

DEPARTMENT OF EDUCATION**34 CFR Part 75**

RIN: 1880-AA76

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary amends Part 75, Education Department General Administrative Regulations (EDGAR), which governs the administration of the Department's discretionary grant programs. These amendments revise certain sections of Part 75 to remove conflicts with Part 74, which was revised in July 1994. These amendments provide virtually all discretionary grantees the greater administrative flexibility to take certain actions without the prior approval of the Department that is permitted under the revised Part 74 for grantees subject to that part. Special Projects and Centers funded by the National Institute on Disability and Rehabilitation Research will continue to need prior approval to extend their projects due to unique circumstances associated with those programs. The Secretary retains discretion under these amendments to require prior approval for any of the actions permitted under the revised regulations if needed in appropriate circumstances.

EFFECTIVE DATES: These regulations take effect on August 27, 1997. These regulations apply to direct grants outstanding on the effective date of the regulations and to all grants made on or after the effective date of the regulations. With respect to the following NIDRR programs, these regulations become applicable on October 1, 1997:

The Knowledge Dissemination and Utilization Centers and Disability and Technical Assistance Centers programs under 34 CFR Part 350, Subpart B, §§ 350.17–350.19;

The Rehabilitation Research and Training Centers program under 34 CFR Part 350, Subpart C;

The Rehabilitation Engineering Research Centers program under 34 CFR Part 350, Subpart D;

The Special Projects and Demonstrations for Spinal Cord Injuries programs under 34 CFR Part 359.

ADDRESSES: While the Secretary is publishing these procedural rules as final regulations, the Secretary is interested in comments on the effect of these changes and ways to improve the discretionary grant administration process of the Department. Written

comments should be sent to: Greg Vick, U.S. Department of Education, Grants Policy and Oversight Staff, Mail Stop 4248, Washington, DC 20202. Copies of comments submitted to the Department will be available for public inspection, until the regulations become effective, in Room 3652, GSA National Capital Region Building, 7th and D Streets, SW., Washington, DC between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Greg Vick, (202) 708–8199. 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 5 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:**Background**

On November 29, 1993 (58 FR 62992), the Office of Management and Budget (OMB) published a revised version of OMB Circular A–110, which establishes uniform administrative requirements for Federal grants and cooperative agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. On July 6, 1994 (59 FR 34722), the Secretary revised Part 74 (Administration of Grants) of EDGAR to apply the provisions of the revised circular to Department of Education grantees that are members of the covered groups.

The revised Part 74 gave the Secretary discretion to dispense with certain prior approval procedures in Part 74 and various OMB circulars, in order to permit a grantee: (1) To extend its grant automatically at the end of a project period for a period of up to one year without prior approval if the Department obligated no additional funds; (2) to carry funds over from one budget period to the next without limitation; (3) to obligate funds up to 90 days before the effective date of the grant award without prior approval; and (4) to make transfers of funds between direct cost budget categories for certain kinds of grants. However, because regulations in Part 80, which applies to governments, and Part 75, which applies to direct grants to any kind of organization, conflict with the new rules in Part 74, these amendments are needed to remove the barriers to use of the discretion authorized in Part 74. Under the amendments, virtually all direct grantees of the Department can benefit from the reduced burden in Part 74.

Extending a Project Period

As currently written, § 75.261, binding on all classes of grantees, requires them to take certain steps before the Department will consider extending the end date of a project period. This regulation conflicts with the Secretary's discretion under § 74.25(e). The new language for § 75.261 provides that grantees of the Department may extend their grants as provided in Part 74 unless a statute, certain regulations or a grant condition prohibits that discretion.

There are situations in which the Secretary might prohibit a grantee from exercising the no-prior-approval discretion otherwise available under the revised § 75.261 by including conditions in the notification of grant award. For example, some grants that support programs for training teachers include funds for both salaries for professors and scholarships for students. If a grantee does not receive new funding for its program, the grantee may try to extend the project period of the award and use any remaining funds to pay salaries for professors without paying stipends to students so they could benefit from the program. To avoid such a result, the Secretary might require prior approval for an extension.

The Secretary also would refuse to permit a grantee to extend its project period if, pursuant to statute, the funds would not be available for expenditure (liquidation of obligations) during the extended period. Under the account closing provisions of Public Law 101–510, funds must be obligated and expended within five years after their availability for obligation by ED expired. If funds are not obligated and expended by a grantee within this period, they revert automatically to the U.S. Treasury. If a grantee were to unilaterally extend its project period so that the funds were no longer available for expenditure, the grantee would suffer from the automatic withdrawal of its authority to liquidate obligations at the start of or in the middle of a budget period.

The Secretary does not expect this unanticipated consequence in the future because the Department is in the process of converting to a new financial management system that will track all funds by the fiscal year they were made available for obligation by the Department. Under this new financial management system, grantees would be required to expend funds from earlier budget periods of their grants before drawing on funds from later budget periods. Budget periods for discretionary grants are not exactly

synchronous with the period funds are available for obligation by ED. However, requiring grantees to obligate funds from earlier budget periods will ensure that, when a grantee gets to its last budget period, the funds obligated during that last period will not have been available to the grantee more than five years after the end of the availability for obligation by the Department. During the period of transition to the new financial system, ED will monitor expenditures closely and might include conditions in some grants that would require prior approval for extensions. Thus, ED could check its records to be sure that the grantee would have funds available for expenditure under the account-closing provisions of Public Law 101-510 before permitting any extension.

Certain programs of NIDRR require special treatment regarding the authority of grantees to extend their grants. As a result, the regulations require grantees to request prior approval to extend their projects under the Knowledge Dissemination and Utilization Centers and Disability and Technical Assistance Centers programs, Rehabilitation Research and Training Centers program, the Rehabilitation Engineering Research Centers program, and the Special Projects and Demonstrations for Spinal Cord Injuries programs. The special regulation for these NIDRR programs is necessary to prevent confusion among constituents that could result if there were more than one center or special project in a given topical or geographical area. Also, if some of the grantees under these programs lost competitions for the next centers or special projects grants and extended their projects, the Assistant Secretary might be unable to ensure that each of these grantees would have access to the required ED information and expertise or to the multi-center databases required for many rehabilitation research grantees.

The Secretary has established a delayed effective date for the regulations as applied to these programs because their regulations were recently amended, changing many of the citations to the relevant subparts and sections. The program amendments become effective on October 1, 1997. Thus, to avoid the confusion of multiple citations in the regulations, these amendments are made effective for these programs on the same date as the program regulations become effective. The end result of the delayed effective date is that the current regulation, requiring prior approval for extension of grants past the end of the project period, will be continued under the new

program and EDGAR regulations that become effective on October 1, 1997.

Carrying Funds Forward

Section 75.253(c) provides that the Secretary considers funds remaining unused by the grantee at the end of a budget period in deciding how much new money to make available to a project for the next budget period. Under the current regulation, if the unused funds are needed to complete activities from the prior budget period, the Secretary adds those unused funds to the funds to be granted for the next budget period, with the result that the grantee gets funds sufficient to complete the unfinished activities and to carry out all new activities as well.

However, if the funds are not needed to complete unfinished activities, the Secretary reduces the amount of new funds made available to the grant by the amount of remaining funds that are carried into the next budget period. Thus the Department's current regulation—in the same manner as the new Part 74—has traditionally provided for carrying over unused funds from a previous budget period but requires the Secretary to consider those funds in deciding how much new money to make available to a grantee.

The Secretary sees the value in many or most cases of letting grantees carry all of their unused funds forward automatically and making all of the remaining funds from the previous budget period available for obligation during the next budget period, especially since doing so will eliminate a significant paperwork burden for the many grantees who otherwise would have to write to the Department to request specific authorization for carrying over unused funds to the following budget period.

Therefore, the Secretary amends § 75.253(c) so that it clearly provides that grantees may carry over unused funds from the previous budget period into a new budget period and gives the Secretary discretion to consider those funds in determining whether to reduce the amount of new funds made available to the grant for the next budget period. Examples of cases where the Secretary might use this discretion include grants to "high-risk" grantees, grants that do not show a sufficient rate of expenditure to indicate substantial progress had been made by the grantee, as required by § 75.253(a)(2)(i), or awards where the grantee has completed the activities of the budget period and does not need extra funds to cover the activities planned for the next budget period. The conditions of a continuation award will alert the grantee in those specific

instances where the Department has either reduced the amount of new funds made available for a new budget period or might reduce the amount of new funds, depending on what information the Department gets from regular grantee reports or, in limited circumstances, from information provided under § 75.253(c)(2)(i).

Spending Grant Funds Before Getting an Award

Both Part 74 and Part 80 incorporate by reference OMB circulars A-21, A-87, and A-122, which govern allowable expenditures under most grant awards, thus giving them the force of law. The relevant circulars allow grantees to expend funds before the effective date of the award only with the prior approval of the awarding agency (so-called "pre-agreement" or "pre-award" costs). Section 74.25(e)(1) now allows a grantee to incur certain pre-award costs under the conditions specified in that section. However, no similar authority exists in Part 80 for grantees subject to that Part. The Secretary adds a new § 75.263, which permits all types of grantees to expend funds before the effective date of the grant as permitted in § 74.25, unless a statute, regulations other than Part 80 regulations, or, in rare circumstances, grant conditions prohibit those expenditures.

Cumulative Transfers Among Budget Categories

Under Part 80 recipients of grants in excess of \$100,000 are required to obtain the approval of the Department before making cumulative cost transfers among categories in a project budget that would exceed ten percent of the current total approved budget (§ 80.30(c)(1)(ii)). By contrast, the revised Part 74 authorizes grantees to make these transfers unless the Secretary imposes a limitation on transfers in a particular case. Thus, Part 80 grantees and those subject to Part 74 are subject to inconsistent treatment in regard to this matter. To resolve this discrepancy, the Secretary adds a new § 75.264, which has the effect of applying the rule in Part 74 to all grantees, including those covered by Part 80.

Conclusion

These amendments reduce regulatory and administrative burden on discretionary grantees and give them more flexibility in planning and implementing their program activities. These regulations also reduce paperwork burden.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required.

Regulatory Flexibility Act Certification

These regulations would not have a significant economic impact on a substantial number of small entities.

These regulations could affect State agencies, nonprofit organizations, institutions of higher education and individuals. 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, hospitals, and nonprofit organizations receiving Federal funds under a direct grant program. The final regulations, however, would not have a significant economic impact on these entities because the amendments relieve regulatory burden.

Paperwork Reduction Act of 1995

The amendments have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements. These regulations reduce paperwork burden.

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 States 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.

Assessment of Education Impact

Based on its own review, the Department has determined that the regulations in this document would not 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 record keeping requirements, Unobligated funds.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: July 21, 1997.

Richard W. Riley,
Secretary of Education.

The Secretary amends 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 75.253(c) is revised to read as follows:

§ 75.253 Continuation of a multi-year project after the first budget period.

* * * * *

(c)(1) Notwithstanding any regulatory requirements in 34 CFR part 80, a grantee may expend funds that have not been obligated at the end of a budget period for obligations of the subsequent budget period if—

- (i) The obligation is for an allowable cost that falls within the scope and objectives of the project; and
- (ii) ED regulations other than 34 CFR part 80, statutes, or the conditions of the grant do not prohibit the obligation.

Note: See 34 CFR 74.25(e)(2).

(2) The Secretary may—

(i) Require the grantee to send a written statement describing how the funds made available under this section will be used; and

(ii) Determine the amount of new funds that the Department will make available for the subsequent budget period after considering the statement the grantee provides under paragraph (c)(2)(i) of this section or any other information available to the Secretary about the use of funds under the grant.

(3) In determining the amount of new funds to make available to a grantee under this section, the Secretary considers whether the unobligated funds made available are needed to complete activities that were planned for completion in the prior budget period.

* * * * *

3. Section 75.261 is amended by redesignating the current paragraphs (a) and (b) as paragraphs (c) and (d); adding new paragraphs (a) and (b); revising the introductory text of the newly designated paragraph (c); amending newly designated paragraph (c)(4)(ii)(C) by removing "(a)(4)(ii)(A)" and adding, in its place, "(c)(4)(ii)(A)"; and adding "Waiver." at the beginning of newly designated paragraph (d) to read as follows:

§ 75.261 Extension of a project period.

(a) *General rule.* A grantee may, notwithstanding any regulatory requirement in 34 CFR part 80, extend the project period of an award one time for a period up to twelve months without the prior approval of the Secretary, if—

(1) The grantee meets the requirements for extension of 34 CFR 74.25(e)(2); and

(2) ED regulations other than the regulations in 34 CFR part 80, statutes or the conditions of an award do not prohibit the extension.

(b) *Specific rule for certain programs of the National Institute on Disability and Rehabilitation Research.*

Notwithstanding paragraph (a) of this section, grantees under the following programs of NIDRR must request prior approval to extend their grants under paragraph (c) of this section:

(1) The Knowledge Dissemination and Utilization Centers and Disability and Technical Assistance Centers authorized under 29 U.S.C. 761a(b)(2), (4), (5), (6), and (11) and implemented at 34 CFR part 350, subpart B, §§ 350.17–350.19.

(2) The Rehabilitation Research and Training Centers program authorized under 29 U.S.C. 762(b) and implemented at 34 CFR part 350, subpart C.

(3) The Rehabilitation Engineering Research Centers authorized under 29 U.S.C. 762(b)(3) and implemented at 34 CFR part 350, subpart D.

(4) The Special Projects and Demonstrations for Spinal Cord Injuries authorized under 29 U.S.C. 762(b)(4) and implemented at 34 CFR part 359.

(c) *Other regulations.* If ED regulations, other than the regulations in 34 CFR part 80, or the conditions of the award require the grantee to get prior approval to extend the project period, the Secretary may permit the grantee to extend the project period if—

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4. A new § 75.263 is added to subpart D to read as follows:

§ 75.263 Pre-award costs; waiver of approval.

A grantee may, notwithstanding any requirement in 34 CFR part 80, incur pre-award costs as specified in 34 CFR 74.25(e)(1) unless—

(a) ED regulations other than 34 CFR part 80 or a statute prohibit these costs; or

(b) The conditions of the award prohibit these costs.

(Authority: 20 U.S.C. 1221e-3 and 3474; OMB Circulars A-21, A-87, and A-122)

5. A new § 75.264 is added to subpart D to read as follows:

§ 75.264 Transfers among budget categories.

A grantee may, notwithstanding any requirement in 34 CFR part 80, make transfers as specified in 34 CFR 74.25 unless—

(a) ED regulations other than 34 CFR part 80 or a statute prohibit these transfers; or

(b) The conditions of the grant prohibit these transfers.

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

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