

## Issue Paper

### Proposed Regulatory Language Team IV – GEAR UP

**Origin:** HEOA Sec. 404(a)(2)

**Issue:** Priority

**Statutory cites:** HEA Sec. 404A(b)(3)

**Regulatory cites:** New 34 CFR §694.17

**Summary of issue:** Section 404A(b)(3) of the HEA gives a priority in funding to entities that (1) have carried out successful GEAR UP programs prior to enactment of the HEOA, and (2) have a prior, demonstrated commitment to early intervention, leading to college access through collaboration and replication of successful strategies. Under previous regulations, the Secretary could choose to provide priority to applicants in Empowerment Zones or to Partnerships that award scholarships.

**Updated information since March 25-27 meeting:** Negotiators reached tentative agreement on this issue. Slight editorial changes were made to the language.

**Tentative agreement:** Yes

**Change:**

~~§694.1517~~ What priorities does ~~may~~ the Secretary establish for a GEAR UP grant?

~~For any fiscal year, the~~ The Secretary awards competitive preference priority points to an eligible applicant for a State grant that has both-- ~~may select one or more of the following priorities:~~

(a) Carried out a successful State GEAR UP grant prior to August 14, 2008 determined on the basis of data (including outcome data) submitted by the applicant as part

of its annual and final performance reports, and the applicant's history of compliance with applicable statutory and regulatory requirements; and ~~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) Demonstrated commitment to early intervention, leading to college access through collaboration and replication of successful strategies. ~~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.~~

## Issue Paper

### Proposed Regulatory Language Team IV – GEAR UP

**Origin:** HEOA Sec. 404(b)

**Issue:** Funding Rules

**Statutory cites:** HEA Section 404B(a)

**Regulatory cites:** 34 CFR §694.1

**Summary of issue:** The HEOA requires the Secretary to award at least 33 percent of the GEAR UP appropriation to States; at least 33 percent to Partnerships; and to award the remainder to States or Partnerships “taking into consideration the number, quality, and promise of applications for the grants” and, to the extent practicable, the geographic distribution of grants and the distribution of grants between urban and rural applicants. The HEA has always required the distribution of at least 33 percent of funds to States and to Partnerships. The language regarding how the remaining funds are distributed is new.

**Updated information since March 25-27 meeting:** Negotiators reached tentative agreement not to regulate in this area. Negotiators also reached tentative agreement to provide express regulatory authority in Part 694 allowing the Secretary to establish a maximum Partnership award for each competition, as is currently done in competitions for State awards. The GEAR UP draft regulatory language provided for the second round of negotiated rulemaking was edited slightly to clarify that the maximum Partnership award for which an applicant can apply is the lesser of the maximum amount set by the Secretary or \$800 per student. (In the previous version, both requirements were mentioned, but it was not specified how the requirements related to each other.)

**Tentative Agreement:** Yes

#### **Change:**

§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 Secretary may establish the maximum amount that may be awarded each fiscal year for

a GEAR UP Partnership grant in a notice published in the Federal Register. The maximum amount for which a Partnership may apply ~~that the Secretary may award each fiscal year for a GEAR UP Partnership grant is~~ may not exceed the lesser of the maximum amount established by the Secretary or the amount 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.

## Issue Paper

### Proposed Regulatory Language Team IV – GEAR UP

**Origin:** HEOA Sec. 404(a)(2)  
**Issue:** Duration of awards  
**Statutory cites:** HEA Sec. 404A(b)(2)  
**Regulatory cites:** New 34 CFR §694.18 and §694.22

**Summary of issue:** Previously, GEAR UP grants were awarded for a period of up to six years. The HEOA provides authority for grantees to apply for an optional seventh year of funding. The purpose of the new seventh year is to provide services at an institution of higher education to follow students through their first year of college attendance.

**Updated information since March 25-27 meeting:** As agreed at the February meeting, the Department proposes to specify that the seventh year of funding is available only to grantees that applied for new awards after August 14, 2008 (the date the HEOA was signed into law). The draft regulations also respond to the negotiators' suggestions 1) that States using a priority approach should have the option of providing services to students in their first year of college at any point during the life of the grant, and 2) that grantees may serve students in high school (in addition to students in college) during the seventh year of the grant.

As discussed by the Committee, the Department included in the draft regulation examples of services that can be provided to students in their first year of college. These examples are included in a separate section that addresses "permissible activities."

**Tentative agreement:** No

**Change:**

§694.18 When may a GEAR UP grantee provide services to students attending an institution of higher education?

(a) The Secretary authorizes an eligible State or Partnership to provide GEAR UP services to students

attending an institution of higher education if the State or Partnership--

(1) Applies for and is awarded a new award after August 14, 2008 and

(2) In its application, requested a seventh year so that the State or Partnership may continue to provide services to students through their first year of attendance at an institution of higher education.

(b) A State grantee that uses a priority (rather than or in addition to a cohort) approach to identify participating students may, consistent with its approved application and at any time during the project period, provide services to students during their first year of attendance at an institution of higher education, provided that the grantee continues to provide all required early intervention services throughout the Federal budget period.

(c) If a grantee is awarded a seven year grant, consistent with the grantee's approved application, during the seventh year of the grant the grantee--

(1) Must provide services to students in their first year of attendance at an institution of higher education; and

(2) May choose to provide services to high school students who have yet to graduate.

(d) Grantees that continue to provide services to students through their first year of attendance at an institution of higher education must, to the extent practicable, coordinate with other academic support services to ensure that there is no duplication of service.

\* \* \* \* \*

§694.22 What services may a GEAR UP project provide to students in their first year at an institution of higher education?

Consistent with their approved applications and §694.18, a grantee may provide any services to students in their first year of attendance at an institution of higher education that will help those students succeed in school, and that do not duplicate services otherwise available to them.

Examples of services that may be provided include--

(a) Orientation services including introduction to on-campus services and resources;

(b) On-going counseling to students either in person or through electronic or other means of correspondence;

(c) Assistance with course selection for the second year of postsecondary education;

(d) Assistance with choosing and declaring an academic major;

(e) Assistance regarding academic, social, and personal areas of need;

(f) Referrals to providers of appropriate services;

(g) Tutoring and supplemental academic support;

(h) Assistance with financial planning;

(i) Career counseling and advising services; or

(j) Advising students about transferring to other schools.



## Issue Paper

### Proposed Regulatory Language Team IV – GEAR UP

**Origin:** HEOA Sec. 404(a)(3)

**Issue:** Revised Definition of Partnerships

**Statutory cites:** HEA Sec. 404A(c)(2)

**Regulatory cites:** None

**Summary of issue:** The HEOA changed the definition of an “eligible entity” to include a Partnership consisting of 1) one or more local education agencies and 2) one or more degree granting institutions of higher education. Partnerships may include not less than two other community organizations or entities. A previous requirement that Partnerships must include one or more elementary or secondary schools was eliminated.

**Updated information since the March 25-27 meeting:** The Committee reached tentative agreement that the statute is clear on the new definition of “eligible entity” and that no regulations regarding this provision are necessary.

**Tentative agreement:** Yes

**Change:** None

## Issue Paper

### Proposed Regulatory Language Team IV – GEAR UP

**Origin:** HEOA Sec. 404C(c)(3)  
**Issue:** Changes to Matching Requirements  
**Statutory cites:** HEA Sec. 404C(b)  
**Regulatory cites:** 34 CFR §694.7

**Summary of issue:** Generally, GEAR UP grantees are required to match one dollar of non-Federal funds for every Federal dollar awarded. The HEOA makes a number of changes to the GEAR UP matching requirement. Previously, grantees were expected to meet matching requirements each year. The HEOA provides that grantees can meet their matching requirements over the entire life of the grant if they make “substantial progress” in meeting the matching requirements each year. The HEOA also expands the types of contributions that can be considered part of the matching funds to include the costs of administering a scholarship program under the grant-funded project.

**Updated information:** The Committee reached tentative agreement on conforming changes to the regulations indicating that grantees must make substantial progress in meeting the matching percentage stated in their applications each year. (See § 694.7)

**Tentative agreement:** Yes

#### **Change:**

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

(a) ~~In general.~~ In order to be eligible for funding--  
~~A Partnership must~~

(1) An applicant must state in its application the  
percentage of the cost of the GEAR UP project the applicant  
~~Partnership~~ will provide for each year from non-Federal

funds, subject to the requirements in paragraph (b) of this section; and

(2) A grantee must make substantial progress towards meeting the ~~Comply with~~ matching percentage stated in its approved application for each year of the project period.

~~(b) Matching requirements. (1) Except as provided in paragraph (b) (2) of this section, §§694.8 and 694.9, the non-Federal share of the cost of the GEAR UP project must be not less than 50 percent of the total cost of the project (i.e., one dollar of non-Federal contributions for every one dollar of Federal funds obligated for the project) 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 7<sup>th</sup> 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)(c)~~ The non-Federal share of the cost of a GEAR UP project may be provided in cash or in-kind.

## Issue Paper

### Proposed Regulatory Language Team IV – GEAR UP

**Origin:** HEOA Sec. 404(c)(3)(C)

**Issue:** Waiver of Matching Requirements

**Statutory cites:** HEA Sec. 404C(b)(2)

**Regulatory cites:** New 34 CFR §694.8 and §694.9

**Summary of issue:** Under the HEA as previously authorized, the Secretary could, under certain circumstances, modify the matching requirement applicable to a Partnership. The HEOA retains this provision, and also authorizes the Secretary to approve the following types of requests for reduction to the matching requirement: (1) requests made at the time of an application, if the applicant demonstrates a significant economic hardship that precludes it from meeting the matching requirement, (2) requests from Partnership applicants to count contributions to scholarship funds established under section 404E of HEA on a two-to-one basis, or (3) requests made by a grantee demonstrating that the matching funds identified in an approved application are no longer available and the grantee has exhausted all reserves for replacing them.

**Updated information since the March 25-27 meeting:** The Department proposes regulatory language that incorporates suggestions by non-Federal negotiators to 1) limit the waiver of the matching requirement to 50-75 percent of the requirement; 2) limit the period of the waiver to two years, unless the grantee reapplies for another waiver; and 3) create a multiple-tiered system for different types of waiver requests.

The proposal would establish the following three new types of waivers:

- 1) At the time of the application, the Secretary could waive up to 75 percent of the matching requirement for a period of up to two years for an economic hardship that stems from a specific exceptional or uncontrollable event (such as a natural disaster) that had a devastating effect on the members of the Partnership and the community in which the project would operate. This would be a one-time waiver that could not be renewed. Applicants seeking this type of waiver would need to have their proposed budgets reflect full matching contributions for years 3 through 7 (or year 6 if they do not seek to provide services for students attending an Institution of Higher Education) of their grants. At the end of the waiver period, grantees that continue to experience problems meeting their matching requirement may qualify for a waiver under #3 of this numbered list.
- 2) At the time of the application, the Secretary could waive up to 50 percent of the matching requirement for up to two years for other significant economic

hardships. In determining whether an economic hardship is significant, the Secretary would consider a list of factors delineated in the regulations.

In order to provide application opportunities for chronically distressed communities whose circumstances are unlikely to change over seven years, while at the same time ensuring that grantees continue to actively pursue match opportunities, the proposal includes a provision that the Secretary may tentatively approve a waiver of up to 50 percent of the matching requirement for up to the full seven years of the grant at the time of application. (Thus, allowing applicants to submit proposals with a reduced matching percentage proposed for every year of the grant.) However, to retain the waiver beyond two years, the grantee would need to submit documentation confirming that it continues to meet the factors upon which the waiver was granted and has tried unsuccessfully to obtain other sources of match.

- 3) After a grant has been awarded, the Secretary could waive up to 50 percent of the matching requirement for a period of up to two years when the grantee demonstrates, based on a list of factors delineated in the regulation, that the sources of match identified in its application no longer exist and that it has exhausted other potential sources of match.

The Department proposes to break the matching provisions into multiple sections to make them easier to follow. The Department also proposes to move the waiver provision in current §694.7 to new §694.8 and proposes slight modifications to the wording of this provision so that it aligns with the new waiver provisions in §§694.8 and 694.9.

**Tentative agreement:** No

**Change:**

§694.8 Under what conditions may the Secretary approve a request from a Partnership applying for a GEAR UP grant to waive a portion of the matching requirement?

(a) The Secretary may approve a Partnership applicant's request for a waiver of up to 75 percent of the matching requirement for up to two years if the applicant demonstrates in its application evidence of a significant economic hardship that stems from a specific, exceptional,

or uncontrollable event, such as a natural disaster, that has a devastating effect on the members of the Partnership and the community in which the project would operate.

(b) (1) The Secretary may approve a Partnership applicant's request to waive up to 50 percent of the matching requirement for up to two years if the applicant demonstrates in its application that an on-going significant economic hardship precludes the applicant from meeting its matching requirement.

(2) In determining whether an applicant is experiencing an on-going economic hardship that is significant enough to justify a waiver under this paragraph, the Secretary considers documentation of such factors as:

(i) Severe distress in the local economy of the community to be served by the grant (e.g., there are few employers in the local area or large employers have left the local area).

(ii) Local unemployment rates that are higher than the national average.

(iii) Low or decreasing revenues for State and County governments in the area to be served by the grant.

(iv) Significant reductions in the budgets of institutions of higher education that are participating in the grant.

(v) Other data that reflect a significant economic hardship for the geographical area served by the applicant.

(3) The Secretary may provide tentative approval of a request for a waiver under paragraph (1) for the remaining years of the project period. Grantees that receive tentative approval of a waiver for more than two years under this paragraph must submit documentation to the Secretary every two years by such time as the Secretary may direct that demonstrates that--

(i) The significant economic hardship upon which the waiver was granted still exists; and

(ii) The grantee tried diligently, but unsuccessfully to obtain contributions needed to meet the matching requirement.

(c) The Secretary may approve a Partnership applicant's request in its application to match its contributions to its scholarship fund, established under section 404E of the HEA, on the basis of two non-Federal dollars for every one Federal dollar of GEAR UP funds.

(d) The Secretary may approve a request by a Partnership applicant that has three or fewer institutions



of higher education as members to waive up to 70 percent of the matching requirement if the Partnership applicant includes--

(1) 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;

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

(3) 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.

§694.9 Under what conditions may the Secretary approve a request from a Partnership that has received a GEAR UP grant to waive a portion of the matching requirement?

(a) After a grant is awarded, the Secretary may approve a Partnership grantee's written request for a waiver of up to--

(1) 50 percent of the matching requirement for up to two years if the grantee demonstrates that--

(i) The matching contributions described for those two years in the grantee's approved application are no longer available; and

(ii) The grantee has exhausted all funds and sources of potential contributions for replacing the matching funds.

(2) 75 percent of the matching requirement for up to two years if the grantee demonstrates that matching contributions from the original application are no longer available due to an uncontrollable event, such as a natural disaster, that has a devastating effect on members of the Partnership and the community in which the project would operate.

(b) In determining whether the grantee has exhausted all funds and sources of potential contributions for replacing matching funds, the Secretary considers the grantee's documentation of key factors such as the following and their direct impact on the grantee:

(1) A reduction of revenues for State and County governments.

(2) An increase in local unemployment rates.

(3) Significant reductions in the operating budgets of institutions of higher education that are participating in the grant.

(4) A reduction of business activity in the local area (e.g., large employers have left the local area).

(5) Other data that reflect a significant decrease in resources available to the grantee in the local geographical area served by the grantee.

(c) If a grantee has received one or more waivers under this section or under §694.8, the grantee may request an additional waiver of the matching requirement under this section no earlier than 60 days before the expiration of the grantee's existing waiver.

(d) The Secretary may grant additional waiver requests for up to 50 percent of the matching requirement for a period of up to two years upon the expiration of any previous waivers.

## Issue Paper

### Proposed Regulatory Language Team IV – GEAR UP

**Origin:** HEOA Sec. 404(d)

**Issue:** Required and Allowable Activities

**Statutory cites:** HEA Sec. 404D

**Regulatory cites:** New 34 CFR §694.19, §694.20, 694.21 and §694.22

**Summary of issue:** The HEOA modifies the GEAR UP program by distinguishing between certain activities and services that projects must provide and optional activities that projects may offer. Prior to the new law, projects could choose from a number of allowable activities and services.

**Updated information:** Non-Federal negotiators agreed that the lists of required and allowable activities should be included in the regulations. At the suggestion of one negotiator, the Department proposes to include this language in multiple sections to make it easier to follow. The Department also included clarification that career awareness activities should relate to rigorous academic curriculum. The Department proposes to use language describing required and permissible activities that is very close to the statutory language in order to ensure that we do not inadvertently make changes that bypass Congressional intent.

**Tentative agreement:** No

**Change:**

§694.19 What are required activities for GEAR UP projects?

A grantee must provide comprehensive mentoring, outreach, and supportive services to students participating in the GEAR UP program. These services must include the following activities:

(a) Providing information regarding financial aid for postsecondary education to participating students.

(b) Encouraging student enrollment in rigorous and challenging curricula and coursework, in order to reduce the need for remedial coursework at the postsecondary level.

(c) Implementing activities to improve the number of participating students who--

(1) Obtain a secondary school diploma; and

(2) Complete applications for, and enroll in, a program of postsecondary education.

(d) In the case of State grants, providing scholarships in accordance with section 404E of the HEA.

\$694.20 What other activities may all GEAR UP projects provide?

A grantee may use grant funds to carry out the following services and activities:

(a) Providing tutors and mentors, who may include adults or former participants in a GEAR UP program, for eligible students.

(b) Conducting outreach activities to recruit priority students (identified in section 404D(d) of the HEA) to participate in program activities.

(c) Providing supportive services to eligible students.

(d) Supporting the development or implementation of rigorous academic curricula, which may include college preparatory, Advanced Placement, or International Baccalaureate programs, and providing participating students access to rigorous core academic courses that reflect challenging State academic standards.

(e) Supporting dual or concurrent enrollment programs between the secondary school and institution of higher education partners of a GEAR UP Partnership.

(f) Providing activities that support participating students to--

(1) Meet challenging State academic standards;

(2) Successfully apply for postsecondary education;

(3) Successfully apply for student financial aid; and

(4) Develop graduation and career plans including career awareness and planning assistance as it relates to a rigorous academic curriculum.

(g) Providing special programs or tutoring in science, technology, engineering, or mathematics.

(h) For Partnerships, providing support for scholarships described in section 404E of the HEA.

(i) Introducing eligible students to institutions of higher education, through trips and school-based sessions.

(j) Providing an intensive extended school day, school year, or summer program that offers--

(1) Additional academic classes; or

(2) Assistance with college admission applications.

(k) Providing other activities designed to ensure secondary school completion and postsecondary education enrollment of at-risk children, such as:

(1) Identification of at-risk children.

(2) After-school and summer tutoring.

(3) Assistance to at-risk children in obtaining summer jobs.

(4) Academic counseling.

(5) Financial and economic literacy education or counseling.

(6) Volunteer and parent involvement.

(7) Encouraging former or current participants of a GEAR UP program to serve as peer counselors.

(8) Skills assessments.

(9) Personal and family counseling, and home visits.

(10) Staff development.

(11) Programs and activities that are specially designed for students who are limited English proficient.

(l) Enabling eligible students to enroll in Advanced Placement or International Baccalaureate courses, or college entrance examination preparation courses.

(m) Providing services to eligible students in the participating cohort through the first year of attendance at an institution of higher education.

(n) Fostering and improving parent and family involvement in elementary and secondary education by promoting the advantages of a college education, and emphasizing academic admission requirements and the need to take college preparation courses, through parent engagement and leadership activities.

(o) Disseminating information that promotes the importance of higher education, explains college preparation and admission requirements, and raises awareness of the resources and services provided by the eligible entities to eligible students, their families, and communities.

(p) For a GEAR UP Partnership grant, in the event that matching funds described in the approved application are no longer available, in a collaborative manner, providing matching resources and participating in other activities authorized under section 404D of the HEA.



§694.21 What additional activities are allowable for State GEAR UP projects?

In addition to the required and permissible activities identified in §§694.19 and 694.20, a State may use grant funds to carry out one or more of the following services and activities:

(a) Providing technical assistance to--

(1) Secondary schools that are located within the State; or

(2) Partnerships that are located within the State.

(b) Providing professional development opportunities to individuals working with eligible cohorts of students.

(c) Providing administrative support to help build the capacity of Partnerships to compete for and manage grants awarded under the GEAR UP program.

(d) Providing strategies and activities that align efforts in the State to prepare eligible students to attend and succeed in postsecondary education, which may include the development of graduation and career plans.

(e) Disseminating information on the use of scientifically valid research and best practices to improve services for eligible students.

(f) (1) Disseminating information on effective coursework and support services that assist students in achieving the goals described in paragraph (f) (2) (ii) of this section, and

(2) Identifying and disseminating information on best practices with respect to--

(i) Increasing parental involvement; and

(ii) Preparing students, including students with disabilities and students who are limited English proficient, to succeed academically in, and prepare financially for, postsecondary education.

(g) Working to align State academic standards and curricula with the expectations of postsecondary institutions and employers.

(h) Developing alternatives to traditional secondary school that give students a head start on attaining a recognized postsecondary credential (including an industry-recognized certificate, an apprenticeship, or an associate's or a bachelor's degree), including school designs that give students early exposure to college-level courses and experiences and allow students to earn transferable college credits or an associate's degree at the same time as a secondary school diploma.

(i) Creating community college programs for students that are personalized drop-out recovery programs, and that allow drop-outs to complete a secondary school diploma and begin college-level work.

§694.22 What are permissible activities for GEAR UP projects that are serving students in their first year of attendance at an institution of higher education?

Consistent with its approved application and §694.18, a grantee may provide services to GEAR UP students in their first year of attendance at an institution of higher education, such as:

(a) Orientation services including introduction to on-campus services and resources;

(b) On-going counseling to students either in person or through electronic or other means of correspondence;

(c) Assistance with course selection for the second year of postsecondary education;

(d) Assistance with choosing and declaring an academic major;

(e) Assistance regarding academic, social, and personal areas of need;

(f) Referrals to providers of appropriate services;

(g) Tutoring and supplemental academic support;

(h) Assistance with financial planning;

(i) Career counseling and advising services; and

(j) Advising students about transferring to other  
schools.

## Issue Paper

### Proposed Regulatory Language Team IV – GEAR UP

**Origin:** HEOA Sec. 404(e)

**Issue:** Scholarship Component/Funds Held in Reserve for Scholarships

**Statutory cites:** HEA Sec. 404E

**Regulatory cites:** New 34 CFR §694.12 and §694.13

**Summary of issue:** The HEOA requires State grantees to hold in reserve funds for scholarships for eligible students in an amount that is not less than the minimum scholarship amount multiplied by the number of students that the State estimates will enroll in an institution of higher education. The HEOA also requires grantees to provide information on the eligibility requirements for scholarships to all participating students upon the students' entry into the GEAR UP program.

**Updated information since March 25-27 meeting:** Negotiators reached tentative agreement on this issue. (Negotiators also raised the possibility of adding a priority for States that propose to provide continuation scholarships to students in their sophomore through senior years of college. The Department did not propose to include such a priority because it would disadvantage States that receive a waiver of the scholarship provision.)

The Department also clarified that although the HEOA no longer allows Partnerships to use Federal funds to provide scholarships that do not meet the requirements of section 404E of the HEA, Partnerships may use non-Federal scholarship funds that do not meet the requirements of section 404E to comply with their matching requirements.

**Tentative agreement:** Yes

**Change:**

~~§694.1012~~ 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, t~~The maximum scholarship amount of a scholarship awarded that an eligible student may receive under section 404E of the HEA must be established by the grantee. 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) The minimum scholarship amount that an eligible student receives for each fiscal year must not be less than the minimum Federal Pell Grant award under section 401 of the HEA at the time of award.

~~(2)(3)~~ (3) If an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education 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 may 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.~~

\_\_\_\_\_ (b) For purposes of this section, an eligible student is a student who--

\_\_\_\_\_ (1) Is less than 22 years old at the time of award of the first GEAR UP scholarship;

\_\_\_\_\_ (2) Has received a secondary school diploma or its recognized equivalent on or after January 1, 1993;

\_\_\_\_\_ (3) Is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of

higher education that is located within the State's boundaries, except that, at the grantee's option, an eligible entity may offer scholarships to students who attend institutions of higher education outside the State; and

(4) Has participated in the activities required under §694.19.

~~—(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.~~

(c) (1) By the time students who have received services from a State grant have completed the twelfth grade, a State that has not received a waiver under section 404E(b) (2) of the HEA of the requirement to spend at least fifty percent of its GEAR UP funds on scholarships must hold in reserve an amount that is not less than the minimum Federal Pell Grant multiplied by the number of students the State estimates will enroll in an institution of higher education.

(2) Consistent with paragraph (a) of this section and §694.14, States must use funds held in reserve to make scholarships to eligible students.



(d) States using a priority approach may award scholarships under paragraph (a) of this section to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

(e) States providing scholarships must provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the GEAR UP program.

(f) A State must provide scholarship funds as described in this section to all eligible students who attend an institution of higher education in the State, and may provide these scholarship funds to eligible students who attend institutions of higher education outside the State.

~~(d)~~ (g) 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,~~ may ~~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~~ is enrolled or accepted for enrollment in a

program of undergraduate instruction at an institution of higher education.

~~(e)(h) Other grant assistance.~~ A GEAR UP scholarship, provided under section 404E of the HEA, may not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA, except that in no case shall the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

~~§694.1113~~ May a Partnership that does not award scholarships ~~participate in the GEAR UP scholarship component~~ under section 404E of the HEA provide, as part of a GEAR UP project, financial assistance for postsecondary education ~~to students using non-Federal funds 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.~~

## Issue Paper

### Proposed Regulatory Language Team IV – GEAR UP

**Origin:** HEOA Sec. 404(e)(5)

**Issue:** **Redistribution or Return of Unused Scholarship Funds/Reporting on Scholarship Monies after the Grant Period**

**Statutory cites:** HEA Sec. 404E(e)(4)(A)

**Regulatory cites:** New 34 CFR §694.14

**Summary of issue:** Previously, the HEA was silent as to the disposition of unused scholarship funds after the closure of a GEAR UP grant. The HEOA specifies that grantees may redistribute any funds not used by eligible students within six years of their completion of high school to other eligible students. The HEOA requires State grantees to return to the Secretary any remaining scholarship funds to be redistributed by the Secretary to other grantees.

In order for the Secretary to implement this provision, grantees may need to report on their scholarship funds after the completion of their grant award periods. At present, grantees have no accountability or reporting responsibilities to the Federal government after the grants close.

**Updated information since the March 25-27 meeting:** At the suggestion of one negotiator, the Department proposes to require the return of Federal funds within 45 days after the six-year period for expending funds expires. The 45-day period is consistent with other title IV programs. No other changes to this language are proposed.

**Tentative agreement:** No

**Change:**

§694.14 What are the requirements for redistribution or return of scholarship funds not awarded to a project's eligible students?

(a) Scholarship funds held in reserve by States under §694.12(c) or by Partnerships under section 404D(b)(7) of

the HEA that are not used by eligible students as defined in §694.12(b) within six years of the students' scheduled completion of secondary school may be redistributed by the grantee to other eligible students.

(b) Any Federal scholarship funds that are not used by eligible students within six years of the students' scheduled completion of secondary school, and are not redistributed by the grantee of other eligible students, must be returned to the Secretary within 45 days after the six-year period for expending the scholarship funds expires.

(c) Grantees that reserve funds for scholarships must annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds to eligible students until these funds are fully expended or returned to the Secretary.

(d) A scholarship fund is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund.

## Issue Paper

### Proposed Regulatory Language Team IV – GEAR UP

**Origin:** HEOA Sec. 404(a)(2), (b), and (c)

**Issue:** Continuity of Student Services

**Statutory cites:** HEA Sec. 404B(d)(1)(B) and (C); HEA Section 404A(b)(3)(B)

**Regulatory cites:** New 34 CFR §694.23

**Summary of issue:** The HEOA requires the Secretary to require eligible Partnerships to continue to provide services to students who received services under a previous GEAR UP grant award but have not yet completed the 12<sup>th</sup> grade. Under the GEAR UP program cohort approach, grantees may choose to add new cohorts (grade levels) of students each year of a grant and there is no minimum grade level at which services may begin. Accordingly, grants can end before students who are part of a cohort have completed high school. The HEOA requires eligible entities to provide services to these students through the 12<sup>th</sup> grade. Prior to the new law, there was no provision for grantees to serve students from a previous grant.

**Updated information since March 25-27 meeting:** The Department proposes draft regulations that conform to the statute and indicate that grantees who receive funding after the passage of the HEOA must continue to serve students from a previous grant received by the grantee. The regulations also indicate that if a Partnership or State grant using a cohort approach ends before all students have completed the 12<sup>th</sup> grade, the grantee must continue to provide services to the secondary students who have not yet completed 12<sup>th</sup> grade using either non-Federal funds or Federal funds awarded in a subsequent GEAR UP competition. At the request of a negotiator, the Department is proposing some minor wording changes to this language.

**Tentative agreement:** No

**Change:**

§694.23 Are GEAR UP grantees required to provide services to students who were served under a previous GEAR UP grant?

\_\_\_\_\_ If a Partnership or State grant using a cohort approach--

(a) Ends before all students who received GEAR UP services under the grant have completed the twelfth grade, the grantee must continue to provide services required by §§694.18 and 694.19 and authorized under §§694.20 and 694.21 to those students who are enrolled in secondary schools until they complete the twelfth grade. After the grant ends, these services must be provided using non-Federal funds or Federal funds awarded in a subsequent GEAR UP competition.

(b) Is awarded a GEAR UP grant on or after August 14, 2008 and the grantee served students under a prior grant who remain enrolled in the secondary school, the grantee must continue to serve those students using Federal funds awarded for the new grant or the non-Federal matching contributions required under the new grant.

**Issue Paper**

**Proposed Regulatory Language  
Team IV – GEAR UP**

**Issue:** Updates/Conforming Changes

**Regulatory cites:** 34 CFR §694.4, §694.10, §694.11, §694.15, and §694.16

**Summary of issue:** The Department proposes the following updates/conforming changes to the regulations: 1) Several sections must be renumbered due to the addition of new sections; 2) Negotiators requested clarification that grantees could serve students at just one high school if the grantee is following a majority of the students; 3) The department proposes to delete a section of the regulations regarding the NEISP program because it is no longer relevant; and 4) The Department proposes to clarify that 21<sup>st</sup> Century Scholarship Certificates should include information about GEAR UP scholarships, where applicable.

**Updated information since March 25-27 meeting:** The following language was included in the draft regulatory package that was circulated to negotiators before the March 25-27 meeting. The Department received no comments on this language.

**Tentative agreement:** No

**Change:**

\* \* \* \* \*

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

\* \* \*

(b) (2) Must continue to provide GEAR UP services to at least those students in the cohort ~~that~~who attend one or more participating schools that together enroll a substantial majority of the students in the cohort.

\* \* \* \* \*



~~§694.8~~10 What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program?

\* \* \* \* \*

~~§694.9~~11 What is the maximum indirect cost rate for an agency of a State or local government?

\* \* \* \* \*

~~§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.~~

\* \* \* \* \*

~~§694.12~~15 How does a State determine which State agency will apply for, and administer, a State grant under this program?

\* \* \* \* \*

~~§694.13~~16 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?

\* \* \*

(b) 21st Century Scholarship Certificates must be personalized and indicate the amount of Federal financial aid for college and the estimated amount of any scholarship provided under section 404E of the HEA, if applicable, that a student may be eligible to receive.