

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1880-AA69

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs. These proposed amendments would reduce the need for specific regulations governing individual programs. The proposed amendments would authorize the Secretary to establish selection criteria for a discretionary grant program based on provisions in the statute authorizing that program and on existing selection criteria in EDGAR. The amendments also would clarify the Secretary's authority to establish annual funding priorities for grant competitions.

DATES: Comments must be received on or before October 2, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Jacinta Ma, U.S. Department of Education, 600 Independence Avenue SW., Washington, DC 20202. Comments also may be sent through the Internet to Selection __ Criteria@ed.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Jacinta Ma, U.S. Department of Education, 600 Independence Avenue SW., Washington, DC 20202-2241. Telephone: (202) 401-8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed amendments would allow the Secretary to establish selection criteria based on statutory provisions, clarify the Secretary's authority to establish one or more annual priorities, and allow the Secretary to establish the maximum score for each selection criterion on a competition-by-competition basis. The proposed amendments also would conform existing regulations in §§ 75.1 and 75.200 to reflect the additional method for establishing selection criteria.

In addition, the proposed amendments would eliminate requirements in § 75.101(c) that are unnecessary. The inclusion of the information required by § 75.101(c) in

an application notice is already adequately provided for in § 75.101(a).

The following is a summary of the major provisions of the proposed amendments.

Section 75.105 Annual Priorities

The Secretary proposes to amend § 75.105 to clarify that if a statute authorizing a program includes one or more specific priorities, the Secretary may establish those priorities as annual funding priorities without first submitting them to public comment. Statutory priorities include provisions that require the Secretary to give preference or special consideration to certain applicants. Because these priorities are established by statute, public comment could affect only the way the Department implements the statutory priority, e.g., what weight to give to the priority or choosing among priorities. This amendment would codify the Department's long-standing interpretation of the current provisions in § 75.105 regarding priorities. In addition, the proposed regulations would allow the Secretary to establish without public comment annual funding priorities selected from allowable activities specified in a program statute assuming that there is legal authority to establish this type of priority. Through these amendments, the Secretary would be able to assign an appropriate weight to the statutory priority or priority selected from allowable activities, and, in an application notice published in the **Federal Register**, indicate how the priority will apply to the particular competition.

Sections 75.200, 75.201, 75.209, and 75.210 Selection Criteria

EDGAR provides selection criteria for choosing among competing grant applications (34 CFR 75.210) under programs that do not have implementing regulations or have implementing regulations that do not include selection criteria. However, the EDGAR selection criteria are necessarily very general, and for some programs the EDGAR criteria may not adequately enable reviewers to evaluate the extent to which grant applications respond to specific provisions contained in the program statutes that govern the competitions. Therefore, in an effort to create more targeted selection criteria in appropriate situations and to reduce the amount of rulemaking for discretionary grant programs, the Secretary proposes these amendments to Part 75 to authorize the Secretary to establish selection criteria for a grant competition based on the authorizing statute. The

Secretary believes these amendments will reduce the amount of rulemaking for discretionary programs because, in the past, the Department regularly had to develop program-specific regulations to meet the need for more specific selection criteria.

The Secretary proposes a new provision (§ 75.209) that would allow the Secretary to establish selection criteria based on statutory provisions. For example, the Secretary could establish criteria based on provisions such as specified statutory selection criteria, allowable activities, application content requirements, or other pre-award or post-award conditions. The new selection criteria would mirror statutory language and the Secretary would evaluate each application to determine how well the applicant's proposed project meets each of the criteria. The Secretary has already published a notice in the **Federal Register** (March 7, 1995 at 60 FR 12648) authorizing this procedure for conducting certain FY 1995 grant competitions under the Improving America's Schools Act of 1994.

If a program does not have implementing regulations establishing selection criteria or has implementing regulations that do not include selection criteria, these amendments would authorize the Secretary to evaluate applications by applying the general selection criteria in part 75, selection criteria based on provisions in the authorizing statute for the program, or a combination of these criteria. These amendments would also allow the Secretary the flexibility to weigh the criteria according to the needs of each individual competition.

Rather than establishing in regulations the total number of points an application may receive and the maximum number of points that an application may receive for a particular selection criterion (either established from a statutory provision or found in EDGAR), the Secretary will notify applicants of the total possible score and the maximum points for each selection criterion in the application package. If no point allocation is specified, the Secretary would assign an equal maximum value to each selection criterion.

Because the selection criteria would be included in an application package, the criteria would be subject to prior public comment in accordance with the Paperwork Reduction Act of 1995. That statute requires the Department to publish in the **Federal Register** a notice of proposed information collection that solicits public comment. Anyone who wishes to comment may contact the

Department and obtain a copy of the proposed application package.

The Secretary proposes to preserve § 75.210 of EDGAR, which establishes general selection criteria, except that the maximum point value assigned to each selection criterion would be removed to allow for the proposed process of assigning a maximum possible point value to each criterion according to the needs of the competition. In addition, because the Secretary would be able to weigh each criterion by establishing the total number of points and assigning a maximum possible point value to each selection criterion, there would no longer be a need to retain § 75.210(c), which allows for the distribution of an unassigned 15 points among the criteria in § 75.210(b).

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These regulations could affect States, State agencies, and individuals. States, State agencies, and individuals, however, are not defined as "small entities" in the Regulatory Flexibility Act.

The small entities that could be affected by these regulations are institutions of higher education, local educational agencies, community-based organizations, and nonprofit organizations receiving Federal funds under a direct grant program. The proposed regulations, however, would not have a significant economic impact on these entities, if affected, because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed regulations would impose minimal requirements for the Secretary to select grantees.

Paperwork Reduction Act of 1980

The proposed amendments have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

Some of the programs that would be affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 5100, 600 Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 75

Administrative practice and procedure, Continuation funding, Education, Grant programs—education, Grants administration, Incorporation by reference, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

Dated: August 28, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary proposes to amend part 75 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 is revised to read as follows:

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

2. Section 75.1 is amended by revising the Note to read as follows:

§ 75.1 Programs to which part 75 applies.

* * * * *

Note: See part 76 for the general regulations that apply to programs that allocate funds among eligible States. For a description of the two kinds of direct grant programs see § 75.200(b) for a description of a discretionary grant program and § 75.200(c) for a description of a formula grant program. Also see §§ 75.201, 75.209, and 75.210 for the selection criteria for discretionary grant programs that do not have implementing regulations or whose implementing regulations do not include selection criteria.

§ 75.101 [Amended]

3. Section 75.101 is amended by removing paragraph (c).

4. Section 75.105 is amended by removing the word "or" following paragraph (b)(2)(ii), replacing the period at the end of paragraph (b)(2)(iii) with a semicolon, adding new paragraphs (b)(2)(iv) and (b)(2)(v), and revising the first sentence in paragraph (c)(2)(i) to read as follows:

§ 75.105 Annual priorities.

* * * * *

(b) * * *

(2) * * *

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

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

(c) * * *

(2) * * *

(i) The Secretary may award some or all bonus points to an application depending on the extent to which the application meets the priority. * * *

5. Section 75.200 is amended by revising paragraph (b)(3) to read as follows:

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

* * * * *

(b) * * *

(3) If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria, the Secretary uses one of the following to evaluate applications for new grants under the program:

(i) Selection criteria established under § 75.209.

(ii) Selection criteria in § 75.210.

(iii) A combination of selection criteria established under § 75.209 and selection criteria in § 75.210.

* * * * *

6. Section 75.201 is revised to read as follows:

§ 75.201 How to use the selection criteria.

(a) If points are assigned to the selection criteria, the Secretary informs applicants of—

(1) The total possible score for all of the criteria for a program; and

(2) The maximum possible score for each criterion.

(b) If no points are assigned to the selection criteria, the Secretary evaluates each criterion equally.

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

7. A new § 75.209 is added to read as follows:

§ 75.209 Selection criteria based on statutory provisions.

(a) If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria, the Secretary may evaluate applications by—

(1) Establishing selection criteria based on particular statutory provisions that may include but are not limited to—

- (i) Specific statutory selection criteria;
- (ii) Allowable activities;
- (iii) Application content requirements; or
- (iv) Other pre-award and post-award conditions; and

(2) Assigning the maximum possible score for each of the criteria established under paragraph (a)(1) of this section.

(b) The Secretary reviews each application to determine how well the applicant's proposed project meets each

of the criteria established under paragraph (a)(1) of this section.

Example: If a program statute requires that each application address how the applicant will serve the needs of limited English proficient children, under § 75.209 the Secretary could establish a criterion and evaluate applications based on how well the applicant's proposed project meets that statutory provision. The Secretary might decide to award up to 10 points for this criterion. Applicants who have the best proposals to serve the needs of limited English proficient children would score the highest under the criterion in this example. (Authority: 20 U.S.C. 1221e-3 and 3474)

8. Section 75.210 is amended by revising the heading, removing paragraphs (a) and (c), removing the point designations following the italicized headings in paragraphs (b) (1), (2), (3), (4), (5), (6), and (7), adding undesignated introductory text, removing "*The criteria—*" in paragraph (b), and redesignating paragraphs (b) (1),

(2), (3), (4), (5), (6), and (7) as paragraphs (a), (b), (c), (d), (e), (f), and (g), respectively, to read as follows:

§ 75.210 General selection criteria.

The Secretary may use one or more of the following selection criteria, together with one or more criteria established under § 75.209, if any, to evaluate applications for new grants under a discretionary grant program:

(a) *Meeting the purposes of the authorizing statute.* * * *

(b) *Extent of need for the project.* * * *

(c) *Plan of operation.* * * *

(d) *Quality of key personnel.* * * *

(e) *Budget and cost effectiveness.* * * *

(f) *Evaluation plan.* * * *

(g) *Adequacy of resources.* * * *

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

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