

**§ 76.797 When is an SEA required to make adjustments to allocations under this subpart?**

(a) The SEA must make any necessary adjustments to allocations under a covered program on or before the date the SEA allocates funds to LEAs under the program for the succeeding academic year.

(b) In allocating funds to a charter school LEA based on adjustments made in accordance with paragraph (a) of this section, the SEA may use funds from the SEA's allocation under the applicable covered program for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation under the program for the succeeding academic year.

(Authority: 20 U.S.C. 8065a)

APPLICABILITY OF THIS SUBPART TO  
LOCAL EDUCATIONAL AGENCIES

**§ 76.799 Do the requirements in this subpart apply to LEAs?**

(a) Each LEA that is responsible for funding a charter school under a covered program must comply with the requirements in this subpart on the same basis as SEAs are required to comply with the requirements in this subpart.

(b) In applying the requirements in this subpart (except for §§ 76.785, 76.786, and 76.787) to LEAs, references to SEA (or State), charter school LEA, and LEA must be read as references to LEA, charter school, and public school, respectively.

(Authority: 20 U.S.C. 8065a)

**Subpart I—What Procedures Does the Secretary Use To Get Compliance?**

SOURCE: 45 FR 22517, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980, and further redesignated at 64 FR 71965, Dec. 22, 1999.

**§ 76.900 Waiver of regulations prohibited.**

(a) No official, agent, or employee of ED may waive any regulation that applies to a Department program unless the regulation specifically provide that it may be waived.

(b) No act or failure to act by an official, agent, or employee of ED can affect the authority of the Secretary to enforce regulations.

(Authority: 43 Dec. Comp. Gen. 31(1963))

**§ 76.901 Office of Administrative Law Judges.**

(a) The Office of Administrative Law Judges, established under Part E of GEPA, has the following functions:

(1) Recovery of funds hearings under section 452 of GEPA.

(2) Withholding hearings under section 455 of GEPA.

(3) Cease and desist hearings under section 456 of GEPA.

(4) Any other proceeding designated by the Secretary under section 451 of GEPA.

(b) The regulations of the Office of Administrative Law Judges are at 34 CFR part 81.

(Authority: 20 U.S.C. 1234)

[57 FR 30342, July 8, 1992]

**§ 76.902 Judicial review.**

After a hearing by the Secretary, a State is usually entitled—generally by the statute that required the hearing—to judicial review of the Secretary's decision.

(Authority: 20 U.S.C. 1221e-3, 3474, and 6511(a))

**§ 76.910 Cooperation with audits.**

A grantee or subgrantee shall cooperate with the Secretary and the Comptroller General of the United States or any of their authorized representatives in the conduct of audits authorized by Federal law. This cooperation includes access without unreasonable restrictions to records and personnel of the grantee or subgrantee for the purpose of obtaining relevant information.

(Authority: 5 U.S.C. appendix 3, sections 4(a)(1), 4(b)(1)(A), and 6(a)(1); 20 U.S.C. 1221e-3(a)(1), 1232f)

[54 FR 21776, May 19, 1989]

**PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS**

AUTHORITY: 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

## § 77.1

### § 77.1 Definitions that apply to all Department programs.

(a) [Reserved]

(b) Unless a statute or regulation provides otherwise, the following definitions in part 74 or 80 of this title apply to the regulations in title 34 of the Code of Federal Regulations. The section of part 74 or 80 that contains the definition is given in parentheses.

*Award* (§ 74.2)

*Contract* (includes definition of “Sub-contract”) (§ 74.2) (§ 80.3)

*Equipment* (§ 74.2) (§ 80.3)

*Grant* (§ 80.3)

*Personal property* (§ 74.2)

*Project period* (§ 74.2)

*Real property* (§ 74.2) (§ 80.3)

*Recipient* (§ 74.2)

*Supplies* (§ 74.2) (§ 80.3)

(c) Unless a statute or regulation provides otherwise, the following definitions also apply to the regulations in this title:

*Acquisition* means taking ownership of property, receiving the property as a gift, entering into a lease-purchase arrangement, or leasing the property. The term includes processing, delivery, and installation of property.

*Ambitious* means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure.

*Applicant* means a party requesting a grant or subgrant under a program of the Department.

*Application* means a request for a grant or subgrant under a program of the Department.

*Baseline* means the starting point from which performance is measured and targets are set.

*Budget* means that recipient’s financial plan for carrying out the project or program.

*Budget period* means an interval of time into which a project period is divided for budgetary purposes.

*Department* means the U.S. Department of Education.

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*Director of the Institute of Museum Services* means the Director of the Institute of Museum Services or an officer or employee of the Institute of Museum Services acting for the Director under a delegation of authority.

*Director of the National Institute of Education* means the Director of the National Institute of Education or an officer or employee of the National Institute of Education acting for the Director under a delegation of authority.

*ED* means the U.S. Department of Education.

*EDGAR* means the Education Department General Administrative Regulations (34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99).

*Elementary school* means a day or residential school that provides elementary education, as determined under State law.

*Evidence of promise* means there is empirical evidence to support the theoretical linkage(s) between at least one critical component and at least one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice. Specifically, evidence of promise means the conditions in paragraphs (a) and (b) of this section are met:

(i) There is at least one study that is a—

(A) Correlational study with statistical controls for selection bias;

(B) Quasi-experimental study that meets the What Works Clearinghouse Evidence Standards with reservations;<sup>1</sup> or

(C) Randomized controlled trial that meets the What Works Clearinghouse Evidence Standards with or without reservations.<sup>2</sup>

<sup>1</sup>What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: <http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19>.

<sup>2</sup>What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: <http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19>.

(ii) The study referenced in paragraph (a) found a statistically significant or substantively important (defined as a difference of 0.25 standard deviations or larger), favorable association between at least one critical component and one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice.

*Facilities* means one or more structures in one or more locations.

*Fiscal year* means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30.

*GEPA* means The General Education Provisions Act.

*Grant period* means the period for which funds have been awarded.

*Grantee* means the legal entity other than a Government subject to 34 CFR part 80 to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. For example, a grant award document may name as the grantee one school or campus of a university. In this case, the granting agency usually intends, or actually intends, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provision of grant programs in which eligibility is limited to organizations which may be only components of a legal entity.) The term “grantee” does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant. The definition of “grantee” for State, local, and tribal governments is contained in 34 CFR 80.3.

*Large sample* means an analytic sample of 350 or more students (or other single analysis units) who were randomly assigned to a treatment or con-

trol group or 50 or more groups (such as classrooms or schools) that contain 10 or more students (or other single analysis units) and that were randomly assigned to a treatment or control group.

*Local educational agency* means:

(a) A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in:

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties a State recognizes as an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school.

(c) As used in 34 CFR parts 400, 408, 525, 526 and 527 (vocational education programs), the term also includes any other public institution or agency that has administrative control and direction of a vocational education program.

*Logic model* (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (i.e., the active “ingredients” that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

*Minor remodeling* means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alterations to buildings, building maintenance, or repairs.

*Moderate evidence of effectiveness* means one of the following conditions is met:

(i) There is at least one study of the effectiveness of the process, product,

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strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations,<sup>3</sup> found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), and includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice.

(ii) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards with reservations,<sup>4</sup> found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample (**Note:** multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph).

*Multi-site sample* means more than one site, where site can be defined as an LEA, locality, or State.

*National level* describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (e.g., economically disadvantaged, racial and ethnic groups, mi-

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grant populations, individuals with disabilities, English learners, and individuals of each gender).

*Nonprofit*, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

*Nonpublic*, as applied to an agency, organization, or institution, means that the agency, organization, or institution is nonprofit and is not under Federal or public supervision or control.

*Performance measure* means any quantitative indicator, statistic, or metric used to gauge program or project performance.

*Performance target* means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

*Preschool* means the educational level from a child's birth to the time at which the State provides elementary education.

*Private*, as applied to an agency, organization, or institution, means that it is not under Federal or public supervision or control.

*Project* means the activity described in an application.

*Public*, as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

*Quasi-experimental design study* means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations<sup>5</sup> (they cannot meet What Works Clearinghouse Evidence Standards without reservations).

*Randomized controlled trial* means a study that employs random assignment

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of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcome for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.<sup>6</sup>

*Regional level* describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as with different groups (e.g., economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). For an LEA-based project, to be considered a regional-level project, a process, product, strategy, or practice must serve students in more than one LEA, unless the process, product, strategy, or practice is implemented in a State in which the State educational agency is the sole educational agency for all schools.

*Relevant outcome* means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program.

*Secondary school* means a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Secretary may determine, with respect to that State, whether the term includes education beyond the twelfth grade.

*Secretary* means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

*Service function*, with respect to a local educational agency:

(a) Means an educational service that is performed by a legal entity—such as an intermediate agency:

(1)(i) Whose jurisdiction does not extend to the whole State; and

(ii) That is authorized to provide consultative, advisory, or educational services to public elementary or secondary schools; or

(2) That has regulatory functions over agencies having administrative control or direction of public elementary or secondary schools.

(b) The term does not include a service that is performed by a cultural or educational resource.

*State* means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

*State educational agency* means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.

*Strong evidence of effectiveness* means one of the following conditions is met:

(i) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations,<sup>7</sup> found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample (Note: multiple studies can cumulatively meet the large and multi-site sample requirements as long as

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each study meets the other requirements in this paragraph).

(ii) There are at least two studies of the effectiveness of the process, product, strategy, or practice being proposed, each of which: Meets the What Works Clearinghouse Evidence Standards with reservations,<sup>8</sup> found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the studies or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample.

*Strong theory* means a rationale for the proposed process, product, strategy, or practice that includes a logic model.

*Work of art* means an item that is incorporated into facilities primarily because of its aesthetic value.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474)

[45 FR 22529, Apr. 3, 1980, as amended at 45 FR 37442, June 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86298, Dec. 30, 1980; 54 FR 21776, May 19, 1989; 57 FR 30342, July 8, 1992; 59 FR 34739, July 6, 1994; 64 FR 50392, Sept. 16, 1999; 77 FR 18679, Mar. 28, 2012; 78 FR 49355, Aug. 13, 2013]

**PART 79—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF EDUCATION PROGRAMS AND ACTIVITIES**

Sec.

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- 79.2 What definitions apply to these regulations?
- 79.3 What programs and activities of the Department are subject to these regulations?
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<sup>8</sup>What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: <http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19>.

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- 79.5 What is the Secretary's obligation with respect to Federal interagency coordinations?
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AUTHORITY: 31 U.S.C. 6506; 42 U.S.C. 3334; and E.O. 12372, unless otherwise noted.

SOURCE: 48 FR 29166, June 24, 1983, unless otherwise noted.

**§ 79.1 What is the purpose of these regulations?**

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of Section 401 of the Intergovernmental Cooperation Act of 1968 and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional, and local coordination for review of proposed federal financial assistance.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

(Authority: E.O. 12372)

**§ 79.2 What definitions apply to these regulations?**

*Department* means the U.S. Department of Education.