



Federal Register

**Thursday,
April 6, 2000**

Part IX

**Department of
Education**

**34 CFR Part 379
Projects With Industry; Final Rule**

DEPARTMENT OF EDUCATION

34 CFR Part 379

RIN 1820-AB45

Projects With Industry

AGENCY: Office of Special Education and Rehabilitative Services, Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Projects With Industry (PWI) program to clarify statutory intent and to enhance program accountability.

DATES: These regulations are effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT:

Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3315, Mary E. Switzer Building, Washington, DC 20202-2575. Telephone: (202) 205-8292. 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, audiotape, or computer diskette) on request to the contact person named in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On January 22, 1996, we published a notice of proposed rulemaking (NPRM) for the PWI program in the *Federal Register* (61 FR 1672) inviting comments on changes needed to improve the PWI program's compliance indicators. We used the comments received in response to that NPRM, comments provided by participants in focus group meetings held by the Rehabilitation Services Administration (RSA), a June 1994 report on the PWI program prepared for the Department by the Research Triangle Institute, and RSA's analysis of grantee performance on the current PWI compliance indicators to develop revisions to the PWI compliance indicators.

On June 23, 1998, we published an NPRM for the PWI program in the *Federal Register* (63 FR 34218) proposing revisions to the PWI compliance indicators. On pages 34218 through 34221 of the June 23, 1998, NPRM, we discussed the major changes proposed in that document to improve project performance, enhance project accountability, better reflect statutory intent, and reduce grantee burden. These proposed changes included the following:

- Amending § 379.21(a)(4) to require an applicant to include in its

application a description of the factors that justify the project's projected average cost per placement.

- Amending § 379.50 to eliminate the minimum composite scoring system for all proposed compliance indicators and replace it with minimum performance levels on all proposed compliance indicators. We also proposed the requirement that grantees attain at least the minimum performance level on each of the compliance indicators to be eligible for continuation funding.

- Amending § 379.51 and § 379.52 to eliminate both the performance ranges within each proposed compliance indicator and the minimum composite scoring system for all proposed compliance indicators. We proposed replacing these with the requirement that grantees attain at least the minimum performance level on each of the compliance indicators.

- Amending § 379.53 to replace the nine compliance indicators with five proposed compliance indicators.

- Amending § 379.54 to reflect the change from composite scoring to a pass/fail system.

In addition to the proposed changes, we also stated that we proposed to collect data from PWI projects on "change in earnings" and "job retention" for individuals who receive services. We stated our intention to use this data to determine the need for—(a) Any revision to the performance level for the "Change in earnings" compliance indicator or to the compliance indicator itself; and (b) developing a compliance indicator, and appropriate performance level to measure job retention for individuals who receive PWI services.

In response to public comment, we have made several changes in these final regulations from what was proposed in the June 23, 1998, NPRM. The final regulations—(1) Require that each grant application include a projected average cost per placement for the project (§ 379.21(c)); (2) require a project to pass the two "primary" compliance indicators and any two of the three "secondary" compliance indicators to receive a continuation award (§ 379.50); (3) designate two compliance indicators as "primary" and three compliance indicators as "secondary" (§ 379.51(b) and (c)); and (4) change the minimum performance levels for three of the compliance indicators (§ 379.53(a)(1)—Placement rate; § 379.53(a)(2)—Change in earnings; and § 379.53(b)(3)—Average cost per placement). A more detailed description of these and other changes to the regulations is contained in the "Analysis of Comments and Changes" section of this preamble.

Analysis of Comments and Changes

In response to our invitation in the June 23, 1998, NPRM, 108 parties submitted comments on the proposed regulations. Most commenters addressed more than one issue regarding the proposed regulations. We reviewed all comments and carefully considered these comments in the development of the final regulations. Major issues raised by the commenters are discussed under the section of the final regulations to which they pertain. We do not specifically discuss in this preamble: (1) The technical changes to the PWI regulations (published in the *Federal Register* on September 1, 1999 (64 FR 48052)) to implement the 1998 Amendments to the Rehabilitation Act of 1973 (1998 Amendments), which are in title IV of the Workforce Investment Act of 1998 (WIA), Pub. L. 105-220 (enacted August 7, 1998); (2) changes suggested by commenters but that the law does not authorize us to make under the applicable statutory authority; and (3) other minor changes. We also wish to point out that the technical changes we made to the PWI regulations to implement the 1998 Amendments included substantial changes to § 379.21 from what we proposed in the June 23, 1998, NPRM. In these final regulations, we made several additional changes to § 379.21 beyond the technical changes we made on September 1, 1999. However, only one of these additional changes, which we mentioned previously, was significant, and the others were very minor.

An analysis of the comments and the changes in the regulations since publication of the June 23, 1998, NPRM follows.

Section 379.21(a)(7)—Grant Application Must Include a Description of the Factors That Justify the Applicant's Projected Average Cost Per Placement

Comments: Four commenters supported the requirement in proposed § 379.21(a)(4) that an application include a justification of the project's proposed cost per placement.

Discussion: We have reviewed this section and wish to clarify that it is the project's projected *average* cost per placement that must be justified. This clarifying change makes the application requirement consistent with the actual compliance indicator, which refers to the project's "actual *average* cost per placement." (Emphasis added.)

Changes: We have revised § 379.21(a)(7)(proposed § 379.21(a)(4)) by changing the word "proposed" to "projected" and adding the word "average" to the phrase "proposed cost

per placement” so that the regulations now read “projected average cost per placement.”

Section 379.21(c)—Grant Application Must Include the Project's Projected Average Cost Per Placement

Comments: None.

Discussion: Since publication of the June 23, 1998, NPRM, we have reviewed this section and realized that the requirement to include in an application the projected average cost per placement was only implicit. The NPRM required that the grant application include a description of the justification of the project's proposed cost per placement. In addition, the NPRM proposed a minimum performance level not to exceed 110 percent of the projected average cost per placement in the grantee's application. Although this language implied that the grantee's application should include the projected average cost per placement so that the difference between the actual average cost per placement and the projected average cost per placement could be calculated, this requirement was not explicit anywhere in the NPRM. As a result, we believed the language in the final regulations needed to be clear and explicit that the applicant must include the projected average cost per placement in its application. In addition, we believe an applicant should understand that it must use the same method to calculate the projected average cost per placement that we have always used, which is to divide the sum of the total project costs (*i.e.*, Federal dollar amount of the grant plus the total non-Federal contributions) by the number of individuals the applicant projects in its application will be served by the project. This method is described in Instruction Number 8 of the “Instructions for Completing the Reporting Form for Projects With Industry Compliance Indicators and Annual Evaluation Report” that we mail to each recipient of a PWI grant.

Changes: We have added a new paragraph (c) to § 379.21 that explicitly requires the applicant to include in its application the projected average cost per placement for the proposed project, which must be calculated by dividing the sum of the total project costs (*i.e.*, Federal dollar amount of the grant plus the total non-Federal contributions) by the number of individuals the applicant projects in its application will be served by the project.

Section 379.50—Requirements for Continuation Funding

Comments: Fifteen commenters opposed the requirement that grantees

meet minimum performance levels on all program compliance indicators to receive continuation funding. A majority of these commenters objected to the proposed requirement because they believed the composite scoring method allowed for more flexibility in how projects achieve their goals. Four of these commenters favored retaining the composite scoring method because it allowed a project that excelled in one or more areas to receive continuation funding even though it might be weak or unable to attain the minimum performance level in one or more other areas.

Discussion: We agree with the comments favoring more flexibility and have made changes to achieve a combination of flexibility and accountability. Under the former composite scoring method, a PWI project could receive zero points on as many as five of the nine compliance indicators and still receive continuation funding. Because this did not ensure the high level of performance and accountability we expected of all PWI projects, we proposed the changes published in the June 23, 1998, NPRM.

We have since reviewed available data to determine the effect on PWI projects if they had been required to meet all of the five proposed compliance indicators to receive continuation funding. The available data indicated that, although most projects could have met most of the minimum performance levels, a significant percentage of projects might not have met all five of the proposed compliance indicators. These projects would have failed to receive continuation funding under the system proposed in the June 23, 1998, NPRM. After reviewing the data, we believe the changes we have made combine the best features of the minimum performance level approach and the composite scoring method.

The changes we have made are based on the belief that placing individuals in competitive employment and increasing their earnings are the two most important purposes of the PWI program. The newly designated “primary” compliance indicators will measure how well a PWI project achieves these dual goals. We believe that if a project is unable to meet the minimum performance level for both of these two compliance indicators, it should not receive a continuation award.

We believe the newly designated “secondary” compliance indicators also are important for measuring the success of a PWI project. However, we do not believe that the failure to meet any one of the “secondary” compliance

indicators should cause an otherwise successful project to lose its continuation funding. Therefore, we have determined that PWI projects must meet only two of the three “secondary” compliance indicators to receive continuation funding.

We believe that requiring PWI projects to meet only two of the three “secondary” compliance indicators provides the necessary flexibility to ensure that individuals without a significant disability and individuals who were unemployed for shorter periods also will have access to PWI services. Finally, this added flexibility will benefit projects—(1) Designed to excel in meeting one “secondary” compliance indicator (*e.g.*, projects serving a high percentage of individuals with significant disabilities) but which may have difficulty in meeting one or both of the other “secondary” indicators; and (2) projects facing a variety of economic and other factors that affect how much it costs to provide services to individuals.

Changes: We have revised § 379.50 to eliminate the proposed requirement that a project meet the minimum performance levels on all five compliance indicators to receive a continuation award. We also have divided the proposed five compliance indicators into “primary” and “secondary” compliance indicators. “Placement rate” and “Change in earnings” are “primary” indicators. “Percent placed who have significant disabilities,” “Percent placed who were previously unemployed,” and “Cost per placement” are “secondary” indicators. We have revised § 379.50 to require that a grantee meet the minimum performance levels of the two newly designated “primary” compliance indicators and any two of the three newly designated “secondary” compliance indicators to receive continuation funding. This last change makes proposed § 379.52(c) incorrect. Therefore, we have deleted § 379.52(c).

Comments: Four commenters believed that eliminating the composite scoring method (on which continuation funding was based) in the middle of a grant period is unfair to existing grantees.

Discussion: We are sensitive to the concerns of commenters that existing projects should not be unfairly penalized for grant proposals that were produced under the previous compliance indicators. We also recognize the need for a delay in the implementation of the indicators and the need to allow projects the opportunity to negotiate changes to their approved grant applications.

Changes: We have determined that implementation of the new compliance indicators should begin on October 1, 2000. We also will provide an existing project a one-time opportunity to negotiate, prior to July 1, 2000, reasonable changes to the content of its approved grant application, consistent with these regulations.

Section 379.51—What Are the Program Compliance Indicators?

Comments: One commenter recommended retaining two of the former compliance indicators (“Percent of persons served whose disabilities are significant” and “Percent of persons served who have been unemployed for at least 6 months at the time of project entry”) in addition to those we proposed.

Discussion: We believe that these two former compliance indicators identified by the commenters should no longer be used to measure a project’s performance for the reasons given in the preamble to the June 23, 1998, NPRM. As we stated in that preamble, projects should be judged on the extent to which they are successful in assisting individuals to achieve competitive employment, including those with a significant disability and those who have been unemployed at least 6 months prior to project entry. We believe that discontinuing the use of these two compliance indicators places more focus on a project’s actual success in placing individuals in competitive employment, better reflects the goals of the PWI program, and reduces grantee information collection and reporting burden.

Changes: None.

Comments: One commenter proposed a new compliance indicator to measure the active involvement of the Business Advisory Council (BAC) in the structure and operation of a PWI project.

Discussion: The 1998 Amendments strengthened the role of the BACs in PWI projects in the following ways: (1) The project’s BAC must include a representative of the appropriate designated State unit. (2) The identification of job and career availability must be consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of WIA. (3) The BAC has the option to prescribe either training programs or job placement programs in fields related to the job and career availability it has identified. We believe the most effective method of ensuring BAC involvement in a PWI project is to monitor the extent to which a BAC complies with the

revised statutory requirements. The technical amendments to the PWI regulations, including those made to § 379.21(a)(1), are designed to ensure BAC compliance with those statutory requirements.

Change: None.

Section 379.52—How Is Grantee Performance Measured Using the Compliance Indicators?

Comments: All but one of the commenters who addressed this section of the regulations opposed the proposed requirement that a grantee pass all of the proposed compliance indicators to qualify for continuation funding. Some commenters believed that a pass/fail approach would penalize projects that are unable, due to the individual characteristics of the project or for reasons beyond the project’s control, to meet one or more of the proposed compliance indicators. Some commenters expressed concern that an entire project could fail by experiencing a temporary deficiency in one area even though the project’s performance and achievements are outstanding in all other areas.

Discussion: For the reasons stated in the discussion to § 379.50, we believe the previous composite scoring system that allowed a project to fail five of the nine compliance indicators and yet receive continuation funding was detrimental both to the PWI program and individuals served by the PWI program. We believe deficiencies that would make a project ineligible to receive continuation funding are adequately addressed through the provisions of § 379.54(c), which allow grantees to submit data from the first 6 months of the current budget period to demonstrate that a project’s performance has improved sufficiently to meet the minimum performance level or levels.

Changes: None.

Section 379.53—What Are the Minimum Performance Levels for Each Compliance Indicator?

(a) Placement Rate

Comments: Eleven commenters addressed the proposed requirement that a minimum of 55 percent of individuals served by the project be placed into competitive employment. Three of these commenters supported the proposed compliance indicator, citing the importance of this indicator in determining whether the overall purpose of the PWI program is being met. Three commenters expressed concern that the 55 percent level of compliance was too high and would

adversely affect projects serving large percentages of individuals with significant disabilities or other individuals who are more difficult to place in employment. Two commenters believed that the proposed compliance indicator failed to consider local economic conditions and changes in those conditions that are beyond the control of the project.

Discussion: As stated previously, we remain committed to implementing compliance indicators for the PWI program that ensure sufficiently high standards of performance and accountability in the use and expenditure of Federal funds. We realize that increasing the minimum performance on this indicator from 40 percent to 55 percent may cause some difficulty for some projects. Therefore, we have decided to phase in the new minimum performance level over a period of 5 years. The minimum performance level for this indicator will be 50 percent for fiscal year (FY) 2001, which is 5 percentage points lower than what we proposed in the NPRM. This minimum performance level will increase to 55 percent by FY 2005. We believe that starting at a lower minimum level than what we proposed and phasing in the higher minimum performance level for the placement rate is warranted to help ensure that otherwise effective projects do not fail this compliance indicator because they serve individuals with significant disabilities or because of the location of the project (e.g., rural areas). The 5 years should be more than sufficient time to improve a project’s performance, even for those projects that serve individuals with significant disabilities or that are in a location that makes it difficult to place individuals (e.g., rural areas).

Changes: We have lowered the proposed minimum performance level for the “Placement rate” indicator in § 379.53(a)(1) from 55 percent to 50 percent for FY 2001. However, we have established a phased-in increase in the performance level as follows: 51 percent for FY 2002; 52 percent for FY 2003; 54 percent for FY 2004; and 55 percent for FY 2005.

(b) Change in Earnings

Comments: Sixty-six commenters expressed concern with the proposed “Change in earnings” indicator. Thirty-nine of the commenters, all from the State of Maine, were opposed to the proposed compliance indicator because they believe the \$150 per week minimum increase in earnings for an individual placed by the project is unfair to projects operating in rural or poor States because the job market

consists mainly of small businesses that provide primarily part-time employment. In addition, 17 of the commenters felt that the proposed compliance indicator fails to consider those individuals seeking career advancement who may not achieve an increase in earnings of \$150.00 per week. Nine of the commenters felt that the proposed performance level discourages individuals from considering part-time work. One of the commenters believed that the proposed threshold of 75 percent for projects serving individuals in supported employment and projects serving students working fewer than 30 hours per week in the "Change in earnings" indicator is too high.

Discussion: We agree that the proposed "Change in earnings" compliance indicator needs to be restructured. The proposed "Change in earnings" compliance indicator contained three categories of projects, each of which had different performance levels. These categories were projects in which at least 75 percent of individuals placed are placed into supported employment, projects in which 75 percent of individuals placed are students enrolled in secondary schools who work fewer than 30 hours per week, and all other projects. Under the proposed regulations, the performance level for projects in the first two categories (*i.e.*, supported employment and students) required an average increase in earnings of at least \$100 per week. The proposed level for all other projects was \$150 per week.

Because many other projects (*e.g.*, "supported employment" projects and those with secondary school students) may place a large percentage of persons who need or choose to obtain part-time employment, we believe combining the two proposed exceptions to this performance level in the final regulations will simplify this indicator. In addition, we believe lowering the proposed minimum level of increase in earnings will be more fair to projects operating in rural or poor States, make it easier for projects that serve individuals seeking career advancement, and eliminate any undue penalty to projects serving individuals who want to work part-time.

Changes: We have lowered the proposed minimum "Change in earnings" performance level in § 379.53(a)(2)(A) to \$125 per week. In addition, we have combined the two proposed exceptions to this requirement into one exception now found in § 379.53(a)(2)(B). The "Change in earnings" indicator in the final regulations has two categories with

different performance levels: (1) Projects in which at least 75 percent of individuals placed in competitive employment are working fewer than 30 hours per week (average increase in earnings of \$100.00 per week). (2) All other projects (average increase in earnings of \$125 per week). The revised compliance indicator requires that, if at least 75 percent of the individuals placed by a project work fewer than 30 hours per week, their minimum change in earnings must increase by an average of at least \$100 per week over earnings at the time of project entry.

(c) Percent Placed Who Have Significant Disabilities

Comments: The two commenters who specifically addressed the proposed "Percent placed who have significant disabilities" compliance indicator suggested that we consider increasing the performance level for this indicator. One of these commenters felt that PWI projects should move toward serving higher percentages of individuals with significant disabilities, as is currently the practice in State vocational rehabilitation (VR) programs.

Discussion: We do not believe that the proposed performance level for the "Percent placed who have significant disabilities" compliance indicator should be modified at this time. Title I of the Rehabilitation Act requires a State VR agency to give priority to serving those individuals with the most significant disabilities if it cannot serve all eligible individuals. There is no similar requirement in the PWI program's authorizing language. Although we are committed to serving individuals with significant disabilities, we believe that flexibility is needed to ensure that persons who are not "individuals with a significant disability" also have access to PWI services.

We also intend to review on a periodic basis each project's performance relative to the minimum performance level for all compliance indicators. If warranted, we will adjust the performance level for this compliance indicator, as well as all other compliance indicators.

Changes: None.

(d) Percent Placed Who Were Previously Unemployed

Comments: Seven commenters addressed the proposed "Percent placed who were previously unemployed" indicator. Six of the commenters raised concerns that some projects may have difficulty meeting this compliance indicator because they serve a number of individuals who are already

employed or who have performed temporary or seasonal work within 6 months prior to entering the program. One of these commenters expressed concern that the steady decrease in the percentage of previously unemployed individuals who have entered this commenter's project over the past 2 years makes it more difficult to achieve compliance with this indicator.

Discussion: We believe that the proposed performance level for this compliance indicator is already set at a level that will allow most projects to serve a considerable number of individuals who are already employed or who have performed temporary or seasonal work. In addition, available data show that a large majority of projects already exceed this compliance indicator by sizable margins. Therefore, we do not believe that the performance level for this compliance indicator requires modification.

Changes: None.

(e) Average Cost Per Placement

Comments: Fifty-seven commenters expressed concerns about the "Average cost per placement" indicator. Thirty-four of these commenters were concerned that the proposed requirement will have an adverse effect on existing projects, and they believed it would be unfair to change rules in the middle of a project period. These commenters also questioned whether projects would be allowed to renegotiate the estimated "cost per placement." Twenty-one commenters believed that it would not be possible to predict, within a 10 percent margin of error, the projected "average cost per placement" 6 years into the future, as required at the time of application. Two commenters stated that, because the cost of services varies significantly from individual to individual, it is difficult to project costs in advance. Another commenter noted that the unemployment rate, which fluctuated from a low of 5.8 percent to a high of 9.0 percent over a recent 5-year grant period, had a significant impact on the cost per placement, and that no one could have predicted these fluctuations. Three commenters believed that projects will deny needed costly services to individuals with significant disabilities to avoid exceeding the projections and failing this compliance indicator.

Discussion: We agree with the commenters that the proposed performance level for this compliance indicator needed more flexibility and that the allowable difference between the projected and actual average cost per placement needed to be increased. We believe that allowing for a larger difference between the projected and

actual average cost per placement will provide for greater flexibility in the types of services PWI projects provide. The available data suggests that a substantially larger number of PWI projects will be able to meet the performance level for this compliance indicator if the allowable difference between the projected and actual average cost per placement is greater than what we had proposed.

We also intend to review on a periodic basis each project's performance relative to the minimum performance level on this compliance indicator. If warranted, we will adjust the performance level for this compliance indicator, as well as for any other compliance indicator.

Changes: We have raised the allowable change between projected and actual "Average cost per placement" in § 379.53(b)(3) from 110 percent to 115 percent.

Goals 2000: Educate America Act

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

These regulations address the National Education Goal that every adult American will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The regulations further the objectives of this Goal by implementing a program that affords individuals with disabilities opportunities for job training, job placement, placement in competitive employment, and career advancement.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those costs resulting from statutory requirements and those costs we have determined 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, we have determined that the benefits of the final regulations justify the costs.

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

Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the June 23, 1998, NPRM under the heading "Summary of potential costs and benefits." (63 FR 34218, 34221) We include additional discussion of potential costs and benefits in the section of this preamble titled "Analysis of Comments and Changes."

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. We display the valid OMB control number assigned to the collection of information in these final regulations 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 an 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. The order and the regulations in 34 CFR part 79 do not apply to federally recognized Indian tribes or tribal organizations.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the June 23, 1998, NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. Based on the response to the June 23, 1998, NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal**

Register, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:
<http://ocfo.ed.gov/fedreg.htm>
<http://www.ed.gov/news.html>

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or, in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number 84.234 Projects With Industry)

List of Subjects in 34 CFR Part 379

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

Dated: January 27, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

For the reasons discussed in the preamble, the Secretary amends part 379 of title 34 of the Code of Federal Regulations as follows:

PART 379—PROJECTS WITH INDUSTRY

1. The authority citation for part 379 continues to read as follows:

Authority: Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795(g), unless otherwise noted.

2. Section 379.21 is revised to read as follows:

§ 379.21 What is the content of an application for an award?

(a) The grant application must include a description of—

(1) The responsibilities and membership of the BAC, consistent with section 611(a)(2)(A) of the Act, and how it will interact with the project in carrying out grant activities, including how the BAC will—

(i) Identify job and career availability within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(ii) Identify the skills necessary to perform the jobs and careers identified; and

(iii) For individuals with disabilities in fields related to the job and career availability identified under paragraph (a)(1)(i) of this section, prescribe either—

(A) Training programs designed to develop appropriate job and career skills; or

(B) Job placement programs designed to identify and develop job placement and career advancement opportunities;

(2) How the project will provide job development, job placement, and career advancement services to project participants;

(3) To the extent appropriate, how the project will provide for—

(i) Training in realistic work settings to prepare individuals with disabilities for employment and career advancement in the competitive market; and

(ii) To the extent practicable, the modification of any facilities or equipment of the employer involved that are used primarily by individuals with disabilities, except that a project will not be required to provide for that modification if the modification is required as a reasonable accommodation under the Americans with Disabilities Act of 1990;

(4) How the project will provide individuals with disabilities with support services that may be required to maintain the employment and career advancement for which the individuals have received training under this part;

(5) How the project will involve private industry in the design of the proposed project and the manner in which the project will collaborate with private industry in planning, implementing, and evaluating job development, job placement, career advancement activities, and, to the extent included as part of the activities to be carried out by the project, job training activities;

(6) A plan to annually conduct a review and evaluation of the operation of the proposed project in accordance with the program compliance indicators and evaluation standards in Subpart F of this part and, in conducting the review and evaluation, to collect data and information of the type described in subparagraphs (A) through (C) of section 101(a)(10) of the Act, as determined to be appropriate by the Secretary;

(7) The factors that justify the applicant's projected average cost per placement, including factors such as the project's objectives, types of services, target population, and service area, and how these factors affect the projection;

(8) The geographic area to be served by the project, including an explanation

of how the area is currently unserved or underserved by the PWI program; and

(9) How the project will address the needs of individuals with disabilities from minority backgrounds, as required by section 21(c) of the Act.

(b) The grant application also must include assurances from the applicant that—

(1) The project will carry out all activities required in § 379.10;

(2) Individuals with disabilities who are placed by the project will receive compensation at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled;

(3) Individuals with disabilities who are placed by the project will—

(i) Be given terms and benefits of employment equal to terms and benefits that are given to similarly situated nondisabled co-workers; and

(ii) Not be segregated from their co-workers;

(4) The project will maintain any records required by the Secretary and make those records available for monitoring and audit purposes;

(5) The project will provide to the Secretary an annual evaluation report of project operations as required in § 379.21(a)(6) and will submit reports in the form and detail and at the time required by the Secretary; and

(6) The applicant will comply with any requirements necessary to ensure the correctness and verification of those reports.

(c) The grant application also must include the projected average cost per placement for the project, which must be calculated by dividing the sum of the total project costs (*i.e.*, Federal dollar amount of the grant plus the total non-Federal contributions) by the number of individuals the applicant projects in its application will be served by the project.

(Approved by the Office of Management and Budget under control number 1820-0631)
(Authority: Section 611 of the Act; 29 U.S.C. 795)

3. Subpart F of part 379 is revised to read as follows:

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?

379.50 What are the requirements for continuation funding?

379.51 What are the program compliance indicators?

379.52 How is grantee performance measured using the compliance indicators?

379.53 What are the minimum performance levels for each compliance indicator?

379.54 What are the reporting requirements for the compliance indicators?

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?

§ 379.50 What are the requirements for continuation funding?

To receive a continuation award for the third or subsequent year of the PWI grant, a grantee must—

(a) Adhere to the provisions of its approved application; and

(b) Meet the minimum performance levels on—

(1) The two “primary” program compliance indicators identified in § 379.51(b) and described in § 379.53(a); and

(2) Any two of the three “secondary” compliance indicators identified in § 379.51(c) and described in § 379.53(b).

(Authority: Section 611(f)(4) of the Act; 29 U.S.C. 795(f)(4))

§ 379.51 What are the program compliance indicators?

(a) *General.* The program compliance indicators implement program evaluation standards, which are contained in an appendix to this part, by establishing minimum performance levels in essential project areas to measure the effectiveness of individual grantees.

(b) *Primary compliance indicators.* “Placement rate” and “Change in earnings” are “primary” compliance indicators.

(c) *Secondary compliance indicators.* “Percent placed who have significant disabilities,” “Percent placed who were previously unemployed,” and “Average cost per placement” are “secondary” compliance indicators.

(Authority: Sections 611(d)(1) and 611(f)(1) of the Act; 29 U.S.C. 795(d)(1) and 795(f)(1))

§ 379.52 How is grantee performance measured using the compliance indicators?

(a) Each compliance indicator establishes a minimum performance level.

(b) If a grantee does not achieve the minimum performance level for a compliance indicator, the grantee does not pass the compliance indicator.

(Authority: Section 611(f)(1) of the Act; 26 U.S.C. 795(f)(1))

§ 379.53 What are the minimum performance levels for each compliance indicator?

(a) *Primary compliance indicators.*

(1) *Placement rate.* The project places individuals it serves into competitive employment as follows:

(i) No less than 50 percent during fiscal year (FY) 2001.

(ii) No less than 51 percent during FY 2002.

(iii) No less than 52 percent during FY 2003.

(iv) No less than 54 percent during FY 2004.

(v) No less than 55 percent during FY 2005 and any year thereafter.

(2) *Change in earnings.* (i) Except as provided in paragraph (a)(2)(ii) of this section, the average earnings of all individuals who are placed into competitive employment by the project increase by an average of at least \$125.00 a week over the average earnings of all individuals at the time of project entry.

(ii) For projects in which at least 75 percent of individuals placed into competitive employment are working fewer than 30 hours per week, the average earnings of all individuals placed by the project increase by an average of at least \$100.00 a week over the average earnings of all individuals at the time of project entry.

(b) *Secondary compliance indicators.*

(1) *Percent placed who have significant disabilities.* At least 50 percent of individuals who are placed into competitive employment are individuals with significant disabilities.

(2) *Percent placed who were previously unemployed.* At least 50 percent of individuals who are placed into competitive employment are individuals who were continuously unemployed for at least 6 months at the time of project entry.

(3) *Average cost per placement.* The actual average cost per placement does not exceed 115 percent of the projected average cost per placement in the grantee's application.

(Authority: Section 611(f)(1) of the Act; 29 U.S.C. 795(f)(1))

§ 379.54 What are the reporting requirements for the compliance indicators?

(a) To receive continuation funding for the third or any subsequent year of a PWI grant, each grantee must submit to the Secretary data for the most recent complete budget period no later than 60 days after the end of that budget period, unless the Secretary authorizes a later submission date. The Secretary uses this data to determine if the grantee has met the program compliance indicators in this subpart F.

(b) A grantee may receive its second year of funding (or the first continuation award) under this program before data from the first complete budget period is

available. However, to allow the Secretary to determine whether the grantee is eligible for the third year of funding (or the second continuation award), the grantee must submit data from the first budget period in accordance with paragraph (a) of this section.

(c) If the data for the most recent complete budget period provided under paragraph (a) or (b) of this section show that a grantee has failed to achieve the minimum performance levels, as required by § 379.50(b), the grantee may, at its option, submit data from the first 6 months of the current budget period. The grantee must submit this data no later than 60 days after the end of that 6-month period, unless the Secretary authorizes a later submission date. The data must demonstrate that the grantee's project performance has improved sufficiently to meet the minimum performance levels required in § 379.50(b).

(Approved by the Office of Management and Budget under control number 1820-0631)

(Authority: Section 611(f)(2) and 611(f)(4) of the Act; 29 U.S.C. 795(f)(2) and 795(f)(4))

[FR Doc. 00-8523 Filed 4-5-00; 8:45 am]

BILLING CODE 4000-01-P