

DEPARTMENT OF EDUCATION**34 CFR Part 75**

RIN 1880-AA61

Direct Grant Programs**AGENCY:** Department of Education.**ACTION:** Final regulations.

SUMMARY: The Secretary amends the Education Department General Administrative Regulations (EDGAR) to permit the Department to consider for funding, under appropriate discretionary grant programs administered by the Department, unsolicited grant applications. The Secretary takes this action as part of the Department's overall effort at re-invention. The authority to consider unsolicited applications allows the Department to respond to truly exceptional applications of national significance that might not conform to the Department's announced annual competitions.

EFFECTIVE DATE: These regulations take effect April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Greg Vick, Grants Division, GCS, U.S. Department of Education, (Room 3636, ROB-3), 600 Independence Avenue, S.W., Washington, D.C., 20202-4700. Telephone: (202) 708-8199. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary amends EDGAR to make a change in the procedures for selecting applications for new grants. The Secretary continues to believe that the vast majority of discretionary grant funds should be awarded on the basis of competition, and that for some of these competitions the Department should establish funding priorities in order to focus limited resources on critical issues and problems. However, the Secretary is also concerned that the constraints of the Department's grant schedules and funding priorities may preclude the Department's consideration of truly exceptional applications representing novel approaches to issues facing the nation or other groundbreaking ideas or methods appropriate to Department of Education programs.

Under these amendments to EDGAR, the Department will continue to use existing procedures for announcing grant competitions and selecting applications for new grants. On what the Secretary expects to be rare

occasions, the Secretary will also consider unsolicited applications that were not submitted in response to an application notice published in the Federal Register. However, the Secretary does not consider unsolicited applications under a program if the program office has published a notice in the Federal Register indicating that unsolicited applications will not be considered for that year.

Any unsolicited applications that meet the requirements for existing or upcoming competitions of the Department will be considered under those competitions. Applications that could have been considered under competitions for which deadlines have passed will not be considered for funding as unsolicited applications unless the Secretary determines on an individual basis that, because of an exceptional circumstance, consideration of an application is warranted. Inability to meet a deadline for submitting an application under a grant competition, by itself, is not such a circumstance.

Analysis of Comments and Changes

The Secretary published a notice of proposed rulemaking (NPRM) on December 9, 1994 (59 FR 63878). Two comments were received on the NPRM. Except for minor editorial and technical revisions, the Secretary has made no changes in these regulations since publication of the NPRM. A note has been added following § 75.222 informing applicants of the address to which unsolicited applications should be sent to assure prompt consideration. An analysis of the comments follows.

Comment: One commenter expressed support for the amendments permitting the Secretary to consider unsolicited applications.

Discussion: None.

Changes: None.

Comment: One commenter questioned the source of the money to fund unsolicited applications and recommended an annual competition without priorities, format requirements, or regulations, to fund unsolicited applications.

Discussion: Funding for unsolicited applications will come from available, but unobligated, funds for the program under which the application is considered for selection. An unsolicited application would be considered only if it would not have an adverse impact on the funds available for other awards planned for the program. Since the unsolicited applications would not be competing against each other, but would be considered on an individual basis to determine if they are of exceptional quality, the Secretary believes limiting

the consideration of unsolicited applications to an annual competition would be unnecessarily restrictive.

Changes: None.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

List of Subjects in 34 CFR Part 75

Education Department, Grant programs—education, Grant administration, Incorporation by reference.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: February 27, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 75 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 is revised to read as follows:

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

2. Section 75.219 is amended by removing the word "or" at the end of paragraph (a), removing the period at the end of paragraph (b)(3) and adding, in its place, "; or" and adding a new paragraph (c) to read as follows:

§ 75.219 Exceptions to the procedures under § 75.217.

* * * * *

(c) The Secretary receives an unsolicited application that meets the requirements of § 75.222.

3. Section 75.222 is redesignated as § 75.221.

4. A new § 75.222 is added to read as follows:

§ 75.222 Procedures the Department uses under § 75.219(c).

If the Secretary receives an unsolicited application, the Secretary may consider the application under the following procedures unless the Secretary has published a notice in the Federal Register stating that the program that would fund the application would not consider unsolicited applications:

(a)(1) The Secretary determines whether the application could be funded under a competition planned or conducted for the fiscal year under which funds would be used to fund the application.

(2)(i) If the application could be funded under a competition described in paragraph (a)(1) of this section and the deadline for submission of applications has not passed, the Secretary refers the application to the appropriate competition for consideration under the procedures in § 75.217.

(ii)(A) If the application could have been funded under a competition described in paragraph (a)(1) of this section and the deadline for submission of applications has passed, the Secretary may consider the application only in exceptional circumstances, as determined by the Secretary.

(B) If the Secretary considers an application under paragraph (a)(2)(ii) of this section, the Secretary considers the application under paragraphs (b) through (e) of this section.

(iii) If the application could not be funded under a competition described in paragraph (a)(1) of this section, the

Secretary considers the application under paragraphs (b) through (e) of this section.

(b) If an application may be considered under paragraphs (a)(2)(ii) or (iii) of this section, the Secretary determines if—

(1) There is a substantial likelihood that the application is of exceptional quality and national significance for a program administered by ED;

(2) The application meets the requirements of all applicable statutes and codified regulations that apply to the program; and

(3) Selection of the project will not have an adverse impact on the funds available for other awards planned for the program.

(c) If the Secretary determines that the criteria in paragraph (b) of this section have been met, the Secretary assembles a panel of experts that does not include any employees of the Department to review the application.

(d) The experts—

(1) Evaluate the application based on the selection criteria; and

(2) Determine whether the application is of such exceptional quality and national significance that it should be funded as an unsolicited application.

(e) If the experts highly rate the application and determine that the application is of such exceptional quality and national significance that it should be funded as an unsolicited application, the Secretary may fund the application.

Note to § 75.222: To assure prompt consideration, applicants submitting unsolicited applications should send the application, marked "Unsolicited Application" on the outside, to the Chief, Application Control Center, U.S. Department of Education, Washington, DC 20202-4725. (Authority: 20 U.S.C. 1221e-3 and 3474)

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