

§ 76.797 When is an SEA required to make adjustments to allocations under this subpart?

(a) The SEA must make any necessary adjustments to allocations under a covered program on or before the date the SEA allocates funds to LEAs under the program for the succeeding academic year.

(b) In allocating funds to a charter school LEA based on adjustments made in accordance with paragraph (a) of this section, the SEA may use funds from the SEA's allocation under the applicable covered program for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation under the program for the succeeding academic year.

(Authority: 20 U.S.C. 8065a)

APPLICABILITY OF THIS SUBPART TO
LOCAL EDUCATIONAL AGENCIES

§ 76.799 Do the requirements in this subpart apply to LEAs?

(a) Each LEA that is responsible for funding a charter school under a covered program must comply with the requirements in this subpart on the same basis as SEAs are required to comply with the requirements in this subpart.

(b) In applying the requirements in this subpart (except for §§ 76.785, 76.786, and 76.787) to LEAs, references to SEA (or State), charter school LEA, and LEA must be read as references to LEA, charter school, and public school, respectively.

(Authority: 20 U.S.C. 8065a)

Subpart I—What Procedures Does the Secretary Use To Get Compliance?

SOURCE: 45 FR 22517, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980, and further redesignated at 64 FR 71965, Dec. 22, 1999.

§ 76.900 Waiver of regulations prohibited.

(a) No official, agent, or employee of ED may waive any regulation that applies to a Department program unless the regulation specifically provide that it may be waived.

(b) No act or failure to act by an official, agent, or employee of ED can affect the authority of the Secretary to enforce regulations.

(Authority: 43 Dec. Comp. Gen. 31(1963))

§ 76.901 Office of Administrative Law Judges.

(a) The Office of Administrative Law Judges, established under Part E of GEPA, has the following functions:

(1) Recovery of funds hearings under section 452 of GEPA.

(2) Withholding hearings under section 455 of GEPA.

(3) Cease and desist hearings under section 456 of GEPA.

(4) Any other proceeding designated by the Secretary under section 451 of GEPA.

(b) The regulations of the Office of Administrative Law Judges are at 34 CFR part 81.

(Authority: 20 U.S.C. 1234)

[57 FR 30342, July 8, 1992]

§ 76.902 Judicial review.

After a hearing by the Secretary, a State is usually entitled—generally by the statute that required the hearing—to judicial review of the Secretary's decision.

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

§ 76.910 Cooperation with audits.

A grantee or subgrantee shall cooperate with the Secretary and the Comptroller General of the United States or any of their authorized representatives in the conduct of audits authorized by Federal law. This cooperation includes access without unreasonable restrictions to records and personnel of the grantee or subgrantee for the purpose of obtaining relevant information.

(Authority: 5 U.S.C. appendix 3, sections 4(a)(1), 4(b)(1)(A), and 6(a)(1); 20 U.S.C. 1221e-3(a)(1), 1232f)

[54 FR 21776, May 19, 1989]

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

77.1 Definitions that apply to all Department programs.

77.2 Incorporation by Reference.

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

§ 77.1 Definitions that apply to all Department programs.

(a) [Reserved]

(b) Unless a statute or regulation provides otherwise, the following definitions in 2 CFR part 200 apply to the regulations in subtitles A and B of this title. The section of 2 CFR part 200 that contains the definition is given in parentheses as well as references to the term or terms used in title 34 that are consistent with the term defined in title 2.

Contract (2 CFR 200.22).

Equipment (2 CFR 200.33).

Federal award (2 CFR 200.38) (The terms “award,” “grant,” and “subgrant,” as defined in paragraph (c) of this section, have the same meaning, depending on the context, as “Federal award” in 2 CFR 200.38.).

Period of performance (2 CFR 200.77) (For discretionary grants, ED uses the term “project period,” as defined in paragraph (c) of this section, instead of “period of performance” to describe the period during which funds can be obligated.).

Personal property (2 CFR 200.78).

Real property (2 CFR 200.85).

Recipient (2 CFR 200.86).

Subaward (2 CFR 200.92) (The term “subgrant,” as defined in paragraph (c) of this section, has the same meaning as “subaward” in 2 CFR 200.92).

Supplies (2 CFR 200.94).

(c) Unless a statute or regulation provides otherwise, the following definitions also apply to the regulations in subtitles A and B of this title:

Acquisition means taking ownership of property, receiving the property as a gift, entering into a lease-purchase arrangement, or leasing the property. The term includes processing, delivery, and installation of property.

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the

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relevant performance measure and the baseline for that measure.

Applicant means a party requesting a grant or subgrant under a program of the Department.

Application means a request for a grant or subgrant under a program of the Department.

Award has the same meaning as the definition of “Grant” in this paragraph (c).

Baseline means the starting point from which performance is measured and targets are set.

Budget means that recipient’s financial plan for carrying out the project or program.

Budget period means an interval of time into which a project period is divided for budgetary purposes.

Demonstrates a rationale means a key project component included in the project’s logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Department means the U.S. Department of Education.

Direct grant program means any grant program of the Department other than a program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.

Cross Reference: See 34 CFR 75.1(b).

Director of the Institute of Museum Services means the Director of the Institute of Museum Services or an officer or employee of the Institute of Museum Services acting for the Director under a delegation of authority.

Director of the National Institute of Education means the Director of the National Institute of Education or an officer or employee of the National Institute of Education acting for the Director under a delegation of authority.

ED means the U.S. Department of Education.

EDGAR means the Education Department General Administrative Regulations (34 CFR parts 75, 76, 77, 79, 81, 82, 84, 86, 97, 98, and 99).

Elementary school means a day or residential school that provides elementary education, as determined under State law.

Evidence-based means the proposed project component is supported by one

or more of strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.*, sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.*, assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.*, a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Facilities means one or more structures in one or more locations.

Fiscal year means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30.

GEPA means The General Education Provisions Act.

Grant means financial assistance, including cooperative agreements, that provides support or stimulation to accomplish a public purpose. 2 CFR part 200, as adopted in 2 CFR part 3474, uses the broader, undefined term “Award”

to cover grants, subgrants, and other agreements in the form of money or property, in lieu of money, by the Federal Government to an eligible recipient. The term does not include—

(i) Technical assistance, which provides services instead of money;

(ii) Other assistance in the form of loans, loan guarantees, interest subsidies, or insurance;

(iii) Direct payments of any kind to individuals; and

(iv) Contracts that are required to be entered into and administered under procurement laws and regulations.

Grantee means the legal entity to which a grant is awarded and that is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award notice (GAN). For example, a GAN may name as the grantee one school or campus of a university. In this case, the granting agency usually intends, or actually intends, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provision of grant programs in which eligibility is limited to organizations that may be only components of a legal entity.) The term “grantee” does not include any secondary recipients, such as subgrantees and contractors, that may receive funds from a grantee pursuant to a subgrant or contract.

Grant period means the period for which funds have been awarded.

Local educational agency means:

(i) A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in:

(A) A city, county, township, school district, or other political subdivision of a State; or

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(B) Such combination of school districts or counties a State recognizes as an administrative agency for its public elementary or secondary schools; or

(ii) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school.

(iii) As used in 34 CFR parts 400, 408, 525, 526 and 527 (vocational education programs), the term also includes any other public institution or agency that has administrative control and direction of a vocational education program.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.*, the active “ingredients” that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Minor remodeling means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alterations to buildings, building maintenance, or repairs.

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a “strong evidence base” or “moderate evidence base” for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a “positive effect” or “potentially positive effect” on a relevant outcome based on a “medium to large” extent of evidence, with no reporting of a “nega-

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tive effect” or “potentially negative effect” on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.*, favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.*, State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

National level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (*e.g.*, economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender).

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Nonpublic, as applied to an agency, organization, or institution, means that the agency, organization, or institution is nonprofit and is not under Federal or public supervision or control.

Performance measure means any quantitative indicator, statistic, or metric

used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Preschool means the educational level from a child's birth to the time at which the State provides elementary education.

Private, as applied to an agency, organization, or institution, means that it is not under Federal or public supervision or control.

Project means the activity described in an application.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (e.g., training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Project period means the period established in the award document during which Federal sponsorship begins and ends (See, 2 CFR 200.77 Period of performance).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by WWC reporting a "strong evidence base" or "moderate evidence base" for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a "positive effect" or "potentially positive effect" on a relevant outcome with no reporting of a "negative effect" or "potentially negative effect" on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (e.g., a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (i.e., favorable) effect on a relevant outcome.

Public, as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (e.g., establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Regional level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as with different groups (e.g., economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). For an LEA-based project, to be considered a regional-level project, a process, product, strategy, or practice must serve students in more than one LEA, unless the process, product, strategy, or practice is implemented in a State in which the State educational agency is the sole educational agency for all schools.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Secondary school means a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Secretary may determine, with respect to that State, whether the term includes education beyond the twelfth grade.

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

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Service function, with respect to a local educational agency:

(i) Means an educational service that is performed by a legal entity—such as an intermediate agency:

(A)(1) Whose jurisdiction does not extend to the whole State; and

(2) That is authorized to provide consultative, advisory, or educational services to public elementary or secondary schools; or

(B) That has regulatory functions over agencies having administrative control or direction of public elementary or secondary schools.

(ii) The term does not include a service that is performed by a cultural or educational resource.

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

State educational agency means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a “strong evidence base” for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a “positive effect” on a relevant outcome based on a “medium to large” extent of evidence, with no reporting of a “negative effect” or “potentially negative effect” on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the

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WWC Handbooks, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.*, favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.*, State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual or any other form of legal agreement, but does not include procurement purchases, nor does it include any form of assistance that is excluded from the definition of “grant or award” in this part (See 2 CFR 200.92, “Subaward”).

Subgrantee means the government or other legal entity to which a subgrant is awarded and that is accountable to the grantee for the use of the funds provided.

What Works Clearinghouse (WWC) Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention

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reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Work of art means an item that is incorporated into facilities primarily because of its aesthetic value.

[45 FR 22529, Apr. 3, 1980, as amended at 45 FR 37442, June 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86298, Dec. 30, 1980; 54 FR 21776, May 19, 1989; 57 FR 30342, July 8, 1992; 59 FR 34739, July 6, 1994; 64 FR 50392, Sept. 16, 1999; 77 FR 18679, Mar. 28, 2012; 78 FR 49355, Aug. 13, 2013; 79 FR 76094, Dec. 19, 2014; 80 FR 2608, Jan. 20, 2015; 82 FR 35449, July 31, 2017; 83 FR 18421, Apr. 27, 2018; 85 FR 62611, Oct. 5, 2020]

§ 77.2 Incorporation by Reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance by email at Contact.WWC@ed.gov, and is available from the sources listed in paragraph (b) of this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(b) Institute of Education Sciences, 550 12th Street SW, Washington, DC 20202, (202) 245-6940, <http://ies.ed.gov/ncee/wwc/Handbooks>.

(1) What Works Clearinghouse Standards Handbook, Version 4.1, January 2020, IBR approved for § 77.1.

(2) What Works Clearinghouse Procedures Handbook, Version 4.1, January 2020, IBR approved for § 77.1.

(3) What Works Clearinghouse Standards Handbook, Version 4.0, October 2017, IBR approved for § 77.1.

(4) What Works Clearinghouse Procedures Handbook, Version 4.0, October 2017, IBR approved for § 77.1.

(5) What Works Clearinghouse Procedures and Standards Handbook, Version 3.0, March 2014, IBR approved for § 77.1.

(6) What Works Clearinghouse Procedures and Standards Handbook,

Version 2.1, September 2011, IBR approved for § 77.1.

[82 FR 35450, July 31, 2017, as amended at 85 FR 62612, Oct. 5, 2020]

PART 79—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF EDUCATION PROGRAMS AND ACTIVITIES

Sec.

79.1 What is the purpose of these regulations?

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79.11 What are the Secretary's obligations in interstate situations?

79.12 How may a State simplify, consolidate, or substitute federally required State plans?

79.13 [Reserved]

AUTHORITY: 31 U.S.C. 6506; 42 U.S.C. 3334; and E.O. 12372, unless otherwise noted.

SOURCE: 48 FR 29166, June 24, 1983, unless otherwise noted.

§ 79.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of Section 401 of the Intergovernmental Cooperation Act of 1968 and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.