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Wednesday  
July 1, 1998

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**Part VII**

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**Department of  
Education**

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**34 CFR Parts 74 and 80  
Administration of Grants and Agreements  
With Institutions of Higher Education,  
Hospitals, and Other Non-Profit  
Organizations; and Uniform  
Administrative Requirements for Grants  
and Cooperative Agreements to State and  
Local Governments; Final Rule**

## DEPARTMENT OF EDUCATION

## 34 CFR Parts 74 and 80

## Administration of Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCY: Department of Education.

ACTION: Applicability of revised Office of Management and Budget circulars A-21, A-87, A-102, A-110, and A-122.

SUMMARY: The Secretary announces the applicability of five revised Office of Management and Budget (OMB) circulars. These revised circulars provide conditional exceptions from certain regulatory requirements for the Department of Education (ED) grant programs. The Secretary takes this action to promote efficiency in the State and local program administration of these programs.

DATES: The revised circulars are applicable as of July 1, 1998.

## FOR FURTHER INFORMATION CONTACT:

Ronelle Holloman, U.S. Department of Education, 600 Independence Avenue, SW, Room 3652, ROB-3, Washington, DC 20202-4248. Telephone: (202) 205-3501. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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

SUPPLEMENTARY INFORMATION: On August 29, 1997, OMB published in the **Federal Register** (62 FR 45934) final revisions to five OMB circulars. The five circulars are A-21, "Cost Principles for Educational Institutions"; A-87, "Cost Principles for State, Local, and Indian Tribal Governments"; A-102, "Grants and Cooperative Agreements with State and Local Governments"; A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations"; and A-122, "Cost Principles for Non-Profit Organizations." Now the Secretary of ED announces the applicability of the five revised circulars to the Department's grant programs.

These revisions to the circulars provide a conditional exception from

the requirements of 34 CFR Part 74 and a conditional class exception from the requirements of 34 CFR Part 80 for certain ED grant programs. The programs to which these revisions can apply are those formula grant programs with statutorily-authorized consolidated planning and consolidated administrative funding that are identified by ED and approved by the Secretary.

The Secretary can apply the exception to formula grant programs that are administered by State and local governments, and have the following characteristics: the related programs (1) serve a common program purpose, (2) have specific statutorily-authorized consolidated planning and consolidated administrative funding, and (3) are administered by State agencies that are funded mostly by non-Federal sources. To promote efficiency in the State and local program administration of such related programs, ED can exempt these covered, State-administered programs from Federal grants management requirements in OMB Circulars A-21, A-87, A-110 (34 CFR Part 74), and A-122 and the Grants Management Common Rule (34 CFR Part 80). The exemptions are from all but the allocability-of-costs provisions of Circulars A-21 (Section C, subpart 4), A-87 (Attachment A, subsection C.3), A-122 (Attachment A, subsection A.4) and from all of the administrative requirements provisions of 34 CFR parts 74 and 80.

Thus, ED has discretion to exempt a Federal formula grant program from the Federal grants management requirements. ED will consult with OMB during its consideration of whether to grant such an exemption.

If ED exempts a Federal formula grant program from these requirements, a State would be permitted to use only State procedures, provided that the State adopts its own written fiscal and administrative requirements for expending and accounting for all funds. These requirements must be consistent with the provisions of OMB Circular A-87 and extend to all sub-recipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions; costs are reasonable and necessary for operating these programs; and funds are not used for general expenses required to carry out other responsibilities of a State or its sub-recipients. If a State does not adopt such fiscal and administrative requirements it will continue to be subject to the

Federal grants management requirements.

The Department of Education implements OMB Circulars A-102 and A-110 through regulations codified in 34 CFR Parts 80 and 74 respectively. Because these regulations contain sufficient discretion for ED to implement OMB's guidance, ED does not need to amend these regulations.

In addition, ED adopts the changes to OMB Circulars A-21, A-87 and A-122 that contain cost principles for educational institutions, State and local governments, and non-profit organizations, respectively. These circulars have been amended several times over the years by OMB, and ED has adopted these changes by publishing notices in the **Federal Register**. For a complete list of prior amendments to these circulars adopted by ED, please consult the following **Federal Register** publications: for OMB Circular A-21, May 8, 1996 (61 FR 20880); for Circular A-87, May 17, 1995 (60 FR 26484); and for Circular A-122, May 14, 1997 (62 FR 26577).

The five circulars are available by calling OMB's Publication Office at (202) 395-7332, or they can be obtained in electronic form from the OMB Home Page at (<http://www.whitehouse.gov/WH/EOP/omb>).

## Waiver of Notice and Comment

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed actions in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since OMB previously provided the public an opportunity for comment on the revision of Circulars A-21, A-87, A-102, A-110 and A-122, the Secretary finds that soliciting further public comment with respect to adopting the revised circulars is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B). For the same reasons, the Secretary waives the delayed effective date for this action under 5 U.S.C. 553(d).

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

Dated: June 23, 1998.

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

**Donald Rappaport,**

*Chief Financial and Chief Information Officer.*

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