

**DEPARTMENT OF EDUCATION****RIN 1830-ZA03****Office of Elementary and Secondary Education; Title I, Part C—Education of Migratory Children****AGENCY:** Department of Education.**ACTION:** Notice of final criteria for consortium incentive grants in fiscal year (FY) 1996 and subsequent fiscal years, available under Part C of Title I of the Elementary and Secondary Education Act of 1965.**SUMMARY:** Under the authority of section 1308(d) of Title I of the Elementary and Secondary Education Act (ESEA), as amended by the Improving America's Schools Act (IASA), the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) establishes criteria for awarding Migrant Education Program (MEP) consortium incentive grants to State educational agencies (SEAs) with approved consortium arrangements.**EFFECTIVE DATE:** These regulations take effect on May 8, 1996.**FOR FURTHER INFORMATION CONTACT:** James English, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4100, Washington, D.C. 20202-6135. Telephone: (202) 260-1394. 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:****Background**

The MEP, authorized in Title I, Part C of the ESEA, is a State-operated, formula grant program under which SEAs receive funds to improve the academic achievement and welfare of migratory children who reside in their States. Consistent with the emphasis that the reauthorized ESEA places upon removing barriers to cross-program coordination and integration of programs that serve migratory children, sections 1303(d) and 1308(d) of the ESEA encourage SEAs to consider whether consortium arrangements with other States or appropriate entities would result in a more effective and efficient delivery of MEP services.

In this regard, section 1303(d) directs the Secretary to consult with States whose MEP allocations in any year will be \$1 million or less about the desirability of forming consortia. This section also directs the Secretary to approve any State's consortium

proposal that (1) reduces MEP administrative costs or program function costs, and (2) increases the amount of MEP funds that are made available for direct services to migratory children that add substantially to the educational attainment or welfare of those children. While an SEA may form a consortium arrangement with any appropriate entity, the Secretary, in light of the strong interstate emphasis in the MEP, encourages SEAs to establish multi-State consortium arrangements.

To encourage States to form consortium arrangements that meet the requirements of section 1303(d), section 1308(d) of the ESEA directs the Secretary to reserve up to \$1.5 million of the funds appropriated for the MEP for competitive incentive awards to SEAs with consortium arrangements approved by the Secretary. Section 1308(d) also limits the size of each of these grants to not more than \$250,000 and provides that not fewer than 10 grants be made to eligible SEAs with approved consortium arrangements whose MEP are less than \$1 million. While the provision offers all States an incentive to participate in consortium arrangements, it was enacted particularly to benefit those States that, because of the small size of their MEP allocations, may have particular difficulty in both administering the MEP and providing direct services to migratory children.

Last year, for FY 1995, the Department exercised its authority under section 437(d)(1) of the General Education Provisions Act (GEPA) to waive public comment on the criteria and process for first-year implementation of the consortium incentive grant program. The notice of final criteria for the FY 1995 grants was published in the Federal Register on March 30, 1995. FY 1995 awards went to 15 SEAs participating in 5 approved consortium arrangements.

On February 1, 1996, the Secretary published in the Federal Register (61 FR 3772) a notice of proposed criteria to award the consortium incentive grants in FY 1996 and subsequent fiscal years. The notice of proposed criteria, which was based on the Department's experience with the FY 1995 grants and subsequent discussions with staff from SEAs that applied or considered applying for grants last year, proposed to continue using the same criteria and process as was used in FY 1995. There are no differences between the notice of proposed criteria and this notice of final criteria.

**Analysis of Comment and Changes**

In response to the Secretary's invitation in the notice of proposed criteria, two parties submitted comments. One commenter concurred with the notice of proposed criteria as written. One commenter suggested that the notice should include examples of the "direct services" for which consortium incentive grant funds could be expended.

The Secretary has made no change in the notice of final criteria. The Secretary cannot envision all possible activities that might be characterized as direct services. The Secretary believes that providing a partial list of examples could limit a recipient's flexibility in using the consortium incentive grant funds.

**Eligibility for Consortium Incentive Grants**

The Secretary will reserve \$1.5 million to implement this consortium incentive grant program in FY 1996. For subsequent fiscal years, the Secretary shall announce, in the Federal Register, the amount of funds that will be available under this grant authority.

The Secretary will use a variety of methods, including meetings and telephone calls, to discuss with SEA officials, in States receiving MEP allocations of less than \$1 million, the circumstances in which consortium arrangements might enhance their programs for migratory children.

Consistent with section 1303(d), a consortium arrangement will be approved if it (1) reduces the overall amount of MEP administrative or program function costs across the participating SEAs from the amount that would be incurred in the absence of the consortium, and (2) makes more funds available, in total across the participating SEAs, for direct educational or support services to migratory children, so as to add substantially to their welfare or educational attainment than would have been available in the absence of the consortium.

For purposes of section 1303(d), "administrative or program function costs" include all costs that an SEA or its local operating agencies pay from MEP funds to support MEP activities other than direct educational or support services for migratory children. Administrative and program function costs would include the costs of general program administration paid from funds reserved under section 1603(c) of ESEA, as well as the costs of other, program-specific administrative activities, such as identification and recruitment,

interstate, intrastate, and interagency coordination, and parent advisory councils. The term "direct educational or support services" means any instructional or support activities provided directly to migratory children, as well as training of instructional or support staff who provide instructional or support services directly to migratory children. For purposes of section 1303(d), the term "other appropriate entity" can mean any public or private agency or organization.

A single SEA may be part of more than one consortium arrangement. However, consistent with section 1303(d) of the ESEA, each consortium arrangement that the Secretary approves must separately decrease the amount of MEP administrative or program function costs in total for the participating SEAs and, conversely, increase the amount of MEP funds available for direct services to migratory children in total for the participating SEAs. An SEA will submit the information that the Department needs to review and approve the SEA's consortium arrangement, and determine the size of the SEA's consortium incentive grant, through its MEP-specific application or in conjunction with the optional consolidated State plan under section 14302 of the ESEA.

#### Amount of Incentive Grants

Each SEA with one or more consortium arrangements that the Secretary determines meet the criteria in section 1303(d) of the ESEA, *and* whose consortium arrangements increase the amount of MEP funds available for direct services to migratory children in *its* State, will receive one incentive award. In determining the size of an SEA's award, the Secretary will rank SEAs seeking incentive grants on the basis of the *total* percentage increase in MEP funds that the SEA will make available for direct services to migratory children in *its* State as a result of the SEA's participation in the consortium arrangements, as compared to the level of direct services that would be made available to migratory children in the State in the absence of the consortia.

Example I: SEA A has 1 consortium arrangement that increases the amount of funds available for direct services in State A by 10 percent, while SEA B has 2 consortium

arrangements that increase the total amount of funds available for direct services in State B by 8 percent. SEA A would be ranked higher than SEA B even if SEA B's consortium arrangements permit more total funds to be used for direct services.

Example II: SEA C and SEA D participate together in one consortium and this consortium is the only one in which each SEA participates. If the amount available for direct services increases in total across the two States due to participation in the consortium, but the amount available for direct services in State C does not increase, the consortium arrangement will be approved, but only State D, and not State C, will receive an incentive grant.

From the information that an SEA submits, the Department will calculate, for each State, the total percentage increase in MEP funds available for direct services as a result of all the approved consortium arrangements in which the applicant SEA participates. The Department will then rank these percentages in descending order and divide the distribution into thirds (that is, into terciles). Each SEA ranked in the highest third of the distribution will receive an incentive grant that is three times the size of the grant received by each SEA ranked in the lowest third, while each SEA ranked in the middle third will receive an incentive grant that is twice the size of that provided to each SEA ranked in the lowest third. Within each third, grant awards will be of equal size, except that adjustments will be made so that no consortium incentive grant will be greater than \$250,000 or 100 percent of the amount of funds awarded to the SEA under its formula grant allocation, whichever is less.

An SEA may use incentive grant funds awarded under section 1308(d) of the ESEA only to provide direct services to migratory children. These funds are in addition to, and not in place of, the funds awarded under the MEP formula grant.

The Secretary implements section 1308(d) in this way in order to (1) reward all SEAs whose participation in consortium arrangements increases direct services to migratory children in their State, (2) provide larger awards to those SEAs whose consortium arrangements most enhance their capacity to deliver direct services, and (3) ensure that funds under this program

are available to SEAs as soon as possible.

#### Applicability of the Education Department General Administrative Regulations (EDGAR)

In view of the process that the Department proposes to use to obtain information on proposed SEA consortium arrangements, and the criteria it proposes to use to determine, by formula, the amount of the consortium incentive grant that each applicant SEA will receive, the regulations in 34 CFR Part 75 (Direct Grant Programs) of the Education Department General Administrative Regulations (EDGAR) do not apply. Instead, the consortium incentive grant program will be administered, like the MEP itself, under the provisions of 34 CFR Parts 76, 77, 79, 80, and 85 of EDGAR.

#### Paperwork Reduction Act of 1995

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

#### Intergovernmental Review

The MEP is 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 this program.

Authority: 20 U.S.C. 6393(d) and 6398(d). (Catalog of Federal Domestic Assistance Number: 84.011, Migratory Education Basic State Formula Grant Program)

Dated: March 27, 1996.

Gerald N. Tirozzi,

*Assistant Secretary for Elementary and Secondary Education.*

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