

DEPARTMENT OF EDUCATION**34 CFR Parts 74, 75, 76, and 81**

RIN 1880-AA64

Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations; Direct Grant Programs; State-Administered Programs; and General Provisions Act—Enforcement

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary makes technical amendments to the Education Department General Administrative Regulations (EDGAR) to implement amendments to the General Education Provisions Act (GEPA) made by the Improving America's Schools Act (IASA). The provisions will diminish the paperwork burden for recipients, permit the Secretary to approve State plans for a period longer than three years, authorize the Secretary to take actions other than termination actions if, after a hearing, the Secretary determines that a State plan is not substantially approvable, improve the procedures and requirements governing hearings for the recovery of funds, implement other statutory requirements and make other technical changes to EDGAR.

EFFECTIVE DATE: These regulations take effect October 6, 1995.

FOR FURTHER INFORMATION CONTACT: Ronelle Holloman, U.S. Department of Education, 600 Independence Avenue, SW., Room 3636, ROB-3, Washington, DC 20202-4700. Telephone: (202) 205-3501. 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 is amending sections in 34 CFR Parts 74, 75, 76, and 81 to implement the Improving America's Schools Act of 1994 (Pub. L. 103-382), enacted October 20, 1994, and to make other technical changes. The Improving America's Schools Act extends the authorization for programs under the Elementary and Secondary Education Act of 1965 and, as it relates to these amendments, diminishes paperwork burden for educators and clarifies procedures handled by the Office of Administrative Law Judges. Other technical changes to EDGAR are also being made.

Section-by-Section Analysis

Section 74.53 establishes record retention and access requirements for discretionary grants and cooperative agreements awarded on or after October 1, 1994. The section is amended by removing "five" and adding in its place "three" in all appropriate places to reflect IASA removal of the GEPA requirement that recipients under applicable programs maintain records for five years. In addition, the remaining paragraphs are revised by removing "5" wherever it appears and adding in its place "3".

Section 75.125 is amended by revising the heading and authority citation to eliminate reference to the Joint Funding Simplification Act which no longer exists.

Section 75.734 is removed because the IASA amended GEPA to remove the former requirement that recipients under applicable programs maintain records for five years. The removal of § 75.734 allows recipients of discretionary grant programs to rely on the rules in Parts 74 and 80, which require that records be maintained for only three years.

Section 76.101 is amended to reflect the new section number for the section of the General Education provisions Act (GEPA) that specifies the content of the single State application.

Section 76.103 is revised to change the effective period for a state plan from a three-year State plan to give the Secretary the flexibility to establish a multi-year State plan period. Under the amended regulation, the Secretary could establish a State plan period for more than three years.

Section 76.301 is amended to reflect the new section number for the section of GEPA that authorizes the single State application.

Section 76.401 specifies procedures that States must follow in disapproving local applications and specifies actions the Secretary may take if it's determined that a State did not comply with any of the provisions in § 76.401. The section is amended by revising paragraph (d)(8) to include language that will allow the Secretary additional measures to achieve compliance other than immediate termination of assistance to the State.

Section 76.734 is removed because the IASA amended GEPA to remove the former requirement that recipients maintain records for five years. The removal of § 76.734 allows recipients under state administered programs to rely on the rules in Parts 74 and 80, which require that records be maintained for only three years.

Section 81.24 is amended to implement section 250(a)(1) of the IASA by revising § 81.24(b)(1) to require the Secretary, in issuing a notice of a preliminary departmental decision, to establish a prima facie case.

Section 81.27 is amended to implement section 250(a)(1) of the IASA, to allow a recipient 60 days to file an application for review of a preliminary departmental decision in place of the 30 days allowed in the current requirement.

Section 81.33 is amended to implement section 250(a)(3)(B) of the IASA so that, during the Secretary's review of a decision of the Office of Administrative Law Judges, ex parte communication between employees of the Secretary's office and individuals representing the Department or the recipient are prohibited.

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.

Intergovernmental Review

Some programs affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

The Secretary has determined that this document does not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since these changes merely incorporate statutory amendments into the regulations and do not implement policy changes over which the Secretary has discretion, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C.

553(b)(B) that public comment on these regulations is unnecessary and contrary to the public interest.

List of Subjects

34 CFR Part 74

Administrative practice and procedure, Education Department, Grant programs-education, Grant Administration, Hospitals, Institutions of higher education, Non-profit organizations, Reporting and recordkeeping requirements.

34 CFR Part 75

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

34 CFR Part 76

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

34 CFR Part 81

Enforcement, General Education Provisions Act.

Dated: August 30, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends Parts 74, 75, 76, and 81 of Title 34 of the Code of Federal Regulations as follows:

PART 74—ADMINISTRATION OF GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for Part 74 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474; OMB Circular A-110, unless otherwise noted.

2. In section 74.53, the introduction to paragraph (b) is amended by removing “five” and adding in its place, “three”, in paragraph (b) (1) and (3) and (g) (1) and (2) removing “5-” and adding, in its place, “3-”; in paragraph (b)(3) by removing “5” and adding in its place “3”; and by revising the authority citation to read as follows:

§ 74.53 Qualifications and exceptions

* * * * *

(Authority: 20 U.S.C. 1221e-3 and 3474; OMB Circular A-110)

3. The authority citation for sections 74.1, 74.2, 74.3, 74.4, 74.5, 74.10, 74.11, 74.12, 74.13, 74.14, 74.15, 74.16, 74.17, 74.20, 74.21, 74.22, 74.23, 74.24, 74.25, 74.26, 74.27, 74.28, 74.30, 74.31, 74.32, 74.33,

74.34, 74.35, 74.36, 74.37, 74.40, 74.41, 74.42, 74.43, 74.44, 74.45, 74.46, 74.47, 74.48, 74.50, 74.51, 74.52, 74.60, 74.61, 74.62, 74.70, 74.71, 74.72, and 74.73 and Appendix A to Part 74 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 3474; OMB Circular A-110)

PART 75—DIRECT GRANT PROGRAMS

4. The authority citation for Part 75 continues to read as follows:

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

5. Section 75.125 is amended by revising the heading and the authority citation to read as follows:

§ 75.125 Submit a separate application to each program.

* * * * *

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

§ 75.734 [Removed]

6. Section 75.734 and the note and cross-reference following the section are removed.

7. Section 75.740 is amended in paragraph (a) by removing the number “438” and adding in its place the number “444” and in paragraph (b) by removing the number “439” and adding in its place the number “445” and revising the authority citation to read as follows:

§ 75.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

* * * * *

(Authority: 20 U.S.C. 1221e-3, 1232g, 1232h, and 3474)

8. The authority citation for sections 75.1, 75.2, 75.4, 75.50, 75.51, 75.60, 75.61, 75.62, 75.100, 75.101, 75.102, 75.103, 75.104, 75.105, 75.109, 75.112, 75.117, 75.119, 75.125, 75.126, 75.127, 75.128, 75.129, 75.155, 75.156, 75.158, 75.159, 75.190, 75.191, 75.192, 75.200, 75.201, 75.210, 75.215, 75.216, 75.217, 75.218, 75.219, 75.220, 75.222, 75.230, 75.231, 75.232, 75.233, 75.234, 75.235, 75.236, 75.250, 75.251, 75.253, 75.260, 75.261, 75.262, 75.500, 75.511, 75.515, 75.516, 75.517, 75.519, 75.524, 75.525, 75.530, 75.531, 75.532, 75.533, 75.534, 75.560, 75.561, 75.562, 75.563, 75.564, 75.590, 75.591, 75.592, 75.600, 75.601, 75.602, 75.603, 75.604, 75.605, 75.606, 75.607, 75.608, 75.609, 75.610, 75.611, 75.612, 75.613, 75.614, 75.615, 75.618, 75.620, 75.621, 75.622, 75.626, 75.650, 75.681, 75.682, 75.683, 75.700, 75.701, 75.702, 75.703, 75.707, 75.708, 75.720, 75.730, 75.731, 75.732, 75.900, 75.901, 75.903, and 75.910 is revised to read as follows:

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

9. The authority citation for section 75.580 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 2890, and 3474)

10. The authority citation for section 75.616 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3 and 3474, 42 U.S.C. 8373(b), and E.O. 12185)

11. The authority citation for section 75.617 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3 and 3474, 31 U.S.C. 3504, 3505)

PART 76—STATE-ADMINISTERED PROGRAMS

12. The authority citation for part 76 continues to read as follows:

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

13. Section 76.101 is amended by removing “Section 435” and adding, in its place, “Section 441” and the authority citation is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1232d, and 3474)

14. Section 76.103 is amended by revising the heading and paragraph (a); and by removing “three-year” in paragraph (b) and adding, in its place, “multi-year” to read as follows:

§ 76.103 Multi-year State plans.

(a) Beginning with fiscal year 1996, each State plan will be effective for a period of more than one fiscal year, to be determined by the Secretary or by regulations.

* * * * *

(Authority: 20 U.S.C. 1221e-3, 1231g(a), and 3474)

15. Section 76.301 is amended by removing “Section 436” and adding, in its place, “Section 442” and the authority citation is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1232d, and 3474)

16. Section 76.401 is amended by revising paragraph (d)(8) and the authority citation to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

* * * * *

(d) * * *

(8) If a State educational agency does not comply with any provision of this section, or with any order of the Secretary under this section, the Secretary terminates all assistance to the State educational agency under the applicable program or issues such other orders as the Secretary deems appropriate to achieve compliance.

* * * * *

(Authority: 20 U.S.C. 1221e-3, 1231b-2, 3474, and 6511(a))

§ 76.734 [Removed]

17. Section 76.734 and the note following the section are removed.

18. The authority citation for § 76.1 is revised to read as follows:

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

19. The authority citation for §§ 76.2, 76.50, 76.51, 76.500, 76.532, 76.533, 76.534, 76.563, 76.600, 76.703, 76.704, and 76.707 is revised to read as follows:

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

20. The authority citation for §§ 76.100, 76.102, 76.104, 76.106, 76.125, 76.141, 76.142, 76.201, 76.202, 76.235, 76.261, 76.300, 76.302, 76.303, 76.400, 76.650, 76.651, 76.652, 76.653, 76.654, 76.655, 76.656, 76.657, 76.658, 76.659, 76.660, 76.661, 76.662, and 76.770 is revised to read as follows:

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

21. The authority citation for § 76.140 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1231g(a), and 3474)

22. The authority citation for § 76.304 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1232e, and 3474)

23. The authority citation for §§ 76.530, 76.560, 76.561, 76.681, 76.683, 76.700, 76.701, 76.702, 76.720, 76.722, 76.731, 76.760, 76.761, and 76.902 is revised to read as follows:

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

24. The authority citation for § 76.580 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 2890, and 3474)

25. The authority citation for § 76.591 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1226c, 1231a, 3474, and 6511(a))

26. The authority citation for § 76.677 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 2727(b)(3)(D), 2972(f), and 3474)

27. The authority citation for § 76.705 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1225(b), and 3474)

28. The authority citation for § 76.740 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1232g, 1232h, 3474, and 6511(a))

PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

29. The authority citation for part 81 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3, 1234-1234i, and 3474(a), unless otherwise noted.

30. Section 81.24 is amended by revising paragraph (b)(1) and the authority citation to read as follows:

§ 81.34 Notice of a disallowance decision.

* * * * *

(b)(1) The notice must establish a prima facie case for the recovery of funds, including an analysis reflecting the value of the program services actually obtained in a determination of harm to the Federal interest.

* * * * *

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(a), and 3474(a))

31. Section 81.37 is amended by removing “30” in paragraph (b) and adding, in its place, “60” and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(b)(1), and 3474(a))

32. Section 81.43 is amended by redesignating paragraph (a) as paragraph (a)(1); adding a new paragraph (a)(2); and revising the authority citation to read as follows:

§ 81.43 Review by the Secretary.

(a)(1) * * *

(2) During the Secretary’s review of the initial decision there shall not be any *ex parte* contact between the Secretary and individuals representing the Department or the recipient.

* * * * *

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(d), and 3474(a))

33. The authority citation for sections 81.1, 81.7, 81.8, 81.11, 81.12, 81.17, and 81.19 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

34. The authority citation for section 81.2 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234 (b), (c), and (f)(1), 1234a(a)(1), 1234i, and 3474(a))

35. The authority citation for section 81.4 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234 (b) and (c), and 3474(a))

36. The authority citation for section 81.5 is revised to read as follows:

(Authority: 5 U.S.C. 556(b); 20 U.S.C. 1221e-3, 1234 (d), (f)(1) and (g)(1), and 3474(a))

37. The authority citation for section 81.6 is revised to read as follows:

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e-3, 1234(f)(1), and 3474)

38. The authority citation for section 81.9 is revised to read as follows:

(Authority: 5 U.S.C. 554(b); 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

39. The authority citation for section 81.10 is revised to read as follows:

(Authority: 5 U.S.C. 554(d)(1), 557(d)(1)(A); 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

40. The authority citation for section 81.13 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234 (f)(1) and (h), and 3474(a))

41. The authority citation for section 81.14 is revised to read as follows:

(Authority: 20 U.S.C. 554(c)(1), 1221e-3, 1234(f)(1), and 3474(a))

42. The authority citation for section 81.15 is revised to read as follows:

(Authority: 5 U.S.C. 556 (d) and (e); 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

43. The authority citation for section 81.21 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(k), 1234b (a) and (b), and 3474(a))

44. The authority citation for section 81.22 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234b(a), and 3474(a))

45. The authority citation for section 81.23 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234b(b), and 3474(a))

46. The authority citation for section 81.24 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(a), and 3474(a))

47. The authority citation for section 81.25 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(j), and 3474(a); 31 U.S.C. 3711)

48. The authority citation for section 81.26 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234a (j), and 3474(a))

49. The authority citation for section 81.27 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(b)(1), and 3474(a))

50. The authority citation for section 81.28 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234 (e) and (f)(1), 1234a(b), and 3474(a))

51. The authority citation for section 81.29 is revised to read as follows:

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(c), and 3474(a))

52. The authority citation for section 81.30 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(b)(3), 1234b(b)(1), and 3474(a))

53. The authority citation for section 81.31 is revised to read as follows:

(Authority: 5 U.S.C. 557(c); 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

54. The authority citation for section 81.32 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(e), and 3474(a))

55. The authority citation for section 81.33 is revised to read as follows:

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(d), and 3474(a))

56. The authority citation for section 81.34 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(g), and 3474(a))

57. The authority citation for the appendix to Part 81 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234b(a), and 3474(a))

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