DEPARTMENT OF EDUCATION

34 CFR Part 701

RIN 1850–AA52

Standards for Conduct and Evaluation of Activities Carried out by the Office of Educational Research and Improvement (OERI)—Designation of Exemplary and Promising Programs

AGENCY: Department of Education.

ACTION: Final regulation.

SUMMARY: The Assistant Secretary for Educational Research and Improvement (OERI) is establishing final regulations pursuant to the ''Educational Research, Development, Dissemination, and Improvement Act of 1994.'' The regulations are intended to provide quality assurance that programs designated by the Department of Education as either exemplary or promising have met criteria that will allow educators, professional organizations, and others to use these programs with confidence.

DATES: These regulations take effect December 17, 1997. However, affected parties do not have to comply with the information collection requirement in § 701.4 until the Department of Education publishes in the **Federal Register** notification of the compliance date and the control number assigned by the Office of Management and Budget (OMB) to this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Stephen O'Brien, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 502B, Washington, D.C. Telephone: (202) 219–2141. Internet: (Steve__O'Brien@ed.gov). Individuals who use a telecommunication 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.

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SUPPLEMENTARY INFORMATION: On March 31, 1994, President Clinton signed Public Law 103–227, which includes Title IX, the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Act restructured OERI and provided it with a broad mandate to conduct an array of research, development, dissemination, and improvement activities aimed at strengthening the education of all students.

The Act directed the Assistant Secretary to develop, in consultation with the National Educational Research Policy and Priorities Board (the Board), the highest standards of professional excellence necessary to govern the conduct and evaluation of all research, development, and dissemination activities carried out by the OERI. The legislation requires that the standards be developed in three phases.

In the first phase, standards were promulgated to establish the peer review process and evaluation criteria to be used for reviewing applications for grants and cooperative agreements and proposals for contracts. The Department published final regulations setting out these standards on September 14, 1995 (60 FR 47808). The regulations in this announcement address the second phase of development by establishing the criteria for panels to use in reviewing potentially exemplary and promising educational programs. The Assistant Secretary will later publish proposed regulations for phase three of the standards, which will govern how OERI evaluates performance of its recipients of grants, contracts, and cooperative agreements.

The OERI legislation requires that expert panels be established to review educational programs submitted by individuals or organizations. The legislation also provides that the Secretary may identify educational programs for the panels to review. The statute requires the panels to recommend to the Secretary those programs that should be designated as exemplary or promising and disseminated through the Department's National Education Dissemination System. The law requires that each panel consist of appropriately qualified experts and practitioners and requires the Secretary to develop standards that describe the procedures the panels will use in reviewing the educational programs. Section 941(a)(3) of the law broadly defines educational programs to include educational polices, research findings, practices, and products. Educational programs may range in size and complexity from an individual instructional program—such as an elementary school science program—to a comprehensive reform initiative involving multiple goals and participants. Programs at all levels of education—preschool, elementary, secondary, and postsecondary—are eligible for consideration.

In determining whether an educational program should be recommended as exemplary or promising, each panel is required by the Act to consider: (a) Whether, based on empirical data, the program is effective and should be designated as exemplary or (b) whether there is sufficient evidence to demonstrate that the program shows promise for improving student achievement and should be designated as promising. The Act expressly states that a panel shall not eliminate a program from consideration based on the lack of one type of supporting data such as test scores.

The evaluation process set forth in the final regulations will ensure that programs disseminated by the Department are high-quality, research-based programs that have provided evidence indicating they have improved teaching, learning, or both, or has demonstrated other worthy educational performance outcomes. The Department's dissemination system is designed to make information about these promising and exemplary programs available to the public as quickly as possible. The system will enable the Department to respond to all forms of requests for information and assistance, and to support the applications of research and best practice. The system will use electronic networking and the capabilities of:

—National Research Institutes;
—Educational Resources Information Center (ERIC);
—Regional Educational Laboratories;
—Department-supported dissemination and technical assistance providers;
—National Library of Education;
—Eisenhower Regional Consortia and Clearinghouse, and
—Other public and private nonprofit entities, including education associations and networks.

Until recently, the Department validated exemplary programs through its Program Effectiveness Panel (PEP) and disseminated them through the National Diffusion Network (NDN). Since this program no longer exists, with the adoption of these standards the Department will evaluate and disseminate promising educational programs in addition to exemplary programs. The Department will also work in partnership with constituency groups who have expertise in the specific topic areas represented by the expert panels to develop coordinated procedures to maximize their involvement in this work.

On June 3, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the

Federal Register (61 FR 27990–27993). These final regulations contain three major changes from the NPRM. These changes are fully explained in the ''Analysis of Comments and Changes'' elsewhere in this preamble. The changes pertain to the standing panel; the distinction between ''promising'' and ''exemplary''; and the factors listed under the criteria expert panels will use to evaluate programs.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, seven parties submitted comments on the proposed regulations. This included comments from individual members of two pilot panels (math/science and gender equity) that were appointed by the Secretary to field test the expert panel process. In addition to the public comment, comments from the Board's Subcommittee on Standards are addressed as required by the legislation. The full Board approved the final regulations at a meeting on September 26, 1997. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject with appropriate sections of the regulations referenced in parentheses. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Eligibility (§ 701.3)

Comments: One commenter asked for clarification on who is eligible to submit educational programs for designation as promising or exemplary. Specifically, this commenter asked whether federally-funded entities, such as the Regional Laboratories, will be required to go through this process; whether local agencies that receive Federal funding through states, such as under Title I of the Elementary and Secondary Education Act (ESEA), may submit programs on their own; whether sponsors need to be invited to submit or may submit on their own initiative; and whether for-profit entities may submit.

Discussion: The law provides that ''individuals'' or ''organizations'' may submit educational programs for review. Since the law is silent on the specific nature of the organizations, the Secretary believes that for-profit agencies would be eligible to submit programs for review. With respect to the OERI-funded Regional Educational Laboratories, the law provides that the Secretary may identify those programs for panel review. In addition, the Secretary believes that the Laboratories could submit one or more of their programs on their own initiative. The question of whether local agencies that receive Federal funding through a State or Federal entity, such as under Title I of the ESEA, can submit on their own or must go through their funding agency, will be addressed in administrative guidance.

Changes: None.

Content of Submissions (§ 701.4)

Comments: Three commenters made suggestions about this section. Two commenters believed that requiring funding and staffing information was burdensome and not germane to the designation of a program as promising or exemplary. One commenter believed that this section should require program sponsors to submit specific materials related to content and methods. Another commenter believed that this section should include the requirement that the program include evidence of sustainability of improvement with targeted student populations.

Discussion: The Secretary believes that funding and staffing information should be included to help determine whether an educational program should be recommended as either exemplary or promising. The Secretary agrees that sponsors should be required to submit information or materials specific to content and methods, as available and appropriate. The Secretary believes that the evidence of sustainability of student improvement should be evaluated by peer reviewers in accordance with § 701.22.

Changes: Section 701.4(b)(7) has been renumbered as § 701.4(b)(8) and a new § 701.4(b)(7) has been added to include a provision for specific materials relevant to content and methods.

Procedures for Submitting Educational Programs (New § 701.5)

Comments: One commenter believed that the regulations should contain more specificity about the procedure for submitting programs to the expert panels. This commenter requested specifics on who receives the submissions and whether they may be submitted at any time or only on specific dates.

Discussion: The Secretary agrees that the general submission procedures should be included in regulations. A sponsor seeking the exemplary or promising designation for its educational program may submit its program at any time for consideration to the Assistant Secretary, who will assign the submitted program to the appropriate panel for review. The individual expert panels will set appropriate timelines for program submissions. In addition, the Assistant Secretary will periodically establish and announce in the **Federal Register** specific topic areas of high priority. Sponsors of educational programs in these areas will be invited to submit them for consideration.

Changes: A new § 701.5 has been added to include general procedures for submitting educational programs for review by an expert panel.

Establishment of Panels (§ 701.10)

Comments: The Board's Subcommittee on Standards recommended a change to the expert panel system. The Subcommittee thought that the structure of having members of the expert panels drawn from a separate standing panel of educational experts was an unwieldy, overly-complicated structure. The Board recommended that the expert panels be formed separately from a standing panel, which would instead provide an administrative oversight and monitoring function for the expert panels.

Discussion: The Secretary agrees that the expert panel should be formed separately from a standing panel. The Secretary will determine the feasibility of establishing a separate standing panel for the oversight and monitoring functions referred to by the Board—functions which are administrative in nature and could also be performed by OERI staff. Elimination of a reference to a standing panel in the regulations would not alter the composition and function of the expert panels as outlined in the NPRM.

Changes: Section 701.10(a) has been removed, § 701.10(b) has been revised, § 701.11 has been removed, § 701.12(a) has been revised, and § 701.12 has also been renumbered as § 701.11.

Panel Membership (§§ 701.11 and 701.12)

Comments: One commenter observed that §§ 701.11 and 701.12 in the NPRM did not explicitly state that those serving on the panels would represent both the community of practice and that of research. One commenter believed that each panel should include one or more members with evaluation expertise in order to help evaluate evidence of effectiveness.

Discussion: The Secretary agrees with these comments.

Changes: A sentence has been added at the end of the renumbered § 701.11(a) (formerly § 701.12(a)) stating that the membership of the expert panels will represent both the community of practice and the community of research. Additionally, §§ 701.11(b)(3) and

701.11(b)(4) have been renumbered as §§ 701.11(b)(4) and 701.11(b)(5), respectively; and a new provision for § 701.11(b)(3) has been added to include the selection of at least one individual with expertise in evaluating educational programs.

Difference Between Promising and Exemplary Programs (§ 701.21)

Comments: Five comments were received on the distinction between promising and exemplary programs. As proposed in § 701.21, the distinction was based upon the generalizability of the educational programs. Promising programs had to meet each of the criteria of educational effectiveness in § 701.22 (success, quality, educational significance, and usefulness to others) with respect to only one ''context or population.'' Exemplary programs had to meet each of the criteria ''with respect to multiple contexts or multiple populations.''

Two commenters believed that the distinction should stay the way it was in the NPRM, although one of those suggested some clarifying language. However, three commenters questioned the distinction on the basis that it was too narrowly and artificially drawn and did not reflect the commonly understood meaning of the words ''promising'' and ''exemplary.'' In this regard, one commenter believed that promising programs should not have to meet every criterion in § 701.22 at the same level as exemplary programs. Two commenters believed that promising programs should have to meet the criteria at the same level as exemplary, but that the evidence required of promising programs should be less stringent and that exemplary programs should be held to a higher standard of evidence.

Discussion: The Secretary agrees with those commenters who questioned the proposed distinction and advised OERI to give a more common sense meaning to the terms ''promising'' and ''exemplary.'' The Secretary believes that the distinction between promising and exemplary programs specified in legislation is sufficient to cover these concerns. The Secretary relies upon the expert judgment of the expert panel reviewers in determining the nature and weight of evidence necessary to designate a program as either promising or exemplary, and in applying the criteria listed in § 701.22 in making this determination.

Changes: A revision has been made to the distinction between ''promising'' and ''exemplary.''

Criteria (§ 701.22)

Comments: Five commenters provided comments on this section and suggested revisions to either the wording of the criteria or to the content of the factors listed under each criterion or both. These comments included comments from one member of the math/science pilot panel and three members of the gender equity pilot panel. Although the math/science panel member did provide comments specific to the proposed criteria and factors, the consensus of this panel was that the expert panel process would be better served if each panel developed its own factors specific to the content or discipline or both under review by the individual panel. One commenter suggested that the word ''replicability'' would better capture the concept for the criterion entitled ''usefulness to others.'' In addition, OERI's Board (The Subcommittee on Standards) thought that the regulations should be as simple as possible and should give the expert panels as much discretion as possible in evaluating programs submitted for review.

Discussion: In addition to the math/science and gender equity panels, the Secretary will establish pilot panels in technology and early reading in the next year. The Secretary has determined that until the work of all four pilot panels is concluded, the regulation should retain only the four criteria outlined in the NPRM in § 701.22 and allow each panel the flexibility to establish its own individual factors under each criterion that are specific to its content or discipline. The fact that the comments from the public suggested various changes to the factors underscores the desirability of this approach. While the final regulations will therefore no longer require the expert panels to apply the factors listed in the NPRM, the Secretary encourages each panel to look at these factors as suggested examples. The Secretary will review the factors developed by all of the panels to see if the criteria set forth in the final regulations need to be modified.

Changes: The factors specified under each of the four criteria have been eliminated and the criterion, ''usefulness to others'' has been changed to ''replicability.''

Assessment of Educational Impact

In the NPRM the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the NPRM and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 701

Education, Educational research, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: November 11, 1997.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

The Secretary amends chapter VII of title 34 of the Code of Federal Regulations by adding a new part 701 to read as follows:

PART 701—STANDARDS FOR CONDUCT AND EVALUATION OF ACTIVITIES CARRIED OUT BY THE OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT (OERI)—DESIGNATION OF EXEMPLARY AND PROMISING PROGRAMS

Subpart A—General

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701.22 What criteria are used to evaluate programs for exemplary or promising designation?

Authority: 20 U.S.C. 6011(i), unless otherwise noted.

Subpart A—General

§ 701.1 What is the purpose of these standards?

(a) The standards in this part implement section 941(d) of the Educational Research, Development, Dissemination, and Improvement Act of 1994.

(b) These standards are intended to provide quality assurance that educational programs designated by the U.S. Department of Education as either exemplary or promising have met criteria that will allow educators, professional organizations, and others to use these programs with confidence.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.2 What definitions apply?

The following definitions apply to this part:

Assistant Secretary means the Assistant Secretary for the Office of Educational Research and Improvement.

Educational programs mean educational policies, research findings, practices, and products.

Program sponsor means a party submitting an educational program for designation by the Secretary as either promising or exemplary.

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

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.3 Who is eligible to submit an educational program for review?

Any public or private agency, organization or institution, or an individual may submit an educational program for review.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.4 What must a program sponsor submit for review?

(a) To have an educational program considered for designation as exemplary or promising, a sponsor must submit to the Secretary a description of the program, program materials, and a discussion of the program that is responsive to the criteria in § 701.22.

(b) Information submitted must include, to the extent relevant to the particular program,—

(1) A program abstract of 250 words or less;

(2) A description of the salient features of the program;

(3) A description of the program's philosophy and history;

(4) Site information, including demographics;

(5) A description of evaluation results;

(6) Funding and staffing information;

(7) Specific materials relevant to content and methods, as appropriate; and

(8) Organization name, address, telephone and fax numbers, e-mail address (if available), and contact person.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.5 What are the procedures for submitting an educational program for review by an expert panel?

(a) An applicant seeking the exemplary or promising designation for its educational program may submit its program at any time for consideration to the Assistant Secretary, who will assign the submitted program to the appropriate expert panel for review.

(b) The Assistant Secretary will periodically establish and announce in the **Federal Register** specific topic areas of high priority. Sponsors of educational programs in these areas will be invited to submit their programs for consideration.

(c) The individual expert panels will set appropriate timelines for reviewing program submissions.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

Subpart B—Selection of Panel Members

§ 701.10 How are panels established?

The Assistant Secretary selects individuals, based on their areas of expertise, to serve on expert panels in specific topic areas for the purpose of reviewing and evaluating educational programs and recommending, to the Secretary, those programs that should be designated as exemplary or promising.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.11 How is the membership of expert panels determined?

(a) For the review of each program or group of programs, the Assistant Secretary establishes an expert panel. The membership of the expert panels will represent both the community of practice and the community of research.

(b) In establishing the membership of each expert panel, the Assistant Secretary—

(1) Selects individuals who have in-depth knowledge of the subject area or content of the program or group of programs to be evaluated;

(2) Selects at least one current teacher, principal, or other school-based or community-based professional;

(3) Selects at least one individual with expertise in evaluating educational programs;

(4) Ensures that no more than one-third of the panel members are employees of the Federal Government; and

(5) Ensures that each panel member does not have a conflict of interest, as determined in accordance with paragraph (c) of this section, with respect to any educational program the panel member is asked to review.

(c) Panel members are considered employees of the U.S. Department for the purposes of conflicts of interest analysis and are subject to the provisions of 18 U.S.C. 208, 5 CFR 2635.502, and the Department's policies used to implement those provisions.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

Subpart C—The Expert Panel Review Process

§ 701.20 How does an expert panel evaluate programs?

(a) Each panel member shall—

(1) Independently review each program based on the criteria in § 701.22;

(2) Provide written comments based on an analysis of the strengths and weaknesses of the program according to the criteria;

(3) Participate in site visits or other verification activities, if appropriate; and

(4) Participate in a meeting of the expert panel, if appropriate, to discuss the reviews.

(b) A panel may not eliminate an educational program from consideration based solely on the fact that the program does not have one specific type of supporting data, such as test scores.

(c) Each expert panel shall make a recommendation to the Secretary as to

whether the program is exemplary, promising, or neither.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.21 What is the difference between an exemplary and a promising program?

(a) In determining whether an educational program should be recommended as exemplary or promising, the panel shall consider—

(1) Whether, based on empirical data, the program is effective and should be designated as exemplary; or

(2) Whether there is sufficient evidence to demonstrate that the program shows promise for improving student achievement and should be designated as promising.

(b) The Secretary relies upon the judgment and expertise of peer reviewers, as established in § 701.11, to determine the nature and extent of evidence required to distinguish between promising and exemplary programs and to apply the four criteria established in § 701.22, and their own individual factors under each criterion in making this determination.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.22 What criteria are used to evaluate programs for exemplary or promising designation?

The Secretary establishes the following evaluation criteria for expert panels to use in determining whether an educational program should be recommended as exemplary, promising, or neither:

(a) Evidence of success.

(b) Quality of the program.

(c) Educational significance.

(d) Replicability.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

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