide comments on the subject draft audit report dated March 22, 2004. The audit found that the Bureau of Indian Affairs (BIA) was using facilities improvement and repair (FI&R) funds to pay for replacement school construction projects. The Office of Inspector General (OIG) concluded that the use of FI&R funds was inappropriate and sometimes resulted in the construction of replacement schools not in order of priority.

Public Law 107-110, "No Child Left Behind," Section 5204 (b)(4)(A), recognizes separate accounts for facilities improvement and repair, alteration and renovation (major or minor), health and safety, and new construction. It requires that funds received from those accounts be used for the purposes for which the funds were appropriated and to accomplish work identified in the application. The BIA considers the first three accounts as FI&R funds and the latter account as Replacement School Construction funds. Accordingly, the BIA considers the following types of construction permissible with FI&R funds:

- 1) At a BIA-operated school, ranked FI&R funds may be used to replace a building or component of the school, as the school is not receiving an entirely new school facility.
- 2) At a tribally operated school, ranked FI&R project funds may be used to replace a building or component of the school, as the school is not receiving an entirely new school facility.
- 3) At a tribally operated school, ranked FI&R project funds may be used for replacement school construction, that is replacement of all major buildings that house the entire academic and residential program, provided that the tribe agrees to pay at least one-quarter of the total cost of the replacement school project, and the BIA is able to obtain the remaining three-quarters of the cost.

The use of FI&R project funds for replacement school construction at BIA-operated schools is no longer allowable under BIA's revised practices.

Based on the above, the BIA offers the following comments on the report recommendations.

Recommendation 1: Discontinue the practice of using FI&R funds for replacement school construction at BIA-operated schools.

BIA Response: The BIA concurs with the recommendation. The Office of Facilities Management and Construction (OFMC) discontinued the practice of using FI&R funds for replacement school construction at BIA-operated schools. This will ensure that the current approved replacement school construction projects remain in priority ranking order and that FI&R funds are used only for facilities improvement and repair. For example, the BIA originally planned to include FI&R project funding in the replacement school construction projects at the BIA-operated Bread Springs and Beclabito Schools. The OFMC's revised practices now preclude such transfers. The OFMC believes sufficient replacement school funding exists to complete an adequate scope of work for these replacement school projects.

Recommendation 2: Discontinue the practice of funding replacement school construction with FI&R funds at grant and contract schools without the required one-fourth funding contribution.

BIA Response: The BIA concurs with the recommendation. The OFMC discontinued the practice of using FI&R funds to pay for replacement school construction at tribally operated schools unless the tribe was willing to provide at least the required one-quarter cost share.

The OFMC had intended to use FI&R funds as a part of the funding for replacement school construction projects at Santa Fe Indian School and Cherokee Elementary and High Schools. The OFMC decided not to fund the \$1.2 million FI&R project at Santa Fe Indian School and to require a commitment for at least one-quarter tribal funding for the Cherokee Elementary and High Schools.

Recommendation 3: Determine whether BIA has the authority to collect the required one-fourth cost share contributions from Indian tribes which used FI&R funds for replacement school construction. If BIA has the authority, seek payment of the \$10.2 million.

BIA Response: The BIA does not concur with the recommendation. Based on our assessment, five replacement school construction projects fall into this category. Three of these projects, Santa Fe Indian School, Cherokee Elementary School and Cherokee High School have been or are being administered in accordance with P.L. 107-110, Section 5204 (b)(4)(C), and OIG recommendations. The FI&R project at Santa Fe Indian School scheduled to be added to the Phase I and Phase II replacement school construction project was not approved. A tribal commitment to contribute in excess of one-quarter of the total cost of new construction was obtained before proceeding to provide replacement school construction under the Cherokee Elementary and High School FI&R projects.

The remaining two projects, Tiospa Zina and Navajo Preparatory School, have already received construction grants and are under construction or have been completed. These grants were provided in good faith and with reasonable expectations of using the funds as agreed upon. An attempt by the BIA to seek repayment of the tribal share of the \$6.7 million and \$10.83 million, respectively, would result in an extreme hardship on the Indian Tribes and School Boards.

As a final comment, any actions we take as a result of the recommendations contained in the draft audit report may soon be addressed in the regulations required by P. L. 107-110, Section 5204(b)(4)(C). The Department of the Interior is statutorily mandated to conduct negotiated rulemaking with Indian tribes and tribal organizations to create regulations that address facilities construction. Included in that negotiated rulemaking will be a school replacement and new construction report that determines replacement and new construction needs and a formula for the equitable distribution of funds to address needs for BIA-funded schools; and a renovation repairs report that determines renovation need (major and minor) and a formula for the equitable distribution of funds. [P.L. 107, §1125(a)(5)(A)]

We are committed to improving Indian Education facilities and will make sure existing and future construction projects, in partnership with tribes and tribal school boards, reduce the education deferred maintenance backlog of deficiencies and positively impact the education of Indian children. If you have any questions regarding this response, please contact Boyd Robinson, Office of Facilities Management and Construction, at (505) 346-6508.

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## STATUS OF AUDIT RECOMMENDATIONS

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<u>Recommendations</u>	<u>Status</u>	<u>Action Required</u>
1	Management concurs with recommendation; additional information needed.	<p>Provide specific statutory authority supporting the premise that for BIA-operated schools FI&amp;R funds could be appropriately expended for the new construction of a single school building or building component if the school is not receiving an entirely new school facility.</p> <p>Absent such authority discontinue the practice of using FI&amp;R funds for replacement school construction of single buildings and building components at BIA-operated schools.</p> <p>Provide estimated target date and title of the official responsible for implementation.</p>
2	Management concurs with recommendation; additional information needed.	<p>Provide specific statutory authority supporting the premise that for tribal-controlled schools FI&amp;R funds could be appropriately expended for the new construction of a single school building or building component if the school is not receiving an entirely new school facility.</p>

**Recommendations****Status****Action Required**

		Absent such authority discontinue the practice of using FI&R funds for replacement school construction of single buildings and building components at tribal-controlled schools.
		Provide estimated target date and title of the official responsible for implementation.
3	Unresolved.	Reconsider the recommendation and provide estimated target date and title of the official responsible for implementation.

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