

Bureau of Indian Education: Information on Efforts to Count Students for an Educational Services Program

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Q&A Report to Congressional Committees
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Why This Matters

The Johnson-O'Malley (JOM) program provides academic and cultural supports to meet the specialized and unique educational needs of American Indian and Alaska Native (AI/AN) students enrolled in public schools and select tribal schools.¹ The Bureau of Indian Education (BIE), within the Department of the Interior, contracts with Tribes, tribal organizations, states, public school districts and others who provide JOM services to eligible students. Since 1995, BIE has relied on the same count of eligible students who received services that year to determine its budget allocation for the program, according to agency officials.

In 2018, Congress passed the Johnson-O'Malley Supplemental Indian Education Program Modernization Act (the JOM Modernization Act or the act) to update and modernize the program.² The act includes provisions for BIE to conduct and report on two student counts: a one-time count to estimate the number of AI/AN students potentially eligible for JOM program services and a separate, reoccurring annual count of students currently receiving services. In addition, the act includes a provision for us to review BIE's process for conducting these student counts. This report includes information on the steps BIE took, or plans to take, to estimate the number of students potentially eligible for JOM services, count students currently receiving services, and distribute JOM funds to contractors based on the number of students they serve.

Key Takeaways

- BIE determined that an estimated 578,070 AI/AN students were potentially eligible for services through the JOM program, based on Census's American Community Survey data BIE obtained from the Department of Education. BIE published this estimate in July 2023, more than 3 years after the deadline required by the act. BIE officials told us that disruptions from the COVID-19 pandemic and changes in the agency's understanding of the act's requirements contributed to delays in publishing its estimate.
- BIE took several steps to estimate the number of students potentially eligible for JOM services, according to agency documentation. For example, BIE consulted JOM contractors, including Tribes and tribal organizations, states, and public schools, about estimating the number of students who may be eligible for the program. The agency also assessed the strengths and weaknesses of several data sets for estimating the number of students potentially eligible for JOM services.
- BIE has delayed plans to determine the total number of students currently receiving JOM services until the end of fiscal year 2024. The act requires that contractors submit their annual report with a count of students they serve in the academic year following BIE's publication of its student estimate. Because BIE published its estimate of potentially eligible students late, it will

not complete its annual count of students served by the program until after September 15, 2024, the deadline for contractors to submit their reports for the 2023–24 school year.

- BIE plans to distribute funding to all contractors based on updated counts of students receiving services starting in fiscal year 2025. BIE officials said this will include implementing the act’s requirement to withhold funds from any contractors that fail to report student counts.

What is the Johnson-O’Malley Program?

The JOM program provides supplementary financial assistance to meet the unique and specialized educational needs of eligible AI/AN students in public schools and select tribal schools. Eligible students are age 3 through grade 12 who are either a member of an Indian Tribe or at least one-quarter degree Indian blood descendant of a member of an Indian Tribe, under Interior regulations.³

BIE contracts with Tribes, tribal organizations, states, public school districts, and others who provide JOM services to eligible students.⁴ Prospective contractors must have education plans that have been developed in consultation with and approved by a committee generally made up of a majority of parents of AI/AN students or other tribal and community stakeholders.⁵ The JOM program is the only federally-funded Indian educational program that allows for student, parent, and community involvement in identifying and meeting the educational needs of AI/AN students, according to the National Johnson-O’Malley Association—a tribally led organization which advocates for JOM programs. Under program regulations, JOM committees have the authority to, among other things, participate fully in planning, developing, implementing, and evaluating their local JOM programs.⁶

In fiscal year 2023, Interior allocated \$21.6 million for the program. According to BIE officials, JOM funds can be used to support a wide variety of supplemental education programs. For example, these funds support programs providing Native cultural and language enrichment, academic support, dropout prevention, and the purchase of school supplies. JOM programs may be the only way some students can access tribal language and cultural programs, particularly for students who are not living near tribal lands.

How is the JOM program administered?

The JOM program is administered primarily by BIE, with assistance from the Bureau of Indian Affairs (BIA) in distributing funds. Specifically, BIE is generally responsible for directing and managing JOM functions, including establishing policies and procedures for the program, and providing technical assistance to contractors. It is also responsible for disbursing funds to non-tribal contractors, such as public school districts. BIA’s role in the program is disbursing JOM funds to tribal contractors—the majority of the JOM contractors.⁷

In 2018, BIE created a full-time position dedicated solely to administering the JOM program as part of a broader re-structuring initiative. In addition, four BIE program support staff provide training and technical assistance to JOM contractors, track funding distributions, and collect annual student count reports, among other program responsibilities.

What is the purpose of counting students for the JOM program?

BIE is counting students for the JOM program to obtain a current, accurate, and comprehensive number of students for allocating program funds. BIE last completed a full count of eligible students served by the JOM program in 1995. Subsequently, BIE continued to use contractors’ 1995 student counts for the agency’s annual allocation of JOM funds in response to changes Congress made

to the program's funding. However, over time, Congress became concerned that BIE's use of contractors' 1995 student counts did not reflect the number of eligible students being served or that could be served by the program.⁸

To address the challenges in serving eligible students and obtaining accurate student counts, Congress enacted the JOM Modernization Act in 2018. The act requires BIE to determine both the number of students eligible for the program and the number of students currently receiving services. In particular, it requires that BIE conduct a comprehensive estimate of potential JOM participants, ensure contractors report annual actual student participation numbers to receive funding, and adjust over time the amount of funds allocated to contractors based on actual student counts. In addition, the act requires annual reports describing BIE's total student count for the program based on JOM contractors' actual counts of eligible students served.

What steps did BIE take to estimate the number of potentially eligible students?

BIE took several steps to estimate the number of AI/AN students potentially eligible for program services, according to agency documentation. These included consulting with JOM program contractors and other interested parties on a variety of potential data sets, evaluating those data sets, and selecting the one it concluded would provide the most accurate estimate. The act requires BIE to use the most applicable and accurate data available from a variety of potential sources. According to BIE officials, the purpose of this estimate is to provide Congress with information about potential student demand for the JOM program and to assist Congress in determining future appropriations for the program. They said it is not intended for determining funding allocations for individual contractors.

From June to December 2019, BIE consulted with existing and potential JOM contractors—including Tribes, tribal organizations, states, and public schools—to obtain their comments and recommendations on estimating the number of students who may be eligible for JOM services.⁹ BIE used these comments and recommendations when assessing which of the data sources would provide the most applicable and accurate data for BIE's estimate of potentially eligible students.

According to BIE's report, the agency reviewed several potential data sources for updating its count of AI/AN students potentially eligible for the JOM program, as outlined in its June 2022 report to Congress. The sources included Census Bureau survey data, Education student data, and student counts based on annual reports from existing JOM contractors. The number of potentially eligible AI/AN students estimated from the Census and Education data sources ranged from about 485,000 to 600,000; the most recent incomplete count from JOM contractors was about 317,000.

BIE assessed the strengths and weaknesses of each data set to determine which would provide the most accurate estimate possible of potentially eligible students for program services. For example, BIE reported that it reviewed the sources for each data set (e.g., reported by schools or surveys of households) and margins of error for estimates. BIE also noted some limitations with these data sets. For example, BIE officials told us that the Census data set does not capture the specific student eligibility criteria for the JOM program, including a student's membership in a Tribe or at least one-quarter degree blood descendency of a member of a Tribe.

We also asked officials with Education's National Center for Education Statistics (NCES) about the data sets BIE considered. They noted several limitations with

the Education and Census data sets BIE considered. For example, NCES officials indicated that these data sets do not consistently include tribal membership data. In addition, they noted that, while the Census data set supports analysis of children of more than one race or ethnicity, it cannot be used to determine the percentage of children's background that is attributable to a given race or ethnicity. Despite the various limitations, NCES officials said that the data sources BIE considered were the best suited for estimating the number of AI/AN students.

How many students did BIE estimate were potentially eligible for the program?

BIE ultimately decided to use an estimate of 578,070 AI/AN students potentially eligible for the JOM program. BIE obtained this estimate using 5-Year (2014–2018) average estimates from Census's American Community Survey data, which were tabulated by NCES and made available on its website.¹⁰ BIE concluded that this data source provided the best student estimate possible. In addition, BIE noted that an advantage of using the 5-year estimates is greater reliability compared to the single year estimates it considered.

BIE reported this estimate to Congress in June 2022. The agency officially published this report on its website in July 2023, more than 3 years after the deadline specified in the act. Agency officials said posting the report on BIE's website satisfied the JOM Modernization Act's requirement to publish the report. However, officials said they plan to eventually publish the report in the federal register as well. BIE officials said that the delay in publication was due to disruptions from the COVID-19 pandemic and changes in how the agency understood the requirements in the act.¹¹ Officials also said this publishing delay would push back the implementation dates for the contractor reporting and funding provisions of the act.

When does BIE plan to complete a count of all students currently receiving JOM services?

BIE has delayed plans to complete its annual count of the total number of students currently receiving JOM services until the end of fiscal year 2024. BIE initially told contractors to submit annual student counts no later than September 15, 2023, and it received responses from about 60 percent of contractors, according to BIE officials. The JOM Modernization Act requires that contractors submit annual reports of counts of students they serve to BIE beginning in the year following the fiscal year BIE published its student estimate report.¹² Because BIE did not publish the report with its student estimate until July 2023, the agency determined that contractors are required by the act to submit their annual reports by September 15, 2024.

BIE officials said they have conducted outreach to inform contractors about the JOM Modernization Act requirements for all contractors to begin submitting annual reports with student counts. BIE officials noted challenges with communicating with some contractors, such as those in remote Alaskan villages. They said they are adjusting their outreach efforts to these contractors to help increase reporting in advance of the September 2024 deadline.

When does BIE plan to distribute funding to all contractors based on their updated student counts?

BIE plans to distribute funding to all contractors based on student counts from contractors' annual reports starting in fiscal year 2025. Under program regulations, JOM program funds are annually distributed based on a formula that factors in the number of eligible students served and average per-student operating costs.¹³

For fiscal year 2024, BIE will continue to use the 1995 student counts for determining funding allocations for contractors, including those that did not submit an annual report. However, contractors that reported higher student

counts in fiscal year 2023 will receive a corresponding funding increase. BIE officials told us they will implement the act's requirement to withhold funds from any contractors that fail to submit an annual report starting in fiscal year 2025.

Agency Comments

We provided a draft of this report to Interior and Education for review and comment. Interior provided technical comments, which we incorporated as appropriate. Education had no comments.

How GAO Did This Study

We reviewed relevant federal laws, regulations, and BIE documents related to the JOM program, including BIE's June 2022 report to Congress. We interviewed BIE officials on its administration of the JOM program, its process for updating its count of potentially eligible students, communicating with contractors, and how it distributes funds to contractors for student services. We also examined prior public comments submitted by Tribes and interviewed members of the National Johnson-O'Malley Association—which represents the interests of Native American students who are served by the program. In addition, we conferred with officials with Education's National Center for Education Statistics on BIE's use of the center's data output to update its estimate of potentially eligible students for the JOM Program.

We conducted this performance audit from May to December 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

List of Addressees

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Chair

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Committee on Indian Affairs
United States Senate

The Honorable Jeff Merkley
Chair
The Honorable Lisa Murkowski
Ranking Member
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations
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The Honorable Mike Simpson
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The Honorable Chellie Pingree
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Endnotes

¹Eligible students include those at tribal schools that were previously private—not formerly operated by BIE—and controlled by a Tribe or tribal organization for AI/AN students. See 25 C.F.R. § 273.106.

²Pub. L. No. 115-404, 132 Stat. 5349 (2018). The program was originally authorized by what is known as the Johnson-O'Malley Act of 1934.

³See 25 C.F.R. § 273.112. Interior documentation states that tribes have discretion in determining criteria for tribal membership and can include such requirements as documented descent from an original member, residency on tribal lands, or a required degree ancestry from a particular Tribe.

⁴See 25 C.F.R. § 273.110. A tribal organization is defined as the recognized governing body of any Indian Tribe or any legally established organization of Indians or Tribes which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization. 25 C.F.R. § 273.106.

⁵See 25 C.F.R. § 273.115.

⁶25 C.F.R. § 273.117(a). The regulations refer to Indian Education Committees but for purposes of this report we use the term JOM Committees.

⁷There are currently 262 tribal and 89 non-tribal JOM contractors, according to BIE documentation.

⁸See S. Rept. No. 115-201. Congressional committees had previously directed BIE to update its student count in fiscal years 2012 and 2014. On both occasions, BIE was unable to complete a new count. BIE officials told us the agency's previous student recounts failed because insufficient numbers of contractors reported the number of students they served.

⁹25 U.S.C. § 5348(b)(1)(B)(i). Under the JOM Modernization Act, BIE is required to consult with contractors in making its initial determination of the number of students served or eligible to be served. BIE also included a variety of interested parties focused on education for AI/AN students, such as school boards, parents, and student organizations.

¹⁰National Center for Education Statistics, 5-Year Estimate 2014-2018, table on American Indian and Alaska Native children enrolled in school (public and private). Obtained from the NCES Education Demographic and Geographic Estimates program's ACS-ED Tables tool available at: <https://nces.ed.gov/programs/edge/tableviewer/acsProfile/2018>. We found the ACS data reliable for BIE's purpose of reporting on the number of AI/AN students as calculated by 5-year (2014-18) average estimates.

¹¹Indian Affairs officials indicated that BIE's transmission of the Final Report to Congress in June 2022 did not meet the act's requirement for the agency to publish its report. However, they said that BIE's online posting of the Final Report to its website on July 14, 2023, satisfied this requirement.

¹²25 U.S.C. § 5348(c).

¹³See 25 C.F.R. § 273.140(a). Specifically, the formula is the number of eligible Indian students multiplied by a weight factor that is the state average cost per pupil divided by the national average cost per pupil, or a default factor of 1.3, whichever is higher.