DEPARTMENT OF EDUCATION

34 CFR Parts 76 and 667

RIN 1880–AA59

State-administered Programs; State Postsecondary Review Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends Part 76 of the Education Department General Administrative Regulations (EDGAR) to require a State to file its State plan and other related documents under a given program by a date certain or face deferral of the date on which the State may begin to obligate funds under the program. The Secretary also modifies the policy announced in the notice of proposed rulemaking (NPRM) regarding pre-award costs incurred after the date funds are available for obligation by the Secretary and before the date a State has an approved State plan. Under the modified policy, the Secretary will allow pre-award costs for matching and Maintenance of Effort expenditures because these expenditures are not subject to the Cash Management Improvement Act of 1990 (CMIA). The Secretary takes these actions to protect the Federal Government from interest liabilities under the CMIA when the Department is late in making an initial payment under a State-administered program because the State failed to submit a substantially approvable plan or other required document in a timely fashion. The Secretary also makes conforming amendments to Part 667.

DATES: These regulations take effect on September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Wathen-Dunn, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4434, Washington, D.C. 20202–2243. Telephone: (202) 401–6700. 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 Cash Management Improvement Act of 1990 (CMIA) was passed by Congress to ensure greater efficiency, effectiveness, and equity in the exchange of funds between the Federal Government and the States. Under this statute and the Treasury Department's implementing regulations at 31 CFR Part 205, the Federal Government is liable for interest payments to a State that disburses its own funds for Federal program purposes before the date that Federal funds are deposited to the State's bank account for those obligations, 31 U.S.C. 6503(d). Conversely, a State must pay interest to the Federal Government from the time Federal funds are deposited to the State's account until the time that those funds are paid out by the State, 31 U.S.C. 6503(c).

The CMIA applies to ''major Federal assistance programs,'' which are determined under a chart in the implementing Treasury regulations at 31 CFR 205.4 and Appendix A to Part 205, Subpart A. The chart establishes thresholds for CMIA coverage based on a comparison between the amount of Federal funds expended in a State under a particular program and the total Federal funds expended in the State. The Treasury Department negotiates agreements with each of the States that cover a number of issues under the CMIA, including which programs of the Federal Government are covered by the CMIA in that State. Under the Treasury-State agreement, a State may choose to cover more programs under the CMIA than would be required under the regulatory chart. Thus, to determine whether a program administered by the Department is covered by the CMIA in a particular State, contact the CMIA contact person for the State. These people are usually located in fiscal offices such as a State controller's office. Many of the formula grant State-administered programs of the Department meet the threshold for coverage in most, if not all, States.

The Department of Education (Department) published a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 16, 1993, (58 FR 65856) that proposed regulations to limit the Federal Government's interest liability under the CMIA. The Secretary received 60 comments in response to the NPRM from State educational agencies, State fiscal offices, a trust territory, the Treasury Department, and three national organizations. In addition to the comments, the Department has discussed this rule with the States at various conferences and presentations over the past one and one-half years. Most States asked the Department to defer the proposed rule so that it would not apply to funds made available for obligation by the Secretary starting in calendar year 1994. The reason advanced most often to support the deferral request was to give States time to adjust their schedules to a new clearance process designed to submit State plans to the Department on an earlier date. Commenters who were responsible for State administration of programs that are current-funded, such as the Library Services and Construction Act, suggested that the change in submission date would be particularly burdensome for them without greater advance notice of the change in the regulations. The commenters also asked that the Secretary not apply, in 1994, the decision not to grant pre-award costs if a State is late in submitting its State plan.

In addition to asking for the deferrals, the commenters raised many questions that had to be answered before the regulations could become effective. The Secretary decided to defer both application of the proposed rule and the decision not to grant pre-award costs so that States would have additional time to adjust their State plan development processes to the timelines in the proposed regulations. Thus, the Secretary published a notice in the **Federal Register** on May 26, 1994 (59 FR 27404) indicating his decision to defer application of the actions proposed in the NPRM until the submission of State plans in the spring and summer of 1995. After considering the comments, the Secretary has decided to apply this final rule to applications submitted in the spring and summer of 1996.

The NPRM for these regulations discussed the basis for these regulations, the history of how the Department treated late State plans in past years, the effect of the Treasury regulations implementing the Act on the Department's practices, and the Department's proposed regulations.

Analysis of Comments and Changes

An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. These regulations are designed to cover the full spectrum of the Department's State-administered programs. Thus, this preamble uses examples from many programs to illustrate the applicability of the final regulations. If you have questions about the application of these regulations to a specific program of the Department, contact the program office responsible for the program.

Technical changes to the regulations have been made to improve their quality. These changes, which do not affect substance, are not discussed in this preamble.

General Comments on Interest Liability

Comment: Several commenters expressed concern over the proposed regulatory changes that would limit interest liability to States. Some States concurred with the regulations that would require States to submit a timely State plan and the Department of

Education to respond in a timely manner so interest would not be an issue. However, they believed that if the Federal Government was not responsive within a specific time frame, interest should be paid to the States.

Discussion: The purpose of the CMIA is to achieve efficient, equitable cash management practices so that no interest is exchanged. It is prudent for the Department of Education to take action to correct past practices regarding the acceptance of State plans that are submitted late. The CMIA requires the Secretary of Treasury to regulate and enforce timely disbursements of funds by Federal agencies. The final regulations require States to submit substantially approvable plans by specific dates, and the Department to respond in a timely manner, or pay interest to the States in cases where States use their own funds to pay for Federal program obligations during a period of delay caused by the Department. The Secretary is committed to conducting timely reviews of State plans.

Change: None.

What does substantially approvable mean?

Comment: Many commenters asked the Secretary to define ''substantially approvable,'' stressing the heightened importance of its meaning now that the Secretary has decided not to grant pre-award costs. Some of the commenters expressed the fear that the term could and would be interpreted differently by every program official who approves State plans. Others asked that explicit criteria be included in a definition of the term or that a term different than substantially approvable be used as a test to determine whether funds should flow to a State. One commenter suggested that the Department should authorize the flow of funds if a State made a ''good faith'' submission.

One commenter stated that there have been numerous requests to reword sections of its State plans that have been approved by other staff in past years and that the State had been asked to move sentences from one page to another or to repeat sentences that appear on one page at a later place in the State plan. To this commenter, it was unclear whether the failure to respond to these requests would have rendered the plan not substantially approvable.

Another commenter was concerned that if substantially approvable is interpreted to mean not just submission of required components, but resolution of disagreements about approvable content, the term must mean the same thing as ''fully approvable.'' This commenter believed that disagreements over interpretations of content should not delay the allocation of funds because these disagreements often take months to resolve.

Some of the commenters asked exactly what documents had to be submitted to determine whether a plan was substantially approvable. One recommended that the Department establish a regulatory list of required documents so that there could be no ambiguity about what was required to be submitted.

One commenter was concerned that minor modifications or submission of additional information should not delay the availability of Federal funds for obligation by the State.

Discussion: The Secretary has decided to continue using the term ''substantially approvable'' as the test for whether a State may begin to obligate funds under a program. Most of the programs of the Department and its predecessor, the Education Division of the former Department of Health, Education, and Welfare, have used this term since the early 1970s as the test to determine whether a State may begin to obligate funds. Under this standard, the Department decides whether a plan is substantially approvable based on whether the plan has met substantive requirements under a funding statute and regulations.

While some commenters expressed concern that the substantially approvable standard might be used to defer funding for a State based solely on the need for trivial changes to the State plan, the Department has always made its determination of whether a State plan is substantially approvable based on whether the plan has met substantive requirements under a funding statute and regulations. Thus, the need for minor modifications of a non-substantive nature will not delay the availability of Federal funds for obligation by the State.

The Secretary is aware that in some cases employees of the Department have asked for changes to elements of a State plan that might not be deficient under the ''substantially approvable'' test. These requests have been motivated by a desire to assist a State in improving its State plan and have been made in the context of other changes that have been requested as necessary to make a plan substantially approvable. In the future, employees of the Department will distinguish their requests so that State officials will know which requests must be satisfied in order to make a State plan substantially approvable.

The Secretary understands the concern that each employee of the Department may interpret the standard differently, subjecting a State to arbitrary determinations by the Department. However, the Secretary notes that front line employees of the Department who review State plans do not make the final decisions about whether a plan is substantially approvable. Those decisions are made by senior officials in consultation with program managers. Thus, a decision about whether a particular plan is substantially approvable is made by officials who are exposed to a broad array of plans and who exercise their judgment to ensure that States are treated equitably.

The following examples are taken from past experiences of the Department and demonstrate how the term ''substantially approvable'' has been applied in the context of various programs.

Example 1: Part B of the Individuals With Disabilities Education Act (IDEA)

Under the IDEA, Part B, each participating agency must permit parents to inspect and review any education record relating to their children which is collected, maintained, or used by the agency under Part B. The agency must comply with a parental request to inspect and review records without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made. In one case, the State plan referenced a State statute that required that ''After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created.'' The State was required to ensure that a parent's right to access under the Federal requirement was not limited by State statute in order for its plan to be substantially approvable.

Example 2: Rehabilitation Act of 1973

Section 101(a)(5)(A) of the Rehabilitation Act, as amended in 1992, contains the requirements for the order of selection for services. Under this section, a State plan must show and provide the justification for an order of selection that will be used by the State in determining which individuals with disabilities will be served if the State cannot serve all individuals eligible for services under the Act. The order of selection for the provision of vocational rehabilitation services must be

determined on the basis of serving first those individuals with the most severe disabilities in accordance with criteria established by the State. The State plan must also describe the outcomes and service goals for the individuals served by the State and the time within which the outcomes and service goals may be achieved.

Several State plans that indicated an inability to serve all eligible individuals have been found not to be substantially approvable because they failed to contain the State's criteria for determining which individuals with disabilities are the individuals with the most severe disabilities. In other cases, State plans were found not substantially approvable because the plans failed to indicate that the State would target its resources to serve individuals with the most severe disabilities first.

Example 3: Adult Education Act

The Adult Education Act and its implementing regulations require assurances that public and nonprofit agencies, including correctional education agencies, be provided direct and equitable access to all Federal funds provided under the State plan program. However, one State plan stated ''Correctional agencies will be eligible for any newly appropriated federal funding directly from the U.S. Department of Education for corrections educational programs.'' This language was unacceptable under the requirements of the Act and regulations. The State was asked to submit a revision to the plan to correct the deficiency. The State plan was found substantially approvable when the State revised it to say ''Eligible recipients for adult basic education funding include correctional educational agencies.''

Example 4: Library Services and Construction Act (LSCA)

One State submitted a plan in which a project for strengthening the capacity of the State Library Agency and an Administration project both included administrative expenses. The plan was not considered substantially approvable because activities that would be considered as administration of the Act are not allowed in a Strengthening project. The State was required to include all administrative expenditures under its Administration project before the plan was found substantially approvable.

Under the LSCA, a State must have an approved Long-range Program (LRP) on record with the Department, and all annual programs must be based on needs, priorities, and plans identified in the LRP. In the second year after the passage of amendments to LSCA in 1990, several State plans were not found substantially approvable because the States had not changed their LRPs to reflect new statutory priorities under the LSCA amendments. These plans were found substantially approvable when the new priorities were addressed either in a revised or amended LRP.

The examples described above indicate that the kinds of issues that must be resolved before a State plan can be found substantially approvable are not trivial and the Department's decisions in these cases are based on clear mandates in statutes and implementing program regulations. The Secretary assures the States that the Department will not find a State plan not substantially approvable simply because an assurance or other text is misplaced in the plan or there is some other non-substantive problem with the plan.

This preamble discusses the issue of what documents must be submitted under the heading ''Should the Department be required to send documents, including a list of any other documents required to prove eligibility under each program, to States by a date certain and what should be the effect of the Department's failure to do so?''

Change: None.

How do the regulations affect Maintenance of Effort and Matching Requirements?

Several commenters addressed the discussion in the NPRM regarding the effect of the proposed regulations on fiscal maintenance of effort requirements (MOE). Some confusion was created by the fact that the preamble described the MOE requirement under the Rehabilitation Act as if it were an eligibility requirement. However, under that Act, failure to meet MOE requirements does not deny eligibility. Instead, the allotment for a State is reduced by the amount that the State fails to meet the MOE requirement unless a waiver or modification of the MOE requirement is granted.

Comment: One commenter was concerned that the regulations appeared to require submission of documents demonstrating that a State had met the MOE requirements before a State plan could be considered substantially approvable. The commenter noted that this would not be workable because the financial report needed to demonstrate that MOE had been met was not available until 90 days after the end of the grant period and the State plan for a current funded program had to be submitted before the end of the prior grant period.

Discussion: The CMIA and these implementing regulations do not independently require submission of any document. The documents that must be submitted under a particular program are based on the program statute and implementing regulations.

Most program offices of the Department do not review actual MOE data before making a decision that a plan is substantially approvable. Instead, these programs require a State to submit an assurance that the State has met the MOE requirement based on currently available data. Under these programs, the Department relies on financial audits, reports, and other information to determine whether a State has met its MOE requirement for a particular year. Thus, for these programs, submission of MOE documentation, other than an assurance, would not be required before the Department made a decision about whether a State plan was substantially approvable.

One program office that does review MOE data as part of the State-plan review process is the office administering the LSCA program. Under the LSCA, the determination of whether a State has met a MOE requirement is based on a comparison of the planned expenditures of the State and the expenditures of the State from the second preceding year. Program officials for this program compare the budget of the State-plan submission against the expenditures of the State for the second preceding year before the budgeted year to determine if the State has budgeted sufficient funds to meet the MOE requirement.

Change: None.

Comment: Many commenters wanted the Department to accept, for the purpose of meeting MOE and matching requirements, non-federal expenditures made after the date that funds are available for obligation by the Secretary but before the date a State plan was found substantially approvable. Under some programs, the difference of just a few thousand dollars made a difference for a State in determining whether it met its MOE requirements.

Discussion: The Secretary has decided to modify the policy announced in the NPRM regarding pre-award costs, based on the concerns expressed in these comments. Expenditures incurred to meet matching and MOE requirements are not expenditures for which the Federal Government must deposit funds to the account of a State. Thus, these expenditures are not subject to the interest liabilities of the CMIA.

Given that the CMIA does not apply to non-Federal funds used to meet

matching and MOE requirements, the Secretary decided that he had more flexibility to permit a State to use these expenditures to meet matching and MOE requirements even though the period for obligation by the Secretary has started and the State does not yet have a substantially approvable State plan. Thus, the Secretary has decided to permit States to use these expenditures to meet matching and MOE requirements before the date a State plan is found substantially approvable. However, a State that chooses to use its funds for these types of expenditures would risk the possibility that they would be found unallowable because they do not comply with the State plan that is finally approved. The Secretary decided to change the pre-award cost policy so that States managing programs that require matching or MOE expenditures would have greater flexibility to keep those programs running with matching and MOE expenditures during a period when costs would otherwise be unallowable due to the late submission of a State plan.

The Secretary notes that the MOE determination under some programs of the Department is not based on State expenditures under the Federal program. For example, under the newly reauthorized Title I program of the Elementary and Secondary Education Act of 1965, the MOE determination is based on whether a State has expended sufficient funds on free public education. Another example is one of the MOE requirements under the LSCA Title I program under which the MOE determination is based on State expenditures under a State program that has a similar purpose to the Federal program. Under requirements such as these, State expenditures used to meet the MOE requirement do not need to be for allowable costs under the Federal program. Thus, for these types of MOE requirements, even without the change in policy regarding pre-award costs, expenditures made by a State after the start of the obligation period but before the State plan is found substantially approvable may be used by the State to meet MOE requirements.

Change: No change has been made to the regulations. However, the Secretary has modified the policy regarding pre-award costs to permit grantees to use expenditures made after the date funds become available for obligation by the Secretary and before the date a State plan is found substantially approvable to meet matching and MOE requirements.

When must State plans be submitted?

Comment: Fourteen comments were received concerning the due date specified in proposed § 76.703(a)(1) for submission of State plans. One commenter stated that the proposed submission date change for State plans would not impact that State. Four commenters were concerned that the proposed April 1 submission would be too early: (a) to allow planning time; and, (b) because State program requirements for public input prohibited early submission. One commenter was concerned that an April 1 submission date would not allow sufficient time for Departmental review and feedback to States needing to correct their plans, and still allow adequate time for States to make these corrections before the availability date. Two commenters suggested that an already lengthy process would be made still longer. One commenter believed that the time frame for receiving a plan in substantially approvable form should be 60 days before the start of the obligation period rather than 90 days before that date. Two commenters were concerned that States received their final allocations prior to plan submission in order to provide final financial reports. Three comments concerned precedence of statutory deadlines over regulatory deadlines. One commenter suggested that the Department issue a formal notification to the State when a plan is approved.

Discussion: The Secretary set the deadline date in § 76.703(a)(2) for the submission of State plans as a back-up that would be used only if a program office did not establish its own deadline for submission of State plans. The administrators for each State-administered program are free to set deadlines that are appropriate for their programs. Most State-administered programs already have deadlines that are set in statute, regulations, or direct communications with States. The Secretary is aware that the establishment of a deadline three months before the start of the obligation period could have caused hardship on some States if it had been imposed last spring, before States had time to adjust their State-plan preparation processes to mesh with the new regulations. As stated in the May 26, 1994 (59 FR 27404) document, this consideration was one of the factors that the Secretary considered in deciding to defer application of the regulations to submissions made during the spring and summer of 1995. Therefore, the Secretary has decided to leave the deadline in § 76.703(a)(2) as stated in the proposed regulations. If a State believes that the submission date for a particular program should be adjusted due to conditions particular to that program, the issue should be addressed with Department officials responsible for that program.

Change: None.

When should a plan be considered submitted?

Comment: Five commenters opposed the proposed change in the test under proposed § 76.703(b) that the Department uses to determine when a State plan is considered submitted. The proposed regulations would change the date of submission from the postmark date to the date the State plan is actually received by the Department. The commenters' reasons for opposition included: (1) the acceptance by other Federal agencies of a postmark date; (2) increased burden on States resulting from reduced time frames to complete plans because of having to mail them earlier in order to assure receipt by the Department by the required date; and (3) lack of control over the mail process, which could have negative financial consequences on States. One commenter did not present a reason for opposing the change from postmark to receipt date.

Discussion: In the past, the Department frequently received grant applications from grantees that had mailed applications on the submission date, with receipt by the Department as much as two weeks later. The lag time created by ''mail-in-transit'' has resulted in the Department having shortened review time frames for grant applicants, thereby hampering the Department's ability to complete grant reviews within its prescribed time frame. Earlier mailing of a State plan or use of an expedited delivery service by grant applicants would assure the Department a uniform application review period for all State plans under each grant program.

Change: None.

Should the Department be required to send documents, including a list of any other documents required to prove eligibility under each program, to States by a date certain, and what should be the effect of the Department's failure to do so?

Comment: Some commenters expressed the opinion that the Department should be required to send to States all State plan submission instructions and other relevant materials in a timely manner. Commenters stressed the critical importance this issue plays in allowing States sufficient time to develop and submit plans by the established date, particularly when public input is required.

Specifically, some commenters suggested the Department provide all necessary guidance three months before the States' prescribed State plan submission date, and other commenters recommended six-, four-, and two-month lead times for the receipt of these materials. Other commenters did not suggest specific time frames, but called for ''timely receipt'' of all plan instructions issued by the Department.

One commenter proposed that the regulations at § 76.703(a)(2) include a list of any other documents required to prove eligibility under each program subject to this part.

A related issue addressed by some commenters concerned proposed penalties against the Department should it fail to provide all relevant State plan materials and instructions by a date certain. Some of these commenters suggested that when guidance is late, the deadline for State plan submission should be extended by one day for each day the Department is late in providing guidance. Other commenters proposed a general waiver of the penalty to the State for late submissions if the Department transmits the guidance to the States late, and one commenter suggested an unspecified extension for the State if this occurs.

Discussion: The Secretary is committed to providing States necessary State plan information and instructions—including a list of required documents—in a timely manner. In light of this commitment, the regulation has been changed to require each program subject to these regulations to provide guidance to the States regarding the contents of State plans. The Secretary establishes the date for the delivery of guidance so that there are at least as many days between that date and the date that State plans must be submitted to the Department as there are days between the date that State plans must be submitted to the Department and the date that funds are available for obligation on July 1, or October 1, as appropriate.

In the event that the Department fails to deliver guidance as required, the deadline for the receipt of State plans will be extended one day for each day that the documents are late in being received by the State. The Secretary intends that guidance be sent to the States far enough in advance of the due date for the guidance that the information will be received by the States on or before the due date for the guidance. If a State asserts that it has received the guidance after the due date, it will have the burden of proving the date that it received the guidance. The Secretary is aware of the Department's responsibility to deliver State plan guidance on a timely basis, and will devote appropriate resources to ensure that guidance documents are delivered on a timely basis.

Change: A new paragraph (b) has been added to § 76.703 to cover deferrals of the date that a State plan must be submitted to the Department. Paragraph (b)(3) covers deferral of State plan submission dates caused by failure of the Department to deliver timely guidance to the States regarding State plan requirements.

Should there be a deadline for the Department's decision and what should be the effect of failure to meet such a deadline?

Comment: Many commenters expressed concern that the proposed regulations did not require the Department to complete a timely review such that, if State plans and other documents are submitted on time, the State has an opportunity to submit any necessary modifications or corrections before any delay in the obligation date is imposed. None of the examples in the proposed regulations indicate what will happen if the State plan is submitted in substantially approvable form, on time, but the Department fails to conduct a timely review.

Some of the commenters cited the following example: the State plan is submitted on April 1; the Department completes the review at the end of June and finds that the plan is not substantially approvable; corrections are requested but insufficient time is allowed for the State to make the corrections for an obligation date of July 1.

Several commenters recommended imposing time limits for the Departmental review of the plan. Some of these commenters suggested thirty days, while another commenter suggested forty-five days.

One commenter suggested that, if a time limit on Departmental review could not be imposed, resulting in a State agency not receiving Federal funds until after the first day the funds are available for obligation, then at the very least an appeal process with provisions for due process should be established.

One commenter suggested that if the Department were unable to complete a review in a timely manner, the State should be granted pre-award costs.

Discussion: The Secretary is committed to conducting timely reviews of State plans. If a State submits a State plan in conformance with the guidance provided, it should take less than the three months allotted for the Department to review the plan. Under these circumstances it is anticipated that any changes or corrections needed to make the plan substantially approvable will be minor and can be completed in a very limited amount of time. On the other hand, if a State submits a plan that is not in accord with the guidance provided, then it is possible that the resubmission and approval process could extend beyond the date funds are first available to the Department for obligation. If the Department fails to conduct a timely review of a State plan that is submitted in substantially approvable form on the date it is due, the State could begin to obligate funds on the date funds are available for obligation by the Secretary. Also, States have a responsibility to submit plans that are substantially approvable upon submission.

The Secretary believes that these regulations will result in States submitting timely and high quality plans and in efficient and punctual review by the various Department program offices. In view of the wide variety of content requirements for State plans under Department programs and of the number of plans reviewed by various program offices, the Secretary declines to impose intermediate time frames for Department review of State plans within this three-month period. However, the Secretary believes that the Department should be held accountable in meeting the timeliness established for review of State plans under a program. Thus, the Secretary has decided to modify the regulation so that if the Department takes longer to review a plan than established in advance, the Secretary will grant pre-award costs to the State, regardless of what the regulation would otherwise require.

Change: A new paragraph (g) has been added to § 76.703 so that if the Department takes longer to review a State plan than established under the regulation, the Secretary would grant pre-award costs.

Should the Department establish procedures for notifying the States of the results of the Department's review?

Comment: Several commenters expressed concerns about the Department's ability to maintain and review documents and notify States of the results of that review in a timely manner.

One commenter asked whether the grant award would be the indication of approval or whether there would also be an accompanying letter.

Two commenters suggested that the Department should notify the State when the initial State plan submission is received.

Discussion: The Secretary believes that the Department must be timely in

its response to States concerning the State plan submission. The Secretary will ensure that the Department establishes internal procedures in order to facilitate the notification process. The Department will establish a method of formal notification to States when the documents specified in guidance provided by the Department have been received for review. If a State submits an incomplete State plan, the Department will informally notify the State regarding the missing pieces. Also, the Department will develop internal procedures to include both formal and informal means (phone and fax messages) of notifying the States concerning the status of the review during the process. The Department officially notifies a State regarding the issuance of its grant through a notification of grant award (NGA). Some program offices may provide cover letters prior to or accompanying the NGA. It is mutually beneficial to all parties for the Department to conduct a timely review which includes periodic contact with the State.

Change: A new paragraph (c)(3) has been added to § 76.703 that will require the Department to inform States when all documents specified in Departmental guidance have been received by the Department.

Should the Department change the proposed rule about who may sign for changes to a State plan?

Comment: Two commenters expressed concern about the requirement in proposed § 76.703(e)(2) that would require a State that submits additional information to bring the State plan into substantially approvable form to secure signatures for required changes from the original submitter of the plan or an authorized delegate of that officer.

One commenter suggested that since changes to the plan often are faxed to the Department for review, the State should be allowed to supply the Department with the names of individuals who are authorized to sign the State plan.

One commenter suggested that the Department should consider not requiring signatures from other agencies (i.e. Drug Free Communities) and allow the State agency receiving the grant to submit its plan separately.

Discussion: The Secretary appreciates the difficulties that arise in securing appropriate signatures in a very short turn-around time. The Secretary agrees that submitting a list of staff authorized to sign-off on changes to the plan would be appropriate. The Department does not have the authority to waive the signature required of the Governor for the drug-free program.

The Department will work with States to develop procedures for submitting documents by electronic transmittal and appropriate means of verifying signatures.

Change: None

Should the Department establish a rule permitting waiver of the § 76.703 regulation in certain circumstances?

Comment: Several commenters requested that the regulations provide for a waiver authority or other discretion by the Department to allow pre-award costs when submission of a State plan is late. The reasons commenters felt might justify exceptions to the general rule included circumstances beyond a State's control, such as a natural disaster, absence of State program personnel due to serious medical problems or death and instances when the Federal interest in the timely beginning or continuation of a State's program would be adversely affected, or when significant impairment to the achievement of a program's objectives would result.

Discussion: The Secretary agrees with commenters that there is a need to allow the Department the discretion to allow pre-award costs for expenditures under the Federal program in some limited circumstances. However, the Secretary believes that instances in which pre-award costs are allowed under these regulations should be clear, susceptible to consistent application across programs, and narrowly tailored to situations that are truly outside the control of the State. Some programs may need to permit discretion in granting pre-award costs in program-specific situations. This authority should be addressed, as appropriate, in individual program regulations.

Change: A new paragraph (b) has been added to § 76.703 to cover deferrals for the date that a State plan must be submitted to the Department. Paragraph (b)(1) provides that the Secretary, at a State's request, may extend the submission date for a State plan and, if necessary, approve pre-award costs for a particular grant based on a Presidentially-declared disaster in the State that significantly impairs the ability of the State to submit a timely application.

Should the Department have a special rule when there is a delay in program appropriations or implementing regulations?

Comment: Several commenters noted that there are instances when, due to changing Federal statutes and regulations, States do not have notice of what the State plan requirements are in enough time to enable them to complete the development of the plan and submit it on time. One commenter noted that for one program an April 1 submission date would mean that they would have to begin preparation of the plan 12 to 15 months prior to the start of the fiscal year to which the grant applies. Commenters indicated that States should not be penalized for late submissions in circumstances where there has been a late appropriation or the Department has not notified the States in a timely manner regarding the State plan requirements for a program.

Discussion: Regarding late appropriations, the Treasury Department regulations at 31 CFR 205.11(b) already provide that if a State pays out its own funds for program purposes due to a delay in the passage of a Federal appropriations act, the Federal Government will incur an interest liability if the appropriations act covers the period of the State's expenditure and permits payment for expenditures already incurred by the State. The Secretary does not have authority to change the result under the Treasury regulations.

Regarding program regulations, as a general rule, the requirements that apply to a grant are the statutes and regulations that are in effect on the day that the grant is made. Often, legislation that imposes significant new responsibilities on States has a delayed effective date so that States have time to make the changes necessary for implementation. Similarly, the Federal rulemaking process generally incorporates a delayed effective date, although that delay may not be sufficient in some cases to allow States to make necessary changes in their State plans. Therefore, the Secretary agrees with commenters that these regulations should be modified to allow States a reasonable period of time to make needed changes in State plans.

In many instances, under current practice, if new program requirements take effect at a time that the Department determines is too close to the date on which grants are to be made to allow the State to make needed changes, the Department obtains an assurance from the State that the State is operating the program consistent with all applicable requirements, including those that are newly effective. Other assurances and documentation that the new requirements are being followed may be required by particular programs. Revisions to the State plan to incorporate changes needed as a result of the new requirements must be completed as soon as possible but generally not later than the expected

beginning of the next grant award period. The Secretary believes that this practice may continue to be appropriate for situations that can be addressed by State assurances and documentation that program requirements are being implemented. In other situations, an assurance would not be sufficient to address the new State plan requirements, even in the short run, and the Secretary may need the discretion to give States additional time to submit their applications under a program.

Change: A new § 76.704 has been added that provides that, unless the particular program has established an earlier date, the State plan must meet the requirements that were in effect for the program three months before the State plan due date and any additional requirements known on that date that are scheduled to become effective by the expected grant award date (July 1 for forward-funded programs or October 1 for current-funded programs). If any of these requirements is changed after that date (three months before the State plan due date or the other date established by the program), the Secretary may require a State to submit appropriate assurances and documentation or extend the due date for the State plan and, if necessary under an extended due date, approve pre-award costs for that program.

Should States be permitted to waive their right to interest in return for the Department's acceptance of late State plans without penalty?

Comment: One commenter suggested that the regulations provide that the Secretary could waive these regulations if the State agreed to ''waive'' its claim to interest on the State funds used for pre-award costs under the CMIA. Another commenter recommended that expenditures made during a period that a State plan is not substantially approved be exempted from the operation of the CMIA.

Discussion: The Department is without authority to require or even permit States to forego claims to interest under the CMIA. Congress delegated to the Treasury Department the authority to enforce the CMIA. The operation of the CMIA and the programs to which it applies are controlled by Treasury's CMIA implementing regulations, 31 CFR part 205, and the State-Treasury agreements under those regulations.

Change: None.

Should certain programs be exempt from the regulations in 76.703?

Comment: Commenters noted the particular problems of the programs that are not forward-funded, such as the LSCA programs and the Rehabilitation Act programs. One commenter suggested that these programs be exempted from the operation of the proposed regulations.

Discussion: As explained above, the Secretary cannot control the application of the CMIA to these programs. Thus, the Secretary does not believe that it would be prudent to exclude these programs from the operation of these Department regulations.

Change: None.

Should subgrantees be permitted to obligate funds during a period before the State may begin to obligate funds?

Comment: One comment was received regarding the relationship between proposed § 76.703 and the current § 76.704 (redesignated by this final rulemaking document as § 76.708), which provides that a subgrantee may not begin to obligate funds until the State may begin to obligate funds. The commenter noted that, under many State-administered programs, most of the funds flow through to subgrantees that are required to provide most of the services required under a program. The commenter thought that the proposed regulations should be amended so that subgrantees could begin to obligate funds even if the State had failed to submit a substantially approvable State plan. According to the commenter, this result was appropriate because subgrantees have no control over the timely preparation of the State plan but would be penalized under the proposed regulations for a State's failure to submit a substantially approvable State plan on a timely basis.

Discussion: The Secretary is aware that subgrantees must depend upon responsible management of Federal programs by the States in order to be able to obligate funds at the start of the obligation period. However, the Secretary cannot sever this dependency due to the relationship between the Department, the States, and their subgrantees. Under the framework established by Congress for State-administered programs, the Department makes grants to States and has no direct relationship with subgrantees. The Department looks to the States for proper administration of the programs. For example, when a subgrantee misspends funds under a State-administered program, the Department seeks recovery of the funds or takes other action against the State to achieve compliance by the subgrantee. In this context, a subgrantee derives its entire authority to obligate funds under a program from the State. Thus, if a State lacks authority to obligate funds, its subgrantees are equally without authority to obligate funds.

Even if the Secretary had the power to permit obligation by subgrantees before the State could obligate funds, there are good policy reasons for the Department not to permit such a practice. One of the purposes of approving a State plan is to ensure that the State is imposing correct requirements upon its subgrantees. If a State submitted a plan that was not substantially approvable and subgrantees were permitted to submit local applications for flow through funds and obligate funds under that plan, serious questions would be raised about whether the subgrantees were complying with the Federal requirements under the program.

Change: None.

What issues are raised under the Library Services and Construction Act?

Comment: One commenter suggested that instead of the proposed regulations, the Secretary pro-rate decreases to the grant awards in accordance with the days the plan is late.

Discussion: Under the LSCA statute and GEPA, the Secretary does not have the authority to decrease the grant awards due to a State's late plan submission.

Change: None.

Comment: Two commenters noted that disallowing pre-award costs under LSCA, Title II (Construction), would adversely impact on communities that need to count the cost of the land and architectural fees (both pre-award expenditures) in order to meet the 50 percent matching requirement. They recommend that the Title II construction program be exempt from these regulatory changes.

Discussion: It is highly unlikely that the LSCA Title II program will ever meet the funding threshold for coverage under the CMIA Treasury regulations in subpart A of 31 CFR part 205. The LSCA Title II program regulations require that the request for grant award be submitted to the Department after the State has approved the final working drawings. This, by implication, requires that the land be purchased and the architectural drawings be completed before the plan is submitted. The LSCA Title II regulations clearly provide that these expenditures are allowable. 34 CFR 770.11(a)(5). The Assistant Secretary will specifically authorize these pre-award costs in grant award notices under the LSCA Title II program so that the costs may be allowed to meet the requirements of the program.

Change: None.

Comment: Several commenters were concerned that State and/or local funds expended between July 1 and the effective date of the program (or the date of the acceptance of a substantially approvable plan) would not be counted

toward the matching required under the LSCA program.

Discussion: State or local funds expended between July 1 and the effective date of the program cannot be counted as matching. The LSCA Titles I and III programs begin on October 1 and end on September 30. These two programs do not exist before the October 1 effective date each year. Therefore, the Secretary notes that funds counted as matching under the program must be expended in the same time period as the Federal grant program.

The Secretary also notes that Federal carryover funds may not be obligated and expended after September 30th until there is a substantially approvable plan received by the Department.

Change: None.

Comment: Some commenters asked, given the fact that LSCA is a current-funded program and that, in many years, the Congress has not appropriated funds for LSCA by the start of the Federal fiscal year, is the October 1 date still to be the date on which the Secretary will obligate funds under § 76.703(c). They asked how this would affect the obligation and expenditure of funds between October 1 and the date that Congress actually appropriates funds for LSCA.

Discussion: Regulations covering Federal interest liabilities are found in the Treasury Department regulations implementing the Cash Management Improvement Act at 31 CFR Part 205. Specifically, § 205.11(b) addresses late appropriations and provides that the Federal Government will incur an interest liability if an appropriations act, as enacted, covers the period of the State's expenditure and permits payment for expenses already incurred by the State.

Change: None.

Comment: A commenter asked if a substantially approvable plan was submitted by April 1, could LSCA funds be obligated on July 1.

Discussion: The beginning of the obligation period for current funded programs is October 1, and, therefore, obligations generally may not occur prior to that date.

Change: None.

Comment: Many commenters noted that the examples under § 76.703(e)(3) of the proposed regulations only referred to forward-funded programs. They noted that because LSCA is not forward-funded it should be exempt from these regulatory changes.

Discussion: The Secretary will not exempt the LSCA program from these regulations because current-funded programs cannot be excluded from coverage under the CMIA.

Change: None.

Comment: It was feared by one commenter that, in trying to fit a current funded program under regulations that the commenter felt were clearly intended for forward-funded programs, there might be unforeseen problems in the future.

Discussion: The Secretary does not foresee any issues that are unique to current-funded programs. However, these regulations have been reviewed by Departmental staff knowledgeable about current-funded programs such as the LSCA in order to ensure that issues that may arise with regard to these programs are addressed.

Change: None.

Comment: Several commenters noted that, unlike forward-funded programs, planning for LSCA is done on an unknown Federal allocation. Under these regulations, the State budget might also be unknown. In addition, the staff of the State agency would be compelled to work on the plans for LSCA at the same time they must be effecting closeout of the State fiscal year.

Discussion: The commenters are correct in that State plans prepared for submission under this revised regulation would, in many cases, be based on unknown funding at either the Federal or State levels or at both levels. However, annual plans are considered estimates and are expected to be revised to reflect final Federal funding amounts. (See next discussion for details.) Submissions prior to the due date are acceptable if necessary to decrease impact on State staff.

Change: None.

Comment: Some commenters noted that State plans based on estimated figures would have to be amended at a later date so that the plan proposes activities consistent with the actual funding amounts. This would make even more complex planning and might ''* * * create confusion at the sub-grantee level, and possible fiscal chaos at the state level.'' Such added work was considered by a commenter as a violation of the Paperwork Reduction Act.

Discussion: State plans are expected to be based on an estimation of funds. Under 34 CFR 80.30(c)(ii), changes to plans or budgets that are within ten percent of the budgeted amount, require no additional Federal funding, and make no significant change to the intent of the project or plan, need not be submitted to the Department for prior approval. Because planning is done on an estimated Federal amount currently, grantees are already in the position of amending some projects after the start of the grant period. The need to amend grants, based upon a submission of actual State funding data, and the submission of the supporting data, are considered in the burden when the paperwork burden is calculated under the Paperwork Reduction Act of 1980. Therefore, these revised regulations contain no added information collection requirements.

Change: None.

Comment: Several commenters expressed concern that the required assurances under LSCA would be due prior to the passing of the State's budget confirming the availability of such funds.

Discussion: The assurances may be based on the best available information as of the date of the submission.

Change: None.

Comment: One commenter noted that the revised § 76.703 would require estimated annual expenditure reports (rather than actual report of expenditures) be accepted by the Department in order to generate a plan by July 1.

Discussion: Under current law, the Federal fiscal year ends on September 30. The report covering expenditures for that period is due to the Department at the end of December. The LSCA program plans that will use the information from the report, as a prerequisite for funding, will not be due until the following July 1, which is nine months after the expenditure period. The Secretary does not agree that only estimated expenditures and not actual expenditures could be verified during this time period. Therefore, there is no allowance for estimated annual reports.

Change: None.

Comment: Several commenters voiced a concern that some State expenditures under MOE requirements occur during the July 1 to October 1 period, and a failure to receive permission to count these expenditures towards MOE would cause a failure to qualify for Federal LSCA funding.

Discussion: MOEs under the LSCA are based on the requirement of a State to maintain the support of services of a protected program or to a protected population. Some of these expenditures may not be part of the expenditures under LSCA (such as State Aid) and only have a tenuous relationship to the Federal program. Since many of these programs are ongoing State supported efforts, the Secretary agrees that these amounts are eligible for counting as MOE from the beginning of the State fiscal year, whether or not the State plan is substantially approvable.

Change: None.

Comment: Many commenters noted that § 76.703(a)(2) establishes a due date

for State Plans, of three months prior to the date that the Secretary may obligate funds for the program. The effective date of current programs is October 1, and, therefore, plans are due on the prior July 1. Some commenters noted that such a proposed change will require new timetables at the State and local level. Most commented that the change can be implemented if given enough time. Other commenters requested that the date of October 1 be retained and cited a number of problems associated with this change.

Discussion: The program staff will have reviewed and accepted all timely and substantially approvable plans prior to the effective date of the program in order that the Secretary may make obligations in a timely manner. The retention of the October due date for the submission of State plans is impossible if all reviews are to be accomplished prior to October 1. The Department must reserve the three-month period for review (including negotiations) of the State Plans.

Change: None.

Section 76.711: Should States have to request funds by CFDA number?

The NPRM proposed to add a new § 76.708. This document adds that section as a new § 76.711.

Comment: One commenter asked why the Department would require States to use the CFDA number when the Treasury Department would not require Federal agencies to provide the CFDA number to the States for funds transmitted to the States. Conversely, the Treasury Department suggested in its comments that the Department should require all grantees to request the draw down of funds by CFDA number, because all programs that are covered in the CFDA are subject to coverage under the CMIA. A third commenter stated that a requirement to request funds by CFDA number would place an unnecessary administrative burden on States which might actually hinder timely payments under the CMIA. This commenter asked that the Department stay with the current, single-request system, which permits grantees to request funds needed under all grants to a State in a single request, without having to identify the programs for which the funds are being requested.

Discussion: As the Treasury Department stated in the preamble to the final regulations implementing the CMIA, ''CFDA numbers are key to the provisions of this rule.'' This statement was made in the context of Treasury's discussion of concerns that agencies don't always provide CFDA numbers to States when the agencies make their awards. Treasury said ''Respondents emphasized the problems created in such situations given the fact that [the Treasury regulation implementing the CMIA] relies on program CFDA numbers for tracking withdrawals and payments, and for calculating interest accruals.''

This discussion indicates Treasury's understanding that States will need to request payments by CFDA number and agencies will have to make payments by CFDA number in order to calculate interest liabilities under the Act. The Department of Education already identifies the CFDA number of a grant program whenever it issues a notification of grant award. Thus, the Secretary does not expect any increased burden for a State to check the CFDA number on a grant award document in order to request funds under a program.

Change: In response to the Treasury Department's comment, § 76.708 will require use of the CFDA number when requesting funds for any grant subject to Part 76.

Change: This final rulemaking document makes technical changes by redesignating certain sections that were not affected by the NPRM in order to make room for the new § 76.704. Current §§ 76.704, 76.705, and 76.706 have been redesignated as § 76.708, 76.709, and 76.710, respectively. Cross references to these sections in other parts of 34 CFR have been amended as appropriate.

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

34 CFR Part 76

Education Department, Grant programs-education, Grant administration, Intergovernmental relations, State-administered programs.

34 CFR Part 667

Colleges and universities, Cultural exchange programs, Education, Educational study programs, Grant programs—education.

Dated: April 6, 1995.

Richard Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends Parts 76 and 667 of Title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for part 76 is revised to read as follows:

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

2. Section 76.703 is amended by removing paragraphs (a) and (b), redesignating paragraph (c) as paragraph (h), adding new paragraphs (a) through (g), and adding notes following new paragraphs (b) and (g), to read as follows:

§ 76.703 When a State may begin to obligate funds.

(a) (1) The Secretary may establish, for a program subject to this part, a date by which a State must submit for review by the Department a State plan and any other documents required to be submitted under guidance provided by the Department under paragraph (b)(3) of this section.

(2) If the Secretary does not establish a date for the submission of State plans and any other documents required under guidance provided by the Department, the date for submission is three months before the date the Secretary may begin to obligate funds under the program.

(b) (1) This paragraph (b) describes the circumstances under which the submission date for a State plan may be deferred.

(2) If a State asks the Secretary in writing to defer the submission date for a State plan because of a Presidentially declared disaster that has occurred in that State, the Secretary may defer the submission date for the State plan and any other document required under guidance provided by the Department if the Secretary determines that the disaster significantly impairs the ability of the State to submit a timely State plan or other document required under guidance provided by the Department.

(3) (i) The Secretary establishes, for a program subject to this part, a date by which the program office must deliver guidance to the States regarding the contents of the State plan under that program.

(ii) The Secretary may only establish a date for the delivery of guidance to the States so that there are at least as many days between that date and the date that State plans must be submitted to the Department as there are days between the date that State plans must be submitted to the Department and the date that funds are available for obligation by the Secretary on July 1, or October 1, as appropriate.

(iii) If a State does not receive the guidance by the date established under

paragraph (b)(3)(i) of this section, the submission date for the State plan under the program is deferred one day for each day that the guidance is late in being received by the State.

Note: The following examples describe how the regulations in § 76.703(b)(3) would act to defer the date that a State would have to submit its State plan.

Example 1. The Secretary decides that State plans under a forward-funded program must be submitted to the Department by May first. The Secretary must provide guidance to the States under this program by March first, so that the States have at least as many days between the guidance date and the submission date (60) as the Department has between the submission date and the date that funds are available for obligation (60). If the program transmits guidance to the States on February 15, specifying that State plans must be submitted by May first, States generally would have to submit State plans by that date. However, if, for example, a State did not receive the guidance until March third, that State would have until May third to submit its State plan because the submission date of its State plan would be deferred one day for each day that the guidance to the State was late.

Example 2. If a program publishes the guidance in the **Federal Register** on March third, the States would be considered to have received the guidance on that day. Thus, the guidance could not specify a date for the submission of State plans before May second, giving the States 59 days between the date the guidance is published and the submission date and giving the Department 58 days between the submission date and the date that funds are available for obligation.

(c) (1) For the purposes of this section, the submission date of a State plan or other document is the date that the Secretary receives the plan or document.

(2) The Secretary does not determine whether a State plan is substantially approvable until the plan and any documents required under guidance provided by the Department have been submitted.

(3) The Secretary notifies a State when the Department has received the State plan and all documents required under guidance provided by the Department.

(d) If a State submits a State plan in substantially approvable form (or an amendment to the State plan that makes it substantially approvable), and submits any other document required under guidance provided by the Department, on or before the date the State plan must be submitted to the Department, the State may begin to obligate funds on the date that the funds are first available for obligation by the Secretary.

(e) If a State submits a State plan in substantially approvable form (or an amendment to the State plan that makes it substantially approvable) or any other documents required under guidance provided by the Department after the date the State plan must be submitted to the Department, and—

(1) The Department determines that the State plan is substantially approvable on or before the date that the funds are first available for obligation by the Secretary, the State may begin to obligate funds on the date that the funds are first available for obligation by the Secretary; or

(2) The Department determines that the State plan is substantially approvable after the date that the funds are first available for obligation by the Secretary, the State may begin to obligate funds on the earlier of the two following dates:

(i) The date that the Secretary determines that the State plan is substantially approvable.

(ii) The date that is determined by adding to the date that funds are first available for obligation by the Secretary—

(A) The number of days after the date the State plan must be submitted to the Department that the State plan or other document required under guidance provided by the Department is submitted; and

(B) If applicable, the number of days after the State receives notice that the State plan is not substantially approvable that the State submits additional information that makes the plan substantially approvable.

(f) Additional information submitted under paragraph (e)(2)(ii)(B) of this section must be signed by the person who submitted the original State plan (or an authorized delegate of that officer).

(g) (1) If the Department does not complete its review of a State plan during the period established for that review, the Secretary will grant pre-award costs for the period after funds become available for obligation by the Secretary and before the State plan is found substantially approvable.

(2) The period established for the Department's review of a plan does not include any day after the State has received notice that its plan is not substantially approvable.

Note: The following examples describe how the regulations in § 76.703 would be applied in certain circumstances. For the purpose of these examples, assume that the grant program established an April 1 due date for the submission of the State plan and that funds are first available for obligation by the Secretary on July 1.

Example 1. Paragraph (d): A State submits a plan in substantially approvable form by April 1. The State may begin to obligate funds on July 1.

Example 2. Paragraph (e)(1): A State submits a plan in substantially approvable form on May 15, and the Department notifies the State that the plan is substantially approvable on June 20. The State may begin to obligate funds on July 1.

Example 3. Paragraph (e)(2)(i): A State submits a plan in substantially approvable form on May 15, and the Department notifies the State that the plan is substantially approvable on July 15. The State may begin to obligate funds on July 15.

Example 4. Paragraph (e)(2)(ii)(A): A State submits a plan in substantially approvable form on May 15, and the Department notifies the State that the plan is substantially approvable on August 21. The State may begin to obligate funds on August 14. (In this example, the plan is 45 days late. By adding 45 days to July 1, we reach August 14, which is earlier than the date, August 21, that the Department notifies the State that the plan is substantially approvable. Therefore, if the State chose to begin drawing funds from the Department on August 14, obligations made on or after that date would generally be allowable.)

Example 5. Paragraph (e)(2)(i): A State submits a plan on May 15, and the Department notifies the State that the plan is not substantially approvable on July 10. The State submits changes that make the plan substantially approvable on July 20 and the Department notifies the State that the plan is substantially approvable on July 25. The State may begin to obligate funds on July 25. (In this example, the original submission is 45 days late. In addition, the Department notifies the State that the plan is not substantially approvable and the time from that notification until the State submits changes that make the plan substantially approvable is an additional 10 days. By adding 55 days to July 1, we reach August 24. However, since the Department notified the State that the plan was substantially approvable on July 25, that is the date that the State may begin to obligate funds.)

Example 6. Paragraph (e)(2)(ii)(B): A State submits a plan on May 15, and the Department notifies the State that the plan is not substantially approvable on August 1. The State submits changes that make the plan substantially approvable on August 20, and the Department notifies the State that the plan is substantially approvable on September 5. The State may choose to begin drawing funds from the Department on September 2, and obligations made on or after that date would generally be allowable. (In this example, the original submission is 45 days late. In addition, the Department notifies the State that the plan is not substantially approvable and the time from that notification until the State submits changes that make the plan substantially approvable is an additional 19 days. By adding 64 days to July 1, we reach September 2, which is earlier than September 5, the date that the Department notifies the State that the plan is substantially approvable.)

Example 7. Paragraph (g): A State submits a plan on April 15 and the Department notifies the State that the plan is not substantially approvable on July 16. The State makes changes to the plan and submits a substantially approvable plan on July 30. The Department had until July 15 to decide whether the plan was substantially approvable because the State was 15 days late in submitting the plan. The date the State may begin to obligate funds under the regulatory deferral is July 29 (based on the 15 day deferral for late submission plus a 14 day deferral for the time it took to submit a substantially approvable plan after having received notice). However, because the Department was one day late in completing its review of the plan, the State would get pre-award costs to cover the period of July 1 through July 29.

* * * * *

(Authority: 20 U.S.C. 1221e–3, 6511(a), 3474, 31 U.S.C. 6503)

3. Sections 76.704, 76.705, and 76.706 are redesignated as §§ 76.708, 76.709, and 76.710, respectively.

4. A new § 76.704 is added to read as follows:

§ 76.704 New State plan requirements that must be addressed in a State plan.

(a) This section specifies the State plan requirements that must be addressed in a State plan if the State plan requirements established in statutes or regulations change on a date close to the date that State plans are due for submission to the Department.

(b)(1) A State plan must meet the following requirements:

(i) Every State plan requirement in effect three months before the date the State plan is due to be submitted to the Department under 34 CFR 76.703; and

(ii) Every State plan requirement included in statutes or regulations that will be effective on or before the date that funds become available for obligation by the Secretary and that have been signed into law or published in the **Federal Register** as final regulations three months before the date the State plan is due to be submitted to the Department under 34 CFR 76.703.

(2) If a State plan does not have to meet a new State plan requirement under paragraph (b)(1) of this section, the Secretary takes one of the following actions:

(i) Require the State to submit assurances and appropriate documentation to show that the new requirements are being followed under the program.

(ii) Extend the date for submission of State plans and approve pre-award costs as necessary to hold the State harmless.

(3) If the Secretary requires a State to submit assurances under paragraph (b)(2) of this section, the State shall incorporate changes to the State plan as soon as possible to comply with the new requirements. The State shall submit the necessary changes before the start of the next obligation period.

(Authority: 20 U.S.C. 1221e–3, 6511(a), 3474, 31 U.S.C. 6503)

5. A new § 76.711 is added after redesignated § 76.710 and before the center heading ''REPORTS'' to read as follows:

§ 76.711 Requesting funds by CFDA number.

If a program is listed in the Catalog of Federal Domestic Assistance (CFDA), a State, when requesting funds under the program, shall identify that program by the CFDA number.

(Authority: 20 U.S.C. 1221e–3, 6511(a), 3474, 31 U.S.C. 6503)

PART 667—STATE POSTSECONDARY REVIEW PROGRAM

6. The authority citation for Part 667 continues to read as follows:

Authority: 20 U.S.C. 1099a through 1099a–3, unless otherwise noted.

7. Section 667.1 is amended by revising paragraph (d)(1)(iii) to read as follows:

§ 667.1 Scope and purpose.

* * * * *

(d)(1) * * *

(iii) 34 CFR 76.701, 76.702, 76.703, 76.704, 76.707, 76.720, 76.730, 76.731, 76.734, 76.760, and 76.761 of subpart G;

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[FR Doc. 95–18064 Filed 8–10–95; 8:45 am]

BILLING CODE 4000–01–P