

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: 34 CFR 694.15

Summary of issue: Section 404A(b)(3) of the HEOA 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. This statutory provision also requires the Secretary to ensure that students served by GEAR UP programs prior to the enactment of the HEA continue to receive services through the completion of secondary school. Under previous regulations, the Secretary could choose to provide priority to applicants in Empowerment Zones or to partnerships that award scholarships.

Updated information: In response to comments from the negotiators, the Department proposes regulatory language indicating that the Secretary will award priority points to an eligible applicant for a State grant that has carried out a successful GEAR UP grant and has demonstrated commitment to early intervention activities. The Secretary will determine whether a GEAR UP grant has been successful based upon data (including outcome data) submitted as part of the grantee’s annual and final performance reports and the grantee’s history of compliance with statutory and regulatory requirements. (See section 694.15)

The Department determined, after a close reading of the statute, that Section 404A(b)(3) of the HEA requires the Secretary to ensure that students served by State grants before the enactment of the HEOA will continue to receive services, but does not provide priority to applicants serving those students. This issue is addressed in section 694.18.

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: To be determined

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 “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: At the last negotiation session, negotiators did not come to agreement on whether to regulate in this area, but several negotiators indicated that having a maximum partnership award instead of or in addition to regulations on this issue may improve the geographic distribution and urban/rural mix of grants. In response, the Department proposes to provide express regulatory authority in Part 694 for the Secretary to establish a maximum partnership award for each competition as is currently done in competitions for State awards. (See section 694.1)

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:

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: In response to tentative agreement reached by negotiators, 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 signed into law). The draft regulations also respond to the negotiators' suggestion 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.

The Department seeks further discussion on: 1) whether we should regulate on the types of services that should be provided during the seventh year and to whom they should be provided, 2) whether grantees should be required to serve a certain percentage of their students during the seventh year, 3) whether collaboration with other providers (such as TRIO grantees) should be required, and 4) whether grantees using a multiple cohort approach should be able to serve students in high school during the seventh year. (See new section 694.16)

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: To be determined

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: The Department believes that the statute is clear on the new definition of “eligible entity” and does not believe that regulations regarding this provision are necessary. Non-federal negotiators appeared to agree. No new regulations are proposed.

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 Department proposes conforming changes to the regulations indicating that grantees must make substantial progress in meeting the matching percentage stated in their applications each year. (See section 694.7)

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: 34 CFR 694.7(b)(2)

Summary of issue: Under the HEA as previously authorized, the Secretary could, under certain circumstances, modify the percentage match requirement applicable to a partnership. The HEOA retains this provision, and also authorizes the Secretary to approve the following types of requests for reduction in match: (1) requests made at the time of an application, if the applicant demonstrates a significant economic hardship that precludes it from meeting the match requirement, (2) requests from partnership applicants to count contributions to scholarship funds established under section 404E 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: The Department proposes conforming changes to implement this statutory provision, and seeks further comment on (1) the process it should use to consider requests for waivers, (2) the documentation that the Secretary should consider when reviewing requests for waivers, and (3) the definitions of “significant hardship” and “exhausted all revenues for replacing matching funds.” (See section 694.7)

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: To be determined

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: The Department believes that the statute is clear regarding required and allowable activities and does not believe that regulations regarding this provision are necessary. Non-federal negotiators appeared to agree, but there was interest in providing statutory information in the regulations. The Department seeks comment as to whether the statutory language should be copied into the regulations. (See new section 694.17)

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:	34 CFR 694.10

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. Grantees are also required by the HEOA to provide information on the eligibility requirements for scholarships to all participating students upon the students' entry into the programs assisted under this chapter.

Updated information: The Department proposes language indicating that by the time students served by a State grantee complete the 12th grade, grantees that have not received a waiver of the scholarship provision must hold in reserve an amount that is not less than the minimum Pell grant multiplied by the number of GEAR UP students that the State estimates will enroll in an institution of higher education. In response to requests by non-federal negotiators, the draft regulations specify that States can continue to award scholarships directly to students during the life of the grants.

Negotiators also noted that the provisions of the HEOA appear to conflict as to whether scholarships must be portable (available to out-of-State students). (See sections 404E(e)(2) and 404E(g)(3) of the HEA.) The Department agrees with the non-federal negotiators that the provision in section 404E(g)(3) clearly states that it is the State's option as to whether to offer scholarships to students who attend institutions outside the state, and the draft regulatory language reflects that reading.

The draft regulation also eliminates the former requirement that grantees provide continuation scholarships for each year that a student is in college and instead provides to grantees the option to provide continuation scholarships. The Department seeks further comments from negotiators regarding this proposed change. (See section 694.10)

Issue Paper

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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: To be determined

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 unused funds not distributed to eligible students within six years of their completion of high school to other eligible students. The HEOA also 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: The Department proposes a draft regulation that 1) requires grantees to return unused federal scholarship funds to the Secretary six years after students' completion of high school and 2) requires grantees to report annually to the Secretary on the amount of funds reserved for GEAR UP scholarships and the disbursement of those funds. (See new section 694.12)

Issue Paper

Proposed Regulatory Language Team IV – GEAR UP

Origin: HEOA Sec. 404(b)(1)

Issue: Continuity of Student Services

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

Regulatory cites: To be determined

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 12th grade. Under the GEAR UP program, 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 have completed high school. The HEOA requires eligible entities to provide services to those students through the 12th grade. Prior to the new law, there was no provision for grantees to serve students from a previous grant.

Updated information: 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 12th grade, the grantee must continue to provide services to the secondary students who have not yet completed 12th grade using either non-federal funds or federal funds awarded in a subsequent GEAR UP competition.

Non-federal negotiators would like the Department to provide funding on a non-competitive basis to former grantees to serve students in cohorts that have not completed the 12th grade. Because the Department does not have authority to award grants beyond six or seven years (see section 404A(b)(2) of the HEA), this suggestion was not adopted. (See new section 694.18)