

**DEPARTMENT OF EDUCATION****34 CFR Part 75**

RIN 1880-AA61

**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) governing the deadline date for submitting discretionary grant award applications and the selection of applications for new grants. These amendments are in response to a National Performance Review recommendation to streamline and improve the Department of Education's discretionary grants award process. The amendments would change the way the Department interprets the deadline date for receipt of discretionary grant applications and also expand the bases for rejecting applications for new grants to include consideration of a recipient's previous performance under any Department of Education grant program as well as its failure to submit a final performance report or its submission of a report of unacceptable quality. These amendments are expected to reduce the processing time of discretionary grants, provide at least as much time for applicants to prepare their applications as they have now, improve the quality of final performance reports and increase the ability of the Department to ensure that qualified applicants receive grants.

**DATES:** Comments must be received on or before November 20, 1995.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Mary P. Liggett, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3636, ROB-3, Washington, D.C. 20202-4700. Comments may also be sent through Internet to [Dead\\_Line@ed.gov](mailto:Dead_Line@ed.gov).

**FOR FURTHER INFORMATION CONTACT:** Ronelle Holloman, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3636, ROB-3, Washington, D.C. 20202-4700. Telephone: (202) 205-3501. 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:** In December 1993 the National Performance Review (NPR) issued its Accompanying Report for the

Department of Education. The Accompanying Report included recommendations to streamline and improve the Department of Education's discretionary grants award process. One of the areas identified as a concern was the grant application review process. The discretionary grants process, including proposal preparation time, takes approximately 26 weeks. Of these 26 weeks, six to eight weeks are allowed for the grant applicant to develop a proposal. The remaining time is used by the Department to process and award discretionary grants. Under the current rule, applications must be postmarked or hand delivered to the Department by the deadline date. The NPR recommended the Department change this rule so that all applications must be received in the Department by the deadline date, as is already the case for contract proposals, unless certain circumstances exist.

Consistent with the governmentwide requirement for contracts, there will be certain reasonable exceptions to this standard. For instance, under this proposed regulation, a grant application may be accepted after the deadline if it carries a legible proof-of-mailing date assigned by the U.S. Postal Service or a commercial carrier, which shows the application was mailed not later than the fifth calendar day (for applications sent by mail) or the second calendar day (for applications sent by commercial carrier) before the date specified for receipt of applications.

The new regulation would require an applicant to send its application by mail or commercial carrier to the Department earlier than is now required. However, the Department would add the review time saved by the new procedures to the time that applicants have to prepare applications by increasing the time between publication of the program announcement and the deadline date.

The NPR report also identified the failure to receive final performance reports once Federal funds are spent as a priority issue to be addressed in the grant process. The final performance report is due within 90 days after the completion of a grant and provides the Department the opportunity to review a project in its entirety for its strengths and accomplishments. Additionally, the final step in managing a grant, 'grant closeout,' cannot begin without the final report. The Department begins to officially close out a grant after the expiration or termination of the grant. During closeout, the Department determines whether all required work of a grant project has been completed and Federal funds have been properly accounted for. In addition to providing

the Department with conclusive information about the achievements of a project, these missing performance reports contain valuable information on ways to raise education standards and further improve education. These reports, if received, could be disseminated and successful project activities replicated.

The recommendation of the NPR is to amend the regulations to allow the Secretary of Education, when making future funding decisions, to consider a recipient's past performance under any Department program, including the failure to submit a final performance report or the submission of a report of unacceptable quality. Currently, the Department can only consider an applicant's performance under the program from which it is seeking a new grant. Therefore, a recipient could, under the Department's current regulations, misuse Federal monies or perform poorly under one program, and still be considered for funding under another program.

So that the proposed regulations do not impede the Department's goal of awarding timely FY 1995 discretionary grants, they would not take effect until FY 1996 competitions.

Executive Order 12866

*Assessment of Costs and Benefits*

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Department's programs effectively and efficiently. As stated under the heading Paperwork Reduction Act of 1995 in this preamble, this proposed rule contains no paperwork burdens.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential

costs or increase potential benefits resulting from these proposed regulations.

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. For the most part these revisions are adopted to streamline and improve the discretionary grant process. The proposed revisions would not have a significant economic impact on the entities affected.

Paperwork Reduction Act of 1995

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

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 3636, Regional Office Building No. 3, Seventh and D Streets S.W., Washington, D.C., 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

Education department, Discretionary grant programs—education, Continuation funding, Grant administration, Incorporation by reference, Reporting and recordkeeping requirements, Performance reports, Unobligated funds.

Dated: July 20, 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 continues to read as follows:

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

2. Section 75.102 is amended by revising paragraphs (a) and (b) and adding new paragraph (c), to read as follows:

**§ 75.102 Deadline date for applications.**

(a) The application notice for a program sets a deadline date for applications to be received in the Department.

(b) (1) The Department of Education only accepts a direct grant application if it is received on or before the deadline date unless one of the exceptions in paragraph (c) of this section applies.

(2) If an applicant hand delivers a direct grant application to the Department, the applicant shall deliver the application to the address specified in the application notice by 2:00 p.m. (Washington, D.C., time) on the deadline date.

(c) The Department accepts a direct grant application received after the deadline date only if—

(1) The applicant can show proof that the application was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., if an announcement requires receipt of applications by the 20th of the month, the late application must have been mailed by the 15th); or

(2) The applicant can show proof that the application was sent by commercial carrier not later than the second calendar day before the date specified

for receipt of applications (e.g., if an announcement requires receipt of applications by the 20th of the month, the late application must have been sent by the 18th).

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3. Section 75.103 is amended by revising paragraph (b) to read as follows:

**§ 75.103 Deadline date for preapplications.**

\* \* \* \* \*

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

\* \* \* \* \*

4. Section 75.158 is amended by revising paragraph (c) to read as follows:

**§ 75.158 Deadlines for State comments.**

\* \* \* \* \*

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

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5. Section 75.217 is amended by revising paragraph (d)(3) to read as follows:

**§ 75.217 How the Secretary selects applications for new grants.**

\* \* \* \* \*

(d) \* \* \*

(3) Any other information—

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

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

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

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