



Federal Register

Monday
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Part V

Department of Education

34 CFR Part 75
Direct Grant Programs; Proposed Rule

DEPARTMENT OF EDUCATION**34 CFR Part 75**

RIN 1880-AA02

Direct Grant Programs

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs. These proposed amendments would implement new options for the Department of Education's (Department's) application review process for discretionary grants. These changes are intended to improve the quality of the review process, provide additional flexibility, and provide greater opportunities for inexperienced, "novice applicants" to receive funding.

DATES: We must receive your comments on or before June 1, 2000.

ADDRESSES: Address all comments about these proposed regulations to Valerie A. Sinkovits, U.S. Department of Education, 400 Maryland Avenue SW., room 3652, ROB-3, Washington, DC 20202-4248. If you prefer to send your comments through the Internet use the following address: comments@ed.gov

You must include the term "Redesign" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Valerie Sinkovits. Telephone: (202) 708-7568. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:**I. Invitation to Comment**

We invite you to submit comments and recommendations regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866

and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs affected by these regulations.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3652, Regional Office Building 3, Seventh and D Streets, S.W., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205-8113 or (202) 260-9895. If you use a TDD, you may call the Federal Information Relay Service at 1-800-877-8339.

II. Background of the Department's Redesign of the Discretionary Grants Process

The Secretary takes this action to implement several recommendations made by a Department discretionary grants reengineering team (team). In January of 1995, the Department's Reinvention Coordinating Council (RCC), chaired by the Deputy Secretary of Education, chartered a team of Department staff to redesign the discretionary grants process, including the application review process, to increase customer satisfaction and to ensure the best use of the Department's resources. The team was comprised of staff members from across the Department who had a wealth of knowledge of, and experience with, the Department's discretionary grants process and programs. Current and former Department grant recipients, as well as unsuccessful applicants, provided helpful comments, suggestions, and recommendations to the team for improving the discretionary grants process. The team received input from a variety of organizations, including institutions of higher education, State educational agencies, local educational agencies, and nonprofit organizations. In addition,

numerous Department staff who are involved in all phases of the discretionary grants process, from appropriations through grant close-out, provided input and recommendations on ways to improve the grants process. Furthermore, the team researched the discretionary grants processes of other Federal agencies, including the National Science Foundation and the National Institutes of Health.

The team presented its preliminary design for the new discretionary grants process in May of 1995 at a design review conference for Department staff and customers. Based on participant recommendations and comments, the team made changes and refinements to the design. In December of 1995, the final design was approved for implementation by the Department's Executive Management Committee. Pilot tests of various aspects of the new process were conducted during fiscal year 1996 by several departmental program offices, and additional refinements were made based on the results of an external evaluation. The Department began to implement the approved redesigned discretionary grants process on October 1, 1996. Some of the most noticeable changes implemented since 1996 include: eliminating the Department's centralized grants office and forming discretionary grant teams in the Department's program offices that provide "one-stop shopping" for both grants administration and programmatic information; eliminating unnecessary and time-consuming processes such as grant negotiations prior to award; and establishing partnerships with Department grantees to ensure successful project outcomes.

III. The Team's Findings

Although the team gathered data on all phases of the Department's discretionary grants process, the majority of comments and suggestions from customers and staff alike focused on the review of grant applications—a crucial activity that plays a major role in determining which applicants will be funded.

A. Review Procedures

The team's analysis of the Department's current application review process showed that the same basic review procedures are generally used for all program competitions, regardless of the number of applications received, the average amount of the awards, or the nature of the program. Both staff and customers questioned whether it was cost-effective and efficient for the Department to employ the same review

procedures for the smallest grants as it does for the largest, most complex grants.

Perhaps more importantly, they questioned whether using the same standard review procedures for each of the Department's highly diverse programs would ultimately result in the selection of the best projects that would meet unique program goals.

The team determined that the two most common elements of the Department's application review process are: (1) using numerical scores to rate applications and (2) using primarily "outside reviewers" to review applications; that is, experts who are not employees of the Federal Government.

1. Numerical Scores

Under current practice, the Department establishes the maximum numerical score that an application may receive under a set of selection criteria for a competition. The Department then selects panels of reviewers to rate the applications under these selection criteria. Each member of a peer review panel rates applications by assigning numerical scores under the selection criteria. The scores of individual panel members are typically averaged together or, in some cases, added together by Department staff to produce a panel score for each application. Based on the panel scores, Department staff prepare rank order lists of the applications to assist in making funding determinations.

Some departmental program offices also use a statistical standardization process that adjusts the scores of each reviewer to eliminate biases that result from the scoring preferences of certain reviewers. For example, some reviewers may consistently score all assigned applications higher or lower than other reviewers.

Because often there are so many highly qualified applications that score very close together, the Department may need to calculate scores to one-tenth or even one one-hundredth of a point to determine the rank order. For example, due to limited program funds, the Department might be able to fund an application scoring 97.2. However, an application scoring 97.1, only one-tenth of a point less, may not be funded.

2. Peer Reviewers

Both Department staff and customers placed great importance on the qualifications of the peer reviewers. Customers indicated that they expected a review process that assured a fair and high quality application review by trained reviewers with appropriate backgrounds and subject matter expertise.

Department staff stressed the importance of using high-quality reviewers, but also indicated significant challenges in engaging "outside" reviewers. Often, qualified, prospective reviewers have numerous professional commitments that preclude their participation in the Department's review process. Further, for certain program specialty areas, the pool of qualified experts to draw from is limited and the experts' time and services are in high demand.

B. Inexperienced Applicants

Many unsuccessful applicants, as well as grantees who had received a grant only after submitting numerous unsuccessful applications, expressed frustrations and concerns about the difficulty that inexperienced applicants have in obtaining Department discretionary grant funding. These customers felt that there was not always a "level playing field" among applicants competing for grants. They noted several factors inhibiting success, including the lack of organizational resources to hire professional grant writers with a proven track record for producing winning proposals, and the lack of resources to establish institutional grant or sponsored research offices with the mission of securing grant funding.

C. Building Better Projects

Although the primary goal of the application review process is to identify high quality projects that are worthy of funding, customers indicated that they expected additional benefits from the Department's review process. Numerous customers stated that thoughtful, substantive reviewers' comments identifying the strengths and weaknesses of the proposed project were critical to both the successful applicant and the unsuccessful applicant.

Successful applicants felt that receiving substantive reviewers' comments prior to the start of their grant was an especially timely and helpful tool for improving an already high-quality project. Unsuccessful applicants felt that reviewers' comments identifying weaknesses in their proposed project and suggestions for improvement would help them strengthen their proposals for the next competition. Both successful and unsuccessful applicants saw constructive reviewers' comments as a form of technical assistance that should be an integral part of the review process.

IV. Goals for the Redesigned Application Review Process

In redesigning the discretionary grants process, particularly the application review process, the team had several goals:

- Given the range and diversity of the Department's discretionary grant programs, program offices should have the flexibility to employ procedures for reviewing and selecting grants that most closely meet their individual program needs and result in the selection of quality projects and the timely award of grants.

- Regardless of the application review procedures the Department uses for a particular program, the Department must ensure that, in all cases, trained and qualified reviewers, with appropriate backgrounds and expertise, conduct a high quality review.

- The entire discretionary grants process must be fair, efficient, cost-effective, and result in the issuance of grant awards when the customers need them.

V. The Redesigned Application Review Process

The redesigned application review process increases the options available for reviewing and selecting grants so that the Department can better tailor the method used for a competition to meet the needs of the program. Program offices could continue to use current review and selection methods, but would be encouraged to examine the appropriateness of using the new methods for their competitions.

A. Quality Band Ratings

The redesigned application review process presents a new option for rating applications that focuses on a qualitative description of the application's merit, rather than a quantitative description (*i.e.*, numerical scores). Under the redesigned process, the Department could request that reviewers group applications of comparable merit into quality bands, rather than using numerical ratings to score and rank applications. The reviewers would place applications into one of five possible groupings or quality bands to denote distinctions in quality among the applications. Quality bands would range from highest to lowest quality (*i.e.*, "Excellent," "Very Good," "Good," "Fair" and "Unacceptable").

Under the quality band system of rating applications, all of the applications that place in a particular quality band would be considered comparable in quality, and therefore, the Department could support funding

any of the applications in a fundable quality band.

In any competition using quality bands, the Department would rely heavily on the professional judgement of the reviewers in the rating of applications. The individual reviewers would be instructed to provide strong written justifications for the quality band rating assigned to each application, and include comments that identify the strengths and weaknesses of the application. In addition to justifying the ratings that a reviewer has given to an application, constructive narrative reviewers' comments provide critical technical assistance that can help successful applicants improve and refine their projects and will help unsuccessful applicants improve the quality of their proposals for the next competition. Peer reviewers would receive training by Department staff prior to the start of the review regarding how to provide constructive comments that are integral to the quality band rating system.

The Department would first fund all of the applications in the highest quality band (*i.e.*, the "Excellent" band) and then proceed to fund all of the applications in the next band (*i.e.*, the "Very Good" band), and so on, until all of the applications in the last band that merits funding have been funded. If faced with the inability to fund all of the applications in a particular quality band due to limited program funds, the Secretary would have discretion in determining which applications to fund within the band. As recommended by the team, in exercising that discretion, the Secretary might use a random selection procedure to select applications from within the band until available funds were exhausted. Because the Department could commit to funding any of the applications in that particular quality band, a random selection procedure is both a feasible and fair way of selecting among applications in a quality band.

It should be noted that the Department has experience with qualitative ratings in specific program competitions. Several Department programs, such as the Technology Innovation Challenge Grants Program and the Field-Initiated Studies Research Grant Program, have used qualitative rating systems. In reviewing the applications, reviewers provided written justifications supporting the qualitative ratings assigned to each application and comments focusing on the strengths and weaknesses of the applications.

B. Staff Panel Reviews

Another application review option recommended by the team was the increased use of review panels comprised solely of highly qualified Department staff. This review option is available currently to Department programs, but is not widely used.

However, the Department believes that this kind of review process might be appropriate for programs in which the awards issued were of a relatively small size or in which a high percentage of the applications under the program would ultimately be funded. Further, in competitions involving a multiple tier review process, in which two or three review panels or tiers evaluate applications, Department staff might be used by program offices to participate in one of the initial tiers of review to help determine which applications should be forwarded to the next tier for further consideration.

The team noted the following beneficial aspects of using an internal review and evaluation process for certain program competitions: (1) A high quality review is conducted by "in-house" Department experts, with appropriate backgrounds and subject matter expertise, who are familiar with the laws, regulations, and policies affecting the program and (2) the review process is more cost-effective and efficient, as the need to conduct application reviews off-site is reduced or eliminated, and the fiscal and logistical considerations of recruiting, selecting, and engaging non-Federal readers is reduced, or, in some cases, eliminated.

C. Novice Applicants

In order to address customer concerns about the difficulties that inexperienced applicants face in getting discretionary grant funding from the Department, the team recommended that, if legally permissible and consistent with the intent and purpose of the program, Department program offices could set aside funds to be awarded to novice applicants. The team suggested a streamlined application process for novice applicants, consisting of a brief application, submitted by the applicants for a smaller than average grant under the program; review and evaluation by Department staff members to establish that the applications are of sufficient quality to merit funding; use of a random selection process when the Department does not have sufficient funds to fund all of the qualified novice applications; and closer monitoring and technical assistance after award for novice grantees.

To meet individual program needs, program offices might use other review and selection procedures to assist novice applicants in obtaining funding. For example, instead of conducting a separate competition for novice applicants, a program office might hold only one competition open to all eligible applicants, including novice applicants. Under a competitive preference for a program competition using numerical scores, a novice applicant could receive a certain number of additional points based on its status as a novice. Likewise, in a program competition using quality bands, the Secretary could take into consideration the applicants' "novice" status in making funding decisions. For example, if all of the applications in a quality band could not be funded due to limited program funds, the Secretary could fund all, or a certain percentage of the novice applications in that band before funding other applications in that band.

In all cases, novice grantees would be required to follow the same regulations and requirements as other grantees under the program, and, as mentioned earlier, more stringent conditions might be imposed, if needed, on novice grantees, such as more frequent monitoring by the Department.

VI. Section-by-Section Analysis of the Proposed Regulations

A. Section 75.105 Annual Priorities

This section would be amended to reflect the use of annual priorities in competitions that use quality bands to evaluate applications. Under proposed paragraph (c)(2)(i)(B) of this section, when selecting applications in quality bands, the Secretary may consider the extent to which or how well the application meets the priority in selecting applications for funding.

The following hypothetical example illustrates how this would work. The Secretary publishes an application notice for a competition under the ABC School Technology Program, telling applicants that the Secretary will use quality bands to evaluate applications. The notice also states that the Secretary will give competitive preference to applications under this competition based on the extent to which or how well an application meets the following priority: significant involvement by members of the business community in the design and implementation of the project. In response to the application notice, the Secretary receives many applications under the ABC School Technology Program. The Secretary has sufficient funds to select all of the applications in the "Excellent" band,

but only has sufficient funds to select 10 of the 30 applications in the "Very Good" band. Twelve of the 30 applications in the "Very Good" band address the priority.

In deciding which 10 applications to fund, the Secretary may consider the extent to which or how well the 12 applications address the priority. The Secretary may conclude, after reviewing the applications and the peer reviewers' comments, that eight of the 12 applications extensively address the priority and provide detailed information about how the applicant would implement the priority. The Secretary would select the 8 applicants that effectively addressed the priority, before funding other applications.

The Secretary would document how the Secretary made the decision as to which of the eight applications addressed the priority effectively such that they deserved to be selected over other applications and would include that documentation in the file for each application that addressed the priority.

The four applications that did not address the priority effectively enough to be given priority selection would be treated as equal to the 18 remaining applications that did not address the priority at all. The Secretary would then select the final two applications from the remaining 22 applications. The Secretary either could use random selection, or could rely on information regarding the selection criteria or other requirements relevant to the selection of applications in making the final selection, regardless of whether the applications addressed the priority.

A. Section 75.201 How the Selection Criteria Will Be Used.

This section would be amended to state that the application package or notice published in the **Federal Register** provided to applicants includes certain information for competitions that use quality bands to evaluate applications.

B. Section 75.209 Selection Criteria Based on Statutory Provisions

This section would be amended to reflect how the Secretary would use statutory criteria, along with other criteria established by the Department, in competitions that use quality bands to evaluate applications.

C. Section 75.217 How Does the Secretary Select Applications for Grants?

Paragraph (c) of this section would be revised to reflect the use of quality bands to evaluate applications. Under proposed paragraph (d), the Secretary would continue to make the final

decision as to which applications to fund, whether the Secretary used rank ordering or quality bands. The proposed regulations would continue the Secretary's authority to determine which applications to fund after considering the information in the application, and the quality of the application, as determined under paragraph (c). Proposed paragraph (d) would also retain the provision that the Secretary could consider more information than was available to reviewers to make sure that all factors were properly weighed in the selection process. For example, a group of reviewers might rank an application very high. However, the Secretary might have information about the applicant's unsatisfactory past performance under prior Department grants (e.g., improper use of funds or failure to achieve its approved project goals and objectives). The Secretary could consider this information under paragraph (d)(1)(iii) and decide not to fund the application.

A new paragraph (e) would be added to reflect the Secretary's ability to refuse consideration of applications that do not meet a minimum cut-off score or minimum quality band rating. The Secretary would have flexibility in deciding whether the cut-off score or quality band rating should be established in the application notice for the competition or after determining the overall quality of applications submitted under a competition.

D. Section 75.223 What Procedures Apply When the Secretary Uses Quality Bands to Evaluate Applications?

A new section 75.223 would be added to describe the procedures the Secretary would use under competitions that use quality bands to evaluate applications. These proposed regulations would permit reviewers to group applications under the following five quality bands: "Excellent," "Very Good," "Good," "Fair," and "Unacceptable." Under proposed § 75.223(b), the Secretary would not fund any application placed in the "Unacceptable" band.

In cases where the Secretary selected an application for funding from the "Fair" band, the Secretary would maintain, in the grant file, changes the applicant made to the application showing how the applicant addressed those aspects of the proposed grant that were lacking. Further, the Secretary could impose additional requirements on the grant to ensure that those aspects that were lacking in the original application are implemented properly.

Under proposed paragraph (c) of this section the experts would rate the applications against the program's

selection criteria and then group applications of comparable merit into the same quality band, so that there would be no rank order within a quality band.

Proposed paragraph (d) would add a provision outlining what would happen if the Secretary grouped applications in non-numerical quality bands and there were more applications within any one quality band worthy of funding than available funds would allow. In such situations, the Secretary would use his discretion to select applications and could select randomly from within the quality band in exercising that discretion.

Proposed paragraph (d) would also address the possibility that different members of a panel might put the same application in different quality bands. In these cases, the Secretary would have to resolve the conflict, using all available information. For example, if two reviewers rated an application in the "Very Good" and one rated the application in the "Excellent" band, the Secretary might conclude that the application should be considered with the applications that were rated in the "Very Good" band, as that view predominated in the consideration of the reviewers. In other cases, the Secretary might find that one of the reviewers misunderstood portions of the application and misjudged the application. This might produce a three-reviewer split, where one member rated the application in the "Excellent" band, one member rated the application in the "Very Good" band and the third member rated the application in the "Unacceptable" band. If the Secretary determined that the third reviewer misjudged the application, the Secretary would look at the ratings of the other two reviewers to decide in which band to rate the application. This kind of judgement is similar to what happens under the current system, when the Secretary decides not to fund an application that was within the funding range because the average of the scores for an application was unjustifiably high due to a misreading of the application by one of the reviewers.

The Secretary would direct employees of the Department who act as competition managers or monitors to point out to reviewers variances in evaluations so these kinds of conflicts can be resolved in most cases during the review process. In any case, these issues would be resolved before the Secretary makes final selection decisions. In no case would a reviewer be directed to change an evaluation, only to consider whether the reviewer fully considered all of the information in the application.

The Secretary will monitor the development of the Department's use of quality bands to determine if any further regulatory clarification is needed to resolve issues that may arise from reviewers placing applications in different quality bands.

E. Section 75.224 What Are the Procedures for Using a Multiple Tier Review Process To Evaluate Applications?

Proposed § 75.224 would codify a practice that has evolved in some program offices of the Department involving the use of more than one review of an application. This review by more than one group of reviewers is known as "multiple tier review." A multiple tier review process might be used by a program office to gain different perspectives on an application. For example, one panel of researchers and another panel of practitioners might be asked to review the applications for a particular program competition. More commonly, a multiple tier review process is used to narrow the pool of applicants that will be considered for funding. After the first or second tiers of the review, only some of the applications are forwarded to the next tier for further consideration. Under the multiple tier review process, the Secretary could refuse to consider an application in the second or third tier of review if it did not meet a minimum score or place in a certain minimum quality band level in the previous tier's review. The Secretary could establish the minimum score or quality band either in the application notice for the competition or after considering the overall range in the quality of the applications. For example, if a large number of the applications were rated in the "Excellent" and "Very Good" bands in the first tier of the review, and funds were only available to fund a small number of the applications, the Secretary could decide to eliminate from further review any applications that rated below the "Excellent" band.

When a multiple tier review process is used as a means for narrowing the pool of applications that will be considered for funding, it would not be unusual for an application to receive a considerably different rating in the second or third tier than it did under the previous tier's review, even from the same reviewers. Although the reviewers in the second or third tier are still rating applications under the same selection criteria, the applications are now being reviewed within the context of a higher quality pool of applications, which has the potential for affecting the reviewers' rating practices. For this reason, the

Secretary does not believe that these differences in ratings indicate errors in judgement at the prior tier.

The Secretary would also have discretion under proposed paragraph (d) to refuse consideration of an application that was rejected by any one of the groups evaluating the application in the same tier. For example, in a competition for a major statistical grant, the Secretary might choose at the first tier to have applications reviewed by a panel of statisticians and another panel of educators and citizens. If the statistical panel found the statistical model of an application valid but the panel of educators and citizens found that the result of the applicant's analysis would not advance education issues, the Secretary could refuse to consider that application in the next tier of the review process.

F. Section 75.225 What Procedures Does the Secretary Use if the Secretary Decides to Give Special Consideration to Novice Applicants?

Proposed new section 75.225 would be added to respond to the concerns of some applicants that they could not get a grant from the Department unless they had already received a grant. Proposed section 75.225 (a) would define novice applicants as applicants that have never received a grant or a subgrant from the Department program under which they seek funding, and have not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the program.

In cases where an applicant had participated in a group that received a grant from the Department, such as a consortium or partnership, but had not acted as the grantee (fiscal agent) under the regulations for group applications in §§ 75.127–75.129, the applicant would not be treated as having had a previous grant under that program. However, if the applicant had been the grantee for the group application, then the applicant would be treated as having had a grant under the program that made the award.

When applying for assistance under a program that would use the novice application procedures, an applicant that met the definition of "novice applicant" and wanted to receive special consideration as a novice applicant would check a box on the Department's Application for Federal Education Assistance form (ED 424) to certify that it met all novice applicant requirements for the funding program.

Under proposed paragraph (c), the Secretary would have discretion in appropriate circumstances to set up a

separate competition for novice applicants. This novice competition would not be used when the Department would be funding a highly complicated research project, or large projects that would require coordination among a group of organizations. As an example, the Department could set up a novice competition in which novice applicants compete for small "seed money" grants and are required to submit only brief applications addressing how they meet the selection criteria for the program. The information about how the novice competition would be managed would appear in the application notice for the competition.

The Secretary would also have discretion under proposed paragraph (c) to give special consideration to novice applications as part of a competition not explicitly restricted to novice applicants. If the Secretary chose this means of considering novice applications in a rank-order competition, the Secretary would give a novice application a certain number of additional points, as stated in the application notice for the competition, based on its status as a novice. Also, as mentioned earlier in this preamble, a program office using quality band ratings could give priority to novice applications by selecting a certain percentage of, or all, novice applications within a band before selecting other applications in that band.

Finally, proposed paragraph (d) would authorize the Secretary to place special conditions on a novice grantee to help ensure that it successfully completes the project. For example, to facilitate close monitoring of the grant, the novice grantee might be required to submit performance reports on a quarterly basis.

Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them

into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 75.217 *How the Secretary selects applications for new grants.*)

- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small local educational agencies, tribal governments, community-based organizations, nonprofit organizations, and institutions of higher education. The novice applicant procedures in these regulations would benefit small entities by giving them a greater opportunity to receive awards from the Department. The flexibility in these regulations would benefit all entities, including small entities, by improving customer service and increasing the quality of the application review process.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

These proposed regulations are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. However, many of the programs that these proposed regulations would apply to are subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests 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.

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(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 75

Administrative practice and procedure, Education Department, Grant programs—education, Grant administration, Incorporation by reference, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

Dated: April 12, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend 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 75.105 is amended by revising paragraph (c)(2)(i) to read as follows:

§ 75.105 Annual priorities.

* * * * *

(c) * * *

(2) * * *

(i)(A) If the Secretary prepares a rank order of the applications, the Secretary may assign some or all bonus points to an application depending upon the extent to which or how well the application meets the priority. These points are in addition to any points the applicant earns under the selection criteria (see § 75.200(b)). The application notice states the maximum number of additional points that the Secretary may award to an application depending upon the extent to which or how well the application meets the priority.

(B) If the Secretary selects applications in quality bands, the Secretary may consider the extent to which or how well the application meets the priority in selecting applications.

* * * * *

3. Section 75.201 is revised to read as follows:

§ 75.201 How the selection criteria will be used.

(a) In the application package or a notice published in the **Federal Register**, the Secretary informs applicants of—

(1) The selection criteria chosen;

(2) The factors selected for considering the selection criteria, if any; and

(3) The Secretary's decision whether to prepare a rank order of applications or group applications in non-numerical quality bands. (See 34 CFR 75.217(c))

(b) If the Secretary prepares a rank order of applications, the Secretary also informs applicants of—

(1) The total possible score for all of the criteria for a competition; and

(2) The assigned weight or maximum possible score for each criterion or factor under that criterion.

(c) If the Secretary prepares a rank order of applications and no points or weights are assigned to the selection criteria and factors used for the competition, the Secretary evaluates each selection criterion equally and within each criterion, each factor equally.

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

4. Section 75.209 is amended by revising paragraph (a)(2) to read as follows.

§ 75.209 Selection criteria based on statutory provisions.

(a) * * *

* * * * *

(2)(i) If the Secretary prepares a rank order of applications, assigning the maximum possible score for each of the criteria established under paragraph (a)(1) of this section.

(ii) If the Secretary groups applications in non-numerical quality bands, the Secretary considers statutory criteria with the other criteria under § 75.223(c).

* * * * *

5. Section 75.217 is revised to read as follows:

§ 75.217 How does the Secretary select applications for new grants?

(a) The Secretary selects applications for new grants on the basis of the authorizing statute, the selection

criteria, and any priorities or other requirements that have been published in the **Federal Register** and apply to the selection of applications.

(b)(1) The Secretary may use experts to evaluate the applications submitted under a competition.

(2) These experts may include individuals who are not employees of the Federal Government.

(c) Based solely on the evaluation of the quality of the applications according to the selection criteria, the Secretary either—

(1) Prepares a rank order of the applications; or

(2) Groups applications into non-numerical quality bands in accordance with the procedures in § 75.223.

(d) The Secretary determines the order in which applications will be selected, after considering the following:

(1) The information in each application.

(2) The quality of the applications as determined under § 75.217(c).

(3) Any other information—

(i) Relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants;

(ii) Concerning the applicant's performance and use of funds under a previous award under any Department program; and

(iii) Concerning the applicant's failure under any Department program to submit a performance report or its submission of a performance report of unacceptable quality.

(e)(1) The Secretary may refuse to consider applications that do not meet a minimum cut-off score or minimum quality band.

(2) The Secretary may establish the minimum cut-off score or quality band—

(i) In the application notice published in the **Federal Register**; or

(ii) After reviewing the applications to determine the overall range in the quality of applications received.

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

5. New §§ 75.223, 75.224 and 74.225 are added to subpart D under the

undersigned center heading "selection procedures" to read as follows:

§ 75.223 What procedures apply when the Secretary uses quality bands to evaluate applications?

(a) If the Secretary uses quality bands to evaluate applications, the quality bands are—

(1) Excellent, if the application is outstanding in all respects and deserves the highest priority for support;

(2) Very good, if the application is of high quality in nearly all respects and should be supported if at all possible;

(3) Good, if the application is a quality proposal that is worthy of support;

(4) Fair, if the application is acceptable but lacking in one or more aspects and there are issues that need to be addressed before it can be considered for funding;

(5) Unacceptable, if the application has serious deficiencies and should not be funded.

(b) The Secretary does not fund any application that is placed in the Unacceptable band.

(c) The experts must assign an overall band rating for each application, after considering the quality of the application under each criterion.

(d) If there are more applications within any one quality band than can be funded with remaining funds, the Secretary decides which applications to fund based solely on the Secretary's discretion and may select randomly in exercising that discretion.

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

§ 75.224 What are the procedures for using a multiple tier review process to evaluate applications?

(a) The Secretary may use a multiple tier review process to evaluate applications.

(b) The Secretary may refuse to review applications in any tier that do not meet a minimum cut-off score or minimum quality band established for the prior tier.

(c) The Secretary may establish the minimum cut-off score or quality band—

(1) In the application notice published in the **Federal Register**; or

(2) After reviewing the applications to determine the overall range in the quality of applications received.

(d) The Secretary may, in any tier—

(1) Use more than one group of experts to gain different perspectives on an application; and

(2) Refuse to consider an application if the application is rejected under paragraph (b) of this section by any one of the groups used in the prior tier.

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

§ 75.225 What procedures does the Secretary use if the Secretary decides to give special consideration to novice applications?

(a) As used in this section, "Novice applicant" means an applicant for a grant from ED that—

(1) Has never received a grant or subgrant under the program from which it seeks funding; and

(2) Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the program.

(b) For the purposes of paragraph (a)(2) of this section, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

(c) If the Secretary determines that special consideration of novice applications is appropriate, the Secretary may either—

(1) Establish a separate competition for novice applicants; or

(2) Give competitive preference to novice applicants under the procedures in 34 CFR 75.105(c)(2).

(d) Before making a grant to a novice applicant, the Secretary imposes special conditions, if necessary, to ensure the grant is managed effectively and project objectives are achieved.

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

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