

the General Counsel, in a timely manner, the request, together with a recommended disposition of the request.

(e) The General Counsel forwards to the Secretary for decision—

- (1) The employee's request;
- (2) The recommendation of the head of the employee's principal operating component; and
- (3) The General Counsel's recommendation.

(Authority: 20 U.S.C. 3411, 3461, 3471, and 3474)

PART 73—STANDARDS OF CONDUCT

Sec.

73.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

73.2 Conflict of interest waiver.

APPENDIX TO PART 73—CODE OF ETHICS FOR GOVERNMENT SERVICE

AUTHORITY: 5 U.S.C. 301, 7301; 18 U.S.C. 208; and E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306.

SOURCE: 60 FR 5818, Jan. 30, 1995, unless otherwise noted.

§ 73.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Department of Education are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635 and to the Department of Education regulation at 5 CFR part 6301 which supplements the executive branch-wide standards with a requirement for employees to obtain prior approval to participate in certain outside activities. In addition, employees are subject to the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

§ 73.2 Conflict of interest waiver.

If a financial interest arises from ownership by an employee—or other person or enterprise referred to in 5 CFR 2635.402(b)(2)—of stock in a widely diversified mutual fund or other regulated investment company that in turn owns stock in another enterprise, that financial interest is exempt from the prohibition in 5 CFR 2635.402(a).

APPENDIX TO PART 73—CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should: Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.

Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.

Seek to find and employ more efficient and economical ways of getting tasks accomplished.

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.

Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.

Expose corruption wherever discovered.

Uphold these principles, ever conscious that public office is a public trust.

(This Code of Ethics was unanimously passed by the United States Congress on June 27, 1980, and signed into law as Public Law 96-303 by the President on July 3, 1980.)

PART 75—DIRECT GRANT PROGRAMS

Subpart A—General

REGULATIONS THAT APPLY TO DIRECT GRANT PROGRAMS

Sec.

75.1 Programs to which part 75 applies.

75.2 Exceptions to program regulations to part 75.

75.4 [Reserved]

ELIGIBILITY FOR A GRANT

75.50 How to find out whether you are eligible.

75.51 How to prove nonprofit status.

75.52 Eligibility of faith-based organizations for a grant and nondiscrimination against those organizations.

Pt. 75

INELIGIBILITY OF CERTAIN INDIVIDUALS TO RECEIVE ASSISTANCE

- 75.60 Individuals ineligible to receive assistance.
- 75.61 Certification of eligibility; effect of ineligibility.
- 75.62 Requirements applicable to entities making certain awards.
- 75.63 Severability.

Subpart B [Reserved]

Subpart C—How To Apply for a Grant

THE APPLICATION NOTICE

- 75.100 Publication of an application notice; content of the notice.
- 75.101 Information in the application notice that helps an applicant apply.
- 75.102 Deadline date for applications.
- 75.103 Deadline date for preapplications.
- 75.104 Additional application provisions.
- 75.105 Annual absolute, competitive preference, and invitational priorities.

APPLICATION CONTENTS

- 75.109 Changes to applications.
- 75.110 Information regarding performance measurement.
- 75.112 Include a proposed project period, timeline, project narrative, and a logic model or other conceptual framework.
- 75.117 Information needed for a multi-year project.
- 75.118 Requirements for a continuation award.
- 75.119 Information needed if private school students participate.

SEPARATE APPLICATIONS—ALTERNATIVE PROGRAMS

- 75.125 Submit a separate application to each program.
- 75.126 Application must list all programs to which it is submitted.

GROUP APPLICATIONS

- 75.127 Eligible parties may apply as a group.
- 75.128 Who acts as applicant; the group agreement.
- 75.129 Legal responsibilities of each member of the group.

COMPETITION EXCEPTIONS

- 75.135 Competition exception for proposed implementation sites, implementation partners, or service providers.

STATE COMMENT PROCEDURES

- 75.155 Review procedure if State may comment on applications: Purpose of §§ 75.156–75.158.
- 75.156 When an applicant under § 75.155 must submit its application to the State; proof of submission.

34 CFR Subtitle A (7–1–25 Edition)

- 75.157 The State reviews each application.
- 75.158 Deadlines for State comments.
- 75.159 Effect of State comments or failure to comment.
- 75.190–75.192 [Reserved]

Subpart D—How Grants Are Made

SELECTION OF NEW DISCRETIONARY GRANT PROJECTS

- 75.200 How applications for new discretionary grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.
- 75.201 How the selection criteria will be used.
- 75.202–75.206 [Reserved]
- 75.209 Selection criteria based on statutory or regulatory provisions.
- 75.210 General selection criteria.
- 75.211 Selection criteria for unsolicited applications.

SELECTION PROCEDURES

- 75.215 How the Department selects a new project.
- 75.216 Applications that the Secretary may choose not to evaluate for funding.
- 75.217 How the Secretary selects applications for new grants.
- 75.218 Applications not evaluated or selected for funding.
- 75.219 Exceptions to the procedures under § 75.217.
- 75.220 Procedures the Department uses under § 75.219(a).
- 75.221 Procedures the Department uses under § 75.219(b).
- 75.222 Procedures the Department uses under § 75.219(c).
- 75.223 [Reserved]
- 75.224 What are the procedures for using a multiple tier review process to evaluate applications?
- 75.225 What procedures does the Secretary use when deciding to give special consideration to new potential grantees?
- 75.226 What procedures does the Secretary use if the Secretary decides to give special consideration to an application supported by strong evidence, moderate evidence, or promising evidence, or an application that demonstrates a rationale?
- 75.227 What procedures does the Secretary use if the Secretary decides to give special consideration to rural applicants?

PROCEDURES TO MAKE A GRANT

- 75.230 How the Department makes a grant.
- 75.231 Additional information.
- 75.232 The cost analysis; basis for grant amount.
- 75.233 Setting the amount of the grant.
- 75.234 The conditions of the grant.
- 75.235 The notification of grant award.
- 75.236 Effect of the grant.

Office of the Secretary, Education

Pt. 75

APPROVAL OF MULTI-YEAR PROJECTS

- 75.250 Maximum project period.
- 75.251 Budget periods.
- 75.253 Continuation of a multiyear project after the first budget period.
- 75.254 Data collection period.

MISCELLANEOUS

- 75.260 Allotments and reallocations.
- 75.261 Extension of a project period.
- 75.262 Conversion of a grant or a cooperative agreement.
- 75.263 Pre-award costs; waiver of approval.
- 75.264 Transfers among budget categories.

Subpart E—What Conditions Must Be Met by a Grantee?

NONDISCRIMINATION

- 75.500 Constitutional rights, freedom of inquiry, and Federal statutes and regulations on nondiscrimination.

PROJECT STAFF

- 75.511 Waiver of requirement for a full-time project director.
- 75.515 Use of consultants.
- 75.516 Compensation of consultants—employees of institutions of higher education.
- 75.517 [Reserved]
- 75.519 Dual compensation of staff.

CONFLICT OF INTEREST

- 75.524 Conflict of interest: Purpose of § 75.525.
- 75.525 Conflict of interest: Participation in a project.

ALLOWABLE COSTS

- 75.530 General cost principles.
- 75.531 Limit on total cost of a project.
- 75.532 Use of funds for religion prohibited.
- 75.533 Acquisition of real property; construction.
- 75.534 Training grants—automatic increases for additional dependents.

INDIRECT COST RATES

- 75.560 General indirect cost rates and cost allocation plans; exceptions.
- 75.561 Approval of indirect cost rates and cost allocation plans.
- 75.562 Indirect cost rates for educational training projects; exceptions.
- 75.563 Restricted indirect cost rate or cost allocation plans—programs covered.
- 75.564 Reimbursement of indirect costs.
- 75.580 Coordination with other activities.

EVALUATION

- 75.590 Evaluation by the grantee.
- 75.591 Federal evaluation—cooperation by a grantee.

- 75.592 Federal evaluation—satisfying requirement for grantee evaluation.

CONSTRUCTION

- 75.600 Applicability of using grant funds for construction or real property.
- 75.601 Approval of the construction.
- 75.602 Planning the construction.
- 75.603 Beginning the construction.
- 75.604 During the construction.
- 75.605 After the construction.
- 75.606 Real property requirements.
- 75.607–75.609 [Reserved]
- 75.610 Title to site.
- 75.611 Environmental impact assessment.
- 75.612 Avoidance of flood hazards.
- 75.613 Compliance with the Coastal Barrier Resources Act.
- 75.614 Preservation of historic sites.
- 75.615 Build America, Buy America Act.
- 75.616 Energy conservation.
- 75.617 Access for individuals with disabilities.

EQUIPMENT AND SUPPLIES

- 75.618 Safety and health standards.
- 75.619 Charges for use of equipment or supplies.

PUBLICATIONS AND COPYRIGHTS

- 75.620 General conditions on publication.
- 75.621 [Reserved]
- 75.622 Definition of “project materials.”
- 75.623 Public availability of grant-supported research publications.
- 75.626 Show Federal support.

OTHER REQUIREMENTS FOR CERTAIN PROJECTS

- 75.650 Participation of students enrolled in private schools.
- 75.681 Protection of human research subjects.
- 75.682 Treatment of animals.
- 75.683 Health or safety standards for facilities.
- 75.684 Severability.

Subpart F—What Are the Administrative Responsibilities of a Grantee?

GENERAL ADMINISTRATIVE RESPONSIBILITIES

- 75.700 Compliance with the U.S. Constitution, statutes, regulations, stated institutional policies, and applications.
- 75.701 The grantee administers or supervises the project.
- 75.702 Fiscal control and fund accounting procedures.
- 75.703 Obligation of funds during the grant period.
- 75.707 When obligations are made.
- 75.708 Subgrants.
- 75.712 Beneficiary protections: Written notice.
- 75.713 [Reserved]

§ 75.1

75.714 Subgrants, contracts, and other agreements with faith-based organizations.

REPORTS

75.720 Financial and performance reports.
75.721 [Reserved]

RECORDS

75.730 Records related to grant funds.
75.731 Records related to compliance.
75.732 Records related to performance.
75.733 [Reserved]

PRIVACY

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

Subpart G—What Procedures Does the Department Use To Get Compliance?

75.900 Waiver of regulations prohibited.
75.901 Suspension and termination.
75.902 [Reserved]
75.903 Effective date of termination.
75.910 [Reserved]

APPENDIX A TO PART 75—NOTICE OF ANNOUNCEMENT OF AWARD OPPORTUNITIES

APPENDIX B TO PART 75—NOTICE OF AWARD OR CONTRACT

APPENDIX C TO PART 75—WRITTEN NOTICE OF BENEFICIARY PROTECTIONS

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

Section 75.263 also issued under 2 CFR 200.308(e)(1).

Section 75.617 also issued under 31 U.S.C. 3504, 3505.

Section 75.740 also issued under 20 U.S.C. 1232g and 1232h.

SOURCE: 45 FR 22497, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

REGULATIONS THAT APPLY TO DIRECT GRANT PROGRAMS

§ 75.1 Programs to which part 75 applies.

(a) *General.* (1) The regulations in this part apply to each direct grant program of the Department of Education, except as specified in these regulations for direct formula grant programs, as referenced in paragraph (c)(3) of this section.

(2) The Department administers two kinds of direct grant programs. A direct grant program is either a discre-

34 CFR Subtitle A (7-1-25 Edition)

tionary grant program or a formula grant program other than a State-administered formula grant program covered by 34 CFR part 76.

(3) If a direct grant program does not have implementing regulations, the Secretary implements the program under the applicable statutes and regulations and, to the extent consistent with the applicable statutes and regulations, under the General Education Provisions Act and the regulations in this part. With respect to the Impact Aid Program (Title VII of the Elementary and Secondary Education Act of 1965), see 34 CFR 222.19 for the limited applicable regulations in this part.

(b) *Discretionary grant programs.* A discretionary grant program is one that permits the Secretary to use discretionary judgment in selecting applications for funding.

(c) *Formula grant programs.* (1) A formula grant program is one that entitles certain applicants to receive grants if they meet the requirements of the program. Applicants do not compete with each other for the funds, and each grant is either for a set amount or for an amount determined under a formula.

(2) The Secretary applies the applicable statutes and regulations to fund projects under a formula grant program.

(3) For specific regulations in this part that apply to the selection procedures and grant-making processes for direct formula grant programs, see §§ 75.215 and 75.230.

Note 1 to § 75.1: See 34 CFR part 76 for the general regulations that apply to programs that allocate funds by formula among eligible States.

[89 FR 70320, Aug. 29, 2024]

§ 75.2 Exceptions in program regulations to part 75.

If a program has regulations that are not consistent with part 75, the implementing regulations for that program identify the sections of part 75 that do not apply.

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

§ 75.4 [Reserved]

ELIGIBILITY FOR A GRANT

§ 75.50 How to find out whether you are eligible.

Eligibility to apply for a grant under a program of the Department is governed by the applicable statutes and regulations for that program.

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 52 FR 27803, July 24, 1987; 89 FR 70320, Aug. 29, 2024]

§ 75.51 How to prove nonprofit status.

(a) Under some programs, an applicant must show that it is a nonprofit organization.

(b) An applicant may show that it is a nonprofit organization by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State taxing body or the State attorney general certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

[45 FR 22497, Apr. 3, 1980, as amended at 85 FR 82126, Dec. 17, 2020; 89 FR 15702, Mar. 4, 2024; 89 FR 70320, Aug. 29, 2024]

§ 75.52 Eligibility of faith-based organizations for a grant and non-discrimination against those organizations.

(a)(1) A faith-based organization is eligible to apply for and to receive a grant under a program of the Depart-

ment on the same basis as any other private organization.

(2)(i) In the selection of grantees, the Department—

(A) May not discriminate for or against a private organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization; and

(B) Must ensure that all decisions about grant awards are free from political interference, or even the appearance of such interference, and are made on the basis of merit, not on the basis of religion or religious belief, or the lack thereof.

(ii) Notices or announcements of award opportunities and notices of award or contracts must include language substantially similar to that in appendices A and B, respectively, to this part.

(3) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department may require faith-based organizations to provide assurances or notices if they are not required of non-faith-based organizations. Any restrictions on the use of grant funds must apply equally to faith-based and non-faith-based organizations. All organizations that receive grants under a Department program, including organizations with religious character, motives, or affiliation, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct Federal financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(4) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department may disqualify faith-based organizations from applying for or receiving grants under a Department program on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or

§ 75.52

on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(5) Nothing in this section may be construed to preclude the Department from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(6) The Department may not disqualify an organization from participating in any Department program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the Department has determined that it would deny the accommodation.

(b) The provisions of § 75.532 apply to a faith-based organization that receives a grant under a program of the Department.

(c)(1) A private organization that applies for and receives a grant under a program of the Department and engages in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those activities separately in time or location from any programs or services funded by a grant from the Department. Attendance or participation in any such explicitly religious activities by beneficiaries of the programs and services funded by the grant must be voluntary.

(2) The limitations on explicitly religious activities under paragraph (c)(1) of this section do not apply to a faith-based organization that provides services to a beneficiary under a program supported only by "indirect Federal financial assistance."

(3) For purposes of 2 CFR 3474.15, this section, §§ 75.712 and 75.714, and appendices A and B to this part, the following definitions apply:

(i) *Direct Federal financial assistance* means financial assistance received by an entity selected by the Government or a pass-through entity (under this part) to carry out a service (e.g., by contract, grant, or cooperative agree-

34 CFR Subtitle A (7-1-25 Edition)

ment). References to *Federal financial assistance* will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of *indirect Federal financial assistance*.

(ii) *Indirect Federal financial assistance* means financial assistance received by a service provider when the service provider is paid for services rendered by means of a voucher, certificate, or other similar means of government-funded payment provided to a beneficiary who is able to make a choice of a service provider. Federal financial assistance provided to an organization is *indirect* under this definition if—

(A) The government program through which the beneficiary receives the voucher, certificate, or other similar means of government-funded payment is neutral toward religion; and

(B) The organization receives the assistance wholly as the result of the genuine and independent private choice of the beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords a genuinely independent and private choice.

(iii) *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

(iii) *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

(iv) *Pass-through entity* means an entity, including a nonprofit or non-governmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, such as a State administering agency, that accepts direct Federal financial assistance as a primary recipient or grantee and distributes that assistance to other

organizations that, in turn, provide government-funded social services.

(v) *Religious exercise* has the meaning given to the term in 42 U.S.C. 2000cc-5(7)(A).

NOTE 1 TO PARAGRAPH (C)(3): The definitions of *direct Federal financial assistance* and *indirect Federal financial assistance* do not change the extent to which an organization is considered a recipient of Federal financial assistance as those terms are defined under 34 CFR parts 100, 104, 106, and 110.

(d)(1) A faith-based organization that applies for or receives a grant under a program of the Department will retain its independence, autonomy, right of expression, religious character, and authority over its governance. A faith-based organization that receives Federal financial assistance from the Department does not lose the protections of law.

(2) A faith-based organization that applies for or receives a grant under a program of the Department may, among other things—

(i) Retain religious terms in its name;

(ii) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(iii) Use its facilities to provide services without concealing, removing, or altering religious art, icons, scriptures, or other symbols from these facilities;

(iv) Select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization; and

(v) Include religious references in its mission statement and other chartering or governing documents.

(e) An organization that receives any Federal financial assistance under a program of the Department shall not discriminate against a beneficiary or prospective beneficiary in the provision of program services, or in outreach activities related to such services, on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses

to expend the indirect aid on the organization's program.

(f) If a grantee contributes its own funds in excess of those funds required by a matching or grant agreement to supplement federally funded activities, the grantee has the option to segregate those additional funds or commingle them with the funds required by the matching requirements or grant agreement. However, if the additional funds are commingled, this section applies to all of the commingled funds.

(g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the organization receives financial assistance from the Department.

(h) The Department shall not construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

[85 FR 82126, Dec. 17, 2020, as amended at 89 FR 15702, Mar. 4, 2024]

INELIGIBILITY OF CERTAIN INDIVIDUALS TO RECEIVE ASSISTANCE

SOURCE: Sections 75.60 through 75.62 appear at 57 FR 30337, July 8, 1992, unless otherwise noted.

§ 75.60 Individuals ineligible to receive assistance.

An individual is ineligible to receive a fellowship, scholarship, or discretionary grant funded by the Department if the individual—

(a) Is not current in repaying a debt or is in default, as that term is used in 34 CFR part 668, on a debt—

(1) Under a program administered by the Department under which an individual received a fellowship, scholarship, or loan that they are obligated to repay; or

(2) To the Federal Government under a nonprocurement transaction; and

(b) Has not made satisfactory arrangements to repay the debt.

[89 FR 70320, Aug. 29, 2024]

§ 75.61

§ 75.61 Certification of eligibility; effect of ineligibility.

(a) An individual who applies for a fellowship, scholarship, or discretionary grant from the Department shall provide with his or her application a certification under the penalty of perjury—

(1) That the individual is eligible under § 75.60; and

(2) That the individual has not been debarred or suspended by a judge under section 421 of the Controlled Substances Act (21 U.S.C. 862).

(b) The Secretary specifies the form of the certification required under paragraph (a) of this section.

(c) The Secretary does not award a fellowship, scholarship, or discretionary grant to an individual who—

(1) Fails to provide the certification required under paragraph (a) of this section; or

(2) Is ineligible, based on information available to the Secretary at the time the award is made.

(d) If a fellowship, scholarship, or discretionary grant is made to an individual who provided a false certification under paragraph (a) of this section, the individual is liable for recovery of the funds made available under the certification, for civil damages or penalties imposed for false representation, and for criminal prosecution under 18 U.S.C. 1001.

[57 FR 30337, July 8, 1992, as amended at 89 FR 70320, Aug. 29, 2024]

§ 75.62 Requirements applicable to entities making certain awards.

(a) An entity that provides a fellowship, scholarship, or discretionary grant to an individual under a grant from, or an agreement with, the Secretary shall require the individual who applies for such an award to provide with his or her application a certification under the penalty of perjury—

(1) That the individual is eligible under § 75.60; and

(2) That the individual has not been debarred or suspended by a judge under section 421 of the Controlled Substances Act (21 U.S.C. 862).

(b) An entity subject to this section may not award a fellowship, scholarship, or discretionary grant to an individual if—

34 CFR Subtitle A (7–1–25 Edition)

(1) The individual fails to provide the certification required under paragraph (a) of this section; or

(2) The Secretary informs the entity that the individual is ineligible under § 75.60.

(c) If a fellowship, scholarship, or discretionary grant is made to an individual who provided a false certification under paragraph (a) of this section, the individual is liable for recovery of the funds made available under the certification, for civil damages or penalties imposed for false representation, and for criminal prosecution under 18 U.S.C. 1001.

(d) The Secretary may require an entity subject to this section to provide a list of the individuals to whom fellowship, scholarship, or discretionary grant awards have been made or are proposed to be made by the entity.

[57 FR 30337, July 8, 1992, as amended at 89 FR 70320, Aug. 29, 2024]

§ 75.63 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

[85 FR 82128, Dec. 17, 2020]

Subpart B [Reserved]

Subpart C—How To Apply for a Grant

THE APPLICATION NOTICE

§ 75.100 Publication of an application notice; content of the notice.

(a) Each fiscal year the Secretary publishes application notices in the FEDERAL REGISTER that explain what kind of assistance is available for new grants under the programs that the Secretary administers.

(b) The application notice for a program explains one or more of the following:

(1) How to apply for a new grant.

Office of the Secretary, Education

§ 75.104

(2) If preapplications are used under the program, how to preapply for a new grant.

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86297, Dec. 30, 1980; 51 FR 20824, June 9, 1986; 59 FR 30261, June 10, 1994]

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

(a) The Secretary may include such information as the following in an application notice:

(1) How an applicant can obtain an application package.

(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) If the Secretary plans to approve multi-year projects, the project period that will be approved.

(4) Any priorities established by the Secretary for the program for that year and the method the Secretary will use to implement the priorities. (See § 75.105 *Annual priorities*.)

(5) Where to find the regulations that apply to the program.

(6) The statutory authority for the program.

(7) The deadlines established under § 75.102 (Deadline date for applications.) and 34 CFR 79.8 (How does the Secretary provide States an opportunity to comment on proposed Federal financial assistance?).

(b) If the Secretary either requires or permits preapplications under a program, an application notice for the program explains how an applicant can get the preapplication form.

CROSS REFERENCE: See 34 CFR 77.1—definitions of “budget period” and “project period.”

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 84059, Dec. 22, 1980; 46 FR 3205, Jan. 14, 1981; 51 FR 20824, June 9, 1986; 51 FR 21164, June 11, 1986; 60 FR 63873, Dec. 12, 1995; 61 FR 8455, Mar. 4, 1996; 89 FR 70320, Aug. 29, 2024]

§ 75.102 Deadline date for applications.

(a) The application notice for a program sets a deadline date for the trans-

mittal of applications to the Department.

(b)–(c) [Reserved]

(d) If the Secretary allows an applicant to submit a paper application, the applicant must show one of the following as proof of mailing by the deadline date:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(e) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

NOTE: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

[45 FR 22497, Apr. 3, 1980, as amended at 51 FR 20824, June 9, 1986; 69 FR 41201, July 8, 2004; 89 FR 70320, Aug. 29, 2024]

§ 75.103 Deadline date for preapplications.

(a) If the Secretary invites or requires preapplications under a program, the application notice for the program sets a deadline date for preapplications.

(b) An applicant shall submit its preapplication in accordance with the procedures for applications in § 75.102(d).

[57 FR 30337, July 8, 1992, as amended at 89 FR 70320, Aug. 29, 2024]

§ 75.104 Additional application provisions.

(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.

§ 75.105

(c) If an applicant wants a new grant, the applicant must submit an application in accordance with the requirements in the application notice.

[61 FR 8455, Mar. 4, 1996, as amended at 89 FR 70320, Aug. 29, 2024]

§ 75.105 Annual absolute, competitive preference, and invitational priorities.

(a) *What programs are covered by this section?* This section applies to any program for which the Secretary establishes priorities for selection of applications in a particular fiscal year.

(b) *How does the Secretary establish annual priorities?* (1) The Secretary establishes final annual priorities by publishing the priorities in a notice in the FEDERAL REGISTER, usually in the application notice for that program.

(2) The Secretary publishes proposed annual priorities for public comment, unless:

(i) The final annual priorities will be implemented only through invitational priorities (Cross-reference: See 34 CFR 75.105(c)(1));

(ii) The final annual priorities are chosen from a list of priorities already established in the program's regulations;

(iii) Publishing proposed annual priorities would be impracticable, unnecessary, or contrary to the public interest;

(iv) The program statute requires or authorizes the Secretary to establish specified priorities;

(v) The annual priorities are chosen from allowable activities specified in the program statute; or

(vi) The final annual priorities are developed under the exemption from rulemaking for the first grant competition under a new or substantially revised program authority pursuant to section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1), or an exemption from rulemaking under section 681(d) of the Individuals with Disabilities Education Act, 20 U.S.C. 1481(d), section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581, or any other applicable exemption from rulemaking.

(c) *How does the Secretary implement an annual priority?* The Secretary may choose one or more of the following

34 CFR Subtitle A (7-1-25 Edition)

methods to implement an annual priority:

(1) *Invitations.* The Secretary may simply invite applications that meet a priority. If the Secretary chooses this method, an application that meets the priority receives no competitive or absolute preference over applications that do not meet the priority.

(2) *Competitive preference.* The Secretary may give one of the following kinds of competitive preference to applications that meet a priority.

(i) The Secretary may award some or all bonus points to an application depending on the extent to which the application meets the priority. These points are in addition to any points the applicant earns under the selection criteria (see § 75.200(b)). The notice states the maximum number of additional points that the Secretary may award to an application depending upon how well the application meets the priority.

(ii) The Secretary may select an application that meets a priority over an application of comparable merit that does not meet the priority.

(3) *Absolute preference.* The Secretary may give an absolute preference to applications that meet a priority. The Secretary establishes a separate competition for applications that meet the priority and reserves all or part of a program's funds solely for that competition. The Secretary may adjust the amount reserved for the priority after determining the number of high-quality applications received.

[46 FR 3205, Jan. 14, 1981, as amended at 57 FR 30337, July 8, 1992; 60 FR 63873, Dec. 12, 1995; 89 FR 70320, Aug. 29, 2024]

APPLICATION CONTENTS

CROSS REFERENCE: See § 75.200 for a description of discretionary and formula grant programs.

§ 75.109 Changes to applications.

An applicant may make changes to its application on or before the deadline date for submitting the application under the program.

[89 FR 70321, Aug. 29, 2024]

§ 75.110 Information regarding performance measurement.

(a) The Secretary may establish, in an application notice for a competition, one or more program performance measurement requirements, including requirements for performance measures, baseline data, or performance targets, and a requirement that applicants propose in their applications one or more of their own project-specific performance measures, baseline data, or performance targets and ensure that the applicant's project-specific performance measurement plan would, if well implemented, yield quality data.

(b) If the application notice establishes program performance measurement requirements, the applicant must also describe in the application—

(1)(i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and

(ii) If the Secretary requires applicants to collect data after the substantive work of a project is complete in order to measure progress toward attaining certain performance targets, the data-collection and reporting methods the applicant would use during the post-performance period and why those methods are likely to yield quality data.

(2) The applicant's capacity to collect and report the quality of the performance data, as evidenced by quality data collection, analysis, and reporting in other projects or research.

(c) If an application notice requires applicants to propose project-specific performance measures, baseline data, or performance targets, the application must include the following, as required by the application notice:

(1) *Project-specific performance measures.* How each proposed project-specific performance measure would: accurately measure the performance of the project; be consistent with the program performance measures established under paragraph (a) of this section; and be used to inform continuous improvement of the project.

(2) *Baseline data.* (i) Why each proposed baseline is valid and reliable, including an assessment of the quality data used to establish the baseline; or

(ii) If the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

[89 FR 70321, Aug. 29, 2024]

§ 75.112 Include a proposed project period, timeline, project narrative, and a logic model or other conceptual framework.

(a) An application must propose a project period for the project.

(b) An application must include a narrative that describes how the applicant plans to meet each objective of the project and, as appropriate, how the applicant intends to use continuous improvement strategies in its project implementation based on periodic review of research, data, community input, or other feedback to advance the programmatic objectives most effectively and efficiently, in each budget period of the project.

(c) The Secretary may establish, in an application notice, a requirement to include a logic model or other conceptual framework.

(Approved by the Office of Management and Budget under control number 1875-0102)

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 59 FR 30261, June 10, 1994; 89 FR 70321, Aug. 29, 2024]

§ 75.117 Information needed for a multi-year project.

An applicant that proposes a multi-year project shall include in its application:

(a) Information that shows why a multi-year project is needed; and

§ 75.118

(b) A budget narrative accompanied by a budget form prescribed by the Secretary, that provides budget information for each budget period of the proposed project period.

(Approved by the Office of Management and Budget under control number 1875-0102)

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 59 FR 30261, June 10, 1994; 89 FR 70321, Aug. 29, 2024]

§ 75.118 Requirements for a continuation award.

(a) A recipient that wants to receive a continuation award shall submit a performance report that provides the most current performance and financial expenditure information, as directed by the Secretary, that is sufficient to meet the reporting requirements of 2 CFR 200.328 and 200.329 and 34 CFR 75.590 and 75.720.

(b) If a recipient fails to submit a performance report that meets the requirements of paragraph (a) of this section, the Secretary denies continued funding for the grant.

(Approved by the Office of Management and Budget under control number 1875-0102)

CROSS REFERENCE: See 2 CFR 200.327, Financial reporting, and 200.328, Monitoring and reporting program performance; and 34 CFR 75.117, Information needed for a multi-year project, 75.250 through 75.253, Approval of multi-year projects, 75.590, Evaluation by the grantee, and 75.720, Financial and performance reports.

[59 FR 30261, June 10, 1994, as amended at 64 FR 50391, Sept. 16, 1999; 79 FR 76091, Dec. 19, 2014; 89 FR 70321, Aug. 29, 2024]

§ 75.119 Information needed if private school students participate.

If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 53 FR 49143, Dec. 6, 1988]

34 CFR Subtitle A (7-1-25 Edition)

SEPARATE APPLICATIONS—ALTERNATIVE PROGRAMS

§ 75.125 Submit a separate application to each program.

An applicant shall submit a separate application to each program under which it wants a grant.

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 52 FR 27803, July 24, 1987; 60 FR 46493, Sept. 6, 1995]

§ 75.126 Application must list all programs to which it is submitted.

If an applicant is submitting an application for the same project under more than one Federal program, the applicant shall list these programs in its application. The Secretary uses this information to avoid duplicate grants for the same project.

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

GROUP APPLICATIONS

§ 75.127 Eligible parties may apply as a group.

(a) Eligible parties may apply as a group for a grant.

(b) Depending on the program under which a group of eligible parties seeks assistance, the term used to refer to the group may vary. The list that follows contains some of the terms used to identify a group of eligible parties:

- (1) Combination of institutions of higher education.
- (2) Consortium.
- (3) Partnership.
- (4) Joint applicants.
- (5) Cooperative arrangements.

(c) In the case of a group application submitted in accordance with §§ 75.127 through 75.129, all parties in the group must be eligible applicants under the competition.

[45 FR 22497, Apr. 3, 1980, as amended at 89 FR 70321, Aug. 29, 2024]

§ 75.128 Who acts as applicant; the group agreement.

(a) If a group of eligible parties applies for a grant, the members of the group shall either:

- (1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity to apply for the grant.

(b) The members of the group shall enter into an agreement that:

(1) Details the activities that each member of the group plans to perform; and

(2) Binds each member of the group to every statement and assurance made by the applicant in the application.

(c) The applicant shall submit the agreement with its application.

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

§ 75.129 Legal responsibilities of each member of the group.

(a) If the Secretary makes a grant to a group of eligible applicants, the applicant for the group is the grantee and is legally responsible for:

(1) The use of all grant funds;

(2) Ensuring that the project is carried out by the group in accordance with Federal requirements; and

(3) Ensuring that indirect cost funds are determined as required under § 75.564(e).

(b) Each member of the group is legally responsible to:

(1) Carry out the activities it agrees to perform; and

(2) Use the funds that it receives under the agreement in accordance with Federal requirements that apply to the grant.

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 59 FR 59581, Nov. 17, 1994]

COMPETITION EXCEPTIONS

§ 75.135 Competition exception for proposed implementation sites, implementation partners, or service providers.

(a) When entering into a contract with implementation sites or partners, an applicant is not required to comply with the competition requirements in 2 CFR 200.320(b), if—

(1) The contract is with an entity that agrees to provide a site or sites where the applicant would conduct the project activities under the grant;

(2) The implementation sites or partner entities that the applicant proposes to use are identified in the application for the grant; and

(3) The implementation sites or partner entities are included in the application in order to meet a regulatory, statutory, or priority requirement related to the competition.

(b) When entering into a contract for data collection, data analysis, evaluation services, or essential services, an applicant may select a provider using the informal, small-purchase procurement procedures in 2 CFR 200.320(a)(2), regardless of whether that applicant would otherwise be subject to that part or whether the evaluation contract would meet the standards for a small purchase order, if—

(1) The contract is with the data collection, data analysis, evaluation service, or essential service provider;

(2) The data collection, data analysis, evaluation service, or essential service provider that the applicant proposes to use is identified in the application for the grant; and

(3) The data collection, data analysis, evaluation service, or essential service provider is identified in the application in order to meet a statutory, regulatory, or priority requirement related to the competition.

(c) If the grantee relied on the exceptions under paragraph (a) or (b) of this section, the grantee must certify in its application that any employee, officer, or agent participating in the selection, award, or administration of a contract is free of any real or apparent conflict of interest and, if the grantee relied on the exceptions of paragraph (b) of this section, that the grantee used small purchase procedures to obtain the product or service.

(d) A grantee must obtain the Secretary's prior approval for any change to an implementation site, implementation partner, or data collection, data analysis, evaluation service, or essential service provider, if the grantee relied on the exceptions under paragraph (a) or (b) of this section to select the entity.

(e) The exceptions in paragraphs (a) and (b) of this section do not extend to the other procurement requirements in 2 CFR part 200 regarding contracting by grantees and subgrantees.

(f) For the purposes of this section, *essential service* means a product or service directly related to the grant

§ 75.155

that would, if not provided, have a detrimental effect on the grant.

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

[78 FR 49352, Aug. 13, 2013, as amended at 79 FR 76091, Dec. 19, 2014; 80 FR 67264, Nov. 2, 2015; 89 FR 70321, Aug. 29, 2024]

STATE COMMENT PROCEDURES

§ 75.155 Review procedures if State may comment on applications: Purpose of §§ 75.156–75.158.

If applicable statutes and regulations require that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§ 75.156–75.158 for that purpose.

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

CROSS REFERENCE: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372.

[57 FR 30338, July 8, 1992, as amended at 89 FR 70321, Aug. 29, 2024]

§ 75.156 When an applicant under § 75.155 must submit its application to the State; proof of submission.

(a) Each applicant under a program covered by § 75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.

(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

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

§ 75.157 The State reviews each application.

A State that receives an application under § 75.156 may review and comment on the application.

[45 FR 22497, Apr. 3, 1980, as amended at 89 FR 70321, Aug. 29, 2024]

§ 75.158 Deadlines for State comments.

(a) The Secretary may establish a deadline date for receipt of State comments on applications.

(b) The State shall make its comments in a written statement signed by an appropriate State official.

34 CFR Subtitle A (7–1–25 Edition)

(c) The appropriate State official shall submit comments to the Secretary by the deadline date for State comments. The procedures in § 75.102(d) (how to meet a deadline) of this part apply to this submission.

[45 FR 22497, Apr. 3, 1980, as amended at 89 FR 70321, Aug. 29, 2024]

§ 75.159 Effect of State comments or failure to comment.

(a) The Secretary considers those comments of the State that relate to:

(1) Any selection criterion that applies under the program; or

(2) Any other matter that affects the selection of projects for funding under the program.

(b) If the State fails to comment on an application on or before the deadline date for the appropriate program, the State waives its right to comment.

(c) If the applicant does not give the State an opportunity to comment, the Secretary does not select that project for a grant.

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

§§ 75.190–75.192 [Reserved] Consultation.

Subpart D—How Grants Are Made

SELECTION OF NEW DISCRETIONARY GRANT PROJECTS

§ 75.200 How applications for new discretionary grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

(a) The Secretary uses selection criteria to evaluate the applications submitted for new grants under a discretionary grant program.

(b) To evaluate the applications for new grants under the program, the Secretary may use—

(1) Selection criteria established under § 75.209;

(2) Selection criteria in § 75.210; or

(3) Any combination of criteria from paragraphs (b)(1) and (2) of this section.

(c)(1) The Secretary may award a cooperative agreement instead of a grant

Office of the Secretary, Education

§ 75.210

if the Secretary determines that substantial involvement between the Department and the recipient is necessary to carry out a collaborative project.

(2) The Secretary uses the selection procedures in this subpart to select recipients of cooperative agreements.

[89 FR 70322, Aug. 29, 2024]

§ 75.201 How the selection criteria will be used.

(a) In the application package or a notice published in the FEDERAL REGISTER, the Secretary informs applicants of—

(1) The selection criteria chosen; and
(2) The factors selected for considering the selection criteria, if any.

(b) If points or weights are assigned to the selection criteria or factors, the Secretary informs applicants in the application package or a notice published in the FEDERAL REGISTER of—

(1) The total possible score for all of the criteria for a program; and
(2) The assigned weight or the maximum possible score for each criterion or factor under that criterion.

(c) If no points or weights are assigned to the selection criteria or selected factors, the Secretary evaluates each criterion equally and, within each criterion, each factor equally.

[62 FR 10401, Mar. 6, 1997, as amended at 89 FR 70322, Aug. 29, 2024]

§§ 75.202–75.206 [Reserved]

§ 75.209 Selection criteria based on statutory or regulatory provisions.

The Secretary may establish selection criteria and factors based on statutory or regulatory provisions that apply to the authorized program, which may include, but are not limited to, criteria and factors that reflect—

(a) Criteria contained in the program statute or regulations;
(b) Criteria in § 75.210;
(c) Allowable activities specified in the program statute or regulations;
(d) Application content requirements specified in applicable statutes and regulations;
(e) Program purposes, as described in the program statute or regulations; or

(f) Other pre-award and post-award conditions specified in the program statute or regulations.

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

[78 FR 49353, Aug. 13, 2013, as amended at 89 FR 70322, Aug. 29, 2024]

§ 75.210 General selection criteria.

In determining the selection criteria to evaluate applications submitted in a grant competition, the Secretary may select one or more of the following criteria and may select from among the list of optional factors under each criterion. The Secretary may define a selection criterion by selecting one or more specific factors within a criterion or assigning factors from one criterion to another criterion.

(a) *Need for the project.* (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers one or more of the following factors:

(i) The data presented (including a comparison to local, State, regional, national, or international data) that demonstrates the issue, challenge, or opportunity to be addressed by the proposed project.

(ii) The extent to which the proposed project demonstrates the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(iii) The extent to which the proposed project will provide support, resources, or services; or otherwise address the needs of the target population, including addressing the needs of underserved populations most affected by the issue, challenge, or opportunity, to be addressed by the proposed project and close gaps in educational opportunity.

(iv) The extent to which the proposed project will focus on serving or otherwise addressing the needs of underserved populations.

(v) The extent to which the specific nature and magnitude of gaps or challenges are identified and the extent to which these gaps or challenges will be addressed by the services, supports, infrastructure, or opportunities described in the proposed project.

§ 75.210

(vi) The extent to which the proposed project will prepare individuals from underserved populations for employment in fields and careers in which there are demonstrated shortages.

(b) *Significance.* (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the proposed project is relevant at the national level.

(ii) The significance of the problem or issue as it affects educational access and opportunity, including the underlying or related challenges for underserved populations.

(iii) The extent to which findings from the project's implementation will contribute new knowledge to the field by increasing knowledge or understanding of educational challenges, including the underlying or related challenges, and effective strategies for addressing educational challenges and their effective implementation.

(iv) The potential contribution of the proposed project to improve the provision of rehabilitative services, increase the number or quality of rehabilitation counselors, or develop and implement effective strategies for providing vocational rehabilitation services to individuals with disabilities.

(v) The likelihood that the proposed project will result in systemic change that supports continuous, sustainable, and measurable improvement.

(vi) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study, including the extent to which the contributions may be used by other appropriate agencies, organizations, institutions, or entities.

(vii) The potential for generalizing from the findings or results of the proposed project.

(viii) The extent to which the proposed project is likely to build local, State, regional, or national capacity to provide, improve, sustain, or expand training or services that address the needs of underserved populations.

34 CFR Subtitle A (7-1-25 Edition)

(ix) The extent to which the proposed project involves the development or demonstration of innovative and effective strategies that build on, or are alternatives to, existing strategies.

(x) The extent to which the proposed project is innovative and likely to be more effective compared to other efforts to address a similar problem.

(xi) The likely utility of the resources (such as materials, processes, techniques, or data infrastructure) that will result from the proposed project, including the potential for effective use in a variety of conditions, populations, or settings.

(xii) The extent to which the resources, tools, and implementation lessons of the proposed project will be disseminated in ways to the target population and local community that will enable them and others (including practitioners, researchers, education leaders, and partners) to implement similar strategies.

(xiii) The potential effective replicability of the proposed project or strategies, including, as appropriate, the potential for implementation by a variety of populations or settings.

(xiv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially contributions toward improving teaching practice and student learning and achievement.

(xv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in employment, independent living services, or both, as appropriate.

(xvi) The importance or magnitude of the results or outcomes likely to be attained by the proposed project that demonstrate its impact for the targeted underserved populations in terms of breadth and depth of services.

(xvii) The extent to which the proposed project introduces an innovative approach, such as a modification of an evidence-based project component to serve different populations, an extension of an existing evidence-based project component, a unique composition of various project components to explore combined effects, or development of an emerging project component that needs further testing.

(c) *Quality of the project design.* (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, measurable, and ambitious yet achievable within the project period, and aligned with the purposes of the grant program.

(ii) The extent to which the design of the proposed project demonstrates meaningful community engagement and input to ensure that the project is appropriate to successfully address the needs of the target population or other identified needs and will be used to inform continuous improvement strategies.

(iii) The quality of the logic model or other conceptual framework underlying the proposed project, including how inputs are related to outcomes.

(iv) The extent to which the proposed project's logic model or other conceptual framework was developed based on engagement of a broad range of community members and partners.

(v) The extent to which the proposed project proposes specific, measurable targets, connected to strategies, activities, resources, outputs, and outcomes, and uses reliable administrative data to measure progress and inform continuous improvement.

(vi) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to enable successful achievement of project objectives.

(vii) The quality of the proposed demonstration design, such as qualitative and quantitative design, and procedures for documenting project activities and results for underserved populations.

(viii) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including valid and reliable information

about the effectiveness of the approach or strategies employed by the project.

(ix) The extent to which the proposed development efforts include adequate quality controls, continuous improvement efforts, and, as appropriate, repeated testing of products.

(x) The extent to which the proposed project demonstrates that it is designed to build capacity and yield sustainable results that will extend beyond the project period.

(xi) The extent to which the design of the proposed project reflects the most recent and relevant knowledge and practices from research and effective practice.

(xii) The extent to which the proposed project represents an exceptional approach to meeting program purposes and requirements and serving the target population.

(xiii) The extent to which the proposed project represents an exceptional approach to any absolute priority or absolute priorities used in the competition.

(xiv) The extent to which the proposed project will integrate or build on ideas, strategies, and efforts from similar external projects to improve relevant outcomes, using existing funding streams from other programs or policies supported by community, State, and Federal resources.

(xv) The extent to which the proposed project is informed by similar past projects implemented by the applicant with demonstrated results.

(xvi) The extent to which the proposed project will include coordination with other Federal investments, as well as appropriate agencies and organizations providing similar services to the target population.

(xvii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards and increased social, emotional, and educational development for students, including members of underserved populations.

(xviii) The extent to which the proposed project includes explicit plans for authentic, meaningful, and ongoing community member and partner engagement, including their involvement

§ 75.210

in planning, implementing, and revising project activities for underserved populations.

(xix) The extent to which the proposed project includes plans for consumer involvement.

(xx) The extent to which performance feedback and formative data are integral to the design of the proposed project and will be used to inform continuous improvement.

(xxi) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(xxii) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the project period, including a multiyear financial and operating model and accompanying plan; the demonstrated commitment of any partners; demonstration of broad support from community members and partners (such as State educational agencies, teachers' unions, families, business and industry, community members, and State vocational rehabilitation agencies) that are critical to the project's long-term success; or a plan for capacity-building by leveraging one or more of these types of resources.

(xxiii) The extent to which there is a plan to incorporate the project purposes, activities, or benefits into the ongoing work of the applicant beyond the end of the project period.

(xxiv) The extent to which the proposed project will increase efficiency in the use of time, staff, money, or other resources in order to improve results and increase productivity.

(xxv) The extent to which the proposed project will integrate with, or build on, similar or related efforts in order to improve relevant outcomes, using nonpublic funds or resources.

(xxvi) The extent to which the proposed project demonstrates a rationale that is aligned with the purposes of the grant program.

(xxvii) The extent to which the proposed project represents implementation of the evidence cited in support of the proposed project with fidelity.

(xxviii) The extent to which the applicant plans to allocate a significant portion of its requested funding to the evidence-based project components.

34 CFR Subtitle A (7-1-25 Edition)

(xxix) The strength of the commitment from key decision-makers at proposed implementation sites.

(xxx) The extent to which the proposed project is supported by promising evidence.

(d) *Quality of project services.* (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equitable and adequate access and participation for project participants who experience barriers based on one or more of the following: economic disadvantage; gender; race; ethnicity; color; national origin; disability; age; language; migration; living in a rural location; experiencing homelessness or housing insecurity; involvement with the justice system; pregnancy, parenting, or caregiver status; and sexual orientation. This determination includes the steps developed and described in the form Equity For Students, Teachers, And Other Program Beneficiaries (OMB Control No. 1894-0005) (section 427 of the General Education Provisions Act (20 U.S.C. 1228a)).

(3) In addition, the Secretary considers one or more of the following factors:

(i) The extent to which the services to be provided by the proposed project were determined with input from the community to be served to ensure that they are appropriate and responsive to the needs of the intended recipients or beneficiaries, including underserved populations, of those services.

(ii) The extent to which the proposed project is supported by the target population that it is intended to serve.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge and an evidence-based project component.

(iv) The likely benefit to the intended recipients, as indicated by the logic model or other conceptual framework, of the services to be provided.

(v) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to build recipient and project

capacity in ways that lead to improvements in practice among the recipients of those services.

(vi) The extent to which the services to be provided by the proposed project are likely to provide long-term solutions to alleviate the personnel shortages that have been identified or are the focus of the proposed project.

(vii) The likelihood that the services to be provided by the proposed project will lead to meaningful improvements in the achievement of students as measured against rigorous and relevant standards.

(viii) The likelihood that the services to be provided by the proposed project will lead to meaningful improvements in early childhood and family outcomes.

(ix) The likelihood that the services to be provided by the proposed project will lead to meaningful improvements in the skills and competencies necessary to gain employment in high-quality jobs, careers, and industries or build capacity for independent living.

(x) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners, including those from underserved populations, to maximize the effectiveness of project services.

(xi) The extent to which the services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(xii) The extent to which the services to be provided by the proposed project are focused on recipients, community members, or project participants that are most underserved as demonstrated by the data relevant to the project.

(e) *Quality of the project personnel.* (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant demonstrates that it has project personnel or a plan for hiring of personnel who are members of groups that have historically encountered barriers, or who have professional or personal experiences with barriers, based on one or more of the following: economic dis-

advantage; gender; race; ethnicity; color; national origin; disability; age; language; migration; living in a rural location; experiencing homelessness or housing insecurity; involvement with the justice system; pregnancy, parenting, or caregiver status; and sexual orientation.

(3) In addition, the Secretary considers one or more of the following factors:

(i) The extent to which the project director or principal investigator, when hired, has the qualifications required for the project, including formal training or work experience in fields related to the objectives of the project and experience in designing, managing, or implementing similar projects for the target population to be served by the project.

(ii) The extent to which the key personnel in the project, when hired, have the qualifications required for the proposed project, including formal training or work experience in fields related to the objectives of the project, and represent or have lived experiences of the target population.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The extent to which the proposed project team maximizes diverse perspectives, for example by reflecting the lived experiences of project participants, or relevant experience working with the target population.

(v) The extent to which the proposed planning, implementing, and evaluating project team are familiar with the assets, needs, and other contextual considerations of the proposed implementation sites.

(f) *Adequacy of resources.* (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers one or more of the following factors:

(i) The adequacy of support for the project, including facilities, equipment, supplies, and other resources, from the applicant or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the

§ 75.210

proposed project to the implementation and success of the project.

(iii) The extent to which the budget is adequate to support the proposed project and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iv) The extent to which the costs are reasonable in relation to the number of persons to be served, the depth and intensity of services, and the anticipated results and benefits.

(v) The extent to which the costs of the proposed project would permit other entities to replicate the project.

(vi) The level of initial matching funds or other commitment from partners, indicating the likelihood for potential continued support of the project after Federal funding ends.

(vii) The potential for the purposes, activities, or benefits of the proposed project to be institutionalized into the ongoing practices and programs of the applicant, agency, or organization and continue after Federal funding ends.

(g) *Quality of the management plan.* (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers one or more of the following factors:

(i) The feasibility of the management plan to achieve project objectives and goals on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of plans for ensuring the use of quantitative and qualitative data, including meaningful community member and partner input, to inform continuous improvement in the operation of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality and accessible products and services from the proposed project for the target population.

(iv) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(v) How the applicant will ensure that a diversity of perspectives, includ-

34 CFR Subtitle A (7-1-25 Edition)

ing those from underserved populations, are brought to bear in the design, implementation, operation, evaluation, and improvement of the proposed project, including those of parents, educators, community-based organizations, civil rights organizations, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(h) *Quality of the project evaluation or other evidence-building.* (1) The Secretary considers the quality of the evaluation or other evidence-building of the proposed project.

(2) In determining the quality of the evaluation or other evidence-building, the Secretary considers one or more of the following factors:

(i) The extent to which the methods of evaluation or other evidence-building are thorough, feasible, relevant, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation or other evidence-building are appropriate to the context within which the project operates and the target population of the proposed project.

(iii) The extent to which the methods of evaluation or other evidence-building are designed to measure the fidelity of implementation of the project.

(iv) The extent to which the methods of evaluation or other evidence-building include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quality data that are quantitative and qualitative.

(v) The extent to which the methods of evaluation or other evidence-building will provide guidance for quality assurance and continuous improvement.

(vi) The extent to which the methods of evaluation or other evidence-building will provide performance feedback and provide formative, diagnostic, or interim data that is a periodic assessment of progress toward achieving intended outcomes.

(vii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication

or testing and potential implementation in other settings.

(viii) The extent to which the methods of evaluation will, if well implemented, produce evidence about the effectiveness of the project on relevant outcomes that would meet the What Works Clearinghouse standards without reservations, as described in the What Works Clearinghouse Handbooks.

(ix) The extent to which the methods of evaluation will, if well implemented, produce evidence about the effectiveness of the project on relevant outcomes that would meet the What Works Clearinghouse standards with or without reservations, as described in the What Works Clearinghouse Handbooks.

(x) The extent to which the methods of evaluation include an experimental study, a quasi-experimental design study, or a correlational study with statistical controls for selection bias (such as regression methods to account for differences between a treatment group and a comparison group) to assess the effectiveness of the project on relevant outcomes.

(xi) The extent to which the evaluation employs an appropriate analytic strategy to build evidence about the relationship between key project components, mediators, and outcomes and inform decisions on which project components to continue, revise, or discontinue.

(xii) The quality of the evaluation plan for measuring fidelity of implementation, including thresholds for acceptable implementation, to inform how implementation is associated with outcomes.

(xiii) The extent to which the evaluation plan includes a dissemination strategy that is likely to promote others' learning from the project.

(xiv) The extent to which the evaluator has the qualifications, including the relevant training, experience, and independence, required to conduct an evaluation of the proposed project, including experience conducting evaluations of similar methodology as proposed and with evaluations for the proposed population and setting.

(xv) The extent to which the proposed project plan includes sufficient

resources to conduct the project evaluation effectively.

(xvi) The extent to which the evaluation will access and link high-quality administrative data from authoritative sources to improve evaluation quality and comprehensiveness.

(i) *Strategy to scale.* (1) The Secretary considers the applicant's strategy to effectively scale the proposed project for recipients, community members, and partners, including to underserved populations.

(2) In determining the applicant's strategy to effectively scale the proposed project, the Secretary considers one or more of the following factors:

(i) The quality of the strategies to reach scale by expanding the project to new populations or settings.

(ii) The applicant's capacity (such as qualified personnel, financial resources, or management capacity), together with any project partners, to bring the proposed project effectively to scale on a national or regional level during the grant period.

(iii) The applicant's capacity (such as qualified personnel, financial resources, or management capacity), together with any project partners, to further develop and bring the proposed project effectively to scale on a national level during the grant period, based on the findings of the proposed project.

(iv) The quality of the mechanisms the applicant will use to broadly disseminate information and resources on its project to support further development, adaptation, or replication by other entities to implement project components in additional settings or with other populations.

(v) The extent to which there is unmet demand for broader implementation of the project that is aligned with the proposed level of scale.

(vi) The extent to which there is a market of potential entities that will commit resources toward implementation.

(vii) The quality of the strategies to scale that take into account and are responsive to previous barriers to expansion.

(viii) The quality of the plan to deliver project services more efficiently at scale and maintain effectiveness.

§ 75.211

(ix) The quality of the plan to develop revenue sources that will make the project self-sustaining.

(x) The extent to which the project will create reusable data and evaluation tools and techniques that facilitate expansion and support continuous improvement.

[89 FR 70322, Aug. 29, 2024]

§ 75.211 Selection criteria for unsolicited applications.

(a) If the Secretary considers an unsolicited application under 34 CFR 75.222(a)(2)(ii), the Secretary uses the selection criteria and factors, if any, used for the competition under which the application could have been funded.

(b) If the Secretary considers an unsolicited application under 34 CFR 75.222(a)(2)(iii), the Secretary selects from among the criteria in § 75.210(b), and may select from among the specific factors listed under each criterion, the criteria that are most appropriate to evaluate the activities proposed in the application.

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

[62 FR 10403, Mar. 6, 1997]

SELECTION PROCEDURES

§ 75.215 How the Department selects a new project.

Sections 75.216 through 75.222 describe the process the Secretary uses to select applications for new grants. All these sections apply to a discretionary grant program. However, only § 75.216 applies also to a formula grant program. (See § 75.1(b) Discretionary grant programs, § 75.1(c) Formula grant programs, and § 75.200, How applications for new discretionary grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.)

[89 FR 70326, Aug. 29, 2024]

§ 75.216 Applications that the Secretary may choose not to evaluate for funding.

The Secretary may choose not to evaluate an application if—

(a) The applicant does not comply with all of the procedural rules that govern the submission of the application; or

34 CFR Subtitle A (7–1–25 Edition)

(b) The application does not contain the information required under the program.

[89 FR 70326, Aug. 29, 2024]

§ 75.217 How the Secretary selects applications for new grants.

(a) The Secretary selects applications for new grants on the basis of applicable statutes and regulations, the selection criteria, and any priorities or other requirements that have been published in the FEDERAL REGISTER and apply to the selection of those applications.

(b)(1) The Secretary may use experts to evaluate the applications submitted under a program.

(2) These experts may include persons who are not employees of the Federal Government.

(c) The Secretary prepares a rank order of the applications based on the evaluation of their quality according to the selection criteria and any competitive preference points.

(d) The Secretary then determines the order in which applications will be selected for grants. The Secretary considers the following in making these determinations:

(1) The information in each application.

(2) The rank ordering of the applications.

(3) Any other information—

(i) Relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants;

(ii) Concerning the applicant's performance and use of funds under a previous award under any Department program; and

(iii) Concerning the applicant's failure under any Department program to submit a performance report or its submission of a performance report of unacceptable quality.

[52 FR 27804, July 24, 1987, as amended at 62 FR 4167, Jan. 29, 1997; 89 FR 70322, Aug. 29, 2024]

§ 75.218 Applications not evaluated or selected for funding.

(a) The Secretary informs an applicant if its application—

(1) Is not evaluated; or

(2) Is not selected for funding.

Office of the Secretary, Education

§ 75.222

(b) If an applicant requests an explanation of the reason its application was not evaluated or selected, the Secretary provides that explanation.

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

[57 FR 30338, July 8, 1992]

§ 75.219 Exceptions to the procedures under § 75.217.

The Secretary may select an application for funding without following the procedures in § 75.217 if:

(a) The objectives of the project cannot be achieved unless the Secretary makes the grant before the date grants can be made under the procedures in § 75.217;

(b)(1) The application was submitted under the program's preceding competition;

(2) The application was not selected for funding because the application was mishandled or improperly processed by the Department; and

(3) The application has been rated highly enough to deserve selection under § 75.217; or

(c) The Secretary receives an unsolicited application that meets the requirements of § 75.222.

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 52 FR 27804, July 24, 1987; 60 FR 12096, Mar. 3, 1995; 89 FR 70326, Aug. 29, 2024]

§ 75.220 Procedures the Department uses under § 75.219(a).

If the special circumstances of § 75.219(a) appear to exist for an application, the Secretary uses the following procedures:

(a) The Secretary assembles a board to review the application.

(b) The board consists of:

(1) A program officer of the program under which the applicant wants a grant;

(2) An employee from the Office of Finance and Operations (OFO) with responsibility for grant policy; and

(3) A Department employee who is not a program officer of the program but who is qualified to evaluate the application.

(c) The board reviews the application to decide if:

(1) The special circumstances under § 75.219(a) are satisfied;

(2) The application rates high enough, based on the selection criteria, priorities, and other requirements that apply to the program, to deserve selection; and

(3) Selection of the application will not have an adverse impact on the budget of the program.

(d) The board forwards the results of its review to the Secretary.

(e) If each of the conditions in paragraph (c) of this section is satisfied, the Secretary may select the application for funding.

(f) Even if the Secretary does not select the application for funding, the applicant may submit its application under the procedures in Subpart C of this part.

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86297, Dec. 30, 1980; 64 FR 50391, Sept. 16, 1999; 89 FR 70326, Aug. 29, 2024]

§ 75.221 Procedures the Department uses under § 75.219(b).

If the Secretary has documentary evidence that the special circumstances of § 75.219(b) exist for an application, the Secretary may select the application for funding.

[89 FR 70326, Aug. 29, 2024]

§ 75.222 Procedures the Department uses under § 75.219(c).

If the Secretary receives an unsolicited application, the Secretary may consider the application under the following procedures unless the Secretary has published a notice in the FEDERAL REGISTER stating that the program that would fund the application would not consider unsolicited applications:

(a)(1) The Secretary determines whether the application could be funded under a competition planned or conducted for the fiscal year for which funds would be used to fund the application.

(2)(i) If the application could be funded under a competition described in paragraph (a)(1) of this section and the deadline for submission of applications has not passed, the Secretary refers the application to the appropriate competition for consideration under the procedures in § 75.217.

§ 75.223

(ii)(A) If the application could have been funded under a competition described in paragraph (a)(1) of this section and the deadline for submission of applications has passed, the Secretary may consider the application only in exceptional circumstances, as determined by the Secretary.

(B) If the Secretary considers an application under paragraph (a)(2)(ii)(A) of this section, the Secretary considers the application under paragraphs (b) through (e) of this section.

(iii) If the application could not be funded under a competition described in paragraph (a)(1) of this section, the Secretary considers the application under paragraphs (b) through (e) of this section.

(b) If an application may be considered under paragraphs (a)(2)(ii) or (iii) of this section, the Secretary determines if—

(1) There is a substantial likelihood that the application is of exceptional quality and national significance for a program administered by the Department;

(2) The application meets the requirements of all applicable statutes and regulations that apply to the program; and

(3) Selection of the project will not have an adverse impact on the funds available for other awards planned for the program.

(c) If the Secretary determines that the criteria in paragraph (b) of this section have been met, the Secretary assembles a panel of experts that does not include any employees of the Department to review the application.

(d) The experts—

(1) Evaluate the application based on the selection criteria; and

(2) Determine whether the application is of such exceptional quality and national significance that it should be funded as an unsolicited application.

(e) If the experts highly rate the application and determine that the application is of such exceptional quality and national significance that it should be funded as an unsolicited application, the Secretary may fund the application.

NOTE 1 TO § 75.222: To ensure prompt consideration, an applicant submitting an unsolicited application should send the application,

34 CFR Subtitle A (7–1–25 Edition)

marked “Unsolicited Application” on the outside, to U.S. Department of Education, OFO/G6 Functional Application Team, Mail Stop 5C231, 400 Maryland Avenue SW, Washington, DC 20202-4260.

[60 FR 12096, Mar. 3, 1995, as amended at 89 FR 70326, Aug. 29, 2024]

§ 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)

[66 FR 60138, Nov. 30, 2001]

§ 75.225 What procedures does the Secretary use when deciding to give special consideration to new potential grantees?

(a) If the Secretary determines that special consideration of new potential grantees is appropriate, the Secretary may: provide competitive preference to applicants that meet one or more of the conditions in paragraph (b) of this section; or provide special consideration for new potential grantees by establishing one competition for those applicants that meet one or more of the conditions in paragraph (b) of this section and a separate competition for applicants that meet the corresponding conditions in paragraph (c) of this section.

(b) As used in this section, “new potential grantee” means an applicant

that meets one or more of the following conditions—

(1) The applicant has never received a grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that received a grant or cooperative agreement, under the program from which it seeks funds;

(2) The applicant does not, as of the deadline date for submission of applications, have an active grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that has an active grant or cooperative agreement, under the program from which it seeks funds;

(3) The applicant has not had an active discretionary grant or cooperative agreement under the program from which it seeks funds, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program:

- (i) 1 year;
- (ii) 2 years;
- (iii) 3 years;
- (iv) 4 years;
- (v) 5 years;
- (vi) 6 years; or
- (vii) 7 years;

(4) The applicant has not had an active discretionary grant or cooperative agreement from the Department, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program from which it seeks funds:

- (i) 1 year;
- (ii) 2 years;
- (iii) 3 years;
- (iv) 4 years;
- (v) 5 years;
- (vi) 6 years; or
- (vii) 7 years;

(5) The applicant has not had an active contract from the Department within one of the following number of years before the deadline date for submission of applications under the program from which it seeks funds:

- (i) 1 year;
- (ii) 2 years;
- (iii) 3 years;
- (iv) 4 years;
- (v) 5 years;
- (vi) 6 years; or
- (vii) 7 years; or

(6) Any combination of paragraphs (b)(1) through (5) of this section.

(c) As used in this section, an “application from a grantee that is not a new potential grantee” means an applicant that meets one or more of the following conditions—

(1) The applicant has received a grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that received a grant or cooperative agreement, under the program from which it seeks funds;

(2) The applicant has, as of the deadline date for submission of applications, an active grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that has an active grant or cooperative agreement, under the program from which it seeks funds;

(3) The applicant has had an active discretionary grant or cooperative agreement under the program from which it seeks funds, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program:

- (i) 1 year;
- (ii) 2 years;
- (iii) 3 years;
- (iv) 4 years;
- (v) 5 years;
- (vi) 6 years; or
- (vii) 7 years;

(4) The applicant has had an active discretionary grant or cooperative agreement from the Department, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program from which it seeks funds:

- (i) 1 year;
- (ii) 2 years;

§ 75.226

- (iii) 3 years;
- (iv) 4 years;
- (v) 5 years;
- (vi) 6 years; or
- (vii) 7 years;

(5) The applicant has had an active contract from the Department within one of the following number of years before the deadline date for submission of applications under the program from which it seeks funds:

- (i) 1 year;
- (ii) 2 years;
- (iii) 3 years;
- (iv) 4 years;
- (v) 5 years;
- (vi) 6 years; or
- (vii) 7 years.

(d) For the purpose of this section, a grant, cooperative agreement, or contract is active until the end of the grant's, cooperative agreement's, or contract's project or funding period, including any extensions of those periods that extend the grantee's or contractor's authority to obligate funds.

[89 FR 70326, Aug. 29, 2024]

§ 75.226 What procedures does the Secretary use if the Secretary decides to give special consideration to an application supported by strong evidence, moderate evidence, or promising evidence, or an application that demonstrates a rationale?

If the Secretary determines that special consideration of applications supported by strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale is appropriate, the Secretary may establish a separate competition under the procedures in § 75.105(c)(3), or provide competitive preference under the procedures in § 75.105(c)(2), for applications that are supported by—

- (a) Strong evidence;
- (b) Moderate evidence;
- (c) Promising evidence; or
- (d) Evidence that demonstrates a rationale.

[89 FR 70327, Aug. 29, 2024]

§ 75.227 What procedures does the Secretary use if the Secretary decides to give special consideration to rural applicants?

(a) If the Secretary determines that special consideration of rural appli-

34 CFR Subtitle A (7–1–25 Edition)

cants is appropriate, the Secretary may: provide competitive preference to applicants that meet one or more of the conditions in paragraph (b) of this section; or provide special consideration for rural applicants by establishing one competition for those applicants that meet one or more of the conditions in paragraph (b) of this section and a separate competition for applicants that meet the corresponding conditions in paragraph (c).

(b) As used in this section, “rural applicant” means an applicant that meets one or more of the following conditions:

(1) The applicant proposes to serve a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title V, part B of the Elementary and Secondary Education Act of 1965.

(2) The applicant proposes to serve a community that is served by one or more LEAs—

(i) With a locale code of 32, 33, 41, 42, or 43; or

(ii) With a locale code of 41, 42, or 43.

(3) The applicant proposes a project in which a majority of the schools served—

(i) Have a locale code of 32, 33, 41, 42, or 43; or

(ii) Have a locale code of 41, 42, or 43.

(4) The applicant is an institution of higher education with a rural campus setting, or the applicant proposes to serve a campus with a rural setting. Rural settings include one or more of the following: Town-Fringe, Town-Distant, Town-Remote, Rural Fringe, Rural-Distant, and Rural-Remote, as defined by the National Center for Education Statistics College Navigator search tool.

(c) As used in this section, a “non-rural applicant” means an applicant that meets one or more of the following conditions—

(1) The applicant does not propose to serve a local educational agency (LEA) that is eligible under the Small Rural School Achievement program or the Rural and Low-Income School program authorized under title V, part B of the Elementary and Secondary Education Act of 1965.

Office of the Secretary, Education

§ 75.235

(2) The applicant does not propose to serve a community that is served by one or more LEAs—

(i) With a locale code of 32, 33, 41, 42, or 43; or

(ii) With a locale code of 41, 42, or 43.

(3) The applicant proposes a project in which a majority of the schools served—

(i) Have a locale code of 32, 33, 41, 42, or 43; or

(ii) Have a locale code of 41, 42, or 43.

(4) The applicant is not an institution of higher education with a rural campus setting, or the applicant proposes to serve a campus with a rural setting. Rural settings include one or more of the following: Town-Fringe, Town-Distant, Town-Remote, Rural Fringe, Rural-Distant, and Rural-Remote, as defined by the National Center for Education Statistics College Navigator search tool.

[89 FR 70327, Aug. 29, 2024]

PROCEDURES TO MAKE A GRANT]

§ 75.230 How the Department makes a grant.

(a) If the Secretary selects an application under § 75.217, § 75.220, or § 75.222, the Secretary follows the procedures in §§ 75.231 through 75.236 to set the amount and determine the conditions of a grant. Sections 75.235 through 75.236 also apply to grants under formula grant programs. (See § 75.200 for more information.)

[89 FR 70327, Aug. 29, 2024]

§ 75.231 Additional information.

After selecting an application for funding, the Secretary may require the applicant to submit additional information.

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

§ 75.232 The cost analysis; basis for grant amount.

(a) Before the Secretary sets the amount of a new grant, the Secretary does a cost analysis of the project. The Secretary:

(1) Verifies the cost data in the detailed budget for the project;

(2) Evaluates specific elements of costs; and

(3) Examines costs to determine if they are necessary, reasonable, and allowable under applicable statutes and regulations.

(b) The Secretary uses the cost analysis as a basis for determining the amount of the grant to the applicant. The cost analysis shows whether the applicant can achieve the objectives of the project with reasonable efficiency and economy under the budget in the application.

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 59 FR 30261, June 10, 1994]

§ 75.233 Setting the amount of the grant.

(a) Subject to any applicable matching or cost-sharing requirements, the Secretary may fund up to 100 percent of the allowable costs in the applicant's budget.

(b) In deciding what percentage of the allowable costs to fund, the Secretary may consider any other financial resources available to the applicant.

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

[57 FR 30338, July 8, 1992]

§ 75.234 The conditions of the grant.

(a) The Secretary makes a grant to an applicant only after determining—

(1) The approved costs; and

(2) Any specific conditions.

(b) In awarding a cooperative agreement, the Secretary includes conditions that state the explicit character and extent of anticipated collaboration between the Department and the recipient.

[57 FR 30338, July 8, 1992, as amended at 89 FR 70328, Aug. 29, 2024]

§ 75.235 The notification of grant award.

(a) To make a grant, the Secretary issues a notification of grant award and sends it to the grantee.

(b) The notification of grant award sets the amount of the grant award and

§ 75.236

establishes other specific conditions, if any.

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 57 FR 30338, July 8, 1992]

§ 75.236 Effect of the grant.

The grant obligates both the Federal Government and the grantee to the requirements that apply to the grant.

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

CROSS REFERENCE: See 2 CFR 200.308, Revision of budget and program plans.

APPROVAL OF MULTI-YEAR PROJECTS

§ 75.250 Maximum project period.

The Secretary may approve a project period of up to 60 months to perform the substantive work of a grant unless an applicable statute provides otherwise.

[89 FR 70328, Aug. 29, 2024]

§ 75.251 Budget periods.

(a) The Secretary usually approves a budget period of not more than 12 months, even if the project has a multi-year project period.

(b) If the Secretary approves a multi-year project period, the Secretary:

(1) Makes a grant to the project for the initial budget period; and

(2) Indicates his or her intention to make continuation awards to fund the remainder of the project period.

(c) If the Secretary funds a multi-year data collection period, the Secretary may fund the data collection period through separate budget periods and fund those budget periods in the same manner as those periods are funded during the project period.

[45 FR 22497, Apr. 3, 1980, as amended at 78 FR 49354, Aug. 13, 2013]

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

§ 75.253 Continuation of a multiyear project after the first budget period.

(a) *Continuation award.* A grantee, in order to receive a continuation award from the Secretary for a budget period after the first budget period of an approved multiyear project, must—

(1) Either—

34 CFR Subtitle A (7-1-25 Edition)

(i) Demonstrate that it has made substantial progress in achieving—

(A) The goals and objectives of the project; and

(B) The performance targets in the grantee's approved application, if the Secretary established performance measurement requirements for the grant in the application notice; or

(ii) Obtain the Secretary's approval for changes to the project that—

(A) Do not increase the amount of funds obligated to the project by the Secretary; and

(B) Enable the grantee to achieve the goals and objectives of the project and meet the performance targets of the project, if any, without changing the scope or objectives of the project;

(2) Submit all reports as required by § 75.118;

(3) Continue to meet all applicable eligibility requirements of the grant program;

(4) Maintain financial and administrative management systems that meet the requirements in 2 CFR 200.302 and 200.303; and

(5) Receive a determination from the Secretary that continuation of the project is in the best interest of the Federal Government.

(b) *Information considered in making a continuation award.* In determining whether the grantee has met the requirements described in paragraph (a) of this section, the Secretary may consider any relevant information regarding grantee performance. This includes considering reports required by § 75.118, performance measures established under § 75.110, financial information required by 2 CFR part 200, and any other relevant information.

(c) *Funding for continuation awards.* Subject to the criteria in paragraphs (a) and (b) of this section, in selecting applications for funding under a program, the Secretary gives priority to continuation awards over new grants.

(d) *Budget period.* If the Secretary makes a continuation award under this section—

(1) The Secretary makes the award under §§ 75.231 through 75.236; and

(2) The new budget period begins on the day after the previous budget period ends.

(e) *Amount of continuation award.* (1) Within the original project period of the grant and notwithstanding any requirements in 2 CFR part 200, a grantee may expend funds that have not been obligated at the end of a budget period for obligations in subsequent budget periods if—

(i) The obligation is for an allowable cost within the approved scope and objectives of the project; and

(ii) The obligation is not otherwise prohibited by applicable statutes, regulations, or the conditions of an award.

(2) The Secretary may—

(i) Require the grantee to submit a written statement describing how the funds made available under paragraph (e)(1) of this section will be used; and

(ii) Determine the amount of new funds that the Department will make available for the subsequent budget period after considering the statement the grantee provides under paragraph (e)(2)(i) of this section and any other information available to the Secretary about the use of funds under the grant.

(3) In determining the amount of new funds to make available to a grantee under this section, the Secretary considers whether the unobligated funds made available are needed to complete activities that were planned for completion in the prior budget period.

(4) A decision to reduce the amount of a continuation award under this paragraph (e) does not entitle a grantee to reconsideration under 2 CFR 200.342.

(f) *Decision not to make a continuation award.* The Secretary may decide not to make a continuation award if—

(1) A grantee fails to meet any of the requirements in paragraph (a) of this section; or

(2) A grantee fails to ensure that data submitted to the Department as a condition of the grant meet the definition of “quality data” in 34 CFR 77.1(c) and does not have a plan acceptable to the Secretary for addressing data-quality issues in the next budget period.

(g) *Request for reconsideration.* If the Secretary decides not to make a continuation award under this section, the Secretary will notify the grantee of that decision, the grounds on which it is based, and, consistent with 2 CFR 200.342, provide the grantee with an op-

portunity to request reconsideration of the decision.

(1) A request for reconsideration must—

(i) Be submitted in writing to the Department official identified in the notice denying the continuation award by the date specified in that notice; and

(ii) Set forth the grantee’s basis for disagreeing with the Secretary’s decision not to make a continuation award and include relevant supporting documentation.

(2) The Secretary will consider the request for reconsideration.

(h) *No-cost extension when a continuation award is not made.* If the Secretary decides not to make a continuation award under this section, the Secretary may authorize a no-cost extension of the last budget period of the grant in order to provide for the orderly closeout of the grant.

(i) *A decision to reduce or not to make a continuation award does not constitute withholding.* A decision by the Secretary to reduce the amount of a continuation award under paragraph (e) of this section or to not make a continuation award under paragraph (f) of this section does not constitute a withholding under section 455 of GEPA (20 U.S.C. 1234d).

[89 FR 70328, Aug. 29, 2024]

§ 75.254 Data collection period.

(a) The Secretary may approve a data collection period for a grant for a period of up to 72 months after the end of the project period and provide funds for the data collection period for the purpose of collecting, analyzing, and reporting performance measurement data on the project.

(b) If the Secretary plans to approve a data collection period, the Secretary may inform applicants of the Secretary’s intent to approve data collection periods in the application notice published for a competition or may decide to fund data collection periods after grantees have started their project periods.

(c) If the Secretary informs applicants of the intent to approve data collection periods in the notice inviting applications, the Secretary may require applicants to include in the application a budget for, and description

§ 75.260

of, a data collection period for a period of up to 72 months, as specified in the notice inviting applications, after the end of the project period.

[89 FR 70328, Aug. 29, 2024]

MISCELLANEOUS

§ 75.260 Allotments and reallocations.

(a) Under some of the programs covered by this part, the Secretary allots funds under a statutory or regulatory formula.

(b) Any reallocation to other grantees will be made by the Secretary in accordance with applicable statutes and regulations.

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 52 FR 27804, July 24, 1987; 89 FR 70329, Aug. 29, 2024]

§ 75.261 Extension of a project period.

(a) *One-time extension of project period without prior approval.* A grantee may extend the project period of an award one time, for a period up to 12 months, without the prior approval of the Secretary, if—

(1) The grantee meets the requirements for extension in 2 CFR 200.308(e)(2); and

(2) The extension is not otherwise prohibited by statute, regulation, or the conditions of an award.

(b) *Extension of project period with prior approval.* At the conclusion of the project period extension authorized under paragraph (a) of this section, or in any case in which a project period extension is not authorized under paragraph (a) of this section, a grantee, with prior approval of the Secretary, may extend a project for an additional period if—

(1) The extension is not otherwise prohibited by statute, regulations, or the conditions of an award;

(2) The extension does not involve the obligation of additional Federal funds;

(3) The extension is to carry out the approved objectives and scope of the project; and

(4)(i) The Secretary determines that, due to special or unusual circumstances applicable to a class of grantees, the project periods for the grantees should be extended; or

34 CFR Subtitle A (7–1–25 Edition)

(ii)(A) The Secretary determines that special or unusual circumstances would delay completion of the project beyond the end of the project period;

(B) The grantee requests an extension of the project period at least 45 calendar days before the end of the project period; and

(C) The grantee provides a written statement, before the end of the project period, of the reasons the extension is appropriate under paragraph (b)(4)(ii)(A) of this section and the period for which the project extension is requested.

(c) *Waiver.* The Secretary may waive the requirement in paragraph (b)(4)(ii) of this section if—

(1) The grantee could not reasonably have known of the need for the extension on or before the start of the 45-day period; or

(2) The failure to give notice on or before the start of the 45-day period was unavoidable.

[89 FR 70329, Aug. 29, 2024]

§ 75.262 Conversion of a grant or a cooperative agreement.

(a)(1) The Secretary may convert a grant to a cooperative agreement or a cooperative agreement to a grant at the time a continuation award is made under § 75.253.

(2) In deciding whether to convert a grant to a cooperative agreement or a cooperative agreement to a grant, the Secretary considers the factors included in § 75.200(b) (4) and (5).

(b) The Secretary and a recipient may agree at any time to convert a grant to a cooperative agreement or a cooperative agreement to a grant, subject to the factors included in § 75.200(b) (4) and (5).

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

[57 FR 30339, July 8, 1992]

§ 75.263 Pre-award costs; waiver of approval.

A grantee may incur pre-award costs as specified in 2 CFR 200.308(d)(1) unless—

(a) The Department regulations other than 2 CFR part 200 or a statute prohibit these costs; or

Office of the Secretary, Education

§ 75.500

(b) The conditions of the award prohibit these costs.

[80 FR 67264, Nov. 2, 2015, as amended at 89 FR 70329, Aug. 29, 2024]

§ 75.264 Transfers among budget categories.

A grantee may make transfers as specified in 2 CFR 200.308 unless—

(a) ED regulations other than those in 2 CFR part 200 or a statute prohibit these transfers; or

(b) The conditions of the grant prohibit these transfers.

[79 FR 76092, Dec. 19, 2014, as amended at 89 FR 70329, Aug. 29, 2024]

Subpart E—What Conditions Must Be Met by a Grantee?

NONDISCRIMINATION

§ 75.500 Constitutional rights, freedom of inquiry, and Federal statutes and regulations on nondiscrimination.

(a) Each grantee must comply with the following statutes and regulations:

TABLE 1 TO PARAGRAPH (a)

Subject	Statute	Regulations
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d <i>et seq.</i>).	34 CFR part 100.
Discrimination on the basis of disability	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR part 104.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 <i>et seq.</i>).	34 CFR part 106.
Discrimination on the basis of age	Age Discrimination Act of 1975 (42 U.S.C. 6101 <i>et seq.</i>).	34 CFR part 110.

(b)(1) Each grantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is public and that is legally required to abide by the First Amendment to the U.S. Constitution (hereinafter “public institution”), must also comply with the First Amendment to the U.S. Constitution, including protections for freedom of speech, association, press, religion, assembly, petition, and academic freedom, as a material condition of the Department’s grant. The Department will determine that a public institution has not complied with the First Amendment only if there is a final, non-default judgment by a State or Federal court that the public institution or an employee of the public institution, acting in his or her official capacity, violated the First Amendment. A final judgment is a judgment that the public institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the public institution to be in compliance with the First Amendment.

(2) Each grantee that is a public institution also must submit to the Secretary a copy of the final, non-default

judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(c)(1) Each grantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is private (hereinafter “private institution”) must comply with its stated institutional policies regarding freedom of speech, including academic freedom, as a material condition of the Department’s grant. The Department will determine that a private institution has not complied with these stated institutional policies only if there is a final, non-default judgment by a State or Federal court to the effect that the private institution or an employee of the private institution, acting on behalf of the private institution, violated its stated institutional policy regarding freedom of speech or academic freedom. A final judgment is a judgment that the private institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the private institution to be in compliance with its stated institutional policies.

§ 75.511

(2) Each grantee that is a private institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(d) As a material condition of the Department's grant, each grantee that is a public institution shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

(e) A grantee that is a covered entity as defined in 34 CFR 108.3 shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

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

[85 FR 59978, Sept. 23, 2020, as amended at 89 FR 70329, Aug. 29, 2024]

PROJECT STAFF

§ 75.511 Waiver of requirement for a full-time project director.

(a) If regulations under a program require a full-time project director, the Secretary may waive that requirement under the following conditions:

(1) The project will not be adversely affected by the waiver.

(2)(i) The project director is needed to coordinate two or more related projects; or

(ii) The project director must teach a minimum number of hours to retain faculty status.

(b) The waiver either permits the grantee:

(1) To use a part-time project director; or

(2) Not to use any project director.

(c)(1) An applicant or a grantee may request the waiver.

34 CFR Subtitle A (7-1-25 Edition)

(2) The request must be in writing and must demonstrate that a waiver is appropriate under this section.

(3) The Secretary gives the waiver in writing. The waiver is effective on the date the Secretary signs the waiver.

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

CROSS REFERENCE: See 2 CFR 200.308, Revision of budget and program plans.

§ 75.515 Use of consultants.

(a) Subject to Federal statutes and regulations, a grantee shall use its general policies and practices when it hires, uses, and pays a consultant as part of the project staff.

(b) The grantee may not use its grant to pay a consultant unless:

(1) There is a need in the project for the services of that consultant; and

(2) The grantee cannot meet that need by using an employee rather than a consultant.

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

§ 75.516 Compensation of consultants—employees of institutions of higher education.

If an institution of higher education receives a grant for research or for educational services, it may pay a consultant's fee to one of its employees only in unusual circumstances and only if:

(a) The work performed by the consultant is in addition to his or her regular departmental load; and

(b)(1) The consultation is across departmental lines; or

(2) The consultation involves a separate or remote operation.

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

§ 75.517 [Reserved]

§ 75.519 Dual compensation of staff.

A grant may not use its grant to pay a project staff member for time or work for which that staff member is compensated from some other source of funds, consistent with the cost principles described in 2 CFR part 200.

[45 FR 22497, Apr. 3, 1980, as amended at 89 FR 70329, Aug. 29, 2024]

Office of the Secretary, Education

§ 75.534

CONFLICT OF INTEREST

§ 75.524 Conflict of interest: Purpose of § 75.525.

(a) The conflict of interest regulations of the Department that apply to a grant are in § 75.525.

(b) These conflict of interest regulations do not apply to a “local government,” as defined in 2 CFR 200.64, or a “State,” as defined in 2 CFR 200.90.

(c) The regulations in § 75.525 do not apply to a grantee’s procurement contracts. The conflict of interest regulations that cover those procurement contracts are in 2 CFR part 200.

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

[45 FR 22497, Apr. 3, 1980, as amended at 64 FR 50391, Sept. 16, 1999; 79 FR 76092, Dec. 19, 2014]

§ 75.525 Conflict of interest: Participation in a project.

(a) A grantee may not permit a person to participate in an administrative decision regarding a project if:

(1) The decision is likely to benefit that person or a member of his or her immediate family; and

(2) The person:

(i) Is a public official; or

(ii) Has a family or business relationship with the grantee.

(b) A grantee may not permit any person participating in the project to use his or her position for a purpose that is—or gives the appearance of being—motivated by a desire for a private financial gain for that person or for others.

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

ALLOWABLE COSTS

§ 75.530 General cost principles.

The general principles to be used in determining costs applicable to grants and cost-type contracts under grants are specified at 2 CFR part 200, subpart E—Cost Principles.

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

CROSS REFERENCE: See 2 CFR part 200, subpart D—Post Federal Award Requirements.

[79 FR 76092, Dec. 19, 2014]

§ 75.531 Limit on total cost of a project.

A grantee shall ensure that the total cost to the Federal Government is not more than the amount stated in the notification of grant award.

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

[45 FR 22497, Apr. 3, 1980, as amended at 89 FR 70329, Aug. 29, 2024]

§ 75.532 Use of funds for religion prohibited.

(a) No grantee may use its grant to pay for any of the following:

(1) Religious worship, instruction, or proselytization.

(2) Equipment or supplies to be used for any of the activities specified in paragraph (a)(1) of this section.

(b) [Reserved]

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 69 FR 31711, June 4, 2004]

§ 75.533 Acquisition of real property; construction.

No grantee may use its grant for acquisition of real property or for construction unless specifically permitted by the applicable statutes and regulations.

[45 FR 22497, Apr. 3, 1980, as amended at 89 FR 70329, Aug. 29, 2024]

§ 75.534 Training grants—automatic increases for additional dependents.

The Secretary may increase a grant to cover the cost of additional dependents not specified in the notice of award under § 75.235 if—

(a) Allowances for dependents are authorized by applicable statutes and regulations and are allowable under the grant; and

(b) Appropriations are available to cover the cost.

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 57 FR 30339, July 8, 1992; 89 FR 70329, Aug. 29, 2024]

§ 75.560

INDIRECT COST RATES

§ 75.560 General indirect cost rates and cost allocation plans; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) All grantees, other than hospitals and commercial (for-profit) organizations, at 2 CFR part 200, subpart E;

(2) Hospitals, at 45 CFR part 75, appendix XI; and

(3) Commercial (for-profit) organizations, at 48 CFR part 31.

(b) Except as specified in paragraph (c) of this section, a grantee must have obtained a current indirect cost rate agreement or approved cost allocation plan from its cognizant agency, to charge indirect costs to a grant. To obtain a negotiated indirect cost rate agreement or approved cost allocation plan, a grantee must submit an indirect cost rate proposal or cost allocation plan to its cognizant agency within 90 days after the date on which the Department issues the Grant Award Notification (GAN).

(c) A grantee that meets the requirements in 2 CFR 200.414(f) may elect to charge the *de minimis* rate of modified total direct costs (MTDC) specified in that provision, which may be used indefinitely. The *de minimis* rate may not be used on programs that have statutory or regulatory restrictions on the indirect cost rate. No documentation is required to justify the *de minimis* rate.

(1) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(2) For purposes of the MTDC base and application of the *de minimis* rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(d) If a grantee is required to, but does not, have a federally recognized indirect cost rate agreement or approved cost allocation plan, the Secretary may permit the grantee to

34 CFR Subtitle A (7–1–25 Edition)

charge its grant for indirect costs at a temporary rate of 10 percent of budgeted direct salaries and wages.

(e)(1) If a grantee fails to submit an indirect cost rate proposal or cost allocation plan to its cognizant agency within the required 90 days, the grantee may not charge indirect costs to its grant from the end of the 90-day period until it obtains a federally recognized indirect cost rate agreement applicable to the grant.

(2) If the Secretary determines that exceptional circumstances warrant continuation of a temporary indirect cost rate, the Secretary may authorize the grantee to continue charging indirect costs to its grant at the temporary rate specified in paragraph (d) of this section even though the grantee has not submitted its indirect cost rate proposal within the 90-day period.

(3) Once a grantee obtains a federally recognized indirect cost rate that is applicable to the affected grant, the grantee may use that indirect cost rate to claim indirect cost reimbursement for expenditures made on or after the date on which the grantee submitted its indirect cost proposal to its cognizant agency or the start of the project period, whichever is later. However, this authority is subject to the following limitations:

(i) The total amount of funds recovered by the grantee under the federally recognized indirect cost rate is reduced by the amount of indirect costs previously recovered under the temporary indirect cost rate specified in paragraph (d) of this section.

(ii) The grantee must obtain prior approval from the Secretary to shift direct costs to indirect costs in order to recover indirect costs at a higher negotiated indirect cost rate.

(iii) The grantee may not request additional funds to recover indirect costs that it cannot recover by shifting direct costs to indirect costs.

(f) The Secretary accepts a current indirect cost rate and cost allocation plan approved by a grantee's cognizant agency but may establish a restricted indirect cost rate or cost allocation plan compliant with 34 CFR 76.564 through 76.569 to satisfy the statutory

requirements of certain programs administered by the Department.

[89 FR 70329, Aug. 29, 2024]

§ 75.561 Approval of indirect cost rates and cost allocation plans.

(a) If the Department of Education is the cognizant agency, the Secretary approves an indirect cost rate or cost allocation plan for a grantee that is eligible and does not elect a *de minimis* rate, and is not a local educational agency. For the purposes of this section, the term “local educational agency” does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Secretary, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) The Secretary generally approves indirect cost rate agreements annually. Indirect cost rate agreements may be approved for periods longer than a year if the Secretary determines that rates will be sufficiently stable to justify a longer rate period.

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

[59 FR 59583, Nov. 17, 1994, as amended at 89 FR 70330, Aug. 29, 2024]

§ 75.562 Indirect cost rates for educational training projects; exceptions.

(a) Educational training grants provide funds for training or other educational services. Examples of the work supported by training grants are summer institutes, training programs for selected participants, the introduction of new or expanded courses, and similar instructional undertakings that are separately budgeted and accounted for by the sponsoring institution. These grants do not usually support activities involving research, development, and dissemination of new educational materials and methods. Training grants largely implement previously developed materials and methods and require no significant adaptation of techniques or instructional services to fit different circumstances.

(b) The Secretary uses the definition in paragraph (a) of this section to determine which grants are educational training grants.

(c)(1) Indirect cost reimbursement on a training grant is limited to the lesser of the recipient’s approved indirect cost rate, or 8 percent of the modified total direct cost (MTDC) base. MTDC is defined in 2 CFR 200.1.

(2) If the grantee does not have a federally recognized indirect cost rate agreement on the date on which the training grant is awarded, the grantee may elect to use the temporary indirect cost rate authorized under § 75.560(d)(3) or a rate of 8 percent of the MTDC base. The *de minimis* rate may not be used on educational training programs.

(i) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(ii) For purposes of the MTDC base and application of the 8 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(3) The 8 percent indirect cost rate reimbursement limit specified in paragraph (c)(1) of this section also applies when subrecipients issue subawards that fund training, as determined by the Secretary under paragraph (b) of this section.

(4) The 8 percent limit does not apply to agencies of Indian Tribal governments, local governments, and States as defined in 2 CFR 200.1.

(5) Indirect costs in excess of the 8 percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

(d) A grantee using the training rate of 8 percent is required to maintain documentation to justify the 8 percent rate.

[89 FR 70330, Aug. 29, 2024]

§ 75.563 Restricted indirect cost rate or cost allocation plans—programs covered.

If a grantee or subgrantee decides to charge indirect costs to a program that is subject to a statutory prohibition on using Federal funds to supplant non-Federal funds, the grantee must—

§ 75.564

(a) Use a negotiated restricted indirect cost rate or restricted cost allocation plan compliant with 34 CFR 76.564 through 76.569; or

(b) Elect to use an indirect cost rate of 8 percent of the modified total direct costs (MTDC) base if the grantee or subgrantee does not have a negotiated restricted indirect cost rate. MTDC is defined in 2 CFR 200.1. If the Secretary determines that the grantee or subgrantee would have a lower rate under 34 CFR 76.564 through 76.569, the lower rate must be used on the affected program.

(c) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(d) For purposes of the MTDC base and application of the 8 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

[89 FR 70330, Aug. 29, 2024]

§ 75.564 Reimbursement of indirect costs.

(a) Reimbursement of indirect costs is subject to the availability of funds and statutory or administrative restrictions.

(b) The application of the negotiated indirect cost rate (determination of the direct cost base) or cost allocation plan (charging methodology) must be in accordance with the agreement/plan approved by the grantee's cognizant agency.

(c) Indirect cost reimbursement is not allowable under grants for—

(1) Fellowships and similar awards if Federal financing is exclusively in the form of fixed amounts such as scholarships, stipend allowances, or the tuition and fees of an institution;

(2) Construction grants;

(3) Grants to individuals;

(4) Grants to organizations located outside the territorial limits of the United States;

(5) Grants to Federal organizations; and

(6) Grants made exclusively to support conferences.

34 CFR Subtitle A (7–1–25 Edition)

(d) Indirect cost reimbursement on grants received under programs with statutory restrictions or other limitations on indirect costs must be made in accordance with the restrictions in 34 CFR 76.564 through 76.569 and other applicable restrictions.

(e)(1) Indirect costs for a group of eligible parties (See §§ 75.127 through 75.129) are limited to the amount derived by applying the rate of the applicant, or a restricted rate when applicable, to the direct cost base of the grant in keeping with the terms of the applicant's federally recognized indirect cost rate agreement and program requirements.

(2) If a group of eligible parties applies for a training grant under the group application procedures in §§ 75.127 through 75.129, the grant funds allocated among the members of the group are not considered subawards for the purposes of applying the indirect cost rate in § 75.562(c).

[59 FR 59583, Nov. 17, 1994, as amended at 72 FR 69148, Dec. 7, 2007; 89 FR 70331, Aug. 29, 2024]

§ 75.580 Coordination with other activities.

A grantee shall, to the extent possible, coordinate its project with other activities that are in the same geographic area served by the project and that serve similar purposes and target groups.

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 57 FR 30339, July 8, 1992; 89 FR 70331, Aug. 29, 2024]

EVALUATION

§ 75.590 Evaluation by the grantee.

(a) If the application notice for a competition required applicants to describe how they would evaluate their projects, each grantee under that competition must demonstrate to the Department that—

(1) The evaluation meets the standards of the evaluation in the approved application for the project; and

(2) The performance measurement data collected by the grantee and used in the evaluation meet the performance measurement requirements of the approved application.

Office of the Secretary, Education

§ 75.601

(b) If the application notice for a competition did not require applicants to describe how they would evaluate their projects, each grantee must provide information in its performance report demonstrating—

(1) The progress made by the grantee in the most recent budget period, including progress based on the performance measurement requirements of the grant, if any;

(2) The effectiveness of the grant, including fulfilling the performance measurement requirements of the approved application, if any; and

(3) The effect of the project on the participants served by the project, if any.

(c) An application notice for a competition may require each grantee under that competition to do one or more of the following:

(1) Conduct an independent evaluation;

(2) Make public the final report, including results of any required independent evaluation;

(3) Ensure that the data from the independent evaluation are made available to third-party researchers consistent with the requirements in 34 CFR part 97, Protection of Human Subjects, and other applicable laws;

(4) Submit the final evaluation to the Education Resources Information Center (ERIC), which is administered by the Institute of Education Sciences; or

(5) Submit the final performance report under the grant to ERIC.

[78 FR 49354, Aug. 13, 2013, as amended at 89 FR 70331, Aug. 29, 2024]

§ 75.591 Federal evaluation—cooperation by a grantee.

A grantee must cooperate in any evaluation of the program by the Secretary. If requested by the Secretary, a grantee must, among other types of activities—

(a) Cooperate with the collection of information, including from all or a subset of subgrantees and potential project beneficiaries, including both participants and non-participants, through surveys, observations, administrative records, or other data collection and analysis methods. This information collection may include program characteristics, including uses of

program funds, as well as beneficiary characteristics, participation, and outcomes; and

(b) Pilot its Department-funded activities with a subset of subgrantees, potential project beneficiaries, or eligible participants and allow the Department or its agent to randomly select the subset for the purpose of providing a basis for an experimental evaluation that could meet What Works Clearinghouse standards, with or without reservations.

[89 FR 70331, Aug. 29, 2024]

§ 75.592 Federal evaluation—satisfying requirement for grantee evaluation.

If a grantee cooperates in a Federal evaluation of a program, the Secretary may determine that the grantee meets the evaluation requirements of the program, including § 75.590.

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

CONSTRUCTION

CROSS REFERENCE: See 2 CFR part 200.317-200.326 for procurement requirements.

§ 75.600 Applicability of using grant funds for construction or real property.

(a) As used in this section, the terms “construction” and “minor remodeling” have the meanings given those terms in 34 CFR 77.1(c).

(b) Except as provided in paragraph (c) of this section, §§ 75.600 through 75.618 apply to—

(1) An applicant that requests funds for construction or real property acquisition; and

(2) A grantee whose grant includes funds for construction or real property acquisition.

(c) Sections 75.600 through 75.618 do not apply to grantees in—

(1) Programs prohibited from using funds for construction or real property acquisition under § 75.533; and

(2) Projects determined by the Secretary to be minor remodeling under 34 CFR 77.1(c).

[89 FR 70331, Aug. 29, 2024]

§ 75.601 Approval of the construction.

(a) The Secretary approves a direct grantee construction project—

§ 75.602

(1) When the initial grant application is approved; or

(2) After the grant has been awarded.

(b) A grantee may not advertise or place the construction project on the market for bidding until after the Secretary has approved the project.

[89 FR 70331, Aug. 29, 2024]

§ 75.602 Planning the construction.

(a) In planning the construction project, a grantee—

(1) Must ensure that the design is functional, economical, and not elaborate in design or extravagant in the use of materials compared with facilities of a similar type constructed in the State or other applicable geographic area;

(2) May consider excellence of architecture and design and inclusion of works of art. A grantee must not spend more than 1 percent of the cost of the project on works of art; and

(3) May make reasonable provision, consistent with the other uses to be made of the construction, for areas that are adaptable for artistic and other cultural activities.

(b) In developing the proposed budget for the construction project, a grantee—

(1) Must ensure that sufficient funds are available to meet any non-Federal share of the cost of the construction project;

(2) May include sufficient funds for commissioning of energy, HVAC, and water systems and to train personnel in the proper operation of such building systems;

(3) For new construction and major rehabilitation projects, may consider life-cycle cost analysis for major design decisions to the extent possible;

(4) May budget for reasonable and predictable contingency costs consistent with 2 CFR 200.433; and

(5) May budget for school and community education about the construction project including its energy, environmental, and health features and benefits.

(c) Prior to approving a construction project under § 75.601, the Secretary considers a grantee's compliance with the following requirements, as applicable:

(1) Title to site (§ 75.610).

34 CFR Subtitle A (7–1–25 Edition)

(2) Environmental impact assessment (§ 75.611).

(3) Avoidance of flood hazards (§ 75.612).

(4) Compliance with the Coastal Barrier Resources Act (§ 75.613).

(5) Preservation of historic sites (§ 75.614).

(6) Build America, Buy America Act (§ 75.615).

(7) Energy conservation (§ 75.616).

(8) Access for individuals with disabilities (§ 75.617).

(9) Safety and health standards (§ 75.618).

[89 FR 70331, Aug. 29, 2024]

§ 75.603 Beginning the construction.

(a) A grantee must begin work on the construction project within a reasonable time after the Secretary has approved the project under § 75.601.

(b) A grantee must follow all applicable procurement standards in 2 CFR part 200, subpart D, when advertising or placing the project on the market for bidding.

[89 FR 70331, Aug. 29, 2024]

§ 75.604 During the construction.

(a) A grantee must maintain competent architectural engineering supervision and inspection at the construction site to ensure that the work conforms to the approved final working specifications.

(b) A grantee must complete the construction in accordance with the approved final working specifications unless a revision is approved.

(c) If a revision to the timeline, budget, or approved final working specifications is required, the grantee must request prior written approval consistent with 2 CFR 200.308(h).

(d) A grantee must comply with Federal laws regarding prevailing wages on construction and minor remodeling projects assisted with Department funding, including, as applicable, subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”); as applied through section 439 of GEPA; 20 U.S.C. 1232b) and any tribally determined prevailing wages.

Office of the Secretary, Education

§ 75.612

(e) A grantee must submit periodic performance reports regarding the construction project containing information specified by the Secretary consistent with 2 CFR 200.329(d).

[89 FR 70332, Aug. 29, 2024]

§ 75.605 After the construction.

(a) A grantee must ensure that sufficient funds will be available for effective operation and maintenance of the facilities after the construction is complete.

(b) A grantee must operate and maintain the facilities in accordance with applicable Federal, State, and local requirements.

(c) A grantee must maintain all financial records, supporting documents, statistical records, and other non-Federal entity records pertinent to the construction project consistent with 2 CFR 200.334.

[89 FR 70332, Aug. 29, 2024]

§ 75.606 Real property requirements.

(a) The Secretary approves a direct grantee real property project—

(1) When the initial grant application is approved;

(2) After the grant has been awarded; or

(3) With the approval of a construction project under § 75.601.

(b) A grantee using any grant funds for real property acquisition must—

(1) Comply with the Real Property Standards of the Uniform Guidance (2 CFR 200.310 through 200.316);

(2) Not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without written permission and instructions from the Secretary;

(3) In accordance with agency directives, record the Federal interest in the title of the real property in the official real property records for the jurisdiction in which the facility is located and include a covenant in the title of the real property to ensure nondiscrimination; and

(4) Report at least annually on the status of real property in which the Federal Government retains an interest consistent with 2 CFR 200.330.

(c) A grantee is subject to the regulations on relocation assistance and real property acquisition in 34 CFR part 15 and 49 CFR part 24, as applicable.

[89 FR 70332, Aug. 29, 2024]

§§ 75.607–75.609 [Reserved]

§ 75.610 Title to site.

A grantee must have or obtain a full title or other interest in the site (such as a long-term lease), including right of access, that is sufficient to ensure the grantee's undisturbed use and possession of the facilities for at least 25 years after completion of the project or for the useful life of the construction, whichever is longer.

[89 FR 70332, Aug. 29, 2024]

§ 75.611 Environmental impact assessment.

(a) When a grantee's construction or real property acquisition project is considered a "Major Federal Action," as defined in 40 CFR 1508.1(q), the grantee must include an assessment of the impact of the proposed construction on the quality of the environment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and Executive Order 11514 (35 FR 4247).

(b) If a grantee's construction or real property project is not considered a "Major Federal Action" under NEPA, a NEPA environmental impact assessment is not required; however—

(1) An environmental impact assessment may be required under State or local requirements; and

(2) Grantees are encouraged to perform some type of environmental assessment for projects that involve breaking ground, such as projects to expand the size of an existing building or replace an outdated building.

[89 FR 70332, Aug. 29, 2024]

§ 75.612 Avoidance of flood hazards.

In planning the construction or real property project, a grantee must, consistent with Executive Order (E.O.) 11988 of May 24, 1977, E.O. 13690 of January 30, 2015, and E.O. 14030 of May 20, 2021—

(a) Evaluate flood hazards in connection with the construction;

§ 75.613

(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with the construction;

(c) Mitigate flood hazards through design such as elevating systems and first floor elevations above flood level plus freeboard; and

(d) Summarize remaining flood risks in a memorandum. CITA≤[89 FR 70332, Aug. 29, 2024]

§ 75.613 Compliance with the Coastal Barrier Resources Act.

A grantee may not use, within the Coastal Barrier Resources System, funds made available under a program administered by the Secretary for any purpose prohibited by the Coastal Barrier Resources Act (16 U.S.C. 3501–3510).

[89 FR 70332, Aug. 29, 2024]

§ 75.614 Preservation of historic sites.

(a) A grantee must describe the relationship of the proposed construction to, and probable effect on, any district, site, building, structure, or object that is—

(1) Included in the National Register of Historic Places; or

(2) Eligible under criteria established by the Secretary of the Interior for inclusion in the National Register of Historic Places.

(b) In deciding whether to approve a construction project, the Secretary considers—

(1) The information provided by the grantee under paragraph (a) of this section; and

(2) Any comments received by the Advisory Council on Historic Preservation (see 36 CFR part 800).

[89 FR 70332, Aug. 29, 2024]

§ 75.615 Build America, Buy America Act.

A grantee must comply with the requirements of the Build America, Buy America Act, Pub. L. 117–58, § 70901 through 70927 and implementing regulations, as applicable.

[89 FR 70333, Aug. 29, 2024]

§ 75.616 Energy conservation.

(a) To the extent practicable, a grantee must design and construct facilities to maximize the efficient use of

34 CFR Subtitle A (7–1–25 Edition)

energy. A grantee that is constructing a new school building or conducting a major rehabilitation of a school building may evaluate life-cycle costs and benefits of highly efficient, all-electric systems or a net zero energy project in the early design phase.

(b) A grantee must comply with ASHRAE 90.1–2022 in their construction project.

(c) ANSI/ASHRAE/IES Standard 90.1–2022 (I–P), Energy Standard for Sites and Buildings Except Low-Rise Residential Buildings (I–P Edition), 2022 (“ASHRAE Standard 90.1–2022”), is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Department of Education (the Department) and at the National Archives and Records Administration (NARA). Contact the Department at: Department of Education, 400 Maryland Avenue SW, room 4C212, Washington, DC, 20202–8472; phone: (202) 245–6776; email: EDGAR@ed.gov. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) at American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 180 Technology Parkway, Peachtree Corners, GA 30092; www.ashrae.org; 404–636–8400.

[89 FR 70333, Aug. 29, 2024]

§ 75.617 Access for individuals with disabilities.

A grantee must comply with the following Federal regulations on access by individuals with disabilities that apply to the construction of facilities:

(a) For residential facilities: 24 CFR part 40.

(b) For non-residential facilities: 41 CFR 102–76.60 to 102–76.95.

[89 FR 70333, Aug. 29, 2024]

Office of the Secretary, Education

§ 75.623

EQUIPMENT AND SUPPLIES

CROSS REFERENCE: See 2 CFR 200.311, Real property; 200.313, Equipment; 200.314, Supplies; and 200.59, Intangible property; and 200.315, Intangible property.

§ 75.618 Safety and health standards.

In planning for and designing a construction project,

(a) A grantee must comply with the following:

(1) The standards under the Occupational Safety and Health Act of 1970 (See 29 CFR part 1910).

(2) State and local codes, to the extent that they are more stringent.

(b) A grantee may use additional standards and best practices to support health and wellbeing of students and staff.

[89 FR 70333, Aug. 29, 2024]

§ 75.619 Charges for use of equipment or supplies.

A grantee may not charge students or school personnel for the ordinary use of equipment or supplies purchased with grant funds.

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 89 FR 70333, Aug. 29, 2024]

PUBLICATIONS AND COPYRIGHTS

§ 75.620 General conditions on publication.

(a) *Content of materials.* Subject to any specific requirements that apply to its grant, a grantee may decide the format and content of project materials that it publishes or arranges to have published.

(b) *Required statement.* The grantee must ensure that any publication that contains project materials also contains the following statement: The contents of this [insert type of publication; such as book, report, film, website, and web page] were developed under a grant from the U.S. Department of Education (Department). The Department does not mandate or prescribe practices, models, or other activities described or discussed in this document. The contents of this [insert type of publication] may contain examples of, adaptations of, and links to resources created and maintained by an-

other public or private organization. The Department does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. The content of this [insert type of publication] does not necessarily represent the policy of the Department. This publication is not intended to represent the views or policy of, or be an endorsement of any views expressed or materials provided by, any Federal agency.

[89 FR 70333, Aug. 29, 2024]

§ 75.621 [Reserved]

§ 75.622 Definition of “project materials.”

As used in §§ 75.620 through 75.621, “project materials” means a copyrightable work developed with funds from a grant of the Department. (See 2 CFR 200.307 and 200.315.)

[89 FR 70333, Aug. 29, 2024]

§ 75.623 Public availability of grant-supported research publications.

(a) Grantees must make final peer-reviewed scholarly publications resulting from research supported by Department grants available to the Education Resources Information Center (ERIC), which is administered by the Institute of Education Sciences, upon acceptance for publication.

(b) A final, peer-reviewed scholarly publication is the final version accepted for publication and includes all edits made as part of the peer review process, as well as all graphics and supplemental materials that are associated with the article.

(c) The Department will make the final, peer-reviewed scholarly publication available to the public through ERIC at the same time as the publication becomes available on the publisher’s website.

(d) Grantees are responsible for ensuring that any publishing or copyright agreements concerning submitted articles fully comply with this section.

(e) Grantees must make scientific data that inform the findings in a peer-reviewed scholarly publication publicly available, consistent with requirements in 34 CFR part 97, Protection of

§ 75.626

Human Subjects, and other applicable laws.

[89 FR 70333, Aug. 29, 2024]

§ 75.626 Show Federal support.

Any patent application filed by a grantee for an invention made under a grant must include the following statement in the first paragraph:

The invention described in this application was made under a grant from the Department of Education.

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86297, Dec. 30, 1980; 57 FR 30339, July 8, 1992; 89 FR 70333, Aug. 29, 2024]

OTHER REQUIREMENTS FOR CERTAIN PROJECTS

CROSS REFERENCE: See 2 CFR 200.302, Financial management, and 200.326, Contract provisions.

§ 75.650 Participation of students enrolled in private schools.

If applicable statutes and regulations provide for participation of students enrolled in private schools and, as applicable, their teachers or other educational personnel, and their families, the grantee must provide, as applicable, services in accordance with §§ 76.650 through 76.662.

[89 FR 70333, Aug. 29, 2024]

§ 75.681 Protection of human research subjects.

If a grantee uses a human subject in a research project, the grantee shall protect the person from physical, psychological, or social injury resulting from the project.

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

CROSS REFERENCE: See 34 CFR part 97—Protection of Human Subjects.

§ 75.682 Treatment of animals.

If a grantee uses an animal in a project, the grantee must provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act.

[45 FR 22497, Apr. 3, 1980, as amended at 89 FR 70333, Aug. 29, 2024]

34 CFR Subtitle A (7-1-25 Edition)

§ 75.683 Health or safety standards for facilities.

A grantee shall comply with any Federal health or safety requirements that apply to the facilities that the grantee uses for the project.

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

§ 75.684 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

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

[85 FR 59979, Sept. 23, 2020]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

GENERAL ADMINISTRATIVE RESPONSIBILITIES

§ 75.700 Compliance with the U.S. Constitution, statutes, regulations, stated institutional policies, and applications.

A grantee must comply with § 75.500, applicable statutes, regulations, Executive orders, stated institutional policies, and applications, and must use Federal funds in accordance with the U.S. Constitution and those statutes, regulations, Executive orders, stated institutional policies, and applications.

[89 FR 70334, Aug. 29, 2024]

§ 75.701 The grantee administers or supervises the project.

A grantee shall directly administer or supervise the administration of the project.

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

§ 75.702 Fiscal control and fund accounting procedures.

A grantee shall use fiscal control and fund accounting procedures that ensure proper disbursement of, and accounting for, Federal funds as required in 2 CFR

Office of the Secretary, Education

§ 75.712

part 200, subpart D—Post Federal Award Requirements.

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

[79 FR 76093, Dec. 19, 2014, as amended at 89 FR 70334, Aug. 29, 2024]

§ 75.703 Obligation of funds during the grant period.

A grantee may use grant funds only for obligations it makes during the grant period.

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

§ 75.707 When obligations are made.

The following table shows when a grantee makes obligations for various kinds of property and services.

If the obligation is for—	The obligation is made—
(a) Acquisition of real or personal property.	On the date the grantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the grantee.	When the services are performed.
(c) Personal services by a contractor who is not an employee of the grantee.	On the date on which the grantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services.	On the date on which the grantee makes a binding written commitment to obtain the work.
(e) Public utility services	When the grantee receives the services.
(f) Travel	When the travel is taken.
(g) Rental of real or personal property.	When the grantee uses the property.
(h) A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 CFR part 200, Subpart E—Cost Principles.	On the first day of the project period.

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 57 FR 30340, July 8, 1992; 79 FR 76093, Dec. 19, 2014]

§ 75.708 Subgrants.

(a) A grantee may not make a subgrant under a program covered by this part unless authorized by statute or by paragraph (b) of this section.

(b) The Secretary may, through an announcement in the FEDERAL REGISTER or other reasonable means of notice, authorize subgrants when necessary to meet the purposes of a program. In this announcement, the Secretary will—

(1) Designate the types of entities, e.g., State educational agencies, local educational agencies, institutions of higher education, and nonprofit organizations, to which subgrants can be awarded; and

(2) Indicate whether subgrants can be made to entities identified in an approved application or, without regard to whether the entity is identified in an approved application, have to be selected through a competitive process set out in subgranting procedures established by the grantee.

(c) If authorized under paragraph (b) of this section, a subgrant is allowed if it will be used by that entity to directly carry out project activities described in that application.

(d) The grantee, in awarding subgrants under paragraph (b) of this section, must—

(1) Ensure that subgrants are awarded on the basis of an approved budget that is consistent with the grantee's approved application and all applicable Federal statutory, regulatory, and other requirements;

(2) Ensure that every subgrant includes any conditions required by applicable law; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation, including the Federal non-discrimination laws enforced by the Department.

(e) Grantees that are not allowed to make subgrants under paragraph (b) of this section are authorized to contract, as needed, for supplies, equipment, and other services, in accordance with 2 CFR part 200, subpart D (2 CFR 200.317 through 200.326).

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 52 FR 27804, July 24, 1987; 64 FR 50392, Sept. 16, 1999; 78 FR 49534, Aug. 13, 2013; 79 FR 76093, Dec. 19, 2014; 89 FR 70334, Aug. 29, 2024]

§ 75.712 Beneficiary protections: Written notice.

(a) An organization providing social services to beneficiaries under a Department program supported by direct Federal financial assistance must give written notice to a beneficiary or prospective beneficiary of certain protections. Such notice must be given in the

§ 75.713

manner and form prescribed by the Department. This notice must state that—

(1) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require a beneficiary or prospective beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by a beneficiary in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(4) A beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the Department.

(b) The written notice described in paragraph (a) of this section must be given to a prospective beneficiary prior to the time they enroll in the program or receive services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization must provide the notice at the earliest available opportunity.

(c) The Department may determine that the notice described in paragraph (a) of this section must inform each beneficiary or prospective beneficiary of the option to seek information from the Department as to whether there are any other federally funded organizations in their area that provide the services available under the applicable program.

(d) The notice that an organization uses to notify beneficiaries or prospective beneficiaries of the rights under paragraphs (a) through (c) of this section must include language substantially similar to that in appendix C to this part.

[89 FR 15703, Mar. 4, 2024]

34 CFR Subtitle A (7–1–25 Edition)

§ 75.713 [Reserved]

§ 75.714 Subgrants, contracts, and other agreements with faith-based organizations.

If a grantee under a discretionary grant program of the Department has the authority under the grant to select a private organization to provide services supported by direct Federal financial assistance under the program by subgrant, contract, or other agreement, the grantee must ensure compliance with applicable Federal requirements governing contracts, grants, and other agreements with faith-based organizations, including, as applicable, §§ 75.52 and 75.532, appendices A and B to this part, and 2 CFR 3474.15. If the pass-through entity is a nongovernmental organization, it retains all other rights of a nongovernmental organization under the program's statutory and regulatory provisions.

[85 FR 82128, Dec. 17, 2020]

REPORTS

CROSS REFERENCE: See 2 CFR 200.327–200.337, which appear after the undesignated center heading “Performance and Financial Monitoring and Reporting.”

§ 75.720 Financial and performance reports.

(a) This section applies to the reports required under—

(1) 2 CFR 200.328 (Financial reporting); and

(2) 2 CFR 200.329 (Monitoring and reporting program performance).

(b) A grantee shall submit these reports annually, unless the Secretary allows less frequent reporting.

(c) The Secretary may require a grantee to report more frequently than annually, as authorized under 2 CFR 200.207, Specific conditions, and may impose high-risk conditions in appropriate circumstances under 2 CFR 3474.10.

(d) Upon request of the Secretary, a grantee must, at the time of submission to the Secretary, post any performance and financial reports required by this section on a public-facing website maintained by the grantee,

Office of the Secretary, Education

§ 75.741

after redacting any privacy or confidential business information.

[79 FR 76093, Dec. 19, 2014, as amended at 89 FR 70334, Aug. 29, 2024]

§ 75.721 [Reserved]

RECORDS

CROSS REFERENCE: See 2 CFR 200.333–200.337, which follow the undesignated center heading “Record Retention and Access.”

§ 75.730 Records related to grant funds.

A grantee shall keep records that fully show:

- (a) The amount of funds under the grant;
- (b) How the grantee uses the funds;
- (c) The total cost of the project;
- (d) The share of that cost provided from other sources; and
- (e) Other records to facilitate an effective audit.

(Approved by the Office of Management and Budget under control number 1880–0513)

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 53 FR 49143, Dec. 6, 1988]

§ 75.731 Records related to compliance.

A grantee shall keep records to show its compliance with program requirements.

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

§ 75.732 Records related to performance.

(a) A grantee shall keep records of significant project experiences and results.

(b) The grantee shall use the records under paragraph (a) to:

- (1) Determine progress in accomplishing project objectives; and
- (2) Inform periodic review and continuous improvement of the project plans; and
- (3) Revise those project objectives, if necessary.

(Approved by the Office of Management and Budget under control number 1880–0513)

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

CROSS REFERENCE: See 2 CFR 200.308, Revision of budget and program plans.

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 53 FR 49143, Dec. 6, 1988; 89 FR 70334, Aug. 29, 2024]

§ 75.733 [Reserved]

PRIVACY

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

(a) Most records on present or past students are subject to the requirements of section 444 of GEPA and its implementing regulations in 34 CFR part 99. (Section 444 of GEPA (20 U.S.C. 1232g) is commonly referred to as the “Family Educational Rights and Privacy Act of 1974” or “FERPA”.)

(b) Under most programs administered by the Secretary, research, experimentation, and testing are subject to the requirements of section 445 of GEPA and its implementing regulations at 34 CFR part 98; 20 U.S.C. 1232h, commonly known as the “Protection of Pupil Rights Amendment” or “PPRA”; and the Common Rule for the protection of Human Subjects and its implementing regulations at 34 CFR part 97, as applicable.

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 57 FR 30340, July 8, 1992; 60 FR 46493, Sept. 6, 1995; 89 FR 70334, Aug. 29, 2024]

§ 75.741 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

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

[85 FR 59979, Sept. 23, 2020]

Subpart G—What Procedures Does the Department Use To Get Compliance?

CROSS REFERENCE: See 2 CFR 200.338–200.342 which follow the undesignated center heading “Remedies for Noncompliance.”

§ 75.900

§ 75.900 Waiver of regulations prohibited.

(a) No official, agent, or employee of the Department may waive any regulation that applies to a Department program, unless the regulation specifically provides that it may be waived.

(b) No act or failure to act by an official, agent, or employee of the Department can affect the authority of the Secretary to enforce regulations.

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

[45 FR 22497, Apr. 3, 1980, as amended at 89 FR 70334, Aug. 29, 2024]

§ 75.901 Suspension and termination.

The Secretary may use the Office of Administrative Law Judges to resolve disputes. See, for cross-reference, the following:

(a) 2 CFR 200.338 (Remedies for non-compliance).

(b) 2 CFR 200.339 (Termination).

(c) 2 CFR 200.340 (Notification of termination requirement).

(d) 2 CFR 200.341 (Opportunities to object, hearings and appeals).

(e) 2 CFR 200.342 (Effects of suspension and termination).

(f) 2 CFR 200.344 (Post-closeout adjustments and continuing responsibilities).

[79 FR 76093, Dec. 19, 2014, as amended at 89 FR 70334, Aug. 29, 2024]

§ 75.902 [Reserved]

§ 75.903 Effective date of termination.

Termination is effective on the latest of:

(a) The date of delivery to the grantee of the notice of termination;

(b) The termination date given in the notice of termination; or

(c) The date of a final decision of the Secretary under part 81 of this title.

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

[45 FR 22497, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86298, Dec. 30, 1980; 79 FR 76093, Dec. 19, 2014]

§ 75.910 [Reserved]

34 CFR Subtitle A (7-1-25 Edition)

APPENDIX A TO PART 75—NOTICE OR ANNOUNCEMENT OF AWARD OPPORTUNITIES

(a) Faith-based organizations may apply for this award on the same basis as any other private organization, as set forth at, and subject to the protections and requirements of, this part and any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq.* The Department will not, in the selection of grantees, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(c) A faith-based organization may not use direct Federal financial assistance from the Department to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. Such an organization also may not, in providing services funded by the Department, or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

[89 FR 15703, Mar. 4, 2024]

APPENDIX B TO PART 75—NOTICE OF AWARD OR CONTRACT

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(b) A faith-based organization may not use direct Federal financial assistance from the Department to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. Such an organization also may not, in providing services funded by the Department, or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

[89 FR 15703, Mar. 4, 2024]

APPENDIX C TO PART 75—WRITTEN
NOTICE OF BENEFICIARY PROTECTIONS

Name of Organization:

Name of Program:

Contact Information for Program Staff:
[provide name, phone number, and email address, if appropriate]

Because this program is supported in whole or in part by financial assistance from the U.S. Department of Education, we are required to provide you the following information:

(1) We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that may be offered by our organization, and any participation by you in such activities must be purely voluntary.

(3) We must separate in time or location any privately funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance.

(4) You may report violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the U.S. Department of Education at [insert applicable contact information].

[When required by the Department, the notice must also state:] (5) If you would like information about whether there are any other federally funded organizations that provide the services available under this program in your area, please contact the awarding agency.

This written notice must be given to you before you enroll in the program or receive services from the program, unless the nature of the service provided or exigent circumstances make it impracticable to provide such notice before we provide the actual service. In such an instance, this notice must be given to you at the earliest available opportunity.

[89 FR 15703, Mar. 4, 2024]

**PART 76—STATE-ADMINISTERED
FORMULA GRANT PROGRAMS****Subpart A—General**REGULATIONS THAT APPLY TO STATE-
ADMINISTERED PROGRAMS

Sec.

76.1 Programs to which this part applies.
76.2 Exceptions in program regulations to part 76.

ELIGIBILITY FOR A GRANT OR SUBGRANT

76.50 Basic requirements for subgrants.
76.51 A State distributes funds by formula or competition.
76.52 Eligibility of faith-based organizations for a subgrant and nondiscrimination against those organizations.
76.53 Severability.**Subpart B—How a State Applies for a Grant**

STATE PLANS AND APPLICATIONS

76.100 Effect of this subpart.
76.101 State plans in general.
76.102 Definition of “State plan” for this part.
76.103 Multiyear State plans.
76.104 A State shall include certain certifications in its State plan.
76.106 State documents are public information.CONSOLIDATED GRANT APPLICATIONS FOR
INSULAR AREAS76.125 What is the purpose of these regulations?
76.126 What regulations apply to the consolidated grant applications for insular areas?
76.127 What is the purpose of a consolidated grant?
76.128 What is a consolidated grant?
76.129 How does a consolidated grant work?
76.130 How are consolidated grants made?
76.131 How does an insular area apply for a consolidated grant?
76.132 What assurances must be in a consolidated grant application?
76.133 What is the reallocation authority?
76.134 What is the relationship between consolidated and non-consolidated grants?
76.135 Are there any requirements for matching funds?
76.136 Under what programs may consolidated grant funds be spent?
76.137 How may carryover funds be used under the consolidated grant application?

AMENDMENTS

76.140 Amendments to a State plan.
76.141–76.142 [Reserved]**Subpart C—How a Grant Is Made to a State**APPROVAL OR DISAPPROVAL BY THE
SECRETARY

76.201 A State plan must meet all statutory and regulatory requirements.