

**DEPARTMENT OF EDUCATION****Office of Bilingual Education and Minority Languages Affairs**

**AGENCY:** Department of Education.

**ACTION:** Notice of Limitations and Procedures for Submission and Evaluation of Amended Applications for Bilingual Education: Program Development and Implementation Grants.

**SUMMARY:** The Secretary announces limitations and procedures for submission and evaluation of amended applications for new grants under the Program Development and Implementation Grant (PDI) program which is administered by the Office of Bilingual Education and Minority Languages Affairs (OBEMLA). The limitations and procedures for evaluation and submission apply only in fiscal year (FY) 1998. The Secretary takes this action to allow eligible applicants from California that participated in the PDI program competition announced in the **Federal Register** on November 14, 1997 (62 FR 61180-61202) to submit amended applications that take into account the new requirements for serving students with limited English proficiency (LEP) established in that State by Proposition 227, "English Language Education for Children in Public Schools." Proposition 227 was passed by California's voters on June 2, 1998. No other applications or amendments will be accepted.

**EFFECTIVE DATE:** This notice takes effect July 28, 1998.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Richey or Carol Manitaras, U.S. Department of Education, 600 Independence Avenue, SW, room 5607, Switzer Building, Washington, DC 20202-6510. Telephone: Rebecca Richey, (202) 205-9717, Carol Manitaras (202) 205-9729. 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.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** The PDI program is authorized in section 7112 of Title VII of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (20 U.S.C. 7422). This program provides grants to local educational agencies (LEAs) or one or

more LEAs in collaboration with an institution of higher education (IHE), community-based organizations (CBO), other LEAs, or a State educational agency and to a CBO or an IHE that have an application approved by an LEA to develop and implement early childhood education or family education programs or to conduct an instructional program that supplements the educational services provided by an LEA. Funds under this program are to be used to provide grants to develop and implement new comprehensive, coherent, and successful bilingual education or special alternative instructional programs for LEP students, including programs of early childhood education, kindergarten through twelfth grade education, gifted and talented education, and vocational and applied technology education.

On November 14, 1997, the Department announced in the **Federal Register** the FY 1998 competition for the PDI program. The deadline for transmittal of applications was January 20, 1998 (62 FR 61180). In response to that invitation 242 eligible applications, 36 of which were from California, were submitted to the Department. These applications have all been evaluated, on the basis of the selection criteria set out in the November 14, 1997 notice, by panels of expert reviewers and placed in a rank order. Based on that rank ordering, the amount of available funds, and other relevant factors, the Department has determined that approximately 35 applications are eligible to receive new awards under the PDI program. A number of applications from California were within the funding range of this rank order.

On June 2, 1998, prior to the Department making any new awards under this year's PDI program competition, the voters of California approved Proposition 227, which imposes significant new requirements and limitations on how LEAs in that State can educate LEP students. Proposition 227 will take effect at the start of the coming school year. As a result, many of the California LEAs and other eligible entities that submitted applications for new awards in this year's PDI program competition may not be able to carry out the projects described in their applications. The eligible applicants from California that submitted applications in this year's PDI program competition acted in good faith in relying on the State laws on serving LEP students that were in effect on the date applications were due, January 20, 1998. The Secretary has concluded that it would be unfair to the eligible applicants from California that

participated in this year's PDI program competition, and contrary to the needs of children who would be served by those projects, to deny them an opportunity to compete for funding because of the changes in that State's law brought about by the passage of Proposition 227.

Given these unique and unprecedented circumstances, the Secretary has decided to allow all eligible applicants from California in this year's PDI competition an opportunity to submit amended versions of their original applications to make them consistent with Proposition 227. The Secretary has concluded that it is necessary to offer this opportunity because applicants that cannot carry out their proposed projects due to Proposition 227 will need to amend their applications in order to be eligible for a PDI award.

The procedures established in this notice will operate in the following way. First, these procedures will not adversely affect applicants from outside California that finished in the funding range in this year's competition. These applicants will receive grant awards under the PDI program without regard to the procedures announced in this notice. Second, eligible applicants from California that cannot carry out their proposed projects consistent with Proposition 227 will be allowed to submit, by not later than August 18, 1998, amended applications. These amended applications will be evaluated by panels of experts using the selection criteria set out in the November 14, 1997 **Federal Register** notice (62 FR 61180-61202). (The competitive priority set out in that notice will also apply). Third, eligible applicants from California that have concluded that their applications are consistent with Proposition 227 will inform the Department of that conclusion, and its basis, by August 18, 1998. Finally, based on the scores provided for the amended applications from California and the previous scores of all other applications, a new rank order for the PDI competition will be created. This new rank order will include all applications from California and all the applications from outside of California that did not finish in the funding range in the initial rank order. (As noted earlier, applicants from outside of California that finished in the funding range in the initial rank order will receive PDI grant awards). Those applicants that rank high enough in the new rank order will receive PDI grant awards. Under this process, it is possible that applicants from California that would have finished in the funding range in the initial rank order may not,

because of the score received by their amended proposal, finish in the funding range in the new rank order. Conversely, other applicants that would not have finished in the funding range in the initial rank order may finish in the funding range in the new rank order.

The Secretary has concluded that this process appropriately addresses and balances the needs of all the applicants that participated in this year's competition, the unique circumstances brought about by the passage of Proposition 227 after the due date for applications had passed, and the public interest in selecting quality projects that address the educational needs of LEP students.

The opportunity to submit amended applications is limited to eligible applicants from California that responded to the November 14, 1997 **Federal Register** notice. Eligible applicants from other States that submitted applications in response to that notice are not affected by Proposition 227 and, as a consequence, do not need to amend their applications. LEAs and other eligible entities from California or other States that did not submit PDI applications in response to the November 14, 1997 **Federal Register** notice are also excluded because their status in a competition in which they did not elect to participate was not affected by the passage of Proposition 227.

#### **Deadline and Procedures for Submission and Evaluation of Amended Applications**

The Secretary, in order to ensure timely receipt and processing, establishes the following deadline and procedures for submission and evaluation of amended applications from eligible California applicants that responded to the November 14, 1997 **Federal Register** notice.

*Amended applications:* In order to be considered for funding under this program, amended applications must be received by the Secretary on or before August 18, 1998. For purposes of amended applications submitted pursuant to this notice, the Secretary will not apply 34 CFR 75.102(b), which requires an application to be mailed, rather than received, by the deadline date.

If an eligible applicant wants to submit an amended application, the applicant shall:

(1) Mail the original and two copies of the amended application to: U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, (Attention West Regional Cluster), 600 Independence

Avenue, SW, Switzer Building, room 5607, Washington, D.C. 20202-6510; or

(2) Hand-deliver the original and two copies of the amended application by 4:30 p.m. on or before the deadline date to: U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, (Attention West Regional Cluster), Switzer Building, room 5607, 330 C Street, SW, Washington, D.C.

*Non-amended applications:* If an eligible applicant concludes that no changes are needed to its application due to Proposition 227, the applicant must inform the Secretary, in writing, of that conclusion, and the basis for reaching it, by August 18, 1998. Mail this statement to: U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, (Attention West Regional Cluster), 600 Independence Avenue, SW, Switzer Building, room 5607, Washington, D.C. 20202-6510.

Amended applications will be reviewed in accordance with the selection criteria and priorities announced in the November 14, 1997 notice for the PDI program (62 FR 61180-61202). The scores for the amended applications will then be combined with the scores of the other unfunded applications to create a new rank order.

#### **Waiver of Intergovernmental Review for Federal Programs for Amended Application**

The Secretary waives the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) for amended applications submitted in response to this notice.

#### **State Educational Agency Comment**

The Department, prior to making an award to any applicant from California, including both the amended proposals and the non-amended proposals, will obtain verification from the California Department of Education that the applicant's proposal is consistent with Proposition 227.

#### **Waiver of Proposed Rulemaking**

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties an opportunity to comment on proposed rules or priorities that are not taken directly from a statute. Ordinarily, this practice would have applied to the limitations and procedures in this notice. The Administrative Procedure Act, however, exempts rules from this requirement in those cases where providing an opportunity for public comment is

“impracticable \* \* \* or contrary to the public interest” (5 U.S.C. 553(b)(B)). In this instance, the Secretary finds that it would be both impracticable and contrary to the public interest to provide an opportunity for public comment. Because FY 1998 awards under the Comprehensive School Grants program can be made no later than September 30, 1998, the Secretary has determined that there is not sufficient time to allow interested parties to comment on this notice. The Department, for the foregoing reasons, also waives the 30 day delayed effective date pursuant to 5 U.S.C. 553(d).

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**Note:** The official version of a document is the document published in the **Federal Register**.

**Program authority:** 20 U.S.C. 7422.

(Catalog of Federal Domestic Assistance Number 84.288S, Bilingual Education: Program Development and Implementation Grants)

Dated: July 22, 1998.

**Delia Pompa,**

*Director, Office of Bilingual Education and Minority Languages Affairs.*

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