

**DEPARTMENT OF EDUCATION****34 CFR Part 75**

RIN 1880-AA68

**Education Department General Administrative Regulations—Direct Grant Programs**

AGENCY: Department of Education.

ACTION: Final Regulations.

**SUMMARY:** The Secretary amends the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs. These regulations clarify that the Secretary may reject applications that propose project funding levels that exceed the maximum award amount established in an application notice published in the Federal Register. The Secretary issues these regulations to clarify the meaning of existing regulations that govern the application review process.

**EFFECTIVE DATE:** These regulations take effect on April 3, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mary A. Smith, Office of the General Counsel, U.S. Department of Education, 600 Independence Avenue SW., Room 5113, FB10, Washington, D.C. 20202-2241. Individuals who use a telecommunications device for the deaf 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 takes this action to implement a recommendation made by a quality improvement team for improving the discretionary grant award process.

Under current practice, the Department reviews applications that exceed the upper dollar limit of the estimated range of grant awards expected to be made under a competition but, when the awards are made, in most cases, the Department funds the projects at amounts within the funding range.

In conducting competitions, the Department generally publishes application notices that specify the estimated amounts or estimated ranges of awards. However, because these amounts or ranges are estimated, applicants often request funding at levels above the estimated levels. Under most competitions, the practice of the Department has been to establish grant award amounts for successful applicants that are at or below the amounts specified in the estimates. However, in some cases, the Department has made

awards that exceeded the estimates specified in the application notice.

The Department has been guided by the underlying principle that applicants for discretionary grants must be afforded basic fairness in the competitive grant award process. Most of the time applicants who propose projects that exceed the upper limit of the specified range of awards can propose to do significantly more than applicants who propose funding consistent with the estimates. In these circumstances, applicants who request funds that exceed these amounts are likely to receive better scores from reviewers. If those applicants are then selected for funding, the Department, in most cases, negotiates with the applicants to reduce the cost of the projects to bring them within the estimated funding range. As a result, many of the activities in these applications have to be significantly modified, reduced, or eliminated. The result is that the projects negotiated for final award often differ substantially from the applications that were highly rated by the reviewers. This practice has the potential of rewarding applicants who originally request funding above the funding range and penalizing applicants who follow the estimates.

However, this is not always the case. Sometimes the Department is unsure what a highly qualified project should cost. This is especially true when an educational technology is being explored or the Department is supporting research in a new field. In these situations, the Department may not have confidence that it has correctly estimated what the funded projects will cost. Thus, the Secretary would not put a maximum limitation on the competition to account for the possibility that applicants might need more funds than specified in the expected range in order to successfully implement the program's goals.

These regulations would clarify that the Secretary has discretion to establish funding limits for awards, and provide for the inclusion of information on maximum funding levels in application notices.

Under § 75.101(a)(2), the Secretary may include in an application notice the amount of funds available for grants and the estimated number and amounts of those grants. Some application notices have included the estimated amount of funds available for each grant, and some application notices have given an estimated award amount. As the provision in § 75.101(a)(2) is currently worded, it is unclear whether the application notice may include a maximum award amount. These amendments to § 75.101 clarify that the

Secretary may include an estimated amount of funds available for each grant and, if appropriate, a maximum amount of funds available for each grant.

The Secretary also amends 34 CFR 75.104 to require that if a maximum award amount is established, the Secretary may reject applications that propose a budget that would exceed the maximum award amount.

These amendments will ensure better service to the Department's customers by permitting the Department to reject applications that exceed a maximum amount. This process will enable the Department to make awards more quickly and at less cost.

**Executive Order 12866**

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of the regulatory action.

In assessing the potential costs and benefits—both quantitative and qualitative—the Secretary has determined that the benefits of the regulations in clarifying and improving the Department's grant application review process justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

*Summary of potential costs and benefits:* There are no identified costs associated with these regulations. The potential benefits of these regulations are discussed elsewhere in this preamble under the following heading: Supplementary Information.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small local educational agencies, community-based organizations, nonprofit organizations, and institutions of higher education. However, these regulations would have no economic impact on any of the entities affected and would merely ensure a fairer application review process.

**Paperwork Reduction Act of 1995**

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

**Waiver of 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, because the Secretary is interpreting existing regulations to allow an application notice to include an estimated amount of funds available for each grant or a maximum amount of funds available for each grant and because the Secretary is establishing a procedural rule necessary for the Department to conduct grant application review processes, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(A), that proposed rulemaking requirements do not apply.

**List of Subjects in 34 CFR Part 75**

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

Dated: February 28, 1996.

Richard W. Riley,  
*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends Part 75 of Title 34 of the Code of Federal Regulations as follows:

**PART 75—DIRECT GRANT PROGRAMS**

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

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

2. Section 75.101 is amended by revising paragraph (a)(2) to read as follows:

**§ 75.101 Information in the application notice that helps an applicant apply.**

(a) \* \* \*

(2) The amount of funds available for grants, the estimated number of those

grants, the estimated amounts of those grants and, if appropriate, the maximum award amounts of those grants.

\* \* \* \* \*

3. Section 75.104 is revised to read as follows:

**§ 75.104 Applicants must meet procedural rules.**

(a) The Secretary may make a grant only to an eligible party that submits an application.

(b) If a maximum award amount is established in a notice published in the Federal Register, the Secretary may reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount.

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

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