

**SELECTED KEY PROVISIONS
FROM
EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS
(EDGAR)
PART 75**

NONPROFIT STATUS

Sec. 75.51 How to prove nonprofit status.

(a) Under some programs, an applicant must show that it is a nonprofit organization. (See the definition of nonprofit in 34 CFR 77.1.)

(b) An applicant may show that it is a nonprofit organization by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State taxing body or the State attorney general certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b) (1) through (3) of this section if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

GROUP APPLICATIONS

Sec. 75.127 Eligible parties may apply as a group.

(a) Eligible parties may apply as a group for a grant.

(b) Depending on the program under which a group of eligible parties seeks assistance, the term used to refer to the group may vary. The list that follows contains some of the terms used to identify a group of eligible parties:

(1) Combination of institutions of higher education.

(2) Consortium.

(3) Joint applicants.

(4) Cooperative arrangements.

Sec. 75.128 Who acts as applicant; the group agreement.

(a) If a group of eligible parties applies for a grant, the members of the group shall either:

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity to apply for the grant.

(b) The members of the group shall enter into an agreement that:

(1) Details the activities that each member of the group plans to perform; and

(2) Binds each member of the group to every statement and assurance made by the applicant in the application.

(c) The applicant shall submit the agreement with its application.

Sec. 75.129 Legal responsibilities of each member of the group.

(a) If the Secretary makes a grant to a group of eligible applicants, the applicant for the group is the grantee and is legally responsible for:

- (1) The use of all grant funds;
 - (2) Ensuring that the project is carried out by the group in accordance with Federal requirements; and
 - (3) Ensuring that indirect cost funds are determined as required under Sec. 75.564(e).
- (b) Each member of the group is legally responsible to:
- (1) Carry out the activities it agrees to perform; and
 - (2) Use the funds that it receives under the agreement in accordance with Federal requirements that apply to the grant.

CONSTRUCTION/REAL PROPERTY

Sec. 75.533 Acquisition of real property; construction.

No grantee may use its grant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program.

INDIRECT COST RATES

Sec. 75.560 General indirect cost rates; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for--

- (1) Institutions of higher education, at 34 CFR 74.27;
- (2) Hospitals, at 34 CFR 74.27;
- (3) Other nonprofit organizations, at 34 CFR 74.27;
- (4) Commercial (for-profit) organizations, at 34 CFR 74.27; and
- (5) State and local governments and federally-recognized Indian tribal organizations, at 34 CFR 80.22.

(b) A grantee must have obtained a current indirect cost rate agreement from its cognizant agency, to charge indirect costs to a grant. To obtain an indirect cost rate, a grantee must submit an indirect cost proposal to its cognizant agency within 90 days after the date the Department issues the Grant Award Notification (GAN).

(c) If a grantee does not have a federally recognized indirect cost rate agreement, the Secretary may permit the grantee to charge its grant for indirect costs at a temporary rate of 10 percent of budgeted direct salaries and wages.

(d)(1) If a grantee fails to submit an indirect cost rate proposal to its cognizant agency within the required 90 days, the grantee may not charge indirect costs to its grant from the end of the 90-day period until it obtains a federally recognized indirect cost rate agreement applicable to the grant.

(2) If the Secretary determines that exceptional circumstances warrant continuation of a temporary indirect cost rate, the Secretary may authorize the grantee to continue charging indirect costs to its grant at the temporary rate specified in paragraph (c) of this section even though the grantee has not submitted its indirect cost rate proposal within the 90-day period.

(3) Once a grantee obtains a federally recognized indirect cost rate that is applicable to the affected grant, the grantee may use that indirect cost rate to claim indirect cost reimbursement for

expenditures made on or after the date the grantee submitted its indirect cost proposal to its cognizant agency or the start of the project period, whichever is later. However, this authority is subject to the following limitations:

(i) The total amount of funds recovered by the grantee under the federally recognized indirect cost rate is reduced by the amount of indirect costs previously recovered under the temporary indirect cost rate.

(ii) The grantee must obtain prior approval from the Secretary to shift direct costs to indirect costs in order to recover indirect costs at a higher negotiated indirect cost rate.

(iii) The grantee may not request additional funds to recover indirect costs that it cannot recover by shifting direct costs to indirect costs.

(e) The Secretary accepts an indirect cost rate negotiated by a grantee's cognizant agency, but may establish a restricted indirect cost rate for a grantee to satisfy the statutory requirements of certain programs administered by the Department.

Sec. 75.561 Approval of indirect cost rates.

(a) If the Department of Education is the cognizant agency, the Secretary approves an indirect cost rate for a grantee other than a local educational agency. For the purposes of this section, the term local educational agency does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Secretary, shall approve an indirect cost rate for each local educational agency that requests it to do so. These rates may be for periods longer than a year if rates are sufficiently stable to justify a longer period.

(c) The Secretary generally approves indirect cost rate agreements annually. Indirect cost rate agreements may be approved for periods longer than a year if the Secretary determines that rates will be sufficiently stable to justify a longer rate period.

Sec. 75.564 Reimbursement of indirect costs.

(a) Reimbursement of indirect costs is subject to the availability of funds and statutory or administrative restrictions.

(b) The application of the rates and the determination of the direct cost base by a grantee must be in accordance with the indirect cost rate agreement approved by the grantee's cognizant agency.

(c) Indirect cost reimbursement is not allowable under grants for--

(1) Fellowships and similar awards if Federal financing is exclusively in the form of fixed amounts such as scholarships, stipend allowances, or the tuition and fees of an institution;

(2) Construction grants;

(3) Grants to individuals;

(4) Grants to organizations located outside the territorial limits of the United States;

(5) Grants to Federal organizations; and

(6) Grants made exclusively to support conferences.

(d) Indirect cost reimbursement on grants received under programs with statutory restrictions or other limitations on indirect costs must be made in accordance with the restrictions in 34 CFR 76.564 through 76.569.

(e)(1) Indirect costs for a group of eligible parties (See Sec. Sec. 75.127 through 75.129) are limited to the amount derived by applying the rate of the applicant, or a restricted rate when applicable, to the direct cost base for the grant in keeping with the terms of the applicant's federally recognized indirect cost rate agreement.

(2) If a group of eligible parties applies for a training grant under the group application procedures in Sec. Sec. 75.127 through 75.129, the grant funds allocated among the members of

the group are not considered sub-awards for the purposes of applying the indirect cost rate in Sec. 75.562(c).

Notes & Reminders Regarding Indirect Costs

- The Department reimburses grantees for its portion of the indirect costs that a grantee incurs on projects funded by the grant program. In order to charge indirect costs to a grant, a grantee must have a currently approved indirect cost rate agreement. Any grantee charging indirect costs to a grant under this program must use the ICR negotiated with and approved by its cognizant agency, i.e., either (1) the Federal agency from which it has received the most direct funding, subject to indirect cost support; (2) the particular agency specifically assigned cognizance by OMB; or (3) the State agency that provides the most subgrant funds to the grantee.
- Pay special attention to specific questions, on the application budget form (ED 524), about your organization's cognizant agency and the indirect cost rate that your organization is using in its budget.
- If your organization receives funding and does not have a currently approved indirect cost rate with your organization's cognizant agency as a result of current or previous funding, the Department will require your organization to obtain an approved indirect cost rate within 90 days after the date of the grant award.
- Additional information regarding indirect costs can be found at <http://www.ed.gov/about/offices/list/ocfo/fipao/abouticg.html>.

EQUIPMENT AND SUPPLIES

Sec. 75.618 Charges for use of equipment or supplies.

A grantee may not charge students or school personnel for the ordinary use of equipment or supplies purchased with grant funds.