

DEPARTMENT OF EDUCATION

34 CFR Parts 74, 75, 76, 77, and 80

Administration of Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; Direct Grant Programs; State-Administered Programs; Definitions That Apply to Department Regulations; Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCY: Office of the Chief Financial Officer, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary announces the applicability of revised Office of Management and Budget (OMB) Circular A-21, "Cost Principles for Educational Institutions," and Circular A-122, "Cost Principles for Non-Profit Organizations." The Secretary also announces that the interim final regulations the Department issued for 34 CFR 74.26 and 80.26 on August 29, 1997 (62 FR 45937) are adopted without changes. Finally, the Secretary amends the definition of the Education Department General Administrative Regulations (EDGAR) in 34 CFR 77.1 to include the existing 34 CFR Parts 97, 98, and 99 within the scope of EDGAR and make technical changes and update citations in EDGAR.

DATES: These regulations are effective September 16, 1999.

Applicability Date: The revised circulars and other changes made by this document apply to new and continuation grants and subgrants awarded on or after September 16, 1999.

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SUPPLEMENTARY INFORMATION:

I. Introduction

In fiscal year 1998 OMB made final revisions to Circular A-21, "Cost Principles for Educational Institutions," and Circular A-122, "Cost Principles for

Non-Profit Organizations." You may request a recompilation of OMB Circulars A-21 and A-122 with all their amendments by calling OMB Publication's Office at (202) 395-7332 or you can obtain the circulars in electronic form on the OMB Home Page at <http://www.whitehouse.gov/WH/EOP/omb>.

II. Revisions to 34 CFR Parts 74 and 80

A. Revision That Affects Educational Institutions

On June 1, 1998, (63 FR 29786) OMB published in the **Federal Register** interim final revisions to OMB Circular A-21 to allow trustees' travel expenses. On October 27, 1998, (63 FR 57332) OMB adopted the interim final revisions without change. The Secretary adopts the changes made by OMB on those dates in the Department's regulations at 34 CFR Parts 74 and 80. The changes adopted in these final regulations bind all recipients of Department grants and cooperative agreements to the requirements of Circular A-21 as amended through October 27, 1998. These cost principles apply to educational institutions, except to the extent program regulations or the EDGAR require a different outcome.

B. Revision That Affects Non-Profit Organizations

On June 1, 1998, (63 FR 29794) OMB published in the **Federal Register** a full revision of OMB Circular A-122. OMB amended OMB Circular A-122 by: revising the definition for equipment; requiring the breakout of indirect costs into two categories (facilities and administration) for certain non-profit organizations; modifying the multiple allocation basis; and clarifying the treatment of certain cost items. The Secretary adopts the changes made by OMB on June 1, 1998 in the Department's regulations at 34 CFR Parts 74 and 80. The changes adopted in these final regulations bind all recipients of Department grants and cooperative agreements to the requirements of Circular A-122 as amended through June 1, 1998. These cost principles apply to non-profit organizations, except to the extent program regulations or the EDGAR require a different outcome.

C. Other Revisions to OMB Circulars and the Common Rule

On August 10, 1998, (63 FR 42645) OMB announced the final revision of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other

Non-Profit Organizations." The August 10, 1998, OMB notice adopted for OMB Circular A-110 the final amendments that had been published as interim final revisions on August 29, 1997 (62 FR 45934). The August 29, 1997 interim final rulemaking document published by the Secretary and other participants in the Common Rule (62 FR 45937, 45943) amended both 34 CFR 74.26 and 80.26 to give effect to OMB's rescission of Circular A-128, "Audits of State and Local Governments," and OMB's consolidation into A-133 of the requirements for State and local governments that had formerly been in Circular A-128. The Secretary adopts these changes to 34 CFR parts 74 and 80 as final regulations of the Department.

III. Other Technical Changes

The Secretary makes technical changes to various sections in 34 CFR Parts 75, 76, 77 and 80 to remove obsolete references and make other, nonsubstantive clarifying changes. Included in these changes is an amendment to 34 CFR Part 77 amending the definition of EDGAR to include 34 CFR Part 97, Protection of Human Subjects; 34 CFR Part 98, Student Rights in Research, Experimental Programs and Testing; and 34 CFR Part 99, Family Educational Rights and Privacy. The effect of this amendment is to include these three parts in future publications of EDGAR.

The Department's discretionary and formula grant program regulations currently refer to EDGAR under sections that carry headings such as "What regulations apply to this program?" These program regulations are not amended by this document to include references to 34 CFR parts 97-99 of EDGAR as amended by this final rulemaking document. The Secretary will amend these program regulations in the future to add the appropriate references. However, parts 97 through 99 apply to the grant programs of the Department as a matter of law as specified in parts 97-99. Thus, the amendment in these final regulations to the definition of "EDGAR" does not affect the applicability of parts 97-99 to those programs.

Waiver of Proposed Rulemaking and Delayed Effective Date

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553) and to delay the effective date of final regulations under that Act. However, since OMB has previously provided the public an opportunity for comment on

the revision of Circulars A-21 and A-122, and the technical amendments made in this document are not substantive, the Secretary finds that soliciting further public comment with respect to adopting the amendments made by this document is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B). Since changes to the relevant circulars has already been made final by OMB and the other changes made by this document are only technical in nature, the Secretary also waives the delayed effective date for these amendments under 5 U.S.C. 553(d).

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. These regulations would not have a significant economical impact on any entities affected because they do not make any substantive changes.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

Based on our own 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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(Catalog of Federal Domestic Assistance Number does not apply)

List of Subjects

34 CFR Part 74

Accounting, Colleges and universities, Grant programs, Hospitals, Non-profit organizations, Reporting and recordkeeping requirements.

34 CFR Part 75

Accounting, Administrative practice and procedure, Copyright, Education, Grant programs-education, Inventions and patents, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 76

Accounting, Administrative practice and procedure, American Samoa, Education, Grant programs-education, Guam, Northern Mariana Islands, Pacific Islands Trust Territory, Private Schools, Reporting and recordkeeping requirements, Virgin Islands.

34 CFR Part 77

Education, Grant programs-education.

34 CFR Part 80

Accounting, Grant programs, Indians, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements.

Dated: August 18, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary adopts as final without change the interim rule amending 34 CFR 74.26 and 80.26 published on August 29, 1997, and amends parts 75, 76, 77, and 80 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.

§ 75.118 [Amended]

2. Section 75.118 paragraph (a) is amended by removing "74.82" and adding, in its place, "74.51" and amending the cross-reference that follows the section by removing "74.82 Performance Reports under non-construction grants" and adding in its place "74.51 Monitoring and reporting program performance"

§ 75.215 [Amended]

3. The cross-reference following § 75.215 is amended by removing "(e)" and adding, in its place, "(c)".

4. Section 75.220 is amended by revising paragraph (b)(2) to read as follows:

§ 75.220 Procedures the Department uses under § 75.219(a).

* * * * *

(b) * * *

(2) An employee from the Office of the Chief Financial Officer (OCFO) with responsibility for grant policy; and

* * * * *

5. Section 75.511 is amended by revising the cross-reference that follows the section to read as follows:

§ 75.511 Waiver of requirement for a full-time project director.

* * * * *

CROSS REFERENCE: See 34 CFR 74.25, Revision of budget and program plans; and 34 CFR 80.30, Changes.

§ 75.517 [Amended]

6. Section 75.517 is amended by removing "34 CFR 74.103(c)(2)" and adding, in its place, "34 CFR 74.25(c)(2)".

§ 75.524 [Amended]

7. Section 75.524(b) is amended by removing "34 CFR 74.3" and adding, in its place, "34 CFR 80.3" and removing the note that follows paragraph (b).

8. Section 75.530 is revised to read as follows:

§ 75.530 General cost principles.

The general principles to be used in determining costs applicable to grants and cost-type contracts under grants are specified at 34 CFR 74.27 (for administration of grants to institutions of higher education, and other non-profit organizations) and 34 CFR 80.22 (for uniform administrative requirements for grants and cooperative agreements to State and local governments).

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

CROSS REFERENCE: See 34 CFR part 74, Subpart D—After-the-Award Requirements and 34 CFR part 80, Subpart C—Post-Award Requirements.

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

9. The cross-reference preceding § 75.618 and following the center heading "EQUIPMENT AND SUPPLIES" is revised to read as follows:

CROSS REFERENCE: See 34 CFR 74.32 Real property; 34 CFR 74.35 Supplies and other expendable property; 34 CFR 74.36 Intangible property; 34 CFR 74.2 Definitions; 34 CFR 80.31 Real property; 34 CFR 80.32 Equipment; 34 CFR 80.33 Supplies; and 34 CFR 80.34 Copyrights.

10. Section 75.621 is amended by revising the cross-reference following the section to read as follows:

§ 75.621 Copyright policy for grantees.

* * * * *

CROSS REFERENCE: See 34 CFR 74.22 Payment; 34 CFR 74.24 Program income; and

34 CFR 74.36 Intangible property; 34 CFR 80.25 Program income; and 34 CFR 80.34 Copyrights.

11. The cross-reference preceding § 75.626 and following the center heading "INVENTIONS AND PATENTS" is revised to read as follows:

CROSS REFERENCE: See 34 CFR 74.25, Program income and 34 CFR 80.25, Program income.

12. The cross-reference preceding § 75.650 and following the center heading "OTHER REQUIREMENTS FOR CERTAIN PROJECTS" is revised to read as follows:

CROSS REFERENCE: See 34 CFR 74.21, Standards for financial management systems; 34 CFR 74.48, Contract provisions; 34 CFR 80.20, Standards for financial management and 34 CFR 80.36, Procurement.

13. Section 75.702 is amended by revising the cross-reference following the section to read as follows:

§ 75.702 Fiscal control and fund accounting procedures.

* * * * *

CROSS REFERENCE: See 34 CFR part 74, Subpart C—Post-Award Requirements and Subpart D—After-the-Award Requirements and 34 CFR part 80, Subpart C—Post-Award Requirements and Subpart D—After-the-Grant Requirements.

14. Section 75.708 is amended by revising paragraph (b) to read as follows:

§ 75.708 Prohibition of subgrants.

* * * * *

(b) A grantee may contract for supplies, equipment, construction, and other services, in accordance with 34 CFR part 74, Subpart C—Post-Award Requirements (Procurement Standards §§ 74.40–74.48) and 34 CFR part 80, Subpart C—Post-Award Requirements (§ 80.36 Procurement).

15. The cross-reference following the center heading "REPORTS" and preceding § 75.720 is revised to read as follows:

CROSS REFERENCE: See 34 CFR 74.51, Monitoring and reporting program performance; 34 CFR 74.52, Financial reporting; 34 CFR 80.40, Monitoring and reporting program performance; and 34 CFR 80.41 Financial reporting.

16. Section 75.720 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 75.720 Financial and performance reports.

(a) * * *

(1) 34 CFR 74.51 (Monitoring and reporting program performance) and 34 CFR 74.52 (Financial reporting); and

* * * * *

(c) The Secretary may require a grantee to report more frequently than annually under 34 CFR 74.14 (Special award conditions), 34 CFR 74.21 (Standards for financial management systems), 34 CFR 80.12 (Special grant or subgrant conditions for "high-risk" grantees) or 34 CFR 80.20 (Standards for financial management systems).

17. The cross-reference preceding § 75.730 and following the center heading "RECORDS" is revised to read as follows:

CROSS REFERENCE: See 34 CFR 74.53, Retention and access requirements for records and 34 CFR 80.42, Retention and access requirements for records.

18. Section 75.732 is amended, by revising the cross-reference following the section to read as follows:

§ 75.732 Records related to performance.

* * * * *

CROSS REFERENCE: See 34 CFR 74.25, Revision of budget and program plans.

PART 76—STATE-ADMINISTERED PROGRAMS

19. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e-3, 3474, and 6511(a), unless otherwise noted.

20. Section 76.132 is amended, by revising paragraph (a)(5) to read as follows:

§ 76.132 What assurances must be in a consolidated grant application?

(a) * * *

(5) Submit an annual report to the Secretary containing information covering the program or programs for which the grant is used and administered, including the financial and program performance information

required under 34 CFR 74.51–74.52 and 34 CFR 80.40–80.41.

* * * * *

21. Section 76.530 is revised to read as follows:

§ 76.530 General cost principles.

Both 34 CFR 74.27 and 34 CFR 80.22 reference the general cost principles that apply to grants, subgrants and cost type contracts under grants and subgrants.

(Authority: 20 U.S.C. 1221e-3, 3474 and 6511(a))

22. The cross-reference preceding § 76.681 and following the center heading "OTHER REQUIREMENTS FOR CERTAIN PROGRAMS" is removed.

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

23. The authority citation for part 77 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474, unless otherwise noted.

24. The definition of "EDGAR" in § 77.1 is revised to read as follows:

§ 77.1 Definitions that apply to all Department programs.

* * * * *

EDGAR means the Education Department General Administrative Regulations (34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.)

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PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

25. The authority citation for part 80 continues to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474; OMB Circular A-102, unless otherwise noted.

§ 80.42 [Amended]

26. Section 80.42(b)(4) is amended, by removing "five" and adding, in its place, "three".

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