

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

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

(Authority: 1070a-21 to 1070a-28)

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

(a) *In general.* A Partnership must—

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

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

(b) *Matching requirements.* (1) Except as provided in paragraph (b)(2) of this section, the non-Federal share of the cost of the GEAR UP project must be not less than 50 percent of the total cost over the project period.

(2) A Partnership that has three or fewer institutions of higher education as members may provide less than 50 percent, but not less than 30 percent, of the total cost over the project period if it includes—

(i) A fiscal agent that is eligible to receive funds under Title V, or Part B of Title III, or section 316 or 317 of the HEA, or a local educational agency;

(ii) Only participating schools with a 7th grade in which at least 75 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; and

(iii) Only local educational agencies in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the National School Lunch Act.

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

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

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

Although any member of a Partnership may organize the project, a Partnership must designate as the fiscal agent for its project under GEAR UP—

(a) A local educational agency; or

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

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

§ 694.9 What is the maximum indirect cost rate for an agency of a State or local government?

Notwithstanding 34 CFR 75.560-75.562 and 34 CFR 80.22, the maximum indirect cost rate that an agency of a State or local government receiving funds under GEAR UP may use to charge indirect costs to these funds is the lesser of—

(a) The rate established by the negotiated indirect cost agreement; or

(b) Eight percent of a modified total direct cost base.

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

§ 694.10 What are the requirements for awards under the program's scholarship component under section 404E of the HEA?

(a) *Amount of scholarship.* (1) Except as provided in paragraph (a)(2) of this section, the amount of a scholarship awarded under section 404E of the HEA must be at least the lesser of—

(i) 75 percent of the average cost of attendance, as determined under section 472 of the HEA, for in-State students in 4-year programs of instruction at public institutions of higher education in the State; or

(ii) The maximum Federal Pell Grant award funded for the award year in which the scholarship will be awarded.

(2) If a student who is awarded a GEAR UP scholarship attends an institution on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case shall the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) *Pell Grant recipient priority.* A State, or a Partnership that chooses to participate in the scholarship component under section 404E of the HEA in its GEAR UP project—

(1) Must award GEAR UP scholarships first to students who will receive, or are eligible to receive, a Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded and who are eligible for a GEAR UP scholarship under the eligibility requirements in section 404E(d) of the HEA; and

(2) May, if GEAR UP scholarship funds remain after awarding scholarships to students under paragraph (b)(1) of this section, award GEAR UP scholarships to other eligible students (who will not receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

(c) *Cost of attendance.* A GEAR UP scholarship, in combination with other student financial assistance awarded under any title IV HEA program and any other grant or scholarship assistance, may not exceed the student's cost of attendance.

(d) *Continuation scholarships.* A State, or a Partnership that chooses to participate in the scholarship component in accordance with section 404E of the HEA in its GEAR UP project, must award continuation scholarships in successive award years to each student who received an initial scholarship and who continues to be eligible for a scholarship.

(e) *Order of Scholarships.* (1) *In general.* Notwithstanding 34 CFR 673.5, in awarding GEAR UP scholarships, a State or Partnership must ensure that, for each recipient of a scholarship under this part who is eligible for and receiving other postsecondary student financial assistance, a Federal Pell Grant, if applicable, be awarded first, any other public or private grants, scholarships, or tuition discounts be awarded second, a GEAR UP scholarship be awarded third, and then any other financial assistance, such as loans or work-study, be awarded.

(2) *Exception.* Notwithstanding paragraph (e)(1) of this section, a State or Partnership is not required to ensure that a GEAR UP scholarship recipi-

ent's financial aid be awarded in the order set forth in paragraph (e)(1) only if—

(i) It determines and documents in writing that there are exceptional circumstances related to the GEAR UP student's aid that are unique to that GEAR UP student;

(ii) It documents and maintains in the GEAR UP student's file the modification that was made to the GEAR UP student's award package and the reason for the modification; and

(iii) It provides written notification to the GEAR UP student of the reason for and the specific modification that was made to the package.

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

§ 694.11 Under what conditions may a Partnership that does not participate in the GEAR UP scholarship component under section 404E of the HEA provide financial assistance for postsecondary education to students under the GEAR UP early intervention component?

A GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education, either with funds under this chapter, (Under Chapter 2 of subpart 2 of Part A of Title IV of the HEA,) or with non-Federal funds used to comply with the matching requirement, to students who participate in the early intervention component of GEAR UP if—

(a) The financial assistance is directly related to, and in support of, other activities of the Partnership under the early intervention component of GEAR UP; and

(b) It complies with the requirements in § 694.10.

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

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

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

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