

§ 75.910

**§ 75.910 Cooperation with audits.**

A grantee 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 for the purpose of obtaining relevant information.

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

[54 FR 21775, May 19, 1989]

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AUTHORITY: 20 U.S.C. 1221e-3, 6511(a), 3474, unless otherwise noted.

SOURCE: 45 FR 22517, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

### Subpart A—General

#### REGULATIONS THAT APPLY TO STATE-ADMINISTERED PROGRAMS

#### § 76.1 Programs to which part 76 applies.

(a) The regulations in part 76 apply to each State-administered program of the Department.

(b) If a State formula grant program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term *State formula grant program* means a program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.

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

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 84059, Dec. 22, 1980; 50 FR 29330, July 18, 1985; 52 FR 27804, July 24, 1987; 54 FR 21776, May 19, 1989; 55 FR 14816, Apr. 18, 1990]

#### § 76.2 Exceptions in program regulations to part 76.

If a program has regulations that are not consistent with part 76, the implementing regulations for that program identify the sections of part 76 that do not apply.

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

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 54 FR 21776, May 19, 1989]

#### ELIGIBILITY FOR A GRANT OR SUBGRANT

#### § 76.50 Statutes determine eligibility and whether subgrants are made.

(a) Under a program covered by this part, the Secretary makes a grant:

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(1) To the State agency designated by the authorizing statute for the program; or

(2) To the State agency designated by the State in accordance with the authorizing statute.

(b) The authorizing statute determines the extent to which a State may:

(1) Use grant funds directly; and  
(2) Make subgrants to eligible applicants.

(c) The regulations in part 76 on subgrants apply to a program only if subgrants are authorized under that program.

(d) The authorizing statute determines the eligibility of an applicant for a subgrant.

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

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 52 FR 27804, July 24, 1987; 54 FR 21776, May 19, 1989]

#### § 76.51 A State distributes funds by formula or competition.

If a program statute authorizes a State to make subgrants, the statute:

(a) Requires the State to use a formula to distribute funds;

(b) Gives the State discretion to select subgrantees through a competition among the applicants or through some other procedure; or

(c) Allows some combination of these procedures.

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

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 54 FR 21776, May 19, 1989]

### Subpart B—How a State Applies for a Grant

#### STATE PLANS AND APPLICATIONS

#### § 76.100 Effect of this subpart.

This subpart establishes general requirements that a State must meet to apply for a grant under a program covered by this part. Additional requirements are in the authorizing statute and the implementing regulations for the program.

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

[52 FR 27804, July 24, 1987]

**§ 76.101 The general State application.**

A State that makes subgrants to local educational agencies under a program subject to this part shall have on file with the Secretary a general application that meets the requirements of

section 441 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1221e-3, 1232d, and 3474)  
[52 FR 27804, July 24, 1987, as amended at 60 FR 46493, Sept. 6, 1995]

**§ 76.102 Definition of “State plan” for part 76.**

As used in this part, *State plan* means any of the following documents:

Document	Program	Authorizing statute	Principal Office
State plan .....	Assistance to States for Education of Handicapped Children.	Part B (except section 619), Individuals with Disabilities Education Act (20 U.S.C. 1411-1420).	OSERS
Application .....	Preschool Grants .....	Section 619, Individuals with Disabilities Education Act (20 U.S.C. 1419).	OSERS
Application .....	Handicapped Infants and Toddlers.	Part H, Individuals with Disabilities Education Act (20 U.S.C. 1471-1485).	OSERS
Application or written request for assistance.	Client Assistance Program .....	Section 112, Rehabilitation Act of 1973 (29 U.S.C. 732).	OSERS
Application .....	Removal of Architectural Barriers to the Handicapped Program.	Section 607, Individuals with Disabilities Education Act (20 U.S.C. 1406).	OSERS
State plan .....	State Vocational Rehabilitation Services Program.	Title I, Parts A-C, Rehabilitation Act of 1973 (29 U.S.C. 720-741).	OSERS
State plan supplement .....	State Supported Employment Services Program.	Title VI, Part C, Rehabilitation Act of 1973 (29 U.S.C. 795j-795r).	OSERS
State plan .....	State Independent Living Services Program.	Title VII, Part A, Rehabilitation Act of 1973 (29 U.S.C. 796-796d).	OSERS
State plan .....	State Vocational Education Program.	Title I, Part B, Carl D. Perkins Vocational Education Act (20 U.S.C. 2321-2325).	OVAE
State plan and application .....	State-Administered Adult Education Program.	Section 341, Adult Education Act (20 U.S.C. 1206).	OVAE
State plan .....	Even Start Family Literacy Program.	Title I, Chapter 1, Part B of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741-2749).	OESE
State application .....	State Grants for Strengthening Instruction in Mathematics and Science.	Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981-2993).	OESE
State application .....	Federal, State and Local Partnership for Educational Improvement.	Title I, Chapter 2, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911-2952 and 2971-2976).	OESE
State plan or application .....	Migrant Education Program .....	Sections 1201, 1202, Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2781 and 2782).	OESE
Application .....	State Student Incentive Grant Program.	Section 415C, Higher Education Act of 1965 (20 U.S.C. 1070c-2).	OPE
Application .....	Paul Douglas Teacher Scholarship Program.	Section 553, Higher Education Act of 1965 (20 U.S.C. 1111b).	OPE
Basic State plan, long-range program, and annual program.	The Library Services and Construction Act State-Administered Program.	Library Services and Construction Act (20 U.S.C. 351-355e-3).	OERI
Application .....	Emergency Immigrant Education Program.	Emergency Immigrant Education Act (20 U.S.C. 3121-3130).	OBEMLA
Application .....	Transition Program for Refugee Children.	Section 412(d) Immigration and Naturalization Act (8 U.S.C. 1522 (d)).	OBEMLA
Any document that the authorizing statute for a State-administered program requires a State to submit to receive funds.	Any State-administered program without implementing regulations.	Section 408(a)(1), General Education Provisions Act and Section 414, Department of Education Organization Act (20 U.S.C. 1221e-3(a)(1) and 3474).	Dept-wide

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(Authority: 20 U.S.C. 1221e-3 and 3474)  
[57 FR 30340, July 8, 1992]

### § 76.103 Multi-year State plans.

(a) Beginning with fiscal year 1996, each State plan will be effective for a period of more than one fiscal year, to be determined by the Secretary or by regulations.

(b) If the Secretary determines that the multi-year State plans under a program should be submitted by the States on a staggered schedule, the Secretary may require groups of States to submit or resubmit their plans in different years.

(c) This section does not apply to:

(1) The annual accountability report under part A of title I of the Vocational Education Act;

(2) The annual programs under the Library Services and Construction Act;

(3) The application under sections 141-143 of the Elementary and Secondary Education Act; and

(4) The State application under section 209 of title II of the Education for Economic Security Act.

(d) A State may submit an annual State plan under the Vocational Education Act. If a State submits an annual plan under that program, this section does not apply to that plan.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under section 427 or other applicable law.

(Authority: 20 U.S.C. 1231g(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86296, Dec. 30, 1980; 50 FR 43545, Oct. 25, 1985; 60 FR 46493, Sept. 6, 1995]

### § 76.104 A State shall include certain certifications in its State plan.

(a) A State shall include the following certifications in each State plan:

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(1) That the plan is submitted by the State agency that is eligible to submit the plan.

(2) That the State agency has authority under State law to perform the functions of the State under the program.

(3) That the State legally may carry out each provision of the plan.

(4) That all provisions of the plan are consistent with State law.

(5) That a State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the plan.

(6) That the State officer who submits the plan, specified by title in the certification, has authority to submit the plan.

(7) That the agency that submits the plan has adopted or otherwise formally approved the plan.

(8) That the plan is the basis for State operation and administration of the program.

(b) [Reserved]

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

### § 76.106 State documents are public information.

A State shall make the following documents available for public inspection:

(a) All State plans and related official materials.

(b) All approved subgrant applications.

(c) All documents that the Secretary transmits to the State regarding a program.

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

## CONSOLIDATED GRANT APPLICATIONS FOR INSULAR AREAS

AUTHORITY: Title V, Pub. L. 95-134, 91 Stat. 1159 (48 U.S.C. 1469a).

### § 76.125 What is the purpose of these regulations?

(a) Sections 76.125 through 76.137 of this part contain requirements for the submission of an application by an Insular Area for the consolidation of two or more grants under the programs described in paragraph (c) of this section.

(b) For the purpose of §§ 76.125-76.137 of this part the term *Insular Area*

means the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

(c) The Secretary may make an annual consolidated grant to assist an Insular Area in carrying out one or more State-administered formula grant programs of the Department.

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

[47 FR 17421, Apr. 22, 1982, as amended at 54 FR 21776, May 19, 1989; 57 FR 30341, July 8, 1992]

**§ 76.126 What regulations apply to the consolidated grant applications for insular areas?**

The following regulations apply to those programs included in a consolidated grant:

(a) The regulations in §§ 76.125 through 76.137; and

(b) The regulations that apply to each specific program included in a consolidated grant for which funds are used.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

**§ 76.127 What is the purpose of a consolidated grant?**

An Insular Area may apply for a consolidated grant for two or more of the programs listed in § 76.125(c). This procedure is intended to:

(a) Simplify the application and reporting procedures that would otherwise apply for each of the programs included in the consolidated grant; and

(b) Provide the Insular Area with flexibility in allocating the funds under the consolidated grant to achieve any of the purposes to be served by the programs that are consolidated.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

**§ 76.128 What is a consolidated grant?**

A consolidated grant is a grant to an Insular Area for any two or more of the programs listed in § 76.125(c). The amount of the consolidated grant is the sum of the allocations the Insular Area receives under each of the programs included in the consolidated grant if there had been no consolidation.

*Example.* Assume the Virgin Islands applies for a consolidated grant that includes programs under the Adult Education Act, Vocational Education Act, and Chapter 1 of the Education Consolidation and Improvement Act. If the Virgin Islands' allocation under the formula for each of these three programs is \$150,000; the total consolidated grant to the Virgin Islands would be \$450,000.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

**§ 76.129 How does a consolidated grant work?**

(a) An Insular Area shall use the funds it receives under a consolidated grant to carry out, in its jurisdiction, one or more of the programs included in the grant.

*Example.* Assume that Guam applies for a consolidated grant under the Vocational Education Act, the Handicapped Preschool and School Programs-Incentive Grants, and the Adult Education Act and that the sum of the allocations under these programs is \$700,000. Guam may choose to allocate this \$700,000 among all of the programs authorized under the three programs. Alternatively, it may choose to allocate the entire \$700,000 to one or two of the programs; for example, the Adult Education Act Program.

(b) An Insular Area shall comply with the statutory and regulatory requirements that apply to each program under which funds from the consolidated grant are expended.

*Example.* Assume that American Samoa uses part of the funds under a consolidated grant for the State program under the Adult Education Act. American Samoa need not submit to the Secretary a State plan that requires policies and procedures to assure all students equal access to adult education programs. However, in carrying out the program, American Samoa must meet and be able to demonstrate compliance with this equal access requirement.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

**§ 76.130 How are consolidated grants made?**

(a) The Secretary annually makes a single consolidated grant to each Insular Area that meets the requirements of §§ 76.125 through 76.137 and each program under which the grant funds are to be used and administered.

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(b) The Secretary may decide that one or more programs cannot be included in the consolidated grant if the Secretary determines that the Insular Area failed to meet the program objectives stated in its plan for the previous fiscal year in which it carried out the programs.

(c) Under a consolidated grant, an Insular Area may use a single advisory council for any or all of the programs that require an advisory council.

(d) Although Pub. L. 95-134 authorizes the Secretary to consolidate grant funds that the Department awards to an Insular Area, it does not confer eligibility for any grant funds. The eligibility of a particular Insular Area to receive grant funds under a Federal education program is determined under the statute and regulations for that program.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

**§ 76.131 How does an insular area apply for a consolidated grant?**

(a) An Insular Area that desires to apply for a grant consolidating two or more programs listed in § 76.125(c) shall submit to the Secretary an application that:

(1) Contains the assurances in § 76.132; and

(2) Meets the application requirements in paragraph (c) of this section.

(b) The submission of an application that contains these requirements and assurances takes the place of a separate State plan or other similar document required by this part or by the authorizing statutes and regulations for programs included in the consolidated grant.

(c) An Insular Area shall include in its consolidated grant application a program plan that:

(1) Contains a list of the programs in § 76.125(c) to be included in the consolidated grant;

(2) Describes the program or programs in § 76.125(c) under which the consolidated grant funds will be used and administered;

(3) Describes the goals, objectives, activities, and the means of evaluating program outcomes for the programs for which the Insular Area will use the funds received under the consolidated

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grant during the fiscal year for which it submits the application, including needs of the population that will be met by the consolidation of funds; and

(4) Contains a budget that includes a description of the allocation of funds—including any anticipated carryover funds of the program in the consolidated grant from the preceding year—among the programs to be included in the consolidated grant.

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

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982, as amended at 53 FR 49143, Dec. 6, 1988]

**§ 76.132 What assurances must be in a consolidated grant application?**

(a) An Insular Area shall include in its consolidated grant application assurances to the Secretary that it will:

(1) Follow policies and use administrative practices that will insure that non-Federal funds will not be supplanted by Federal funds made available under the authority of the programs in the consolidated grant;

(2) Comply with the requirements (except those relating to the submission of State plans or similar documents) in the authorizing statutes and implementing regulations for the programs under which funds are to be used and administered, (except requirements for matching funds);

(3) Provide for proper and efficient administration of funds in accordance with the authorizing statutes and implementing regulations for those programs under which funds are to be used and administered;

(4) Provide for fiscal control and fund accounting procedures to assure proper disbursement of, and accounting for, Federal funds received under the consolidated grant;

(5) Submit an annual report to the Secretary containing information covering the program(s) for which the grant is used and administered, including financial and program performance information required under 34 CFR part 74, subparts I and J;

(6) Provide that funds received under the consolidated grant will be under control of, and that title to property acquired with these funds will be in, a

public agency, institution, or organization. The public agency shall administer these funds and property;

(7) Keep records, including a copy of the State Plan or application document under which funds are to be spent, which show how the funds received under the consolidated grant have been spent.

(8) Adopt and use methods of monitoring and providing technical assistance to any agencies, organizations, or institutions that carry out the programs under the consolidated grant and enforce any obligations imposed on them under the applicable statutes and regulations.

(9) Evaluate the effectiveness of these programs in meeting the purposes and objectives in the authorizing statutes under which program funds are used and administered;

(10) Conduct evaluations of these programs at intervals and in accordance with procedures the Secretary may prescribe; and

(11) Provide appropriate opportunities for participation by local agencies, representatives of the groups affected by the programs, and other interested institutions, organizations, and individuals in planning and operating the programs.

(b) These assurances remain in effect for the duration of the programs they cover.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

**§76.133 What is the reallocation authority?**

(a) After an Insular Area receives a consolidated grant, it may reallocate the funds in a manner different from the allocation described in its consolidated grant application. However, the funds cannot be used for purposes that are not authorized under the programs in the consolidated grant under which funds are to be used and administered.

(b) If an Insular Area decides to reallocate the funds it receives under a consolidated grant, it shall notify the Secretary by amending its original application to include an update of the information required under § 76.131.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

**§76.134 What is the relationship between consolidated and non-consolidated grants?**

(a) An Insular Area may request that any number of programs in § 76.125(c) be included in its consolidated grant and may apply separately for assistance under any other programs listed in § 76.125(c) for which it is eligible.

(b) Those programs that an Insular Area decides to exclude from consolidation—for which it must submit separate plans or applications—are implemented in accordance with the applicable program statutes and regulations. The excluded programs are not subject to the provisions for allocation of funds among programs in a consolidated grant.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

**§76.135 Are there any requirements for matching funds?**

The Secretary waives all requirements for matching funds for those programs that are consolidated by an Insular Area in a consolidated grant application.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982]

**§76.136 Under what programs may consolidated grant funds be spent?**

Insular Areas may only use and administer funds under programs described in § 76.125(c) during a fiscal year for which the Insular Area is entitled to receive funds under an appropriation for that program.

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982, as amended at 57 FR 30341, July 8, 1992]

**§76.137 How may carryover funds be used under the consolidated grant application?**

Any funds under any applicable program which are available for obligation and expenditure in the year succeeding the fiscal year for which they are appropriated must be obligated and expended in accordance with the consolidated grant application submitted by

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the Insular Area for that program for the succeeding fiscal year.

(Authority: 20 U.S.C. 1225(b); 48 U.S.C. 1469a)

AMENDMENTS

§ 76.140 Amendments to a State plan.

(a) If the Secretary determines that an amendment to a State plan is essential during the effective period of the plan, the State shall make the amendment.

(b) A State shall also amend a State plan if there is a significant and relevant change in:

(1) The information or the assurances in the plan;

(2) The administration or operation of the plan; or

(3) The organization, policies, or operations of the State agency that received the grant, if the change materially affects the information or assurances in the plan.

(Authority: 20 U.S.C. 1221e-3, 1231g(a), and 3474)

§ 76.141 An amendment requires the same procedures as the document being amended.

If a State amends a State plan under § 76.140, the State shall use the same procedures as those it must use to prepare and submit a State plan.

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

§ 76.142 An amendment is approved on the same basis as the document being amended.

The Secretary uses the same procedures to approve an amendment to a State plan—or any other document a State submits—as the Secretary uses to approve the original document.

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

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.

The Secretary approves a State plan if it meets the requirements of the Fed-

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eral statutes and regulations that apply to the plan.

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

§ 76.202 Opportunity for a hearing before a State plan is disapproved.

The Secretary may disapprove a State plan only after:

(a) Notifying the State;

(b) Offering the State a reasonable opportunity for a hearing; and

(c) Holding the hearing, if requested by the State.

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

§ 76.235 The notification of grant award.

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

(b) The notification of grant award tells the amount of the grant and provides other information about the grant.

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

ALLOTMENTS AND REALLOTMENTS OF GRANT FUNDS

§ 76.260 Allotments are made under program statute or regulations.

(a) The Secretary allots program funds to a State in accordance with the authorizing statute or implementing regulations for the program.

(b) Any reallocation to other States will be made by the Secretary in accordance with the authorizing statute or implementing regulations for that program.

(Authority: 20 U.S.C. 3474(a))

[50 FR 29330, July 18, 1985]

§ 76.261 Reallotted funds are part of a State's grant.

Funds that a State receives as a result of a reallocation are part of the State's grant for the appropriate fiscal year. However, the Secretary does not consider a reallocation in determining the maximum or minimum amount to which a State is entitled for a following fiscal year.

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

### Subpart D—How To Apply to the State for a Subgrant

#### § 76.300 Contact the State for procedures to follow.

An applicant for a subgrant can find out the procedures it must follow by contacting the State agency that administers the program.

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

CROSS REFERENCE: See subparts E and G of this part for the general responsibilities of the State regarding applications for subgrants.

#### § 76.301 Local educational agency general application.

A local educational agency that applies for a subgrant under a program subject to this part shall have on file with the State a general application that meets the requirements of Section 442 of the General Education Provisions Act.

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

(Authority: 20 U.S.C. 1221e-3, 1232d, and 3474)

[52 FR 27804, July 24, 1987, as amended at 53 FR 49143, Dec. 6, 1988; 60 FR 46493, Sept. 6, 1995]

#### § 76.302 The notice to the subgrantee.

A State shall notify a subgrantee in writing of:

- (a) The amount of the subgrant;
- (b) The period during which the subgrantee may obligate the funds; and
- (c) The Federal requirements that apply to the subgrant.

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

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

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 53 FR 49143, Dec. 6, 1988]

#### § 76.303 Joint applications and projects.

(a) Two or more eligible parties may submit a joint application for a subgrant.

(b) If the State must use a formula to distribute subgrant funds (see § 76.51), the State may not make a subgrant that exceeds the sum of the entitlements of the separate subgrantees.

(c) If the State funds the application, each subgrantee shall:

- (1) Carry out the activities that the subgrantee agreed to carry out; and
- (2) Use the funds in accordance with Federal requirements.

(d) Each subgrantee shall use an accounting system that permits identification of the costs paid for under its subgrant.

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

#### § 76.304 Subgrantee shall make subgrant application available to the public.

A subgrantee shall make any application, evaluation, periodic program plan, or report relating to each program available for public inspection.

(Authority: 20 U.S.C. 1221e-3, 1232e, and 3474)

### Subpart E—How a Subgrant Is Made to an Applicant

#### § 76.400 State procedures for reviewing an application.

A State that receives an application for a subgrant shall take the following steps:

(a) *Review.* The State shall review the application.

(b) *Approval—entitlement programs.* The State shall approve an application if:

(1) The application is submitted by an applicant that is entitled to receive a subgrant under the program; and

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program.

(c) *Approval—discretionary programs.* The State may approve an application if:

(1) The application is submitted by an eligible applicant under a program in which the State has the discretion to select subgrantees;

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program; and

(3) The State determines that the project should be funded under the authorizing statute and implementing regulations for the program.

(d) *Disapproval—entitlement and discretionary programs.* If an application does not meet the requirements of the Federal statutes and regulations that

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apply to a program, the State shall not approve the application.

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

**§76.401 Disapproval of an application—opportunity for a hearing.**

(a) *State agency hearing before disapproval.* Under the programs listed in

the chart below, the State agency that administers the program shall provide an applicant with notice and an opportunity for a hearing before it may disapprove the application.

Program	Authorizing statute	Implementing regulations Title 34 CFR Part
Chapter 1, Program in Local Educational Agencies .....	Title I, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701–2731, 2821–2838, 2851–2854, and 2891–2901).	200
Chapter 1, Program for Neglected and Delinquent Children .....	Title 1, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2801–2804).	203
State Grants for Strengthening Instruction in Mathematics and Science.	Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981–2993).	208
Federal, State, and Local Partnership for Educational Improvement.	Title I, Chapter 2, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911–2952 and 2971–2976).	298
Assistance to States for Education of Handicapped Children .....	Part B, Individuals with Disabilities Education Act (except Section 619) (20 U.S.C. 1411–1420).	300
Preschool Grants .....	Section 619, Individuals with Disabilities Education Act (20 U.S.C. 1419).	301
Chapter 1, State-Operated or Supported Programs for Handicapped Children.	Title 1, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2791–2795).	302
Transition Program for Refugee Children .....	Section 412(d), Immigration and Naturalization Act (8 U.S.C. 1522(d)).	538
Emergency Immigrant Education Program .....	Emergency Immigrant Education Act (20 U.S.C. 3121–3130).	581
Financial Assistance for Construction, Reconstruction, or Renovation of Higher Education Facilities.	Section 711, Higher Education Act of 1965 (20 U.S.C. 1132b).	617

(b) *Other programs—hearings not required.* Under other programs covered by this part, a State agency—other than a State educational agency—is not required to provide an opportunity for a hearing regarding the agency’s disapproval of an application.

(c) If an applicant for a subgrant alleges that any of the following actions of a State educational agency violates a State or Federal statute or regulation, the State educational agency and the applicant shall use the procedures in paragraph (d) of this section:

(1) Disapproval of or failure to approve the application or project in whole or in part.

(2) Failure to provide funds in amounts in accordance with the requirements of statutes and regulations.

(d) *State educational agency hearing procedures.* (1) If the applicant applied

under a program listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing before the agency disapproves the application.

(2) If the applicant applied under a program not listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing either before or after the agency disapproves the application.

(3) The applicant shall request the hearing within 30 days of the action of the State educational agency.

(4)(i) Within 30 days after it receives a request, the State educational agency shall hold a hearing on the record and shall review its action.

(ii) No later than 10 days after the hearing the agency shall issue its written ruling, including findings of fact and reasons for the ruling.

(iii) If the agency determines that its action was contrary to State or Federal statutes or regulations that govern the applicable program, the agency shall rescind its action.

(5) If the State educational agency does not rescind its final action after a review under this paragraph, the applicant may appeal to the Secretary. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the State educational agency of the results of the agency's review. If supported by substantial evidence, findings of fact of the State educational agency are final.

(6)(i) The Secretary may also issue interim orders to State educational agencies as he or she may decide are necessary and appropriate pending appeal or review.

(ii) If the Secretary determines that the action of the State educational agency was contrary to Federal statutes or regulations that govern the applicable program, the Secretary issues an order that requires the State educational agency to take appropriate action.

(7) Each State educational agency shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.

(8) If a State educational agency does not comply with any provision of this section, or with any order of the Secretary under this section, the Secretary terminates all assistance to the State educational agency under the applicable program or issues such other orders as the Secretary deems appropriate to achieve compliance.

(e) *Other State agency hearing procedures.* State agencies that are required to provide a hearing under paragraph (a) of this section—other than State educational agencies—are not required to use the procedures in paragraph (d) of this section.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this

Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1221e-3, 1231b-2, 3474, and 6511(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86296, Dec. 30, 1980; 50 FR 43545, Oct. 25, 1985; 52 FR 27805, July 24, 1987; 54 FR 21775, May 19, 1989; 55 FR 14816, Apr. 18, 1990; 57 FR 30341, July 8, 1992; 60 FR 46493, Sept. 6, 1995]

### Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

#### NONDISCRIMINATION

#### § 76.500 Federal statutes and regulations on nondiscrimination.

A State and a subgrantee shall comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (45 U.S.C. 2000d through 2000d-4).	34 CFR part 100.
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	34 CFR part 106.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR part 104.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 <i>et seq.</i> ).	45 CFR part 90.

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

#### ALLOWABLE COSTS

#### § 76.530 General cost principles.

Subpart Q of 34 CFR part 74 references the general cost principles that apply to grants, subgrants, and cost-type contracts under grants and subgrants.

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

**§ 76.532 Use of funds for religion prohibited.**

(a) No State or subgrantee may use its grant or subgrant 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.
- (3) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of the activities specified in paragraph (a)(1) of this section.
- (4) An activity of a school or department of divinity.

(b) As used in this section, *school or department of divinity* means an institution or a component of an institution whose program is specifically for the education of students to:

- (1) Prepare them to enter into a religious vocation; or
- (2) Prepare them to teach theological subjects.

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

**§ 76.533 Acquisition of real property; construction.**

No State or subgrantee may use its grant or subgrant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program.

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

**§ 76.534 Use of tuition and fees restricted.**

No State or subgrantee may count tuition and fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements of a program.

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

INDIRECT COST RATES

**§ 76.560 General indirect cost rates; 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) Institutions of higher education, at 34 CFR 74.27;
- (2) Hospitals, at 34 CFR 74.27;
- (3) Other nonprofit organizations, at 34 CFR 74.27;
- (4) Commercial (for-profit) organizations, at 34 CFR 74.27; and
- (5) State and local governments and federally-recognized Indian tribal organizations, at 34 CFR 80.22.

(b) A grantee must have a current indirect cost rate agreement to charge indirect costs to a grant. To obtain an indirect cost rate, a grantee must submit an indirect cost proposal to its cognizant agency and negotiate an indirect cost rate agreement.

(c) The Secretary may establish a temporary indirect cost rate for a grantee that does not have an indirect cost rate agreement with its cognizant agency.

(d) The Secretary accepts an indirect cost rate negotiated by a grantee's cognizant agency, but may establish a restricted indirect cost rate for a grantee to satisfy the statutory requirements of certain programs administered by the Department.

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

[57 FR 30341, July 8, 1992, as amended at 59 FR 59582, Nov. 17, 1994]

**§ 76.561 Approval of indirect cost rates.**

(a) If the Department of Education is the cognizant agency, the Secretary approves an indirect cost rate for a State agency and for a subgrantee other than 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. These rates may be for periods longer than a year if rates are sufficiently stable to justify a longer period.

(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, 3474, and 6511(a))

[59 FR 59583, Nov. 17, 1994]

**§ 76.563 Restricted indirect cost rate—  
programs covered.**

Sections 76.564 through 76.569 apply to agencies of State and local governments that are grantees under programs with a statutory requirement prohibiting the use of Federal funds to supplant non-Federal funds, and to their subgrantees under these programs.

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

[59 FR 59583, Nov. 17, 1994]

**§ 76.564 Restricted indirect cost rate—  
formula.**

(a) An indirect cost rate for a grant covered by § 76.563 or 34 CFR 75.563 is determined by the following formula:

Restricted indirect cost rate = (General management costs + Fixed costs) ÷ (Other expenditures)

(b) General management costs, fixed costs, and other expenditures must be determined under §§ 76.565 through 76.567.

(c) Under the programs covered by § 76.563, a subgrantee of an agency of a State or a local government (as those terms are defined in 34 CFR 80.3) or a grantee subject to 34 CFR 75.563 that is not a State or local government agency may use—

(1) An indirect cost rate computed under paragraph (a) of this section; or

(2) An indirect cost rate of eight percent unless the Secretary determines that the subgrantee or grantee would have a lower rate under paragraph (a) of this section.

(d) Indirect costs that are unrecovered as a result of these restrictions may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474)

[59 FR 59583, Nov. 17, 1994]

**§ 76.565 General management costs—  
restricted rate.**

(a) As used in § 76.564, *general management costs* means the costs of activities that are for the direction and control of the grantee's affairs that are organization-wide. An activity is not organization-wide if it is limited to one activity, one component of the grantee, one subject, one phase of operations, or other single responsibility.

(b) General management costs include the costs of performing a service function, such as accounting, payroll preparation, or personnel management, that is normally at the grantee's level even if the function is physically located elsewhere for convenience or better management. The term also includes certain occupancy and space maintenance costs as determined under § 76.568.

(c) The term does not include expenditures for—

(1) Divisional administration that is limited to one component of the grantee;

(2) The governing body of the grantee;

(3) Compensation of the chief executive officer of the grantee;

(4) Compensation of the chief executive officer of any component of the grantee; and

(5) Operation of the immediate offices of these officers.

(d) For purposes of this section—

(1) The chief executive officer of the grantee is the individual who is the head of the executive office of the grantee and exercises overall responsibility for the operation and management of the organization. The chief executive officer's immediate office includes any deputy chief executive officer or similar officer along with immediate support staff of these individuals. The term does not include the governing body of the grantee, such as a board or a similar elected or appointed governing body; and

(2) Components of the grantee are those organizational units supervised directly or indirectly by the chief executive officer. These organizational units generally exist one management level below the executive office of the grantee. The term does not include the office of the chief executive officer or a

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deputy chief executive officer or similar position.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474)

[59 FR 59583, Nov. 17, 1994]

§ 76.566 Fixed costs—restricted rate.

As used in § 76.564, *fixed costs* means contributions of the grantee to fringe benefits and similar costs, but only those associated with salaries and wages that are charged as indirect costs, including—

- (a) Retirement, including State, county, or local retirement funds, Social Security, and pension payments;
- (b) Unemployment compensation payments; and
- (c) Property, employee, health, and liability insurance.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474)

[59 FR 59583, Nov. 17, 1994]

§ 76.567 Other expenditures—restricted rate.

(a) As used in § 76.564, *other expenditures* means the grantee's total expenditures for its federally- and non-federally-funded activities in the most recent year for which data are available. The term also includes direct occupancy and space maintenance costs as determined under § 76.568 and costs related to the chief executive officers of the grantee and components of the grantee and their offices (see § 76.565(c) and (d)).

- (b) The term does not include—
  - (1) General management costs determined under § 76.565;
  - (2) Fixed costs determined under § 76.566;
  - (3) Subgrants;
  - (4) Capital outlay;
  - (5) Debt service;
  - (6) Fines and penalties;
  - (7) Contingencies; and
  - (8) Election expenses. However, the term does include election expenses that result from elections required by an applicable Federal statute.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474)

[59 FR 59583, Nov. 17, 1994]

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§ 76.568 Occupancy and space maintenance costs—restricted rate.

(a) As used in the calculation of a restricted indirect cost rate, *occupancy and space maintenance costs* means such costs as—

- (1) Building costs whether owned or rented;
- (2) Janitorial services and supplies;
- (3) Building, grounds, and parking lot maintenance;
- (4) Guard services;
- (5) Light, heat, and power;
- (6) Depreciation, use allowances, and amortization; and
- (7) All other related space costs.

(b) Occupancy and space maintenance costs associated with organization-wide service functions (accounting, payroll, personnel) may be included as general management costs if a space allocation or use study supports the allocation.

(c) Occupancy and space maintenance costs associated with functions that are not organization-wide must be included with other expenditures in the indirect cost formula. These costs may be charged directly to affected programs only to the extent that statutory supplanting prohibitions are not violated. This reimbursement must be approved in advance by the Secretary.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474)

[59 FR 59584, Nov. 17, 1994]

§ 76.569 Using the restricted indirect cost rate.

(a) Under the programs referenced in § 76.563, the maximum amount of indirect costs under a grant is determined by the following formula:

$$\text{Indirect costs} = (\text{Restricted indirect cost rate}) \times (\text{Total direct costs of the grant minus capital outlays, subgrants, and other distorting or unallowable items as specified in the grantee's indirect cost rate agreement})$$

(b) If a grantee uses a restricted indirect cost rate, the general management and fixed costs covered by that rate

must be excluded by the grantee from the direct costs it charges to the grant.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474)

[59 FR 59584, Nov. 17, 1994]

**§ 76.580 Coordination with other activities.**

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

(Authority: 20 U.S.C. 1221e-3, 2890, and 3474)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 57 FR 30341, July 8, 1992]

EVALUATION

**§ 76.591 Federal evaluation—cooperation by a grantee.**

A grantee shall cooperate in any evaluation of the program by the Secretary.

(Authority: 20 U.S.C. 1221e-3, 1226c, 1231a, 3474, and 6511(a))

[45 FR 86298, Dec. 30, 1980, as amended at 57 FR 30341, July 8, 1992]

**§ 76.592 Federal evaluation—satisfying requirement for State or subgrantee evaluation.**

If a State or a subgrantee cooperates in a Federal evaluation of a program, the Secretary may determine that the State or subgrantee meets the evaluation requirements of the program.

(Authority: 20 U.S.C. 1226c; 1231a)

CONSTRUCTION

**§ 76.600 Where to find construction regulations.**

(a) A State or a subgrantee that requests program funds for construction, or whose grant or subgrant includes funds for construction, shall comply with the rules on construction that apply to applicants and grantees under 34 CFR 75.600-75.617.

(b) The State shall perform the functions that the Secretary performs under §§ 75.602 (Preservation of historic sites) and 75.605 (Approval of drawings and specifications) of this title.

(c) The State shall provide to the Secretary the information required under 34 CFR 75.602(a) (Preservation of historic sites).

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

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86298, Dec. 30, 1980; 57 FR 30341, July 8, 1992]

PARTICIPATION OF STUDENTS ENROLLED IN PRIVATE SCHOOLS

**§ 76.650 Private schools; purpose of §§ 76.651-76.662.**

(a) Under some programs, the authorizing statute requires that a State and its subgrantees provide for participation by students enrolled in private schools. Sections 76.651-76.662 apply to those programs and provide rules for that participation. These sections do not affect the authority of the State or a subgrantee to enter into a contract with a private party.

(b) If any other rules for participation of students enrolled in private schools apply under a particular program, they are in the authorizing statute or implementing regulations for that program.

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

NOTE: Some program statutes authorize the Secretary—under certain circumstances—to provide benefits directly to private school students. These “bypass” provisions—where they apply—are implemented in the individual program regulations.

**§ 76.651 Responsibility of a State and a subgrantee.**

(a)(1) A subgrantee shall provide students enrolled in private schools with a genuine opportunity for equitable participation in accordance with the requirements in §§ 76.652-76.662 and in the authorizing statute and implementing regulations for a program.

(2) The subgrantee shall provide that opportunity to participate in a manner that is consistent with the number of eligible private school students and their needs.

(3) The subgrantee shall maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools.

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(b)(1) A State shall ensure that each subgrantee complies with the requirements in §§76.651–76.662.

(2) If a State carries out a project directly, it shall comply with these requirements as if it were a subgrantee.

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

**§ 76.652 Consultation with representatives of private school students.**

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:

(1) Which children will receive benefits under the project;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

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

**§ 76.653 Needs, number of students, and types of services.**

A subgrantee shall determine the following matters on a basis comparable to that used by the subgrantee in providing for participation of public school students:

(a) The needs of students enrolled in private schools.

(b) The number of those students who will participate in a project.

(c) The benefits that the subgrantee will provide under the program to those students.

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

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**§ 76.654 Benefits for private school students.**

(a) *Comparable benefits.* The program benefits that a subgrantee provides for students enrolled in private schools must be comparable in quality, scope, and opportunity for participation to the program benefits that the subgrantee provides for students enrolled in public schools.

(b) *Same benefits.* If a subgrantee uses funds under a program for public school students in a particular attendance area, or grade or age level, the subgrantee shall insure equitable opportunities for participation by students enrolled in private schools who:

(1) Have the same needs as the public school students to be served; and

(2) Are in that group, attendance area, or age or grade level.

(c) *Different benefits.* If the needs of students enrolled in private schools are different from the needs of students enrolled in public schools, a subgrantee shall provide program benefits for the private school students that are different from the benefits the subgrantee provides for the public school students.

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

**§ 76.655 Level of expenditures for students enrolled in private schools.**

(a) Subject to paragraph (b) of this section, a subgrantee shall spend the same average amount of program funds on:

(1) A student enrolled in a private school who receives benefits under the program; and

(2) A student enrolled in a public school who receives benefits under the program.

(b) The subgrantee shall spend a different average amount on program benefits for students enrolled in private schools if the average cost of meeting the needs of those students is different from the average cost of meeting the needs of students enrolled in public schools.

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

**§ 76.656 Information in an application for a subgrant.**

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

(b) The number of students enrolled in private schools who have been identified as eligible to benefits under the program.

(c) The number of students enrolled in private schools who will receive benefits under the program.

(d) The basis the applicant used to select the students.

(e) The manner and extent to which the applicant complied with § 76.652 (consultation).

(f) The places and times that the students will receive benefits under the program.

(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

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

**§ 76.657 Separate classes prohibited.**

A subgrantee may not use program funds for classes that are organized separately on the basis of school enrollment or religion of the students if:

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

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

**§ 76.658 Funds not to benefit a private school.**

(a) A subgrantee may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The subgrantee shall use program funds to meet the specific needs of students enrolled in private schools, rather than:

(1) The needs of a private school; or

(2) The general needs of the students enrolled in a private school.

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

**§ 76.659 Use of public school personnel.**

A subgrantee may use program funds to make public personnel available in other than public facilities:

(a) To the extent necessary to provide equitable program benefits designed for students enrolled in a private school; and

(b) If those benefits are not normally provided by the private school.

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

**§ 76.660 Use of private school personnel.**

A subgrantee may use program funds to pay for the services of an employee of a private school if:

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

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

**§ 76.661 Equipment and supplies.**

(a) Under some program statutes, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the subgrantee acquires with program funds. This public agency is usually the subgrantee.

(b) The subgrantee may place equipment and supplies in a private school for the period of time needed for the project.

(c) The subgrantee shall insure that the equipment or supplies placed in a private school:

(1) Are used only for the purposes of the project; and

(2) Can be removed from the private school without remodeling the private school facilities.

(d) The subgrantee shall remove equipment or supplies from a private school if:

(1) The equipment or supplies are no longer needed for the purposes of the project; or

(2) Removal is necessary to avoid use of the equipment or supplies for other than project purposes.

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

**§ 76.662 Construction.**

A subgrantee shall insure that program funds are not used for the construction of private school facilities.

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

PROCEDURES FOR BYPASS

**§ 76.670 Applicability and filing requirements.**

(a) The regulations in §§ 76.671 through 76.677 apply to the following programs under which the Secretary is authorized to waive the requirements for providing services to private school children and to implement a bypass:

CFDA number and name of program	Authorizing statute	Implementing regulations title 34 CFR part
84.010 Chapter 1 Program in Local Educational Agencies.	Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 <i>et seq.</i> ).	200
84.151 Federal, State, and Local Partnership for Educational Improvement.	Chapter 2, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911-2952, 2971-2976).	298
84.164 Mathematics and Science Education .....	Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981-2993).	208
84.186 State and Local Programs .....	Part B, Drug Free Schools and Communities Act of 1986 (20 U.S.C. 3191-3197).	None

(b) *Filing requirements.* (1) Any written submission under §§ 76.671 through 76.675 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(2) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(3) The filing date for a written submission is the date the document is—

- (i) Hand-delivered;
- (ii) Mailed; or
- (iii) Sent by facsimile transmission.

(4) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(5) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(Authority: 20 U.S.C. 2727(b), 2972(d)-(e), 2990(c), 3223(c))

[54 FR 21775, May 19, 1989, as amended at 57 FR 56795, Nov. 30, 1992]

**§ 76.671 Notice by the Secretary.**

(a) Before taking any final action to implement a bypass under a program listed in § 76.670, the Secretary provides the affected grantee and subgrantee, if appropriate, with written notice.

(b) In the written notice, the Secretary—

- (1) States the reasons for the proposed bypass in sufficient detail to allow the grantee and subgrantee to respond;
- (2) Cites the requirement that is the basis for the alleged failure to comply; and
- (3) Advises the grantee and subgrantee that they—

(i) Have at least 45 days after receiving the written notice to submit written objections to the proposed bypass; and

(ii) May request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the grantee and subgrantee by certified mail with return receipt requested.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21775, May 19, 1989]

**§ 76.672 Bypass procedures.**

Sections 76.673 through 76.675 contain the procedures that the Secretary uses in conducting a show cause hearing. The hearing officer may modify the procedures for a particular case if all parties agree the modification is appropriate.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

**§ 76.673 Appointment and functions of a hearing officer.**

(a) If a grantee or subgrantee requests a hearing to show cause why the Secretary should not implement a bypass, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the grantee, subgrantee, and representatives of the private school children of the time and place of the hearing.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

**§ 76.674 Hearing procedures.**

(a) The following procedures apply to a show cause hearing regarding implementation of a bypass:

(1) The hearing officer arranges for a transcript to be taken.

(2) The grantee, subgrantee, and representatives of the private school children each may—

(i) Be represented by legal counsel; and

(ii) Submit oral or written evidence and arguments at the hearing.

(b) Within 10 days after the hearing, the hearing officer—

(1) Indicates that a decision will be issued on the basis of the existing record; or

(2) Requests further information from the grantee, subgrantee, rep-

resentatives of the private school children, or Department officials.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

**§ 76.675 Posthearing procedures.**

(a)(1) Within 120 days after the record of a show cause hearing is closed, the hearing officer issues a written decision on whether a bypass should be implemented.

(2) The hearing officer sends copies of the decision to the grantee, subgrantee, representatives of the private school children, and the Secretary.

(b) Within 30 days after receiving the hearing officer's decision, the grantee, subgrantee, and representatives of the private school children may each submit to the Secretary written comments on the decision.

(c) The Secretary may adopt, reverse, modify, or remand the hearing officer's decision.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

**§ 76.676 Judicial review of a bypass action.**

If a grantee or subgrantee is dissatisfied with the Secretary's final action after a proceeding under §§ 76.672 through 76.675, it may, within 60 days after receiving notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located.

(Authority: 20 U.S.C. 2727(b)(4)(B)-(D), 2972(h)(2)-(4), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

**§ 76.677 Continuation of a bypass.**

The Secretary continues a bypass until the Secretary determines that the grantee or subgrantee will meet the requirements for providing services to private school children.

(Authority: 20 U.S.C. 1221e-3, 2727(b)(3)(D), 2972(f), and 3474)

[54 FR 21776, May 19, 1989]

§ 76.681

OTHER REQUIREMENTS FOR CERTAIN PROGRAMS

CROSS REFERENCE: See 34 CFR part 74, Subpart C—Bonding and Insurance; and 34 CFR 74.144—Inventions and patents.

**§ 76.681 Protection of human subjects.**

If a State or a subgrantee uses a human subject in a research project, the State or subgrantee shall protect the person from physical, psychological, or social injury resulting from the project.

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

CROSS REFERENCE: See 34 CFR Part 97—Protection of Human Subjects.

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 57 FR 30341, July 8, 1992]

**§ 76.682 Treatment of animals.**

If a State or a subgrantee uses an animal in a project, the State or subgrantee shall provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act of 1970.

(Authority: Pub. L. 89-544, as amended)

**§ 76.683 Health or safety standards for facilities.**

A State and a subgrantee shall comply with any Federal health or safety requirements that apply to the facilities that the State or subgrantee uses for a project.

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

**Subpart G—What Are the Administrative Responsibilities of the State and Its Subgrantees?**

GENERAL ADMINISTRATIVE RESPONSIBILITIES

**§ 76.700 Compliance with statutes, regulations, State plan, and applications.**

A State and a subgrantee shall comply with the State plan and applicable statutes, regulations, and approved applications, and shall use Federal funds

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in accordance with those statutes, regulations, plan, and applications.

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

**§ 76.701 The State or subgrantee administers or supervises each project.**

A State or a subgrantee shall directly administer or supervise the administration of each project.

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

**§ 76.702 Fiscal control and fund accounting procedures.**

A State and a subgrantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.

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

**§ 76.703 When a State may begin to obligate funds.**

(a)(1) The Secretary may establish, for a program subject to this part, a date by which a State must submit for review by the Department a State plan and any other documents required to be submitted under guidance provided by the Department under paragraph (b)(3) of this section.

(2) If the Secretary does not establish a date for the submission of State plans and any other documents required under guidance provided by the Department, the date for submission is three months before the date the Secretary may begin to obligate funds under the program.

(b)(1) This paragraph (b) describes the circumstances under which the submission date for a State plan may be deferred.

(2) If a State asks the Secretary in writing to defer the submission date for a State plan because of a Presidentially declared disaster that has occurred in that State, the Secretary may defer the submission date for the State plan and any other document required under guidance provided by the Department if the Secretary determines that the disaster significantly

impairs the ability of the State to submit a timely State plan or other document required under guidance provided by the Department.

(3)(i) The Secretary establishes, for a program subject to this part, a date by which the program office must deliver guidance to the States regarding the contents of the State plan under that program.

(ii) The Secretary may only establish a date for the delivery of guidance to the States so that there are at least as many days between that date and the date that State plans must be submitted to the Department as there are days between the date that State plans must be submitted to the Department and the date that funds are available for obligation by the Secretary on July 1, or October 1, as appropriate.

(iii) If a State does not receive the guidance by the date established under paragraph (b)(3)(i) of this section, the submission date for the State plan under the program is deferred one day for each day that the guidance is late in being received by the State.

NOTE: The following examples describe how the regulations in § 76.703(b)(3) would act to defer the date that a State would have to submit its State plan.

*Example 1.* The Secretary decides that State plans under a forward-funded program must be submitted to the Department by May first. The Secretary must provide guidance to the States under this program by March first, so that the States have at least as many days between the guidance date and the submission date (60) as the Department has between the submission date and the date that funds are available for obligation (60). If the program transmits guidance to the States on February 15, specifying that State plans must be submitted by May first, States generally would have to submit State plans by that date. However, if, for example, a State did not receive the guidance until March third, that State would have until May third to submit its State plan because the submission date of its State plan would be deferred one day for each day that the guidance to the State was late.

*Example 2.* If a program publishes the guidance in the FEDERAL REGISTER on March third, the States would be considered to have received the guidance on that day. Thus, the guidance could not specify a date for the submission of State plans before May second, giving the States 59 days between the date the guidance is published and the submission date and giving the Department 58 days be-

tween the submission date and the date that funds are available for obligation.

(c)(1) For the purposes of this section, the submission date of a State plan or other document is the date that the Secretary receives the plan or document.

(2) The Secretary does not determine whether a State plan is substantially approvable until the plan and any documents required under guidance provided by the Department have been submitted.

(3) The Secretary notifies a State when the Department has received the State plan and all documents required under guidance provided by the Department.

(d) If a State submits a State plan in substantially approvable form (or an amendment to the State plan that makes it substantially approvable), and submits any other document required under guidance provided by the Department, on or before the date the State plan must be submitted to the Department, the State may begin to obligate funds on the date that the funds are first available for obligation by the Secretary.

(e) If a State submits a State plan in substantially approvable form (or an amendment to the State plan that makes it substantially approvable) or any other documents required under guidance provided by the Department after the date the State plan must be submitted to the Department, and—

(1) The Department determines that the State plan is substantially approvable on or before the date that the funds are first available for obligation by the Secretary, the State may begin to obligate funds on the date that the funds are first available for obligation by the Secretary; or

(2) The Department determines that the State plan is substantially approvable after the date that the funds are first available for obligation by the Secretary, the State may begin to obligate funds on the earlier of the two following dates:

(i) The date that the Secretary determines that the State plan is substantially approvable.

(ii) The date that is determined by adding to the date that funds are first

available for obligation by the Secretary—

(A) The number of days after the date the State plan must be submitted to the Department that the State plan or other document required under guidance provided by the Department is submitted; and

(B) If applicable, the number of days after the State receives notice that the State plan is not substantially approvable that the State submits additional information that makes the plan substantially approvable.

(f) Additional information submitted under paragraph (e)(2)(i)(B) of this section must be signed by the person who submitted the original State plan (or an authorized delegate of that officer).

(g)(1) If the Department does not complete its review of a State plan during the period established for that review, the Secretary will grant pre-award costs for the period after funds become available for obligation by the Secretary and before the State plan is found substantially approvable.

(2) The period established for the Department's review of a plan does not include any day after the State has received notice that its plan is not substantially approvable.

NOTE: The following examples describe how the regulations in § 76.703 would be applied in certain circumstances. For the purpose of these examples, assume that the grant program established an April 1 due date for the submission of the State plan and that funds are first available for obligation by the Secretary on July 1.

*Example 1.* Paragraph (d): A State submits a plan in substantially approvable form by April 1. The State may begin to obligate funds on July 1.

*Example 2.* Paragraph (e)(1): A State submits a plan in substantially approvable form on May 15, and the Department notifies the State that the plan is substantially approvable on June 20. The State may begin to obligate funds on July 1.

*Example 3.* Paragraph (e)(2)(i): A State submits a plan in substantially approvable form on May 15, and the Department notifies the State that the plan is substantially approvable on July 15. The State may begin to obligate funds on July 15.

*Example 4.* Paragraph (e)(2)(ii)(A): A State submits a plan in substantially approvable form on May 15, and the Department notifies the State that the plan is substantially approvable on August 21. The State may begin to obligate funds on August 14. (In this ex-

ample, the plan is 45 days late. By adding 45 days to July 1, we reach August 14, which is earlier than the date, August 21, that the Department notifies the State that the plan is substantially approvable. Therefore, if the State chose to begin drawing funds from the Department on August 14, obligations made on or after that date would generally be allowable.)

*Example 5.* Paragraph (e)(2)(i): A State submits a plan on May 15, and the Department notifies the State that the plan is not substantially approvable on July 10. The State submits changes that make the plan substantially approvable on July 20 and the Department notifies the State that the plan is substantially approvable on July 25. The State may begin to obligate funds on July 25. (In this example, the original submission is 45 days late. In addition, the Department notifies the State that the plan is not substantially approvable and the time from that notification until the State submits changes that make the plan substantially approvable is an additional 10 days. By adding 55 days to July 1, we reach August 24. However, since the Department notified the State that the plan was substantially approvable on July 25, that is the date that the State may begin to obligate funds.)

*Example 6.* Paragraph (e)(2)(ii)(B): A State submits a plan on May 15, and the Department notifies the State that the plan is not substantially approvable on August 1. The State submits changes that make the plan substantially approvable on August 20, and the Department notifies the State that the plan is substantially approvable on September 5. The State may choose to begin drawing funds from the Department on September 2, and obligations made on or after that date would generally be allowable. (In this example, the original submission is 45 days late. In addition, the Department notifies the State that the plan is not substantially approvable and the time from that notification until the State submits changes that make the plan substantially approvable is an additional 19 days. By adding 64 days to July 1, we reach September 2, which is earlier than September 5, the date that the Department notifies the State that the plan is substantially approvable.)

*Example 7.* Paragraph (g): A State submits a plan on April 15 and the Department notifies the State that the plan is not substantially approvable on July 16. The State makes changes to the plan and submits a substantially approvable plan on July 30. The Department had until July 15 to decide whether the plan was substantially approvable because the State was 15 days late in submitting the plan. The date the State may begin to obligate funds under the regulatory deferral is July 29 (based on the 15 day deferral for late submission plus a 14 day deferral

for the time it took to submit a substantially approvable plan after having received notice). However, because the Department was one day late in completing its review of the plan, the State would get pre-award costs to cover the period of July 1 through July 29.

(h) After determining that a State plan is in substantially approvable form, the Secretary informs the State of the date on which it could begin to obligate funds. Reimbursement for those obligations is subject to final approval of the State plan.

(Authority: 20 U.S.C. 1221e-3, 3474, 6511(a) and 31 U.S.C. 6503)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 60 FR 41294, Aug. 11, 1995; 61 FR 14484, Apr. 2, 1996]

**§ 76.704 New State plan requirements that must be addressed in a State plan.**

(a) This section specifies the State plan requirements that must be addressed in a State plan if the State plan requirements established in statutes or regulations change on a date close to the date that State plans are due for submission to the Department.

(b)(1) A State plan must meet the following requirements:

(i) Every State plan requirement in effect three months before the date the State plan is due to be submitted to the Department under 34 CFR 76.703; and

(ii) Every State plan requirement included in statutes or regulations that will be effective on or before the date that funds become available for obligation by the Secretary and that have been signed into law or published in the FEDERAL REGISTER as final regulations three months before the date the State plan is due to be submitted to the Department under 34 CFR 76.703.

(2) If a State plan does not have to meet a new State plan requirement under paragraph (b)(1) of this section, the Secretary takes one of the following actions:

(i) Require the State to submit assurances and appropriate documentation to show that the new requirements are being followed under the program.

(ii) Extend the date for submission of State plans and approve pre-award

costs as necessary to hold the State harmless.

(3) If the Secretary requires a State to submit assurances under paragraph (b)(2) of this section, the State shall incorporate changes to the State plan as soon as possible to comply with the new requirements. The State shall submit the necessary changes before the start of the next obligation period.

(Authority: 20 U.S.C. 1221e-3, 3474, 6511(a) and 31 U.S.C. 6503)

[60 FR 41296, Aug. 11, 1995]

**§ 76.707 When obligations are made.**

The following table shows when a State or a subgrantee 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 on which the State or subgrantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the State or subgrantee.	When the services are performed.
(c) Personal services by a contractor who is not an employee of the State or subgrantee.	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services.	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e) Public utility services .....	When the State or subgrantee receives the services.
(f) Travel .....	When the travel is taken.
(g) Rental of real or personal property.	When the State or subgrantee uses the property.
(h) A preagreement cost that was properly approved by the State under the cost principals identified in 34 CFR 74.171 and 80.22..	

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

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 55 FR 14817, Apr. 18, 1990; 57 FR 30342, July 8, 1992]

**§ 76.708 When certain subgrantees may begin to obligate funds.**

(a) If the authorizing statute for a program requires a State to make subgrants on the basis of a formula (see § 76.5), the State may not authorize an applicant for a subgrant to obligate

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funds until the later of the following two dates:

(1) The date that the State may begin to obligate funds under § 76.703; or

(2) The date that the applicant submits its application to the State in substantially approvable form.

(b) Reimbursement for obligations under paragraph (a) of this section is subject to final approval of the application.

(c) If the authorizing statute for a program gives the State discretion to select subgrantees, the State may not authorize an applicant for a subgrant to obligate funds until the subgrant is made. However, the State may approve pre-agreement costs in accordance with the cost principles that are appended to 34 CFR part 74 (Appendices C-F).

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

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980. Further redesignated at 60 FR 41295, Aug. 11, 1995]

**§ 76.709 Funds may be obligated during a “carryover period.”**

(a) If a State or a subgrantee does not obligate all of its grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, it may obligate the remaining funds during a carryover period of one additional fiscal year.

(b) The State shall return to the Federal Government any carryover funds not obligated by the end of the carryover period by the State and its subgrantees.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA “shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act.” Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under section 427 or other applicable law.

(Authority: U.S.C. 1221e-3, 1225(b), and 3474)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86296, Dec. 30, 1980. Redesignated at 60 FR 41295, Aug. 11, 1995]

**§ 76.710 Obligations made during a carryover period are subject to current statutes, regulations, and applications.**

A State and a subgrantee shall use carryover funds in accordance with:

(a) The Federal statutes and regulations that apply to the program and are in effect for the carryover period; and

(b) Any State plan, or application for a subgrant, that the State or subgrantee is required to submit for the carryover period.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA “shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act.” Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under section 427 or other applicable law.

(Authority: U.S.C. 1221e-3, 1225(b), and 3474)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86296, Dec. 30, 1980. Redesignated at 60 FR 41295, Aug. 11, 1995]

**§ 76.711 Requesting funds by CFDA number.**

If a program is listed in the Catalog of Federal Domestic Assistance (CFDA), a State, when requesting funds under the program, shall identify that program by the CFDA number.

(Authority: 20 U.S.C. 1221e-3, 6511(a), 3474, 31 U.S.C. 6503)

[60 FR 41296, Aug. 11, 1995]

REPORTS

**§ 76.720 Financial and performance reports by a State.**

(a) This section applies to a State’s reports required under 34 CFR 80.41 (Financial reporting) and 34 CFR 80.40 (Monitoring and reporting of program performance).

(b) A State shall submit these reports annually, unless the Secretary allows less frequent reporting.

(c) However, the Secretary may, under 34 CFR 80.12 (Special grant or

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subgrant conditions for "high-risk" grantees) or 34 CFR 80.20 (Standards for financial management systems) require a State to report more frequently than annually.

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

[57 FR 30342, July 8, 1992]

**§ 76.722 A subgrantee makes reports required by the State.**

A State may require a subgrantee to furnish reports that the State needs to carry out its responsibilities under the program.

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

RECORDS

**§ 76.730 Records related to grant funds.**

A State and a subgrantee shall keep records that fully show:

- (a) The amount of funds under the grant or subgrant;
- (b) How the State or subgrantee 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. 1232f)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 53 FR 49143, Dec. 6, 1988]

**§ 76.731 Records related to compliance.**

A State and a subgrantee shall keep records to show its compliance with program requirements.

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

PRIVACY

**§ 76.740 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 438 of GEPA and its implementing regulations under 34

CFR part 99. (Section 438 is the Family Educational Rights and Privacy Act of 1974.)

(b) Under most programs administered by the Secretary, research, experimentation, and testing are subject to the requirements of section 439 of GEPA and its implementing regulations at 34 CFR part 98.

(Authority: 20 U.S.C. 1221e-3, 1232g, 1232h, 3474, and 6511(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 57 FR 30342, July 8, 1992]

USE OF FUNDS BY STATES AND SUBGRANTEES

**§ 76.760 More than one program may assist a single activity.**

A State or a subgrantee may use funds under more than one program to support different parts of the same project if the State or subgrantee meets the following conditions:

- (a) The State or subgrantee complies with the requirements of each program with respect to the part of the project assisted with funds under that program.
- (b) The State or subgrantee has an accounting system that permits identification of the costs paid for under each program.

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

**§ 76.761 Federal funds may pay 100 percent of cost.**

A State or a subgrantee may use program funds to pay up to 100 percent of the cost of a project if:

- (a) The State or subgrantee is not required to match the funds; and
- (b) The project can be assisted under the authorizing statute and implementing regulations for the program.

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

STATE ADMINISTRATIVE RESPONSIBILITIES

**§ 76.770 A State shall have procedures to ensure compliance.**

Each State shall have procedures for reviewing and approving applications for subgrants and amendments to those applications, for providing technical

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assistance, for evaluating projects, and for performing other administrative responsibilities the State has determined are necessary to ensure compliance with applicable statutes and regulations.

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

[57 FR 30342, July 8, 1992]

### **§ 76.783 State educational agency action—subgrantee's opportunity for a hearing.**

(a) A subgrantee may request a hearing if it alleges that any of the following actions by the State educational agency violated a State or Federal statute or regulation:

(1) Ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds; or

(2) Terminating further assistance for an approved project.

(b) The procedures in § 76.401(d)(2)–(7) apply to any request for a hearing under this section.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under section 427 or other applicable law.

(Authority: 20 U.S.C. 1231b-2)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 45 FR 86296, Dec. 30, 1980; 57 FR 30342, July 8, 1992]

## **Subpart H—What Procedures Does the Secretary Use To Get Compliance?**

### **§ 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 af-

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fect 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.**

(a) [Reserved]