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Part II

**Department of
Education**

34 CFR Part 694

**Office of Postsecondary Education;
Gaining Early Awareness and Readiness
for Undergraduate Programs; Final Rule**

**Office of Postsecondary Education;
Notice Inviting Applications for New
Awards for Fiscal Year 1999—Gaining
Early Awareness and Readiness for
Undergraduate Programs—GEAR UP;
Notice**

DEPARTMENT OF EDUCATION**34 CFR Part 694**

RIN 1840-AC59

Gaining Early Awareness and Readiness for Undergraduate Programs**AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Final regulations.**SUMMARY:** The Secretary amends the Code of Federal Regulations to add regulations necessary to implement certain provisions of the Higher Education Amendments of 1998. The regulations only apply to the fiscal year 1999 grant competition.**EFFECTIVE DATE:** These regulations take effect April 1, 1999.**FOR FURTHER INFORMATION CONTACT:** Lisa Aserkoff, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-2110. Telephone: (202) 401-6296. 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.

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SUPPLEMENTARY INFORMATION:**Background**

These final regulations implement certain provisions of the Higher Education Amendments of 1998 (Amendments), (Public Law 105-244), enacted October 7, 1998, amending the Higher Education Act of 1965 (HEA).

Section 403 of the Amendments established the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), a program designed to give more low-income students the skills, encouragement, and preparation needed to pursue postsecondary education, and to strengthen academic programs and student services at participating schools. GEAR UP provides two types of competitive grants: State grants and Partnership grants. State grants must provide early college preparation and awareness activities through the early intervention component of the GEAR UP program and scholarships for participating students through the scholarship component of GEAR UP. Partnerships must provide early college

preparation and awareness activities through the early intervention component, and are encouraged to provide college scholarships, although they are not required to include a scholarship component in their GEAR UP projects.

Under its principles for regulating, the Department of Education (Department) regulates only when it improves the quality and equality of services to its customers—learners of all ages. The Department regulates only when absolutely necessary, and then in the most flexible, most equitable, and least burdensome way possible. The Department regulates if a demonstrated problem exists and cannot be resolved without regulation or if necessary to provide legally binding interpretation to resolve an ambiguity. The Department does not regulate if entities or situations to be regulated are so diverse that a uniform approach does more harm than good.

These final regulations are necessary to implement the GEAR UP program. In some instances, the Amendments require the Secretary to regulate. In others, regulations are necessary to clarify certain provisions in the statute.

The regulations set a maximum amount that the Secretary may award each year to a Partnership or a State under GEAR UP. For Partnership grants, the maximum amount that the Secretary may award each year is calculated by multiplying the number of students the Partnership proposes to serve that year, as stated in the Partnership's plan, by \$800. The Secretary has determined that this is an appropriate average per student, per year, Federal dollar amount to spend under GEAR UP. The Secretary believes that this average maximum Federal dollar amount per student will ensure that the Department can fund a substantial number of projects nationwide each year, while still providing for a broad range of services for those students served.

The final regulations set the maximum dollar amount that the Secretary may award each year for State grants under GEAR UP at \$5 million. As with Partnership grants, the Secretary believes that this will ensure that the Department can fund a substantial number of projects each year, while providing the services necessary to ensure a successful program.

Under the statute, a Partnership must, and a State may, conduct its early intervention component by serving entire grade levels, or cohorts, of students. The final regulations clarify the statutory requirements regarding which students a Partnership, or a State that chooses to use the cohort approach,

must serve under the GEAR UP early intervention component. After outlining the statutory requirements, the regulations explain what happens if there are changes in the cohort.

A Partnership or State must include in the cohort of students receiving direct services any additional students at the grade level of the students in the cohort who begin attending the school where the cohort began. For example, if a Partnership or State starts with a 6th grade cohort, and several new students arrive at the school the following year, when the cohort has reached 7th grade, the Partnership or State must serve as part of the cohort any new 7th grade students. The Secretary believes that any new student who begins attending a school participating in a GEAR UP program, before the cohort leaves the school with a 7th grade at which the cohort began to receive GEAR UP services, should have the opportunity to benefit from the direct services other students are receiving. On the other hand, some students who began in the cohort are likely to leave the participating school as well. Students who depart the participating school are not required to be served. Thus, this requirement should not cause the size of the cohort to increase significantly in the years before the cohort leaves the school with a 7th grade at which the cohort began to receive GEAR UP services.

As the cohort moves on to a subsequent participating school (for example, a high school), it is possible that a single middle-grades school could feed into more than one high school. Some cohorts may therefore eventually have their students distributed among several schools.

These regulations provide that if not all the students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services, the Partnership or the State may, but is not required to, provide services to all of those students. However, the Partnership or State must continue to provide GEAR UP services to at least those students in the cohort who attend subsequent participating schools that enroll a substantial majority of the students in the cohort.

For example, a cohort could graduate from its middle-grades school after the 8th grade, and the students from that cohort could then begin attending three different high schools. If 40% of the cohort attends one high school, 30% attends another high school, and another 30% attends a third high school, the Partnership or State would be required to serve the students from

the original cohort in at least two of the high schools in order to meet the substantial majority requirement.

The Secretary believes that requiring Partnerships or States to provide services to at least those students in the cohort who attend subsequent participating schools that enroll a substantial majority of the students in the cohort is the best way to ensure that the maximum number of students from the original cohort continue to receive services, without placing an undue burden on Partnerships or States.

The regulations outline the requirements a Partnership or State must meet if it chooses to provide services to private school students under the program's early intervention component. The regulations are based on private school student participation requirements generally applicable to most elementary and secondary education programs carried out by the Department and are designed to ensure that Federal funds are used for educational services that are secular, neutral, and nonideological.

The regulations establish the matching requirements for GEAR UP Partnerships. Under the regulations, a Partnership must state in its application the percentage of the cost of the GEAR UP project for each year that the Partnership will provide from non-Federal funds, and then comply with the matching percentage stated in the application for each year of the project period. However, a Partnership must provide at least 20% of the cost of the project from non-Federal funds for any year in the project period, and the non-Federal share of the cost of the GEAR UP project must be at least 50% of the total cost over the project period.

The Secretary believes that these matching requirements give Partnerships broad flexibility in terms of the amount of the project cost that the Partnership must provide each year. The Secretary also believes that a Partnership should be responsible for at least 20 percent of the cost of the project for any given year, and for at least 50 percent of the entire cost of the project. The Secretary believes that the success of any project depends in part upon strong community support. The 50 percent requirement helps to ensure that the GEAR UP project can be sustained, even after Federal funds are no longer available, through strong community Partnerships, with support from all partners.

These regulations also address the requirements for the scholarship component of the project for States, and for any Partnership that chooses to include a scholarship component in its

project. The regulations outline the minimum scholarship amount that a State or Partnership must award under the scholarship component. Under the statute, the minimum amount of the scholarship for each fiscal year is not less than the lesser of: 75 percent of the average cost of attendance for an in-State student, in a 4-year program, at public institutions of higher education in that State; or the maximum Federal Pell Grant funded under section 401 of the HEA for that year. The statute gives the Secretary the authority to decide how to determine 75 percent of the average cost of attendance. These regulations specify that the percentage will be determined using section 472 of the HEA, the cost of attendance provisions for Title IV of the HEA. As GEAR UP is a Title IV program, the Secretary believes the general cost of attendance provisions for Title IV should apply. This provision is also based on the regulations for cost of attendance under the National Early Intervention Scholarship and Partnership Program (NEISP), the program which GEAR UP replaced.

The regulations also detail the relationship of a GEAR UP scholarship to other financial assistance received by a student, and the GEAR UP scholarship amount provided to a part-time student. As provided in the statute, GEAR UP scholarships must not be considered when awarding other Title IV grant assistance (for example, Federal Pell Grants or Federal Supplemental Educational Opportunity Grants). However, the statute also provides that the total amount of Title IV assistance awarded to a student must not exceed the student's total cost of attendance. A student's cost of attendance is, in part, related to whether the student attends an institution on a full-time or part-time basis. The regulations clarify that a State or Partnership that awards a GEAR UP scholarship to a student attending an institution on a less than full-time basis must reduce the scholarship amount proportionately. This proportionate reduction is similar to the reduction of Federal Pell Grants awarded to part-time students. The Secretary believes that it is important to clarify the GEAR UP scholarship amount for part-time students in the regulations in order to ensure that these nontraditional students are appropriately served under GEAR UP.

As required by the statute, the regulations also give a priority under the scholarship component to students who will receive Federal Pell grants for the academic year in which the GEAR UP scholarship is being awarded. The regulations also address how to award

any remaining scholarship funds, once eligible students who will receive Federal Pell Grants have received their awards. Under the regulations, if a State or Partnership has GEAR UP scholarship funds remaining after awarding scholarships to all eligible Federal Pell Grant recipients, the State or Partnership must award those funds to eligible students after considering the need of those students for GEAR UP scholarships. Since this program is targeted at students at schools in low-income areas, the Secretary believes it is important that scholarship funds go to the students with the greatest need.

The regulations state that a State or Partnership must award continuation scholarships in successive award years to each student who received an initial scholarship, and who continues to be eligible. This is a provision from the NEISP regulations that the Secretary believes is important to apply also to the GEAR UP program. The Secretary believes that, once students receive a GEAR UP scholarship, they should be confident that they will continue to receive their scholarship money for as long as they remain eligible.

In order to assist institutions of higher education package the amounts and types of aid that a particular student receives, the regulations also outline the order in which financial assistance should be given to help institutions of higher education package the amounts and types of aid that a particular student receives. These regulations are also based on the NEISP regulations. Specifying the order in which financial aid is awarded is necessary because the Secretary intends that GEAR UP scholarships be "last dollar" grant assistance, and not be used to reduce any other grants (Federal or non-Federal) or tuition discounts.

The regulations also address the circumstances under which a Partnership may provide scholarship assistance to students who have participated in the GEAR UP early intervention component, if the Partnership decides not to participate in the GEAR UP scholarship component. Under the statute, only States are required to participate in the scholarship component. Partnerships may offer scholarships using GEAR UP funds to students who have participated in the GEAR UP early intervention component. However, if they choose to offer scholarships without participating in the scholarship component, they may offer scholarships using GEAR UP funds only if certain requirements are met. The regulations address those requirements.

Under the regulations, the Partnership may provide financial assistance for postsecondary education to students who participate in the early intervention component only if the financial assistance is directly related to, and in support of, other activities of the Partnership under the early intervention component of GEAR UP. The Secretary believes that it would be inconsistent with the statutory requirements applicable to the scholarship component for a Partnership to use its GEAR UP funds under the early intervention component to provide financial assistance unless there is a strong link between that financial assistance and the particular GEAR UP activities in which the student has participated.

For example, students could be awarded financial assistance based on the successful completion of academic milestones they specifically committed themselves to as part of the GEAR UP project. However, students may not be awarded financial assistance as part of a GEAR UP project that is independent of the GEAR UP early intervention component activities, or that does not meet the requirements of the GEAR UP scholarship component.

The Secretary recognizes that since GEAR UP projects must start not later than the 7th grade, scholarships for postsecondary education won't be a concern for most GEAR UP students for at least six years. However, under the statute, students who have been participating in either the NEISP or TRIO programs may be eligible to receive scholarship money during the first years of the program. Additionally, the Secretary feels that it is important that applicants are aware of any requirements that might affect the way in which they shape their projects, even if the requirements do not have an immediate impact.

The regulations also provide that the Governor of a State must designate which State agency shall apply for, and administer, a State grant under GEAR UP. As with the NEISP program, the Secretary believes that the best way to ensure that the Department receives the best possible application from each State is to ask the Governor to designate which State agency will apply on behalf of that State. The Secretary believes that Governors are in a unique position to bring about coordination among State and local agencies, educational institutions, and others to develop State GEAR UP plans that marshal resources and add support to States' efforts to raise academic standards.

The regulations also state the requirements that a Partnership or State

participating in GEAR UP must meet with respect to 21st Century Scholarship Certificates. Under the statute, the Secretary must ensure that each student participating in a GEAR UP program receives a 21st Century Scholarship Certificate that is personalized, and that indicates the amount of Federal financial aid for college that the student may be eligible to receive. The regulations therefore require that a State or Partnership must provide each student with a certificate. The Secretary believes that the best and most efficient way to award the certificates, which will be from the Secretary, is to involve the States and Partnerships in awarding them. The Secretary believes that the students' personalized information is most readily available to the project grantees and that awarding the students their certificates complements other early college awareness activities by States and Partnerships as part of their GEAR UP projects.

Finally, the regulations address the priorities the Secretary must establish, and the priorities that the Secretary may choose to establish each year in making GEAR UP awards. Under the statute, the Secretary is required to give a priority to any State grant applicant that had carried out successful educational opportunity programs under NEISP, and that has a demonstrated commitment to early intervention leading to college access. In addition to that priority, the Secretary may also give a funding priority to a Partnership or State applicant that proposes to serve a substantial number or percentage of students who reside in an Empowerment Zone, including a Supplemental Empowerment Zone, or Enterprise Community, as designated by the U.S. Department of Housing and Urban Development or the U.S. Department of Agriculture. The Secretary believes that applicants proposing to serve Empowerment Zones or Enterprise Communities demonstrate a commitment to serving the students with the greatest need for encouragement and motivation to attend institutions of higher education and may decide to give applicants who serve those students a priority.

The Secretary may also give a priority to a Partnership that establishes or maintains a financial assistance program to award scholarships either under the GEAR UP scholarship component, or in accordance with the regulations that apply to Partnerships. The Secretary believes that the knowledge that scholarships will be available is a powerful way to encourage students to go on to postsecondary education. The

Secretary may therefore decide to give Partnership applicants that show a commitment to providing scholarships to GEAR UP students a funding priority.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action. The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the regulations justify the costs. Potential costs and benefits of the final regulations are discussed elsewhere in this preamble under the heading "Supplementary Information".

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities. Entities that would be affected by these regulations are States and State agencies, local educational agencies (LEAs), local community organizations, and institutions of higher education. States and state agencies are not "small entities" under the Regulatory Flexibility Act.

Institutions of higher education are defined as "small entities," according to U.S. Small Business Administration Size Standards if they are for-profit or nonprofit institutions with total annual revenue below \$5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Small LEAs and local community organizations are small entities for the purposes of the Regulatory Flexibility Act. The final regulations would not have a significant economic impact on the small entities affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision.

The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control numbers assigned to the collections of information in these final regulations are displayed at the end of the affected sections of the regulations.

Intergovernmental Review

This program 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 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.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Waiver of Rulemaking

In accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553), it is generally the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. However, section 437(d) of the General Education Provisions Act exempts from these rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). In order to make awards on a timely basis, the Secretary has decided to publish this regulation in final under the authority of section 437(d). Further, the Secretary has determined that, to make grants under this competition before the funds expire, the use of negotiated rulemaking would be impracticable and contrary to the public interest under section 492(b)(2) of the HEA. The Department did consult with the public, however, throughout the development of this program.

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

List of Subjects in 34 CFR Part 694

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

(Catalog of Federal Domestic Assistance Number: 84.334 Gaining Early Awareness and Readiness for Undergraduate Programs)

Dated: February 19, 1999.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

The Secretary amends Chapter VI of Title 34 of the Code of Federal Regulations by adding the following new part:

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS

Sec.

- 694.1 To what fiscal year do these regulations apply?
- 694.2 What is the maximum amount that the Secretary may award each year to a Partnership or a State under this program?
- 694.3 Which students must a Partnership, or a State that chooses to use the cohort approach in its project, serve under the program's early intervention component?
- 694.4 What are the requirements for a cohort?
- 694.5 Which students must a State or Partnership serve when there are changes in the cohort?
- 694.6 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?
- 694.7 Who may provide GEAR UP services to students attending private schools?
- 694.8 What are the matching requirements for a GEAR UP partnership?

- 694.9 What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program?
- 694.10 What are the requirements regarding the amount of a GEAR UP scholarship, and its relationship to other Federal student financial assistance?
- 694.11 What requirements must a State, or a Partnership that chooses to include a scholarship component in its project, follow in awarding scholarships under the program's scholarship component?
- 694.12 Under what conditions may a Partnership that does not participate in the GEAR UP scholarship component provide financial assistance to students under the GEAR UP early intervention component?
- 694.13 How does a State determine which State agency will apply for, and administer, a State grant under this program?
- 694.14 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholar Certificates?
- 694.15 What requirements apply to a State that served students under the National Early Intervention Scholarship and Partnership Program (NEISP) and that receives a GEAR UP grant?
- 694.16 What priority must the Secretary establish?
- 694.17 What priorities may the Secretary establish?
- Authority:** 20 U.S.C. 1070a-21 to 1070a-28, unless otherwise noted.

§ 694.1 To what fiscal year do these regulations apply?

The regulations in this part apply to the fiscal year 1999 grant competition. (Authority: 20 U.S.C. 1070a-21)

§ 694.2 What is the maximum amount that the Secretary may award each year to a Partnership or a State under this program?

(a) *Partnership grants.* The maximum amount that the Secretary may award each year for a GEAR UP Partnership grant is calculated by multiplying—

- (1) Eight hundred dollars (\$800); by
- (2) The number of students the Partnership proposes to serve that year, as stated in the Partnership's plan.

(b) *State grants.* The maximum amount that the Secretary may award each year for a GEAR UP State grant is \$5 million.

(Authority: 20 U.S.C. 1070a-23)

§ 694.3 Which students must a Partnership, or a State that chooses to use the cohort approach in its project, serve under the program's early intervention component?

A Partnership, or a State that chooses to use the cohort approach in its GEAR UP early intervention component, must, except as provided in § 694.5—

(a) Provide services to at least one entire grade level (cohort) of students

(subject to § 694.04(b)) beginning not later than the 7th grade; and

(b) Ensure that services are provided through the 12th grade to those students.

(Authority: 20 U.S.C. 1070a-21 to 1070a-28)

§ 694.4 What are the requirements for a cohort?

(a) *In general.* Each cohort to be served by a Partnership or State must be from a participating school—

(1) That has a 7th grade; and

(2) In which at least 50 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; or

(b) *Public housing exception.* If the Partnership or State determines it would promote program effectiveness, a cohort may consist of all of the students in a particular grade level at one or more participating schools who reside in public housing, as defined in section 3(b)(1) of the United States Housing Act of 1937.

(Authority: 20 U.S.C. 1070a-21 to 1070a-28)

§ 694.5 Which students must a State or Partnership serve when there are changes in the cohort?

(a) *At the school where the cohort began.* A Partnership or State must serve, as part of the cohort, any additional students who—

(1) Are at the grade level of the students in the cohort; and

(2) Begin attending the participating school at which the cohort began to receive GEAR UP services.

(b) *At a subsequent participating school.* If not all of the students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services, a Partnership or a State—

(1) May continue to provide GEAR UP services to all students in the cohort; and

(2) Must continue to provide GEAR UP services to at least those students in the cohort that attend participating schools that enroll a substantial majority of the students in the cohort.

(Authority: 20 U.S.C. 1070a-22)

§ 694.6 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?

(a) *Secular, neutral, and nonideological services or benefits.* Educational services or other benefits, including materials and equipment, provided under GEAR UP by a Partnership or State that chooses to provide those services or benefits to

students attending private schools, must be secular, neutral, and nonideological.

(b) *Control of funds.* In the case of a Partnership or State that chooses to provide services under GEAR UP to students attending private schools, the fiscal agent (in the case of a Partnership) or a State agency (in the case of a State) must—

(1) Control the funds used to provide services under GEAR UP to those students; and

(2) Hold title to materials, equipment, and property purchased with GEAR UP funds for GEAR UP program uses and purposes related to those students; and

(3) Administer those GEAR UP funds and property.

(Authority: 20 U.S.C. 1070a-21 to 1070a-28)

§ 694.7 Who may provide GEAR UP services to students attending private schools?

(a) GEAR UP services to students attending private schools must be provided—

(1) By employees of a public agency; or

(2) Through contract by the public agency with an individual, association, agency, or organization.

(b) In providing GEAR UP services to students attending private schools, the employee, individual, association, agency, or organization must be independent of the private school that the students attend, and of any religious organization affiliated with the school, and that employment or contract must be under the control and supervision of the public agency.

(c) Federal funds used to provide GEAR UP services to students attending private schools may not be commingled with non-Federal funds.

(Authority: 20 U.S.C. 1070a-21 to 1070a-28)

§ 694.8 What are the matching requirements for a GEAR UP Partnership?

(a) *In general.* A Partnership must—

(1) State in its application the percentage of the cost of the GEAR UP project the Partnership will provide for each year from non-Federal funds, subject to the requirements in paragraph (b) of this section; and

(2) Comply with the matching percentage stated in its application for each year of the project period.

(b) *Matching requirements.* (1) A Partnership must provide not less than 20 percent of the cost of the project from non-Federal funds for any year in the project period.

(2) The non-Federal share of the cost of the GEAR UP project must be not less than 50 percent of the total cost over the project period.

(3) The non-Federal share of the cost of a GEAR UP project may be provided in cash or in-kind.

(Authority: 20 U.S.C. 1070a-23)

(Approved by the Office of Management and Budget under control number 1840-0740)

§ 694.9 What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program?

A Partnership must designate as the fiscal agent for its project under GEAR UP—

(a) A local educational agency; or

(b) An institution of higher education that is not pervasively sectarian.

(Authority: 20 U.S.C. 1070a-22)

§ 694.10 What are the requirements regarding the amount of a GEAR UP scholarship, and its relationship to other Federal student financial assistance?

(a) *In general.* Except as provided in paragraph (b) of this section, a State, or a Partnership that chooses to include a scholarship component in its GEAR UP project—

(1) Must award a scholarship under the scholarship component that is at least the lesser of—

(i) Seventy-five (75) percent of the average cost of attendance, as determined under section 472 of the Higher Education Act of 1965, as amended (HEA), for in-State students in a 4-year program of instruction at public institutions of higher education in the State; or

(ii) The maximum Federal Pell Grant award funded for that fiscal year.

(2) Must not award a GEAR UP scholarship to a student in an amount that, in combination with other student financial assistance awarded under title IV of the HEA, exceeds the student's cost of attendance, as defined in section 472 of that Act.

(b) If a student who is awarded a GEAR UP scholarship attends an institution on a less than full-time basis during any academic year, the State or Partnership awarding the GEAR UP scholarship must reduce the scholarship amount proportionately.

(c) A GEAR UP scholarship must not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA.

(Authority: 20 U.S.C. 1070a-25)

§ 694.11 What requirements must a State, or a Partnership that chooses to include a scholarship component in its project, follow in awarding scholarships under the program's scholarship component?

(a) *Pell Grant recipient priority.* A State, or a Partnership that chooses to

include a scholarship component in its GEAR UP project, must award GEAR UP scholarships—

(1) To students who—
 (i) Are eligible for a GEAR UP scholarship; and
 (ii) Will receive a Federal Pell Grant for the academic year for which the GEAR UP scholarship is being awarded; and

(2) If the State or Partnership has GEAR UP scholarship funds remaining after awarding scholarships to students under paragraph (a)(1) of this section, to other eligible students (who will not receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

(b) *Continuation scholarships.* A State or a Partnership must award continuation scholarships in successive award years to each student who received an initial scholarship and who continues to be eligible for a scholarship.

(c) *Order of scholarships.* In awarding GEAR UP scholarships, a State or Partnership must ensure that, for each recipient of a scholarship under this part who is eligible for and receiving other postsecondary student financial assistance, a Federal Pell Grant be awarded first, other public and private grants, scholarships, or tuition discounts be awarded second, a GEAR UP scholarship be awarded third, and then other financial assistance be awarded.

(Authority: 20 U.S.C. 1070a-25)

§ 694.12 Under what conditions may a Partnership that does not participate in the GEAR UP scholarship component provide financial assistance to students under the GEAR UP early intervention component?

A GEAR UP Partnership that does not participate in the GEAR UP scholarship

component may provide financial assistance for postsecondary education to students who participate in the early intervention component only if the financial assistance is directly related to, and in support of, other activities of the Partnership under the early intervention component of GEAR UP.

(Authority: 20 U.S.C. 1070a-21 to 1070a-28)

§ 694.13 How does a State determine which State agency will apply for, and administer, a State grant under this program?

The Governor of a State must designate which State agency applies for, and administers, a State grant under GEAR UP.

(Authority: 20 U.S.C. 1070a-21 to 1070a-28)

§ 694.14 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholar Certificates?

(a) A State or Partnership must provide, in accordance with such procedures as the Secretary may specify, a 21st Century Scholar Certificate from the Secretary of Education to each student participating in the early intervention component of its GEAR UP project.

(b) 21st Century Scholar Certificates must be personalized and indicate the amount of Federal financial aid for college that a student may be eligible to receive.

(Authority: 20 U.S.C. 1070a-26)

§ 694.15 What requirements apply to a State that served students under the National Early Intervention Scholarship and Partnership program (NEISP) and that receives a GEAR UP grant?

Any State that receives a grant under this part and that served students under the NEISP program on October 6, 1998

must continue to provide services under this part to those students until they complete secondary school.

(Authority: 20 U.S.C. 1070a-21)

§ 694.16 What priority must the Secretary establish?

For any fiscal year, the Secretary must select any State grant applicant that—

(a) On October 6, 1998, carried out successful educational opportunity programs under the National Early Intervention Scholarship and Partnership program (as that program was in effect on that date); and

(b) Has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

(Authority: 20 U.S.C. 1070a-21)

§ 694.17 What priorities may the Secretary establish?

For fiscal year 1999, the Secretary may select one or more of the following priorities:

(a) Projects by Partnerships or States that serve a substantial number or percentage of students who reside in an Empowerment Zone, including a Supplemental Empowerment Zone, or Enterprise Community designated by the U.S. Department of Housing and Urban Development or the U.S. Department of Agriculture.

(b) Partnerships that establish or maintain a financial assistance program that awards scholarships to students either in accordance with section 404E of the HEA, or in accordance with § 694.12.

(Authority: 20 U.S.C. 1070a-21 to 1070a-28)

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