

*Example 1.* In conducting a performance evaluation, a supervisor may take into consideration information showing that the employee had failed to propose an appropriate adjustment to tax liability in one of the cases the employee examined, provided that information is derived from a review of the work done on the case. All information derived from such a review of individual cases handled by an employee, including time expended, issues raised, and enforcement outcomes reached may be considered in evaluating the employee.

*Example 2.* When assigning a case, a supervisor may discuss with the employee the merits, issues and development of techniques of the case based upon a review of the case file.

*Example 3.* A supervisor may not establish a goal for proposed adjustments in a future examination, based upon the tax enforcement results achieved in other cases.

*Example 4.* A headquarters unit may use records of tax enforcement results to develop methodologies and algorithms for use in selecting tax returns to audit.

Approved: July 22, 1999.

**Charles O. Rossotti,**

*Commissioner of Internal Revenue.*

Dated: July 22, 1999.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF EDUCATION

### 34 CFR Part 611

RIN 1840-AC67

#### Teacher Quality Enhancement Grants Program

**AGENCY:** Office of Postsecondary Education, Department of Education

**ACTION:** Final regulations

**SUMMARY:** The Assistant Secretary for Postsecondary Education (Assistant Secretary) issues regulations that apply the eight percent (8%) indirect cost limitation for the Department's educational training grants to all funds that States and local educational agencies receive under the Teacher Quality Enhancement Grants Program for States and Partnerships authorized by sections 201-205 of the Higher Education Act (HEA), as amended by the Higher Education Amendments of 1998. These regulations would ensure that the limited funding available to support program activities is concentrated on direct support for improvements in teacher licensing, certification, preparation, and recruitment, rather than for recipient "overhead."

**DATES:** These regulations are effective on September 7, 1999.

**FOR FURTHER INFORMATION CONTACT:** Dr. Louis Venuto, Higher Education Programs, Office of Postsecondary Education, 400 Maryland Ave. SW., Portals Building, Room 6234, Washington, D.C. 20202-5131; Telephone: (202) 708-8847, or by FAX to: (202) 260-9272. Inquiries also may be sent by e-mail to: Louis\_Venuto@ed.gov. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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#### SUPPLEMENTARY INFORMATION:

##### Background

The Nation faces an immediate need for significant improvements in teacher licensure, certification, preparation, and recruitment. America's schools will need to hire 2.2 million teachers over the next decade, more than half of whom will be first-time teachers. As classrooms grow more challenging and diverse, these teachers will need to be well prepared to teach all students to the highest standards. Contemporary classrooms and social conditions confront teachers with a range of complex challenges previously unknown in the profession. New education goals and tougher standards, more rigorous assessments, site-based management, greater interest in parental involvement, the continuing importance of safety and discipline, and expanded use of technology increase the knowledge and skills that teaching demands.

On October 8, 1998, the President signed into law the Higher Education Amendments of 1998 (Pub. L. 105-244). Title II of this law addresses the Nation's need to ensure that new teachers enter the classroom prepared to teach all students to high standards by authorizing, as Title II of the HEA, Teacher Quality Enhancement Grants for States and Partnerships.

The new Teacher Quality Enhancement Grants Program consists of three different competitive grant programs: (1) The State Grants Program, which is designed to help States promote a broad array of improvements in teacher licensure, certification, preparation and recruitment, (2) the Partnership Grants for Improving Teacher Preparation Program, which is

designed to have schools of education, schools of arts and sciences, high-need local educational agencies (LEAs) and others work together to ensure that new teachers have the content knowledge and skills their students need of them when they enter the classroom, and (3) the Teacher Recruitment Program, which is designed to help schools and school districts with severe teacher shortages to secure the high-quality teachers that they need. For Fiscal Year 1999, Congress appropriated \$75 million for grants to States and partnerships to implement activities under these programs.

These three programs are designed to increase student achievement by implementing comprehensive approaches to improving teacher quality. They collectively provide an historic opportunity to make positive change in the recruitment, preparation, licensing, and on-going support of teachers in America. As such, the success of these programs is critical to the Nation's ability to succeed in increasing student achievement for all students. However, to achieve success those awarded Teacher Quality Enhancement Grants must ensure that they focus their grant funds on costs that are directly associated with securing needed improvements in teaching and the teaching profession. For this reason, on May 19, 1999, the Assistant Secretary published a Notice of Proposed Rulemaking (NPRM) for this program in the **Federal Register** (64 FR 27403) that proposed a limit of eight percent (8%) on the indirect cost rate that States and LEAs receiving Teacher Quality Program funds could use to pay for their overhead and other expenses that they could charge as "indirect costs." This eight-percent rate is the same maximum rate that the Department, under 34 CFR 75.562(a), now permits institutions of higher education (IHEs) and nonprofit agencies to use in charging indirect costs to education training grants. As the May 18, 1999 NPRM explained, by establishing this maximum eight-percent indirect cost for States and LEAs, these recipients will have the same limitation on their indirect costs as do those IHEs and nonprofit organizations that receive funds awarded under the programs' initial competitions. See the Notice Inviting Applications for New Awards and Final Procedures and Requirements for FY 1999 Competitions Under the Teacher Quality Enhancement Grant Programs, 64 FR 6139, 6145-46 (February 8, 1999). Therefore, this regulation will have all

recipients of program funds subject to the same maximum indirect cost rate.

The NPRM recognized that, absent a limitation of this kind, §§ 75.560–75.564 and 80.22 of the Education Department's General Administrative Regulations (EDGAR), which incorporate Federal cost principles developed by the Office of Management and Budget (OMB), permit grantees to claim these costs. However, it also explained that the best data available to the Department indicate that over 20 States have indirect cost rates of over 15 percent; two States have an indirect cost rates of 34 percent. Absent the establishment, through program regulations, of a limitation on recipient indirect cost rates, States with these indirect cost rates that are awarded State or Teacher Recruitment Program grants could devote 15 percent or more of their grant awards to support their overall overhead expenses and other indirect costs rather than the direct costs of improving teacher quality.

The Secretary continues to believe that allowing States, LEAs, and other Teacher Quality Enhancement grant recipients to use program funds to compensate themselves for these very high general overhead and related expenses is inconsistent with the vital purpose of the programs and the expectations that Congress and the Nation have for their success.

Accordingly, for reasons explained more fully in the NPRM, given (1) the pivotal significance of the Teacher Quality Enhancement Grant programs, (2) the national need that these programs have a maximum impact on the quality and quantity of highly-qualified new teachers, and (3) the fact that these programs are competitive, the Secretary issues 34 CFR 611.41 (renumbered from proposed § 611.30 in the NPRM). Section 611.41 establishes a maximum indirect cost rate that a State or LEA receiving funds under any of the Teacher Quality Enhancement Grant Programs may use in charging program funds as indirect costs. Under this regulation, a State or LEA may charge Teacher Quality Enhancement Grants Program funds for indirect costs at a rate that is limited to eight percent or its negotiated rate, whichever is less.

Section 611.41 will apply to any funding that States and LEAs receive under the three Teacher Quality Enhancement Grant programs, both under the initial and any subsequent program. As explained above, the Department previously established this limitation for IHEs and nonprofit organizations that receive program funds awarded in the initial 1999 grant competitions. In proposed regulations

that the Secretary will develop to govern future competitions under the three Teacher Quality Enhancement Grant programs, the Secretary intends to propose that this eight-percent limitation for IHEs and nonprofit organizations apply to future competitions as well. This proposal, if finalized, would make the eight-percent maximum indirect cost rate applicable to all grant funds awarded under all grant competitions held under these programs, regardless of the recipient.

#### **Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, one party submitted comments on the proposed regulation. An analysis of the comment and of the changes in the regulations since publication of the NPRM follows.

*Comment:* The commenter noted that the cost principles in OMB Circular A–87, which govern Federal grants to State and local governments, authorize grantees to recover indirect costs that are otherwise allowable. The commenter, a State official, acknowledged that the proposed rule for the Teacher Quality programs would itself have minimal impact on his state. However, the commenter expressed concern about what appeared to be a trend on the part of Federal programs to cap administrative costs, and thus create an “unfunded mandate.”

*Discussion:* The three new Teacher Quality Enhancement Grant programs offer an opportunity to improve teacher quality in America by effectively addressing the immediate need for significant improvements in teacher licensure, certification, preparation, and recruitment. However, success will depend upon how well we use the resources that Congress provides to make sustained and meaningful improvements in teacher licensure, certification, preparation, and recruitment. For fiscal year 1999, Congress appropriated \$75 million for these three component programs. If these funds, and funds that Congress will appropriate for use in future years, are to achieve their purposes, we need to ensure that they are used as effectively as possible. To do so, it is necessary to place a reasonable limitation on the amount of program funds that Title II grant recipients may use to reimburse themselves for the “indirect costs” of program activities.

Doing so does not create, as the commenter suggests, an unfunded mandate. Rather, § 611.41 strikes a reasonable balance between the need to focus as much funding for the Teacher Quality Enhancement Grant programs as possible on direct services to improve

teacher licensure, certification, preparation, and recruitment, and the reality that, to do so, recipients will encounter some indirect costs. In this regard, the Secretary continues to believe that States and LEAs receiving Teacher Quality Enhancement Grant funds do not need to apply high general indirect cost rates in order to fairly compensate themselves for the overhead and other indirect costs associated with activities they will conduct.

Moreover, because these programs are competitive, States and LEAs (as well as IHEs and nonprofit agencies) that believe that they need additional indirect costs to implement these needed grant activities simply need not apply or accept grant awards. Therefore, this regulation does not impose any non-reimbursed indirect costs on unwilling recipients, and so does not establish an unfunded mandate.

The Department has no plans to apply this limitation on State and LEA indirect cost rates to other grant programs. However, any decision to propose doing so would come only after the Department weighs State and LEA interests in charging indirect costs authorized in both EDGAR regulations and OMB cost principles against the Nation's need to maximize the amount of grant funds supporting direct program services. In weighing these relative interests, one consideration must be whether a proposal to limit indirect cost rates can be expected to discourage submission of high-quality applications. In this regard, we note that the Department announced in the application packages used for the initial Teacher Quality Enhancement grant competitions its intent to propose the eight-percent limitation on State and LEA indirect cost rates. Nonetheless, 40 States applied for the State Program grants, and large numbers of LEAs are included as partners in the 220 partnerships that applied for the Partnership Program grants. Also relevant here is the fact that no State applicant for 1999 grant competitions requested an indirect cost reimbursement in excess of eight percent.

State and Teacher Recruitment grant awards have yet to be announced. However, the Secretary is pleased with the number of high-quality applications, and believes that this outpouring of interest in the new Teacher Quality Enhancement Grants Program demonstrates that the limitation on indirect costs has not discouraged high-quality applications for these important awards.

*Change:* None.

**Goals 2000: Educate America Act**

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goal that the Nation's teaching force will have the content knowledge and teaching skills needed to instruct all American students for the next century.

**Paperwork Reduction Act of 1995**

These regulations do not contain any information collection requirements.

**Intergovernmental Review**

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

**Assessment of Educational Impact**

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

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(Catalog of Federal Domestic Assistance Number 84.336: Teacher Quality Enhancement Grants Program)

**List of Subjects in 34 CFR Part 611**

Colleges and universities, Elementary and secondary education, Grant programs—education.

**Program Authority:** 20 U.S.C. 1021 *et seq.*

Dated: August 2, 1999.

**Claudio F. Prieto,**

*Acting Assistant Secretary for Postsecondary Education.*

For the reasons discussed in the preamble, the Secretary amends Chapter VI of title 34 of the Code of Federal Regulations by adding a new part 611 to read as follows:

**PART 611—TEACHER QUALITY ENHANCEMENT GRANTS PROGRAM**

Sec.

**Subpart A—D****Subpart E—Other Grant Conditions**

611.41 What is the maximum indirect cost rate for States and local educational agencies?

**Authority:** 20 U.S.C. 1021 *et seq.*, unless otherwise noted.

**Subpart A—D—[Reserved]****Subpart E—Other Grant Conditions**

**§ 611.41** What is the maximum indirect cost rate for States and local educational agencies?

Notwithstanding 34 CFR 75.560–75.562 and 34 CFR 80.22, the maximum indirect cost rate that a State or local educational agency receiving funding under the Teacher Quality Enhancement Grants Program may use to charge indirect costs to these funds is the lesser of—

- (a) The rate established by the negotiated indirect cost agreement; or
- (b) Eight percent.

(Authority: 20 U.S.C. 1021 *et seq.*)

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[OPP-300897; FRL-6091-9]

RIN 2070-AB78

**N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; Pesticide Tolerances for Emergency Exemptions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for combined residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on wheat grain, wheat forage, wheat hay, wheat straw, and meat, fat, meat byproducts, and kidney of cattle, goats, horses, hogs, and sheep. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on wheat. This regulation establishes a maximum permissible level for residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on July 31, 2001.

**DATES:** This regulation is effective August 6, 1999. Objections and requests for hearings must be received by EPA on or before October 5, 1999.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number [OPP-300897], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300897], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental