

DEPARTMENT OF EDUCATION**34 CFR Part 75**

RIN 1890-AA02

Direct Grant Programs

AGENCY: Office of the Chief Financial Officer, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs. These amendments will implement new options for our application review process for discretionary grants. These changes will improve the quality of the review process and provide greater opportunities for inexperienced, "novice applicants" to receive funding.

DATES: These regulations are effective December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Valerie Sinkovits, U.S. Department of Education, 400 Maryland Avenue, SW., room 3652, ROB-3, Washington, DC 20202-4248. Telephone: (202) 708-7568.

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SUPPLEMENTARY INFORMATION: On April 17, 2000 the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (65 FR 20698).

In the preamble to the NPRM, the Secretary discussed on pages 20699 through 20702 the major changes proposed in that document to increase the options available for reviewing and selecting discretionary grants. These included the following:

- Amending § 75.217 to include the use of quality bands to evaluate applications and adding a new § 75.223 to describe the procedures used under competitions that use quality bands.
- Adding a new § 75.224 to address the practice that has evolved in some program offices of the Department of Education (Department) involving the use of more than one review of an application, otherwise known as "multiple tier review."
- Adding a new § 75.225 to include procedures to use if the Secretary

decides to give special consideration to novice applicants.

These final regulations contain one significant difference from the NPRM. As a result of public comments we received, we have decided not to make final the regulations regarding the use of quality bands in this document. We would like to do more work to consider fully the issues raised by commenters and to determine whether to issue final regulations for the quality band procedures. Rather than delay the implementation of the procedures for novice applicants, we have decided to publish as much of the NPRM as possible in final now and to notify the public of our decision regarding the quality band procedures at a later date.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, sixteen parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss substantive issues under the section of the regulations to which they pertain. Generally, we do not address technical and other minor changes, as well as suggested changes that the law does not authorize the Secretary to make.

A number of commenters supported these regulations while others raised concerns about them. As discussed earlier, the Secretary has decided to proceed with publishing these final regulations without the sections on quality bands. Therefore, these final regulations include only the sections on multiple tier review and novice procedures. All of the comments discussed below concern novice procedures, as none were received on multiple tier review. Before discussing the individual comments, we provide a general response to the comments we received on the novice procedures.

The novice procedures were developed in response to the public perception that the barriers to receiving a grant are highest for those who have never received a grant before. These procedures are an additional option for Department staff—they are not required—and would be used only in those circumstances where they are programmatically appropriate.

When determining the number of bonus points available to novice applicants under a particular program, the Secretary will carefully balance quality concerns with the goal of enabling new applicants to break into the grant award system. The Secretary will not fund projects under these

procedures that are of poor quality or do not meet the requirements of the program under which they are funded.

Section 75.225 What Procedures Does the Secretary Use if the Secretary Decides To Give Special Consideration to Novice Applications?

Comments: A number of commenters strongly supported the novice procedures, stating that it would be encouraging to first-time applicants to know that more experienced applicants would not necessarily win out over less experienced, yet highly qualified applicants. These commenters believed that this gave their organizations and their grants' intended beneficiaries a better chance of benefiting from Federal funding despite their inexperience in writing applications and managing grants.

Discussion: These comments affirm the Secretary's intent to broaden the pool of applicants that apply for and ultimately receive funding under the Department's discretionary grant programs.

Changes: None.

Comments: Several commenters questioned the appropriateness of allowing programs to give novice applicants any preference in the selection process, stating that all applicants were novices at one time and were able to get funded by following the application procedures, studying funded applications, and submitting high quality proposals. These commenters were concerned that lower quality applications would be funded under these procedures. One commenter questioned the perception held by some unsuccessful applicants that an organization had to already have a grant to get a grant. Another questioned the need for a separate regulation to make the funding of novices a priority, since programs already have the ability to define priorities for funding.

Discussion: During the Department's reengineering process a significant number of focus group participants from the applicant community voiced the opinion that it was very difficult to break into the grant funding system, particularly for small and inexperienced organizations that lack the resources to hire professional grant writers. Therefore, one of the goals of the reengineered grants process is to broaden the range of grant applicants and recipients who participate in our programs. Instituting special procedures for novice applicants is one way to achieve this goal and to address the perception that our grants process is unfairly weighted toward the larger institutions with greater resources. The

Secretary will not fund poor quality applications or ones that do not address the program's requirements. Although programs may set funding priorities, the funding of novice applicants is generally not addressed in this fashion. In addition, this new procedure standardizes the procedures for programs that choose to open up a competition for novices, ensuring greater fairness in the process.

Changes: None.

Comments: A number of commenters recommended that the proposed definition of novice applicant be changed. One commenter suggested that the five-year period without a Federal discretionary grant be eliminated from the novice applicant definition and that the Secretary be given latitude in the final determination of which applicants qualify as novices. One commenter was concerned that under the proposed definition, a "novice applicant" may never have received a grant before simply because it did not have the need that would have made it eligible to apply for a particular grant competition, and not because it lacked the resources or capacity to apply. Another commenter was concerned about how the definition would be applied to groups of applicants, such as consortia and partnerships.

Discussion: The definition was set at five years without a discretionary grant from any Federal program in order to ensure that the applicant was truly an inexperienced novice applicant. If the definition applied only to an applicant that had not received a grant or subgrant under the particular Department of Education program from which it seeks funding, then an applicant with extensive experience in receiving grants from other Federal programs could apply as a novice, which clearly it would not be.

The Secretary recognizes that there is a slight possibility that an organization could qualify as a novice, despite the fact that it had the resources and capacity to apply earlier, but hadn't received a grant from the Federal government in the past five years merely because it hadn't had a legitimate reason to apply. However, the Secretary believes that the likelihood that this would happen is small, and that achieving the goal of broadening the pool of applicants who apply for, and ultimately receive, discretionary grant funding outweighs this concern.

Moreover, the Secretary believes that reserving broad latitude to determine which applicants qualify as novices would not give all potential applicants clear notice of the rules by which the competition will be judged. Finally, the

Secretary agrees that clarification is needed in these final regulations regarding how the novice applicant definition would apply to applications submitted by groups, such as partnerships or consortia. The Secretary believes that in order for an application submitted by a group to qualify as a novice application, all members of the group should meet the definition of novice applicant. The Secretary has also amended the novice applicant definition to clarify that any member of a group application that receives a grant under a Department program could not qualify in the future as a novice applicant for that program.

Changes: In order to provide clarification on how the novice application procedures would apply to applications submitted by a group, the Secretary has amended the novice applicant definition in § 75.225(a) to indicate that when a group submits a novice application each member of the group must meet the novice applicant definition. Further, we have amended the definition to preclude members of a group of eligible applicants that receives a grant from being considered as novice applicants under that particular program in the future. Section 75.225 (a) has also been renumbered accordingly.

Comments: Several commenters supported the idea of separate competitions for novice applicants, but did not want standards to be lowered for these competitions; novice applicants should have to meet the same requirements as any other applicant. There was also support for keeping the size of the awards to novices relatively small. Others commented that the winners of novice competitions might require closer monitoring or additional technical support until the novice grantees develop more experience in grants administration. Another commenter thought it would be more prudent to give the additional assistance in advance of the competition, to ensure the submission of high quality proposals.

Discussion: We agree that novice applicants must meet the same requirements as other applicants. As discussed earlier, the purpose of this regulation is to increase the number of competent grantees, not to reward lower quality applications with funding. In addition, it has always been the policy of the Department to nurture successful projects by providing assistance to new grant recipients, particularly first-time or relatively inexperienced grantees. This assistance is given in the form of technical assistance workshops, where training in basic grants administration is provided, as well as regular contact by

phone or e-mail between Department staff and grant project staff. We expect that in the case of novice grantees, post-award support will be provided to a greater extent than normal, to help ensure the success of these projects. In fact, the use of special procedures for novice applicants will make it easier for program staff to identify those applicants that may need the most assistance. As we gain experience with novice applicants, the most effective ways of ensuring their success will in all likelihood become more evident.

Changes: None.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

These final regulations are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. However, many of the programs that these final regulations would apply to are subject to 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, we intend this document to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number does not apply)

List of Subjects in 34 CFR Part 75

Administrative practice and procedure, Education Department, Grant programs—education, Grant administration, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

Dated: November 26, 2001.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 75 of title 34 of the Code of Federal Regulations as follows:

PART 757—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 75.223 is added and reserved and new §§ 75.224 and 74.225 are added to subpart D under the undesignated center heading “Selection Procedures” to read as follows:

§ 75.223 [Reserved]

§ 75.224 What are the procedures for using a multiple tier review process to evaluate applications?

(a) The Secretary may use a multiple tier review process to evaluate applications.

(b) The Secretary may refuse to review applications in any tier that do not meet a minimum cut-off score established for the prior tier.

(c) The Secretary may establish the minimum cut-off score—

(1) In the application notice published in the **Federal Register**; or

(2) After reviewing the applications to determine the overall range in the quality of applications received.

(d) The Secretary may, in any tier—

(1) Use more than one group of experts to gain different perspectives on an application; and

(2) Refuse to consider an application if the application is rejected under paragraph (b) of this section by any one of the groups used in the prior tier.

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

§ 75.225 What procedures does the Secretary use if the Secretary decides to give special consideration to novice applications?

(a) As used in this section, “novice applicant” means—

(1) Any applicant for a grant from ED that—

(i) Has never received a grant or subgrant under the program from which it seeks funding;

(ii) Has never been a member of a group application, submitted in accordance with §§ 75.127–75.129, that received a grant under the program from which it seeks funding; and

(iii) Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the program.

(2) In the case of a group application submitted in accordance with §§ 75.127–129, a group that includes only parties that meet the requirements of paragraph (a)(1) of this section.

(b) For the purposes of paragraph (a)(1)(iii) of this section, a grant is active until the end of the grant’s project or funding period, including any extensions of those periods that extend the grantee’s authority to obligate funds.

(c) If the Secretary determines that special consideration of novice applications is appropriate, the Secretary may either—

(1) Establish a separate competition for novice applicants; or

(2) Give competitive preference to novice applicants under the procedures in 34 CFR 75.105(c)(2).

(d) Before making a grant to a novice applicant, the Secretary imposes special conditions, if necessary, to ensure the grant is managed effectively and project objectives are achieved.

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

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