



# Federal Register

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**Thursday,  
April 27, 2000**

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## **Part III**

# **Department of Education**

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**34 CFR Part 694**

**Gaining Early Awareness and Readiness  
for Undergraduate Programs; Final Rule  
and Notice Inviting Applications for New  
Awards for Fiscal Year 2000**

**DEPARTMENT OF EDUCATION****34 CFR Part 694**

RIN 1840-AC82

**Gaining Early Awareness and Readiness for Undergraduate Programs****AGENCY:** Office of Postsecondary Education, Education.**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations governing the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. These amendments are needed because the current regulations applied only to the fiscal year 1999 competition. These final regulations apply to any future GEAR UP competitions. The proposed regulations were drafted subject to the negotiated rulemaking process required by section 492 of the Higher Education Act of 1965, as amended (HEA).

**DATES:** These regulations are effective May 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Rafael Ramirez, U.S. Department of Education, 1990 K Street, NW., room 6107, Washington, DC 20006. Telephone: (202) 502-7676. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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**SUPPLEMENTARY INFORMATION:** On December 21, 1999, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the *Federal Register* (64 FR 71552). There are several significant differences in the final regulations.

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, 171 parties submitted comments on the proposed regulations. Virtually all of these letters expressed support for the GEAR UP program. An analysis of the comments and of the changes in the regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize the Secretary to make.

*Students Served Under the Cohort Approach (§ 694.2)*

*Comment:* One commenter believed that following individual students from year to year through different middle or high schools and to different States would be impractical, unfeasible, and costly. Another commenter believed that the regulations should provide a definition of what it means to serve a student in a cohort and what records must document that services have been provided.

*Discussion:* Section 404B(g)(1)(B) requires that Partnerships ensure that services continue to be provided to students in a cohort through the twelfth grade. Section 694.4 of the regulations (which extends this provision to States) addresses which students a GEAR UP program must continue to serve when a single middle school feeds into more than one high school. A GEAR UP program is required to continue to provide services to only those students in the cohort who, after completing the last grade level offered by the school, attend participating schools that enroll a substantial majority of the students of the cohort. Under the regulations, therefore, the GEAR UP program would only have to follow the students from the initial cohort who attend subsequent participating schools that enroll a substantial majority of the students from the initial cohort. The GEAR UP program could follow and provide services to students who attend high schools that enroll less than a substantial majority of the students from the initial cohort, but would not be required to do so.

In addition, the proposed regulations would not require a State or Partnership to follow individual students to different States. As explained in the preamble to the NPRM, GEAR UP programs are not required to serve students who begin in the cohort but leave the participating school before completing the last grade level offered by the school. Once a student leaves the participating school before completing the last grade level offered by the school, the GEAR UP program would no longer be required to follow that student.

Evaluating the success of the program depends upon following as many students from the initial cohort as possible. The regulations as published in the NPRM would allow the maximum number of students from the initial cohort to receive services, without placing an undue burden on Partnerships or States.

With respect to a definition of what it means to serve students in a cohort and

what records are required to document that the students have been served, we don't believe that information is necessary in the regulations. Applicants are evaluated based on selection criteria found in 34 CFR 75.210 of the Education General Administrative Regulations (EDGAR). Applicants tell the Department, based on the selection criteria, what services and resources the program will provide the students in the cohort and how they intend to measure the impact of these services and resources. By not regulating the specific services that must be provided, we allow maximum flexibility to the States and Partnerships to develop innovative ways to serve students.

Similarly, we believe that it would be too limiting to specify all forms of acceptable documentation in the regulations. Partnerships and States must be able to document that they are providing the services in their project plans. However, because the services provided will vary from program to program, appropriate documentation will also vary. This approach is consistent with the Department's philosophy on regulating only when necessary.

*Changes:* None.

*Requirements for the Cohort (§ 694.3)*

*Comments:* Two commenters felt that the regulatory language defining the cohort was unduly restrictive and inconsistent with the statute.

*Discussion:* The statute requires that Partnerships provide GEAR UP services to at least one grade level of students, beginning not later than 7th grade, in a participating school that has a 7th grade and in which at least 50 percent of the students enrolled are eligible for free or reduced price lunch. As explained in the NPRM, the intent of GEAR UP Partnerships is to emphasize the importance of providing services and resources to meet the needs of a cohort of low-income students beginning in the middle grades (*i.e.*, schools that include a 7th grade), and continuing to support those students through high school. The regulatory language follows both the purpose and language of the statute.

*Changes:* None.

*Matching Requirements (§ 694.7)*

*Comments:* Two commenters felt that the reduced matching requirement available to the institutions eligible under the regulations was inadequate. The commenters also suggested that the fact that contributions could be in-kind wouldn't help the most needy institutions, because it would still require the institution to find additional funds to maintain its instruction

program. The commenters suggested completely eliminating the matching requirement for all institutions that qualify for Part B of Title III.

One commenter also felt that the Department should eliminate the requirement that the Partnership include only local educational agencies (LEA) in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the National School Lunch Act.

*Discussion:* As explained in the preamble to the NPRM, the success of the GEAR UP program depends, at least in part, on a strong community partnership. Additionally, as the preamble explained, the poorest and very rural communities were able to meet the match in the 1999 competition, suggesting that eliminating the match entirely was unnecessary. Therefore, the negotiating committee, in developing the proposed regulations, felt strongly that a complete waiver of the matching requirement, even for a subset of applicants, was unacceptable.

We also feel that the concern that the neediest institutions would not be able to provide an in-kind match, because they would need to hire new staff, isn't accurate. An institution would not be required to use its faculty or staff to provide the in-kind match. Partnerships must include at least two community organizations or entities. The in-kind match could be met by using qualified community or student volunteers, at no additional cost to the institution, so that time and effort could be counted as much, or more, than institutional resources. The in-kind match could also be met through contributions from partners such as non-profit organizations, large and small businesses, service groups, religious organizations, and State and local governments.

The Department also believes that the requirement that a Partnership include only LEAs in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch is extremely important, and negotiators on the committee to develop the proposed regulations agreed. The negotiating committee felt that those Partnerships that include only the most needy school districts should be eligible for a reduced match. Without the requirement, there could be cases in which Partnerships that included wealthier LEAs could receive the benefit of a reduced match, simply by partnering with an institution of higher education that was eligible for the reduced match. This would allow less needy Partnerships to take advantage of a reduced match. The matching requirement as written allows

us to maximize the effects of the program, by encouraging strong community support to ensure that the benefits of the program continue even after the grant has ended.

*Changes:* None.

#### *Indirect Costs (§ 694.9)*

*Comments:* None.

*Discussion:* We have determined that the language drafted for the proposed regulations, though accurate, is not as clear as it could be. We have therefore decided to make minor technical changes to the language. The change does not alter the substance of the regulation, and the language now reflects the language from the Education General Administrative Regulations (EDGAR) provision on which it was based, § 75.562 on indirect costs for educational training grants.

*Changes:* We have revised the language to reflect § 75.562 of EDGAR, the provision on which it was based.

#### *Amount of Scholarship (§ 694.10(a)(2))*

*Comments:* One commenter expressed concern that the regulations would require the State or Partnership to reduce the scholarship amount proportionally for any student who receives a GEAR UP scholarship and attends on a less than full-time basis.

*Discussion:* The State or Partnership would not be required to reduce the scholarship proportionally. The proposed regulations provide that the State or Partnership may reduce the scholarship for students who attend part-time. The regulation further specifies that if the State or Partnership chooses to reduce the scholarship, then such a reduction cannot be greater than the percentage reduction in tuition and fees charged to that student as a result of attending part-time. This does not require proportional reductions, but merely provides a limit on the maximum reduction in the GEAR UP scholarship. A State or Partnership could choose to reduce the GEAR UP scholarship by an amount that is less than the percentage reduction in tuition and fees.

*Changes:* None.

#### *Continuation Scholarships (§ 694.10(c))*

*Comments:* One commenter suggested that the regulations should include discretion for the Secretary to waive the requirement that States and Partnerships provide continuation scholarships to students who remain eligible when there are insufficient Federal funds.

*Discussion:* The preamble to the NPRM clarified that, if Federal funding were discontinued during the life of the

grant, grantees would not be required to continue to provide their share of the funds. The same policy would apply if Federal funds were reduced and projects were not fully funded as a result. If Federal funds were reduced, grantees could also reduce an equivalent amount of non-federal funds. A waiver process would be unnecessary. A grantee could only be required to provide full continuation scholarships during the life of the grant for all students who remain eligible if Federal funding remained the same. However, as the preamble to the NPRM explained, as long as some level of Federal funding is provided throughout the life of the grant, a grantee is obligated to provide continuation scholarships to students who remain eligible for scholarships even after the grant period has ended.

*Changes:* None.

#### *General Scholarship and Disclosure Requirements (§ 694.11)*

*Comments:* Although several commenters supported the NPRM unchanged, most of the comments from institutions of higher education repeated some or all of the following points: (1) States and Partnerships, not the Department, should monitor scholarship procedures. Departmental enforcement would be an unacceptable intrusion by the Federal government into the internal process by which institutions distribute institutional aid; (2) the proposed disclosure of financial aid packaging would be a burden on institutions and potentially inconsistent with existing regulations on disclosure for institutions; (3) the statutory "supplement-not-supplant" provision should not apply to individual student aid packaging, and should apply to States and Partnerships at the program level; (4) it is inappropriate for the Department to establish requirements for student aid packaging; (5) institutions wouldn't always be able to identify which students were GEAR UP recipients, making compliance difficult, with no clear direction for how the Department would monitor compliance; (6) the regulations would apply to all institutions, not just those participating in GEAR UP; and (7) GEAR UP students should not receive preferential treatment over non-GEAR UP students, as could be the case if the restrictions on financial aid packaging in the proposed regulations were retained.

*Discussion:* After reviewing the comments we received and upon further consideration, we have modified the aid packaging requirements and eliminated the disclosure requirements as published in § 694.11 of the NPRM. The negotiating committee developed

requirements that would have allowed an institution to deviate from certain student financial aid packaging rules, including specific overaward procedures. The proposed packaging provisions and the accompanying proposed disclosure provisions for the packaging of student financial aid have been removed in the final rule. In addition, under the final regulations, institutional monitoring of GEAR UP scholarship awards will rest with States and Partnerships, and not the Department.

We address more specifically each of the points reiterated by the vast majority of the commenters, each under its own heading.

#### 1. Departmental Enforcement

The GEAR UP statute dealing with scholarships closely resembles its predecessor, the National Early Intervention Scholarship and Partnership (NEISP) program statute, in which enforcement for ensuring institutional compliance with the program requirements was placed with State recipients. The GEAR UP statute was modified from NEISP to include Partnerships as eligible entities. In light of the comments regarding Departmental enforcement, States and Partnerships, not the Department, will monitor the treatment of GEAR UP scholarships in relation to other aid, as was the case under both NEISP and the 1999 GEAR UP regulations. The treatment of GEAR UP scholarships under the final regulations, therefore, is the same as the treatment of NEISP scholarships in relation to other aid under the NEISP program, and for GEAR UP scholarships under the fiscal year 1999 GEAR UP regulations. In addition, we expect that States and Partnerships will ensure that institutions, in the case of an overaward, will reduce aid in the reverse order of how it was granted.

#### 2. Disclosure, Burden, and Inconsistency

As mentioned previously, most commenters believed that the disclosure requirements would place an extensive burden on institutions. Additionally, commenters believed that the disclosure requirements were inconsistent with other disclosure requirements for Title IV aid.

The disclosure requirements in the proposed regulations are not part of the final regulations. Individual student financial aid packaging is dealt with in the final regulations by returning to the financial aid ordering language that appeared in both the 1994 NEISP and 1999 GEAR UP regulations. The only difference from the 1999 GEAR UP

regulations is that exceptions to financial aid ordering requirements, suggested by the negotiators in developing the NPRM, are retained in the final regulations in order to recognize exceptional circumstances that cannot be handled by a general packaging regulation. States and Partnerships must ensure that institutions document the exceptional circumstances related to the GEAR UP student that are unique to that student. They will also ensure that institutions document and maintain in the GEAR UP student's file the modification made to the GEAR UP student's award package and the reason for the modification. Finally, States and Partnerships will ensure that institutions provide written notice to the GEAR UP student of the reason for and the specific modification that was made to the package. We believe that these requirements are consistent with other Title IV regulations and do not believe that they are overly burdensome for either States and Partnerships or to institutions. The institution would only have to document cases of exceptional circumstances. Finally, institutions would only be required to disclose their policies to a State or Partnership that requests it. Commenters were most concerned with the burden of disclosing their policy to the Department and prospective students. The final regulations therefore eliminate the burden that concerned so many commenters.

#### 3. Supplement-Not-Supplant

Several commenters believed that the proposed regulations implied that States and Partnerships were exempt from the statutory requirement that GEAR UP funds "supplement and not supplant funds expended for existing programs". States and Partnerships are both subject to the statutory "supplement not supplant" requirement and to the assurance required in GEAR UP plan submissions. In drafting the regulations, the negotiating committee adhered to the Department's principles for regulating, and therefore regulated only when necessary. For the most part, we did not repeat statutory language in the regulations. That does not mean that a statutory requirement not in the regulations does not apply. If State or Partnership recipients do supplant, their awards will be subject to cancellation or re-negotiation, or repayment after an audit finding.

Other commenters did not believe that the supplement-not-supplant provision was intended to apply to individual student aid packages. The intent of the GEAR UP program is to

benefit individual GEAR UP students. Therefore, we believe that individual GEAR UP students must benefit through their individual financial aid packages. The legislative intent is clear that the GEAR UP scholarship is not intended to replace other gift aid but is in addition to any other aid the student would have received.

#### 4. Inappropriate Establishment of Packaging Requirements

The preamble to the NPRM said the Federal Government had a long history of placing maintenance of effort, supplement not supplant, and similar restrictions on institutional aid as a condition of receiving federal funds. This statement is correct. Many major federal student aid programs have had such requirements at one time or another in their history, including Pell Grants and campus-based programs. Additionally, it should be noted that the NPRM preamble was written to give context to readers of the regulation negotiations. We believe the preamble is faithful both to history and to the statements in the negotiations.

#### 5. Identification of GEAR UP Students

By eliminating the disclosure requirements, institutions will not be required to identify GEAR UP students in order to comply with any disclosure requirements. Under the final regulations, States and Partnerships must monitor the ordering of how aid is packaged. One commenter recommended that we require States to develop systems to provide data to students and institutions on the eligibility of GEAR UP awards in a timely manner. It is the State or Partnership's responsibility to inform the institution in a timely manner that the student is a GEAR UP student. The Department feels it is not necessary to specify the actual process in the regulations.

#### 6. Applicability of the Regulations to All Institutions

Again, because the disclosure requirements are not part of the final regulations, the regulations do not apply to all institutions. The final regulations apply to the responsibility of the States and Partnerships, not to the institution. If, however, in the absence of exceptional circumstances, an institution chooses not to follow the ordering outlined in the regulations, then the State or Partnership, acting consistent with their responsibilities under this regulation, must not provide the GEAR UP scholarship.

### 7. Preferential Treatment of GEAR UP Students

We believe it is important that the final regulations reflect the legislative history and intent of the GEAR UP program. GEAR UP was designed to provide early intervention services and programs to students in middle schools and high schools and, where scholarships are offered, to link the scholarships specifically to those students in amounts that will significantly reduce what they have to pay for college. GEAR UP scholarships are designed to permit these students to attend college without the fear of incurring significant debt. Because the intent of the GEAR UP program is to benefit GEAR UP students, in some cases, this will mean that they receive preferential treatment over other non-GEAR UP students.

Further, the GEAR UP program was designed to encourage contributions from partners such as non-profit organizations, large and small businesses, service groups, religious organizations, and State and local governments. These partners must not be discouraged from contributing funds out of concern that institutions will simply reduce their own institutional aid to the student, and therefore the GEAR UP students will not benefit from the scholarships.

Additionally, we are obligated under the Government Performance and Results Act (GPRA) to evaluate program performance for Congress. The term used by several commenters, "preferential treatment," is essentially the same as targeting. If funds targeted by Congress to certain populations are redistributed to other populations (which would be the real effect of a revised package that "released" other gift aid when a GEAR UP scholarship was added), there will be no way to effectively evaluate the effects of the program on the target population.

#### Additional Comments on § 694.11

In addition to the comments already discussed with respect to § 694.11 of the proposed regulations, we also received several other comments on the disclosure requirements that are discussed later in this preamble. However, because all of the comments refer to changes to § 694.11 of the proposed regulations, the changes appear at the end of all of the comments on this section.

#### GEAR UP and Less Needy Students

*Comments:* One commenter suggested that not all the students served by GEAR UP will be needy, since for Partnerships, a cohort of students must be from a school in which at least 50

percent of the students enrolled are eligible for free and reduced-price lunch, which could mean that some students could come from less needy families. Since those students would also receive GEAR UP scholarships, the commenter argues funding will have to be taken from other need-based programs that serve truly needy students.

*Discussion:* We do not believe that the regulations would require an institution to take funding from needy students to give to a less needy GEAR UP student. While GEAR UP early intervention services must be provided to all students in a cohort or students that a State has selected as priority students, not all GEAR UP students are guaranteed a scholarship, as the commenter suggested. We believe that if a GEAR UP student is from a less needy family and therefore not in need of a scholarship, the State or Partnerships may choose not to provide that student with a scholarship. Under § 694.10(b), a State or Partnership must first award a GEAR UP scholarship to students who are eligible to receive a Pell Grant. Students eligible for a Pell Grant are needy students. If, after all the students who participated in the GEAR UP program who are eligible for a Pell Grant are given scholarships, a State or Partnership still has scholarship money available, the State or Partnership may give scholarships to other GEAR UP students, taking into consideration the students' need. Under the regulations therefore, it seems unlikely that less needy students would receive scholarships that would take funding away from needier students.

#### Redistribution of Aid

*Comments:* Commenters noted that students who receive GEAR UP scholarships earn the funds. The commenters stated that these students must know that the fruits of their labors will truly benefit them by reducing their higher education costs. The commenters felt that institutions should not be free, in effect, to redistribute those dollars to other students. The commenters believed that this line of thinking is at odds with the statute. The commenters asserted that, if the final regulations do not prevent this practice, then the preferences that are to be given to Partnership applications that include scholarships should be eliminated.

*Discussion:* We believe that the final regulations contain sufficient protections against redistribution. States and Partnerships are required under the regulations to ensure that institutions package their aid in accordance with the order specified in the regulations. We believe that the ordering specified

provides sufficient protection against redistribution. Consequently, we do not plan to eliminate the competitive preference for Partnerships that include a scholarship component in their application.

#### Students' Knowledge of Institutions' GEAR UP Policies

*Comments:* One commenter suggested that students who have a GEAR UP scholarship should know how that scholarship will be treated with respect to other aid in the packaging of student financial assistance.

*Discussion:* In accordance with § 694.10(e), States and Partnerships must ensure that institutions follow the ordering outlined by the regulations when GEAR UP scholarships are involved. States and Partnerships would inform GEAR UP students of any institution that does not intend to treat the GEAR UP scholarship as required, so that students can decide whether to attend a different institution, or give up the scholarship.

#### Aid Already Disbursed v. Aid Not Yet Disbursed

*Comments:* One commenter suggested that the regulations detailing the order in which aid is packaged should be modified to distinguish aid already disbursed from aid not yet disbursed, since in overaward situations, the institution might have to seek a return of a disbursed loan.

*Discussion:* We don't think that such a distinction is necessary in the regulations. Since loans are part of the financial assistance that is awarded last under the regulations, students should not be in a situation in which loans caused them to exceed their cost of attendance. Therefore the recovery of disbursed loans is unlikely.

#### Supplement-Not-Supplant and Early Intervention

*Comments:* One commenter believed that the statutory supplement-not-supplant language should apply only to early awareness programs of a similar nature and shouldn't restrict the rights of individual institutions in awarding their own aid to individual students.

*Discussion:* We disagree that the supplement-not-supplant language applies only to early awareness programs. The existing programs referred to in the statute include State and institutional aid programs as well as early intervention programs. If supplement-not-supplant referred only to early intervention programs similar in nature, States could cut their current

student aid programs. That interpretation would be contrary to statutory intent.

*Changes:* We have revised § 694.11 to reflect the 1999 regulation, with the addition of a provision for exceptional circumstances.

#### *Cost of Attendance (§ 694.11(a)(2))*

*Comments:* Two commenters suggested that, in determining a student's financial aid package, the regulation should state that the total assistance provided under Title IV should not exceed the student's unmet need, not the student's cost of attendance. The commenters suggested that this would conform the GEAR UP regulation to other Title IV regulations.

*Discussion:* Some Title IV regulations specify cost of attendance and some unmet need, depending on the underlying statute. In this case, cost of attendance is specified in the statute (section 404E(c)), allowing GEAR UP funds to be used to replace expected family contribution (EFC). This will permit GEAR UP students to carry a reduced loan burden where otherwise they may have been forced to borrow to meet their EFC.

*Changes:* None.

#### *Master Calendar*

*Comments:* Two commenters noted that even though the GEAR UP regulations were subject to the negotiated rulemaking process, they will be published in final form past the November 1 deadline for regulations subject to the Master Calendar provisions in the law. The commenters questioned whether or not these regulations can take effect before July 1, 2001.

*Discussion:* The Master Calendar provisions in section 482 of the Higher Education Act (HEA) apply only to the student financial assistance programs. While the Congress has amended section 482 several times to clarify that the scope of the provisions is sweeping with regard to those programs, it has not expanded the scope to encompass the discretionary grant programs in Title IV of the HEA. The paragraph establishing a regulatory deadline of "November 1 prior to the start of the award year" makes clear in particular that the deadline could not apply to the discretionary grant programs, which unlike the student financial assistance programs do not operate on an "award year" basis. In contrast, the statute prescribing negotiated rulemaking, section 492 of the HEA, clearly applies to all Title IV programs.

*Changes:* None.

#### *Mandatory Priority (§ 694.15)*

*Comments:* None.

*Discussion:* While the statutory provisions reflected in § 694.15, as proposed in the NPRM, are still applicable, we do not believe that as a practical matter the priority will arise, since States eligible for the priority have received Gear Up grants.

*Changes:* Section 694.15, as proposed in the NPRM, has been removed.

#### **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 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 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.

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM under the following headings: Executive Order 12866; Summary of Potential Costs and Benefits (64 FR 71560–71561).

#### **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 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 section 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.

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 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 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.

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

**Program Authority:** 20 U.S.C. 1070a–21.

#### **List of Subjects in 34 CFR Part 694**

Colleges and universities, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: April 6, 2000.

**A. Lee Frischler,**

*Assistant Secretary, Office of Postsecondary Education.*

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by revising part 694 to read as follows:

#### **PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)**

Sec.

694.1 What is the maximum amount that the Secretary may award each fiscal year

- to a Partnership or a State under this program?
- 694.2 Which students must a Partnership, or a State that chooses to use the cohort approach in its project, serve under the program's early intervention component?
- 694.3 What are the requirements for a cohort?
- 694.4 Which students must a State or Partnership serve when there are changes in the cohort?
- 694.5 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?
- 694.6 Who may provide GEAR UP services to students attending private schools?
- 694.7 What are the matching requirements for a GEAR UP Partnership?
- 694.8 What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program?
- 694.9 What is the maximum indirect cost rate for an agency of a State or local government?
- 694.10 What are the requirements for awards under the program's scholarship component under section 404E of the HEA?
- 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?
- 694.12 How does a State determine which State agency will apply for, and administer, a State grant under this program?
- 694.13 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?
- 694.14 What requirements apply to a State that served students under the National Early Intervention Scholarship and Partnership program (NEISP) and that receives a GEAR UP grant?
- 694.15 What priorities may the Secretary establish for a GEAR UP grant?

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

**§ 694.1 What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?**

(a) *Partnership grants.* The maximum amount that the Secretary may award each fiscal year for a GEAR UP Partnership grant is calculated by multiplying—

(1) \$800; by

(2) The number of students the Partnership proposes to serve that year, as stated in the Partnership's plan.

(b) *State grants.* The Secretary establishes the maximum amount that may be awarded each fiscal year for a GEAR UP State grant in a notice published in the **Federal Register**.

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

**§ 694.2 Which students must a Partnership, or a State that chooses to use the cohort approach in its project, serve under the program's early intervention component?**

A Partnership, or a State that chooses to use a cohort approach in its GEAR UP early intervention component, must, except as provided in § 694.4—

(a) Provide services to at least one entire grade level (cohort) of students (subject to § 694.3(b)) beginning not later than the 7th grade;

(b) Ensure that supplemental appropriate services are targeted to the students with the greatest needs; and

(c) Ensure that services are provided through the 12th grade to those students.

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

**§ 694.3 What are the requirements for a cohort?**

(a) *In general.* Each cohort to be served by a Partnership or State must be from a participating school—

(1) That has a 7th grade; and

(2) In which at least 50 percent of the students are eligible for free or reduced-price lunch under the National School Lunch Act; or

(b) *Public housing exception.* If the Partnership or State determines it would promote program effectiveness, a cohort may consist of all of the students in a particular grade level at one or more participating schools who reside in public housing, as defined in section 3(b)(1) of the United States Housing Act of 1937.

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

**§ 694.4 Which students must a State or Partnership serve when there are changes in the cohort?**

(a) *At the school where the cohort began.* A Partnership or State must serve, as part of the cohort, any additional students who—

(1) Are at the grade level of the students in the cohort; and

(2) Begin attending the participating school at which the cohort began to receive GEAR UP services.

(b) *At a subsequent participating school.* If not all of the students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services, a Partnership or a State—

(1) May continue to provide GEAR UP services to all students in the cohort; and

(2) Must continue to provide GEAR UP services to at least those students in the cohort that attend participating

schools that enroll a substantial majority of the students in the cohort.

(Authority: 20 U.S.C. 1070-a22)

**§ 694.5 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?**

(a) *Secular, neutral, and nonideological services or benefits.* Educational services or other benefits, including materials and equipment, provided under GEAR UP by a Partnership or State that chooses to provide those services or benefits to students attending private schools, must be secular, neutral, and nonideological.

(b) *Control of funds.* In the case of a Partnership or State that chooses to provide services under GEAR UP to students attending private schools, the fiscal agent (in the case of a Partnership) or a State agency (in the case of a State) must—

(1) Control the funds used to provide services under GEAR UP to those students;

(2) Hold title to materials, equipment, and property purchased with GEAR UP funds for GEAR UP program uses and purposes related to those students; and

(3) Administer those GEAR UP funds and property.

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

**§ 694.6 Who may provide GEAR UP services to students attending private schools?**

(a) GEAR UP services to students attending private schools must be provided—

(1) By employees of a public agency; or

(2) Through contract by the public agency with an individual, association, agency, or organization.

(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 recipient'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)

**§ 694.13 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?**

(a) A State or Partnership must provide, in accordance with procedures the Secretary may specify, a 21st Century Scholar Certificate from the Secretary to each student participating in the early intervention component of its GEAR UP project.

(b) 21st Century Scholarship Certificates must be personalized and indicate the amount of Federal financial aid for college that a student may be eligible to receive.

(Authority: 20 U.S.C. 1070a-26)

**§ 694.14 What requirements apply to a State that served students under the National Early Intervention Scholarship and Partnership program (NEISP) and that receives a GEAR UP grant?**

Any State that receives a grant under this part and that served students under the NEISP program on October 6, 1998 must continue to provide services under this part to those students until they complete secondary school.

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

**§ 694.15 What priorities may the Secretary establish for a GEAR UP grant?**

For any fiscal year, the Secretary may select one or more of the following priorities:

(a) Projects by Partnerships or States that serve a substantial number or percentage of students who reside, or

attend a school, in an Empowerment Zone, including a Supplemental Empowerment Zone, or Enterprise Community designated by the U.S. Department of Housing and Urban Development or the U.S. Department of Agriculture.

(b) Partnerships that establish or maintain a financial assistance program that awards scholarships to students, either in accordance with section 404E of the HEA, or in accordance with § 694.11, to strengthen the early intervention component of its GEAR UP project.

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

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