

oil is to be delivered to the exchange partner. However, if subsequent to the delivery of the NPR crude oil any price is posted having a retroactive effective date encompassing the delivery date, then the exchange ratio shall be adjusted accordingly. No posted price shall be used in the computation unless an actual purchase has been completed at that price.

(g) *Post-delivery adjustments.* In any exchange transaction, if, subsequent to the time deliveries are completed, adjustments to the volumes of crude oil received and delivered by DOE are necessary to equalize the transaction, and DOE finds it impracticable to deliver or receive additional crude oil, DOE may provide such adjustments by making a cash payment to the exchange partner or by directing the exchange partner to make a cash payment to DOE.

(h) *Delivery of oil to the Strategic Petroleum Reserve.* (1) When exchange/sale obligations are required to be discharged in accordance with paragraph (c)(2) of this section, each exchange partner (unless DOE directs certain exchange partners to deliver crude oil to the SPR) shall submit a proposed delivery schedule to DOE at the address specified in the Exchange Notice as soon as practicable, but no later than 30 days after publication of the Exchange Notice. If, however, the Exchange Notice permits the submission of voluntary exchange offers for that exchange period under paragraph (c)(1) of this section, then the proposed delivery schedule shall be submitted no later than 30 days after DOE notified the exchange partners that voluntary exchanges are insufficient and that exchange/sale obligations are to be discharged by means of mandatory exchange/sale transactions in accordance with paragraph (c)(2) of this section. The proposed delivery schedule shall list, for each proposed delivery date, the types of oil to be delivered, the relative volumes of each oil type, and the exchange partner's preference regarding the terminal to which the oil is proposed to be delivered.

(2) DOE shall consider each proposed delivery schedule submitted under paragraph (h)(1) of this section in the order received and shall notify each exchange partner within five days of receipt of the proposed schedule whether the proposed schedule has been accepted or rejected in whole or in part. All ship nomination and acceptance procedures shall be in accordance with any then-current port manual of the relevant receiving terminal of the Strategic Petroleum Reserve. In determining whether to accept or reject

a proposed delivery schedule, DOE shall consider the Strategic Petroleum Reserve's dock and terminal availability and capacity and prior delivery commitments. In its notice rejecting a proposed schedule in whole or in part DOE shall explain its reasons for the rejection and may propose alternative dates, volumes, and/or types of oil which would be appropriate for delivery. To account for daily receipt capabilities at the various terminals, DOE shall in all cases specify the terminal to which a particular shipment shall be delivered.

(3) Upon notice by DOE of acceptance of an exchange partner's delivery schedule, the exchange partner shall be obligated to make delivery of the type and volume of crude oil scheduled on the date scheduled, plus or minus two days. Within five days of receipt of a DOE notice rejecting an exchange partner's delivery schedule, the exchange partner shall submit an alternative proposed delivery schedule to DOE. If such proposed delivery schedule is unacceptable, DOE may specify the delivery schedule. An exchange partner may change its delivery schedule, subject to DOE approval, by giving notice of such change not later than 30 days prior to the delivery date as previously scheduled.

(4) Each exchange partner shall coordinate its deliveries of oil to the Strategic Petroleum Reserve with its receipts from the NPR in a manner such that at the end of each exchange period the exchange partner has not received a volume of NPR crude oil that is greater, multiplied times the exchange ratio, than the volume of crude oil it has delivered to the Strategic Petroleum Reserve.

3. Section 211.65 is amended by adding a new paragraph (c)(2)(iv) to read as follows:

§ 211.65 Method of allocation.

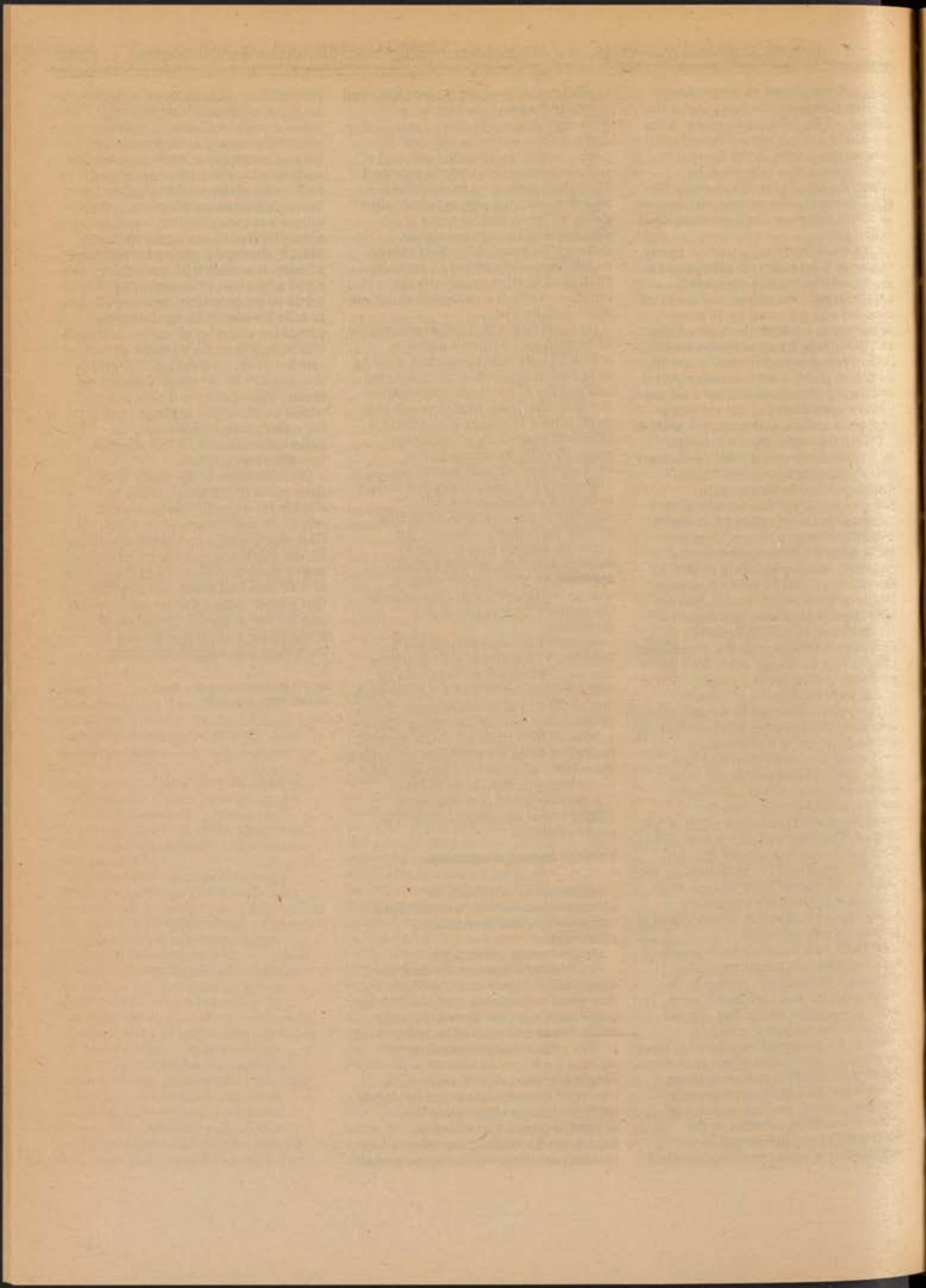
(c) *Review of eligibility for allocations, adjustments to purchase opportunities, and emergency allocations.* * * *

(2) *Emergency allocations.* * * *
(iv) *Special allocation due to loss of supply of NPR crude oil.* (A) *Eligibility.* Any small refiner may apply to ERA for a special allocation of crude oil with respect to one or more of its refineries if:
(1) The refiner has processed in the refinery for which an allocation is sought a volume of NPR crude oil in excess of five percent of such refinery's crude oil runs to stills during the allocation period that ended on September 30, 1980; (2) the refinery has incurred or will incur, during the period

for which an allocation is sought, at least a fifty percent loss, from the volumes received in the allocation period that ended on September 30, 1980, of its supply of NPR crude oil for such refinery due to the exchange of NPR crude oil for oil delivered to the Strategic Petroleum Reserve; (3) the refiner has exhausted any opportunity to obtain NPR crude oil under 10 U.S.C. 7430(d), during the period for which an allocation is sought; (4) the refinery as a result of the loss of its supply of NPR crude oil projects that the crude oil runs to stills for such refinery during the period for which an allocation is sought will be less than the national utilization rate (as used in paragraph (c)(2)(iii) of this section) for all refiners during the second month prior to the period for which an allocation is sought; and (5) the refiner cannot reasonably be expected to replace its lost supplies through its own efforts.

(B) *Allocation.* In the event ERA determines that a small refiner is eligible for a special allocation with respect to one or more of its refineries, ERA may assign a maximum allocation for the eligible refinery or refineries for one or more months equal to the volume of NPR crude oil which has been lost for that period, except that no small refiner may receive a special allocation of crude oil for any of its refineries for more than two allocation periods.

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federal register

Wednesday
January 14, 1981

Part VI

Department of Education

**Transition Program for Refugee Children
and Educational Services for Cuban and
Haitian Entrant Children; Final
Regulations**

DEPARTMENT OF EDUCATION

Office of Bilingual Education and
Minority Languages Affairs

34 CFR Part 538

Transition Program for Refugee
Children

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues final regulations to implement the Transition Program for Refugee Children under the authority of the Refugee Act of 1980 (Pub. L. 96-212). Implementation of these regulations will provide supplementary educational assistance to meet the special educational needs of refugee children and to enhance their transition into American society.

EFFECTIVE DATE: These final regulations will be effective February 13, 1981.

FOR FURTHER INFORMATION CONTACT:

Mr. James Lockhart, Office of Bilingual Education and Minority Languages Affairs, Department of Education, (Room 505, Reporters Building), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 472-7177.

SUPPLEMENTARY INFORMATION:**I. Authority**

The statutory authority for this program is the Immigration and Nationality Act, as amended by the Refugee Act of 1980, Pub. L. 96-212 (8 U.S.C. 1522(d)).

II. Background

On September 11, 1980, the Secretary of Education published a Notice of Proposed Rulemaking (NPRM) to implement the transition Program for Refugee Children. The Secretary invited the public to comment on the proposed regulations and received extensive recommendations in response to that invitation. All comments and recommendations received in the Office of Bilingual Education and Minority Languages Affairs prior to October 27, 1980 were considered in the development of those final regulations. A summary of those comments and the Secretary's responses to them are contained in the appendix to the regulations.

These regulations will govern the award of educational assistance grants to benefit eligible refugee children enrolled in elementary and secondary schools, as authorized by the Refugee Act of 1980.

**III. Relationship to Other Programs
Serving Refugee Children**

Commenters asked for clarification on the relationship between this program and a number of other programs, regulations, and laws concerned with providing for the needs of refugee children. Commenters mentioned the following: assistance to States provided under the Refugee Act of 1980; the Educational Services for Cuban and Haitian Entrant Children Program; the Refugee Education Assistance Act of 1980; the Bilingual Education Program; and the proposed regulations governing the rights of language minority students (Nondiscrimination Under Programs Receiving Federal Financial Assistance Through the Education Department ("Lau") NPRM). Following is a discussion of the relation of the Transition Program for Refugee Children to each of the programs, regulations, and statutes mentioned by commenters.

1. *Assistance to States provided under the Refugee Act of 1980.* To be eligible for assistance under the Transition Program for Refugee Children, a State must meet the requirements in the Refugee Resettlement Program regulations (45 CFR Part 400) that establish conditions for receiving assistance under the Refugee Act of 1980. Those regulations require a State to submit to the Director of the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS) a plan detailing the State's program for delivering assistance and services to refugees. A State is required to identify in the plan a State Coordinator who will have the responsibility and authority to ensure coordination of resources for refugee resettlement, including the provision of educational services to eligible children.

2. *Educational Services for Cuban and Haitian Entrant Children.* In the preamble to the NPRM for Transition Program for Refugee Children, the Secretary proposed that final regulations for this program be used to administer a program of educational services for Cuban and Haitian entrant children under the Secretary's Discretionary Authority (Section 303 of the Elementary and Secondary Education Act (ESEA)). Public comment strongly supported the Secretary's proposal. Final regulations for the Educational Services for Cuban and Haitian Entrant Children Program (34 CFR Part 539) appear in this issue of the *Federal Register*. With the exception of a different definition for "eligible children" and the absence of the eligibility requirements established in the Refugee Act of 1980 and the

regulations governing the Refugee Resettlement Program (45 CFR Part 400), the provisions in 34 CFR Part 539 are identical to the regulations issued in this part (34 CFR Part 538).

3. *Refugee Education Assistance Act of 1980.* Signed into law on October 10, 1980, this Act authorizes a three-year formula grant program for States. Title II of the Act authorizes assistance for local school districts to meet the basic educational needs of recently arrived Cuban and Haitian entrant children. Title III of the Act authorizes assistance for local school districts which have experienced heavy enrollments of Cuban and Haitian entrant and Indochinese refugee children to provide supplementary and basic educational services for those children. The Secretary is preparing to propose regulations to implement the two authorities. The level of funding which a State is entitled to receive under the Refugee Education Assistance Act will not be reduced because of funds made available under the Transition Program for Refugee Children or under the Educational Services for Cuban and Haitian Children Program.

To minimize the reporting burden on SEAs and LEAs eligible for assistance under the various ED programs that provide educational services to refugee and entrant children, the Secretary expects to require only one annual count of eligible refugee and entrant children that identifies whether the children are of Indochinese, Cuban or Haitian, or other origin and the recency of their arrival in the United States (in years). The Secretary believes this counting and reporting format will provide reasonable estimates of children eligible for assistance under the various programs, will simplify the reporting and administrative responsibilities and requirements for SEAs and LEAs, and will enable the Department to promptly administer the Refugee Education Assistance Act when funds are made available.

4. *Bilingual Education Program.* The differences between the Transition Program for Refugee Children and the programs authorized under Title VII of ESEA are essentially the distinctions between a formula grant program that offers a wide range of supplementary assistance exclusively to refugees (Transition Program) and discretionary grant programs that focus on a particular instruction technique, bilingual education (Title VII). Refugee children served by the Transition Program are also eligible for the educational services provided under the Title VII Basic Projects and

Demonstration Projects Program, if those refugee children are limited English proficient, and if the Title VII grant would be supplementary to the basic program of instruction offered by the school district and the educational services provided under this program. The Secretary makes grant awards under Title VII to applicants that demonstrate need for assistance and submit applications proposing high quality projects.

The Title VII support services network (i.e., the National Clearinghouse for Bilingual Education (NCBE), the Bilingual Education Service Centers (BESCs), and the Evaluation, Dissemination, and Assessment Centers (EDACs)) may also provide support for applicants, grantees, subgrantees, and others applying for assistance and serving refugee children under the Transition Program for Refugee Children and the Educational Services for Cuban and Haitian Entrant Children Program. Based on public comment, a selection criterion has been added under the Development and Dissemination Projects Program to evaluate the extent to which an applicant proposes to coordinate activities with existing resource and dissemination centers, such as the Title VII centers. An applicant desiring more information on Title VII support services should contact the person listed in the preamble.

5. *Proposed Regulations Governing Nondiscrimination Under Programs Receiving Federal Financial Assistance Through the Education Department.* On August 5, 1980, the Secretary proposed regulations in the Federal Register (45 FR 52052) to implement provisions in Title VI of the Civil Rights Act of 1964 that prevent school districts receiving Federal Financial Assistance from denying equality of access to any student because of that student's limited proficiency in English. The proposed "Lau" regulations (34 CFR Part 100) are undergoing review in response to extensive public comment. One issue raised by a large number of commenters was the longstanding controversy over the effectiveness of two of the teaching approaches (bilingual education and English as a second language (ESL)) used to improve English language skills of the limited English proficient. The regulations issued here do not specifically support either technique for improving proficiency in the use of the English language. However, as stated in the Education Division General Administrative Regulations (34 CFR 75.500 and 76.500), States and local school districts receiving assistance under Education Department programs

must meet the requirements of Title VI of the Civil Rights Act. If the Secretary issues final Lau regulations that specify requirements or appropriate methods of instruction, those regulations would apply to all recipients of Federal financial assistance. Civil rights regulations are not to be confused with regulations governing the operation of education programs assisted by the Education Department.

IV. Summary of Changes

Based on a review of the comments on the NPRM, the Secretary has made important changes in the substance and structure of the final regulations. Following is a discussion of some of the major changes in the final regulations.

Restructuring the Regulations.—In comparing the final regulations with the NPRM, the reader will notice many changes in format. Some of these changes were made in response to public comment; they will be discussed in greater detail in the appendix. Other changes resulted from the Secretary's concern that the format of the regulations be easy to understand and to follow, and that the structure of the regulations be consistent with other regulations issued by the Department.

In addition, the part number of the NPRM has been changed (from 45 CFR Part 122b to 34 CFR Part 537) as a result of the transfer of Education Department (ED) regulations from Title 45 to Title 34 in the Code of Regulations (CFR) and the subsequent redesignation of part numbers for ED regulations.

General Comments.—The Secretary particularly invited public comment on six provisions in the proposed regulations.

1. The Secretary invited comment on whether SEAs and LEAs should be required to develop comprehensive applications and compete for grants and subgrants.

The overwhelming public response suggested that this program be operated as a State-administered entitlement program with as few application requirements as possible. The final regulations provide for the award of a formula grant to a SEA and a formula subgrant to an LEA based on the number of eligible children in the State and the LEA.

2. The Secretary invited comment on whether an LEA that does not enroll a sufficient number of refugee children to meet the eligibility criteria established for State-administered subgrants should be eligible to receive a subgrant to serve eligible children enrolled in schools within its jurisdiction.

Commenters consistently rejected the proposed eligibility criteria. That

approach has been eliminated. Any LEA with eligible children in schools within its jurisdiction may apply for a subgrant to serve those children.

3. The Secretary invited comment on whether the formula and weights used to distribute funds are appropriate and whether the Secretary should adjust the weights annually.

Public comment supported the concept of additional costs associated with the education of students in secondary schools and recognized that recent arrivals have greater needs which generate additional costs. Although several commenters suggested that the weights be changed from one year intervals to two year intervals, the intervals remain one year. The final regulations retain the provision whereby the Secretary may adjust the formula and the weighting factors through a notice published in the Federal Register. The Secretary will carefully consider the commenters' suggestions in determining whether to adjust the formula or the weights.

4. The Secretary invited comment on whether the 15 percent limit on the amount of any grant that may be used for purposes other than English language instruction was too restrictive and whether the Secretary should annually adjust the limit.

While some commenters suggested that the 15 percent limit was too low, experience with the Bilingual Education: Basic Projects Program (Title VII, ESEA) has shown that 15 percent provides more than adequate support for in-service training costs. However, the final regulations retain the provision which allows the Secretary to adjust 15 percent limit, if experience under this program demonstrates that such an adjustment is appropriate. To ensure that school districts may make the best use of a limited amount of funds, the final regulations provide that the 15 percent limit does not apply where a subgrant, contract, or cooperative agreement is made, or direct services are provided, on behalf of 40 or fewer eligible children.

5. The Secretary invited comment on whether the Secretary should annually establish priorities for the Development and Dissemination Projects Program.

Public comment strongly supported this program and the Secretary's annual announcement of program priorities.

6. The Secretary invited comment on whether the Educational Services for Cuban and Haitian Entrant Children Program should be administered under regulations similar to the regulations proposed for the Transition Program for Refugee Children.

Public comment supported the concept that regulations for that program should parallel the procedures and requirements of the regulations issued here. Regulations governing the Educational services for Cuban and Haitian Entrant Children Program (34 CFR Part 539) are published in this issue of the Federal Register.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority placed in parentheses in the line following each substantive provision of the regulations.

Dated: December 16, 1980.

Shirley M. Hufstetler,
Secretary of Education.

Approved: January 8, 1981.

Patricia Roberts Harris,
Secretary of Health and Human Services.

(Catalog of Federal Domestic Assistance Program No. 84-146, Transition Program for Refugee Children)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 538 to read as follows:

PART 538—TRANSITION PROGRAM FOR REFUGEE CHILDREN

Subpart A—General

Sec.

- 538.1 What is the transition program for refugee children?
- 538.2 Who is eligible to apply for financial assistance?
- 538.3 What regulations apply to this program?
- 538.4 What definitions apply to this program?

Subpart B—What Activities May the Transition Program Support?

- 538.10 What activities are eligible for support under State-administered program?
- 538.11 What activities are eligible for support under the development and dissemination projects program?

Subpart C—How To Apply for a Grant or a Subgrant Under the State-Administered Program and the Development and Dissemination Projects Program?

- 538.20 What documents does the State submit to receive a grant?
- 538.21 How is the number of eligible children determined?
- 538.22 To what extent must a State provide educational services to eligible children enrolled in nonprofit schools?
- 538.23 When does a State submit its application for a grant?
- 538.24 What documents must an applicant submit to an SEA to receive a subgrant?
- 538.25 When does an applicant submit its application?

Subpart D—How Are Grants and Subgrants Made to Applicants Under the State-Administered Program?

Sec.

- 538.30 How does the Secretary review an application submitted by an SEA?
- 538.31 What formula will be used to distribute funds to SEAs with approved applications?
- 538.32 How does the Secretary provide for a substantial and disproportionate increase in the enrollment of eligible children that may occur after a grant has been made?
- 538.33 How are the amounts available for eligible children in each LEA determined?
- 538.34 [Reserved]
- 538.35 What criteria does the Secretary use to review an application under the Development and Dissemination Projects Program?

Subpart E—How Are Funds Under the State-Administered Program To Be Spent?

- 538.40 What are the restrictions on costs under the State-administered program?
- Authority: Immigration and Nationality Act, as amended by the Refugee Act of 1980, Pub. L. 96-212, 6 U.S.C. 1522(d).

Subpart A—General

§ 538.1 What is the transition program for refugee children?

(a) This program provides educational services to meet the special educational needs of eligible children who are enrolled in public and nonprofit private elementary and secondary schools.

(b) This program funds—

(1) Formula grants to States (under the State-Administered Program) based on the number of eligible children in the States; and

(2) Discretionary projects (under the Development and Dissemination Projects Program) designed to produce and demonstrate exemplary approaches, materials, and strategies to meet the special educational needs of eligible children.

(Sec. 412(d)(1) of the Immigration and Nationality Act, as amended)

§ 538.2 Who is eligible to apply for financial assistance?

(a) *State Administered Program.* (1)(i) A State educational agency (SEA) is eligible to apply for a grant to assist local educational agencies (LEAs) in its State in providing special educational services to eligible children, if the State has an approved plan for the administration of refugee resettlement programs in its State on file with the Director of the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS).

(ii) Requirements pertaining to submission and approval of the State plan are contained in 45 CFR Part 400

(Refugee Resettlement Program; Plan and Reporting Requirements for States).

(2) An LEA or a consortium of LEAs may apply to the SEA for a subgrant to provide services to eligible children enrolled in public and nonprofit private schools within its jurisdiction.

(3) If an LEA does not apply for a subgrant to serve eligible children in schools within its jurisdiction, an SEA—

(i) Arranges through subgrants, contracts, or cooperative agreements with public and nonprofit agencies, organizations, and institutions (including institutions of higher education (IHEs)) for the provision of services to those children; or

(ii) Provides services directly to those children.

(b) *Development and Dissemination Projects Program.* The following may apply for a Development and Dissemination project:

- (1) An SEA;
- (2) An LEA;
- (3) An IHE; and
- (4) Any other public or nonprofit public agency, organization, or institution.

(Sec. 412(a)(6); 412 (d)(1) of the Immigration and Nationality Act, as amended)

§ 538.3 What regulations apply to this program?

The following regulations apply to this program:

(a) *General.* (1) The regulations in this part 538.

(2) The Education Division General Administrative Regulations (EDGAR) 34 CFR Parts 74, 77, and 78.

(b) *State-Administered Program.* (1) The regulations in 34 CFR Part 76, except—

- (i) Section 76.101(a)-(d);
- (ii) Section 76.102;
- (iii) Section 76.103; and
- (iv) Section 76.105.

(2) The regulations in 45 CFR Part 400 (Refugee Resettlement Program; Plan and Reporting Requirements for States).

(c) *Development and Dissemination Projects Program.* The regulations in 34 CFR Part 75.

(d) If any sections or provisions of 45 CFR Part 400 or 34 CFR Parts 74-78 do not apply to this program, the inapplicability of those sections or provisions is explicitly stated in these regulations.

(20 U.S.C. 3474(a))

§ 538.4 What definitions apply to this program?

(a) The following definitions are specific to these regulations:
"Act" means the Refugee Act of 1980 (Pub. L. 96-212) as amended.

"Application" includes the terms "State plan" and "general application" as used in EDGAR 34 CFR Parts 74-78.

"Bilingual education" means instruction given in, and study of, both English and, to the extent necessary to allow the children to achieve competence in the English language, the native language of the eligible children.

"Eligible children" means children who are—

- (1)(i) Admitted into the United States as refugees under the authority of the Immigration and Nationality Act, Secs. 203(a)(7) (repealed), 207, or granted asylum in the United States under the authority of Sec. 208 (8 U.S.C. 1153(a)(7)(repealed), 1157, 1158); or
- (ii) Paroled into the United States as refugees under the authority of the Immigration and Nationality Act, Sec. 212(d)(5)(8 U.S.C. 1182(d)(5)); or
- (iii) Allowed to remain in the United States as refugees because their deportation has been withheld under the authority of the Immigration and Nationality Act, Sec. 243(h)(8 U.S.C. 1253(h)); or

(iv) Granted asylum in the United States as refugees under the authority of 8 CFR Part 108; or

(v) Admitted into the United States as refugees under the authority of the Refugee Act of 1980, Pub. L. 96-212; and

(2) Who are within the age limits for which the applicable State is required or permitted under State law to provide free public elementary and secondary school education for students in kindergarten through grade 12.

"Indochinese children" means aliens who have fled from Cambodia, Vietnam, or Laos, and who—

(1) Have been admitted into the United States as refugees under Section 207 of the Immigration and Nationality Act;

(2) Have been paroled into the United States by the Attorney General under Section 212(d)(5) of the Immigration and Nationality Act; or

(3) Are applicants for asylum, or have been granted asylum in the United States.

(b) The following definitions in EDGAR (34 CFR Part 77) apply to these regulations:

Applicant
Application
Award
Local educational agency (LEA)
Nonprofit
Private
Project
Secretary
State
State educational agency (SEA)

(c) The following definitions in the Elementary and Secondary Education

Act of 1965, as amended, apply to these regulations.

Construction
Elementary school
Secondary school

Immigration and Nationality Act, as amended, 20 U.S.C. 2943, and 20 U.S.C. 3474(a)

Subpart B—What Activities May the Transition Program Support?

§ 538.10 What activities are eligible for support under the State-administered program?

The following services may be provided:

(a) Supplemental educational services—with emphasis on instruction to improve English language skills of eligible children—to enable those children to achieve and maintain a satisfactory level of academic performance. These services include—

- (1) Testing to determine the educational needs of eligible children;
- (2) Special English language instruction;
- (3) Bilingual education;
- (4) Remedial programs of instruction; and
- (5) Special materials and supplies.

(b)(1) Up to 15 percent of the award may be used to provide support services for the eligible children, including but not limited to—

- (i) Inservice training for educational personnel to work with eligible children to enable them more effectively to provide services to those children;
- (ii) Training for parents of eligible children to enable them to participate more effectively in the education of their children, and
- (iii) School counseling and guidance services for eligible children, including referrals to appropriate social services and health agencies.

(2)(i) In a given year, the Secretary may increase or decrease the 15 percent limit in paragraph (b)(1) of this section if the Secretary determines that the need for these services is proportionately greater or less than the need to provide special educational services.

(ii) To make this determination, the Secretary considers evaluations of ongoing projects under this program and recommendations from persons experienced in educating refugee children.

(iii) The Secretary announces any change in the 15 percent limit through publication of a notice in the Federal Register.

(3) The restrictions in paragraph (b)(1) of this section do not apply where a subgrant, contract, or cooperative arrangement is made, or direct services

are provided, on behalf of 40 or fewer eligible children.

(c)(1) An SEA may use up to one percent of the total funds it receives under the State-Administered Program—

(i) To ensure proper and efficient administration of funds under this program; and

(ii) To provide technical assistance to subgrantees and others who are providing services under this program to eligible children.

(2) The total amount of funds used by an SEA for the costs in paragraph (c)(1) of this section may not exceed \$200,000.

(Sec. 412(a)(1)(B); 412(a)(6)(B); 412(d)(1) of the Immigration and Nationality Act, as amended)

§ 538.11 What activities are eligible for support under the development and dissemination projects program?

(a) The following activities are eligible for support—

(1) Development of innovative methods, strategies, curricula, instructional materials, instructional programs, personnel development, or other techniques to meet the special educational needs of eligible children, in general, or of eligible children from particular areas of the world;

(2) Examination of the extent to which various projects effectively meet the special educational needs of eligible children; or

(3) Dissemination through national or regional centers, curriculum materials or exemplary practices that meet the special educational needs of eligible children.

(b) The Secretary may, through a notice published in the Federal Register, select specific activities for funding from among those listed in paragraph (a) of this section to respond to the changing national needs for educating eligible children in general or for educating eligible children from particular areas of the world.

(Sec. 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

Subpart C—How Does One Apply for a Grant or a Subgrant Under the State-Administered Program and the Development and Dissemination Projects Program?

§ 538.20 What documents does the State submit to receive a grant?

To receive a grant, an SEA shall submit to the Secretary an application containing the following:

(a) A count of the number of eligible children in the State, as required in § 537.21.

(b) A program plan that includes—

(1) A description of the SEA's method of counting children eligible for assistance under this program;

(2) A brief description of the services to be provided for those children; and

(3) A brief description of the SEA's plan for administering, monitoring, and evaluating the program.

(c) The following assurances:

(1) An assurance that the SEA will make subgrant awards to LEAs or consortia of LEAs in the State within 60 days of the receipt of the grant award.

(2) An assurance that the SEA will not disapprove in whole or in part an application submitted by an LEA for a subgrant without first affording the LEA a hearing according to the provisions in EDGAR (34 CFR 76.401(d)).

(3) The assurances required in EDGAR (34 CFR 76.101(e)).

(Sec. 412(a)(4) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 347(a))

§ 538.21 How is the number of eligible children determined?

(a) On a date specified by the Secretary through a notice published in the Federal Register, an SEA shall count the number of eligible children enrolled in public and nonprofit private schools in each LEA, who have been admitted into the United States—

- (1) Less than one year;
- (2) One to two years;
- (3) Two to three years; or
- (4) Three to four years.

(b)(1) For each category in paragraph (a) of this section, the SEA shall count the number of children enrolled at the elementary school level and the number enrolled at the secondary school level.

(2) For the purpose of this count—

(i) Children who are "enrolled at the elementary school level" means children in grades K-6; and

(ii) Children who are "enrolled at the secondary school level" means children in grades 7-12.

(c) The SEA identifies for each category in paragraphs (a) and (b) of this section the number of Indochinese children and eligible children with another national origin.

(Sec. 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

§ 538.22 To what extent must a State provide educational services to eligible children enrolled in nonprofit private schools?

(a)(1) The SEA shall provide opportunities for eligible children enrolled in nonprofit private schools to receive educational services under this program.

(2) The requirements which must be met by an SEA with respect to eligible

children enrolled in nonprofit private schools are contained in EDGAR (34 CFR 76.651-76.662).

(b) If an LEA is unwilling or unable to provide educational services to eligible children enrolled in nonprofit private elementary and secondary schools, an SEA—

(1) Arranges through a subgrant, contract, or cooperative agreement with a public or nonprofit private agency, organization, or institution for the provision of services to those children; or

(2) Provides services directly to those children.

(c) If a State is prohibited by law from providing educational services to children enrolled in nonprofit private elementary and secondary schools, or if the Secretary determines that an SEA is unwilling or has substantially failed to provide educational services on an equitable basis to eligible children enrolled in nonprofit private schools, the Secretary may—

(1) Proportionally reduce the funds granted to the State; and

(2) Arrange for other means of providing services to those children.

(20 U.S.C. 3474(a))

§ 538.23 When does a State submit its application for a grant?

To be eligible for funds, an SEA must transmit its application in accordance with the application notice published in the Federal Register that establishes a deadline for the transmittal of State applications.

(20 U.S.C. 3474(a))

§ 538.24 What documents must an applicant submit to an SEA to receive a subgrant?

To receive a subgrant, an applicant shall submit to the SEA an application containing the following information:

(a) A count of the number of eligible children in its jurisdiction, as required in § 538.21.

(b) A brief description of the educational services to be provided for the eligible children.

(c) The assurances required in EDGAR (34 CFR 76.301(c)).

(Sec. 412(a)(4) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

§ 538.25 When does an applicant submit its application?

An SEA establishes a deadline for receipt of applications for subgrants under this program.

(20 U.S.C. 3474(a))

Subpart D—How Are Grants and Subgrants Made to Applicants Under the State-Administered Program?

§ 538.30 How does the Secretary review an application submitted by an SEA?

The Secretary reviews and approves an application submitted by an SEA if the application complies with the requirements in this part.

(20 U.S.C. 3474(a))

§ 538.31 What formula will be used to distribute funds to SEAs with approved applications?

(a)(1) The most weight will be given to eligible children who have been admitted into the United States for less than one year on the date the child count was made.

(2) Eligible children in paragraph (a)(1) of this section enrolled in elementary and secondary grades will be weighted equally.

(b)(1) Less weight will be given for eligible children who have been admitted into the United States for more than one year on the date the child count was made.

(2) Eligible children in paragraph (b)(1) of this section enrolled in secondary schools will be given more weight than eligible children enrolled in elementary schools.

(c)(1) The Secretary uses the weighting factors in paragraph (d) of this section.

(2) The Secretary may increase or decrease any weighting factor by one or two points on an annual basis to respond to changing needs of eligible children.

(3) The Secretary announces the weighting factors each year through publication of a notice in the Federal Register.

(d) Weighting factors for the fund distribution formula are presented in the following table:

Recency of arrival in the United States (in years)	Weighting factors by school level	
	Elementary	Secondary
Less than 1	10	10
1 to 2	7	9
2 to 3	4	7
3 to 4	1	3
More than 4	0	0

(e) To determine the amount of a grant—

(1) The applicant's child count for each recency of arrival category is multiplied by the weighting factor for the category;

(2) The products for each category are added; and

(3) The sum of the products are multiplied by the weighted per pupil allocation.

Example: The following table presents a computation for a hypothetical LEA based on the weighting factors in paragraph (d) of this section:

Recency of arrival in the United States (in years)	a Number of eligible children	b Sample weighting factor	Weighted count (product of col. a times b)
Enrolled in Elementary Grades			
0 to 1	10	10	100
1 to 2	10	7	70
2 to 3	5	4	20
3 to 4	0	1	0
More than 4	0	0	0
Enrolled in Secondary Grades			
0 to 1	10	10	100
1 to 2	10	9	90
2 to 3	5	7	35
3 to 4	0	3	0
More than 4	0	0	0
Total	50		415

(4) In the example above, if the weighted per pupil allocation is \$50, the grant award would be \$20,750. As an example of how much would be paid on behalf of an individual student, if the weighted per pupil allocation is \$50, the payment for a student who has been in this country less than a year would be \$500; for a secondary grade student who has been in this country between 3 and 4 years, the payment would be \$150.

(Sec. 412(d) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 347(a))

§ 538.32 How does the Secretary provide for a substantial and disproportionate increase in the enrollment of eligible children that many occur after a grant has been made?

(a) If the Secretary determines that there has been a substantial and disproportionate increase in the enrollment of eligible children, the Secretary may provide SEAs an opportunity to submit evidence of the increase of the number of eligible children enrolled in schools in the State.

(2) Through a notice published in the Federal Register, the Secretary invites SEAs with increased enrollments of eligible children to submit a recount of the number of eligible children enrolled in schools in the State, according to the provisions in § 538.21.

(b) Where funds are available, the Secretary may provide additional assistance to SEA based on the increase in the number of eligible children in the State, provided that the SEA submits a plan outlining how the additional funds would be spent to provide services for those children.

(c) In distributing funds under paragraph (b) of this section, the

Secretary uses the weighting factors in § 538.31.

(d) The Secretary does not decrease the amount of an award to SEA where there is a decrease in the enrollment of eligible children.

(Secs. 412(a)(1)(B); 412(a)(6)(B); 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

§ 538.33 How are the amounts available for eligible children in each LEA determined?

In determining the amounts available for eligible children in each LEA, the SEA—

(a) Subtracts from the SEA's award the costs budgeted for the administration of the SEA grant award and for technical assistance (These costs may not exceed one percent of the SEA award); and

(2) Applies the formula in § 538.31 to determine the amounts of funds available for eligible children in each LEA.

(Sec. 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

§ 538.34 (Reserved)

§ 538.35 What criteria does the Secretary use to review an application under the development and dissemination projects program?

The Secretary uses the following selection criteria worth a total of 100 points. The relative importance of each criterion is indicated next to the heading of that criterion.

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

Note.—The qualification of project personnel should relate to the population served by the project. For example, when reviewing projects that serve Indochinese refugee children, the Secretary looks for project personnel who have extensive experience or expertise in the culture and language of Indochinese populations.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 76.590—Evaluation by the grantee.)

(2) The Secretary looks for information that show methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

- (i) The facilities that the applicant plans to use are adequate; and
- (ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Problems addressed.* (20 points)

(1) The Secretary looks for information that shows the extent to which educational problems of national significance are addressed by the project.

(2) The Secretary looks for information that shows the extent to which the project addresses needs that cannot be, or are not being, effectively addressed by State or local efforts.

(g) *Innovativeness.* (20 points)

The Secretary looks for information that shows the extent to which the project involves techniques that are new nationally but that build on current knowledge and research.

(h) *Scope.* (10 points)

The Secretary looks for information that shows the extent to which the applicant proposes a project that—

(1) Is national or regional in scope; and

(2) Provides services, or is likely to improve educational programs, for eligible children throughout the area served.

(i) *Coordination.* (10 points)

The Secretary looks for information that shows the extent to which the project coordinates activities with existing resource and dissemination centers.

(20 U.S.C. 3474(a))

Subpart E—How Are Funds Under the State-Administered Program To Be Spent?

§ 538.40 What are the restrictions on costs under the State-administered program?

(a)(1) Funds may not be used under this program for—

(i) Construction, repair, remodeling, or alteration of facilities or sites;

(ii) Payments of stipends to participants in inservice training or other workshops, including costs of participant travel, meals, or lodging associated with this training; or

(iii) Payments for the provision of health or social services.

(2) The restrictions in paragraph (a) of this section do not apply where a subgrant, contract, or cooperative arrangement is made, or direct services are provided, on behalf of 40 or fewer eligible children.

(b) Allowable costs are subject to the applicable cost principles in 34 CFR Part 74.

(Sec. 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

Note.—This Appendix is being published for informational purposes only and will not be published in Title 34 Code of Federal Regulations.

Appendix

Summary of Comments and Responses

The following is a summary of the approximately 115 comments received on the notice of proposed rulemaking (NPRM) for the Transition Program for Refugee Children. The comments are arranged in the order of the sections of the proposed regulations to which they pertain. Each set of comments is followed by a response that indicates any change that has been made to the regulations or why no change was considered appropriate.

Many of the added provisions and changes in the language and format of the final regulations are not discussed below. They were prompted by numerous commenters who expressed confusion about the meaning of certain provisions.

Part 537—Transition Program for Refugee Children

§ 122b.1 What is the transition program for refugee children?

Comment. This section and the following section of the proposed regulations generated the greatest number of comments. While commenters strongly supported the purposes and provisions governing the discretionary Development and Dissemination Projects Program, commenters uniformly opposed the dual (entitlement and competitive) nature of the State-administered grants program. Commenters suggested that assistance for refugee children should not be made contingent on the State's ability to prepare competitive proposals. The commenters feared that this competitive approach would tend to favor States that employ superior proposal writers. Commenters overwhelmingly supported an entitlement approach, where a formula grant award is made to a State based on the number of eligible children in the State for whom services are proposed.

Response. A change has been made. The final regulations eliminate the dual grant approach and provide for the award of formula grants to States based on the number of eligible children in the States for whom services are proposed under this program. When a local educational agency (LEA) does not apply to the State for a subgrant to serve the eligible children within its

jurisdiction, the State educational agency (SEA) may directly provide services to those children or may arrange, through subgrants, contracts, or cooperative agreements with public and nonprofit private agencies, organizations, and institutions, for services to be provided to those children.

Based on the elimination of the competitive approach, a number of changes to the final regulations have been made. Public comment on those provisions in the proposed regulations that governed the competitive approach of the State-administered projects will not be addressed in this appendix, since that approach has been eliminated from the final regulations.

Comment. Two commenters suggested that services under this program made available to preschool-age refugees and refugee adults.

Response. No change has been made. Section 412(d) of the Refugee Act of 1980 authorizes the provision of special educational services only to refugee children in elementary and secondary schools. Refugee adults are eligible for services under the Adult Education for Immigrants and Indochinese Refugees Program and under the Adult Education Program for Cuban/Haitian Entrants (34 CFR Part 432). Refugee children enrolled in elementary and secondary schools and preschool age refugee children, if limited English proficient, are eligible for special educational services under the Bilingual Education: Basic Projects and Demonstration Projects Programs (34 CFR Parts 501 and 502) authorized under Title VII of the Elementary and Secondary Education Act (ESEA).

Comment. Several commenters requested clarification of the relationship between this program and other programs, legislation, and regulations providing for the needs of refugee and entrant children. The commenters specifically mentioned the following: assistance to States provided under the Refugee Act of 1980; the Educational Services for Cuban and Haitian Entrants Program (Secretary's Discretionary Authority, Section 303 of ESEA; the Refugee Education Assistance Act of 1980 (Pub. L. 96-422), the Bilingual Education Program (Title VII of ESEA, Pub. L. 95-561), and the proposed regulations governing the rights of language minority students (Nondiscrimination Under Programs Receiving Federal Financial Assistance Through the Education Department) (34 CFR Part 100) published on September 11, 1980 in the Federal Register (45 FR 52052).

Response. The preamble to these regulations discusses the relation of this

program to the programs, legislation, and regulations mentioned by commenters.

§ 122b.2 Who is eligible to apply for financial assistance?

Comment. A number of commenters questioned the rationale for the concentration/proportion eligibility threshold established in the proposed regulations for LEAs applying to SEAs for subgrants. Commenters feared that eligible children who were enrolled in schools in LEAs that did not meet the eligibility requirement for a subgrant, would be left unserved. Commenters recommended that all LEAs be permitted to apply for subgrants to serve eligible children in their jurisdiction, regardless of the number, concentration, or proportion of eligible children in schools in their jurisdictions.

Response. A change has been made. The eligibility threshold has been eliminated. Any LEA with eligible children enrolled in schools within its jurisdiction may apply to the SEA for a subgrant to serve those children. When an LEA does not apply either singly or in a consortium for a subgrant, an SEA may provide services directly to the eligible children or may arrange for services to those children.

Comment. One commenter asked whether there were special conditions and restrictions for LEAs that apply as a consortium for a subgrant.

Response. The Education Division General Administrative Regulations (EDGAR) establishes the requirements for eligible parties that apply as a consortium, the LEAs that submit a joint application for a subgrant (34 CFR 76.303). All the conditions in these regulations that govern an LEA that applies singly for a subgrant also govern an LEA that applies in a consortium.

Comment. One commenter asked whether a State was required by law to submit to the Director of the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS) a plan for the administration of refugee resettlement programs in its State to be eligible to apply under this program.

Response. A change has been made. The regulations now state that a State must have an approved State plan on file with the Director of ORR. Requirements pertaining to the submission of that plan are contained in 45 CFR Part 400 (Refugee Resettlement Program; Plan and Reporting Requirements for States), published on September 9, 1980 in the Federal Register (45 FR 59318).

§ 122b.3 What regulations apply to this program?

Comment. One commenter suggested that this section of the regulations should specify which provisions in EDGAR apply to applicants and grantees under the different types of programs.

Response. A change has been made. This section now specifies which provisions in EDGAR apply to the different types of programs.

§ 122b.4 What definitions apply to this program?

Comment. One commenter questioned whether a change in the status of refugee children to permanent residents affects their eligibility under this program.

Response. No change has been made. A change in the refugee status of an eligible child does not preclude that child from receiving services under this program since program eligibility is based on the authority under which the child has entered the United States and not on the current status of the child.

§ 122b.10 What are the two types of State-administered projects?

Comment. Most of the commenters on this section questioned whether the list of eligible activities was inclusive and suggested additional activities eligible for support. Commenters suggested that the list of eligible activities be expanded to include remedial programs of instruction, training for parents, and mental health counseling. Three commenters asked whether bilingual instruction under this program was transitional in nature. One commenter suggested that instruction be conducted with appreciation for the cultural heritage and ethnic background of the eligible children.

Response. A change has been made. The regulations now state that the activities eligible for support under this program include, but are not limited to, the activities listed in this section. In response to public comment, the list of eligible activities has been expanded to include remedial instruction and parent training activities. Mental health counseling is allowable to the extent that a school provides that type of service as part of its ordinary counseling and guidance services.

The regulations now state that educational services should emphasize instruction to improve the English language skills of eligible children. A definition of "bilingual education", which emphasizes the transitional nature of the bilingual instruction supported under this program, has been

added to the definition section of the regulations. While it is hoped that instructional activities for refugee children would be conducted with appreciation of the cultural heritage and ethnic backgrounds of those children, these regulations do not specify particular instructional approaches, subjects, or courses of study.

Comment. Several commenters suggested that the regulations establish education or certification requirements for teachers of eligible children.

Response. No changes have been made. Establishing requirements for teachers is not authorized by statute.

Comment. Three commenters suggested that SEAs be allowed to provide technical assistance, where needed, to subgrantees and others assisting eligible children under this program. Several commenters suggested that the limit on funds spent for administration of a State grant be reduced from five percent to one percent, in line with the restrictions on administrative costs established in the Refugee Education Assistance Act of 1980.

Response. A change has been made. The regulations now state that an SEA may use up to one percent of the funds it receives in a State-administered grant for administration of the grant and for provision of technical assistance to subgrantees and others who are providing services under this program to eligible children.

§ 122b.11 What is a development and dissemination project?

Comment. One commenter asked why the format of this section did not parallel the format of the section describing eligible activities under the State-Administered Program. Another commenter asked whether development and dissemination projects would use existing centers, such as the Bilingual Education Service Centers (BESCs) funded under Title VII of ESEA, to disseminate materials and exemplary practices.

Response. A change has been made. The format of this section has been revised. The preamble to these regulations addresses the relation of the activities supported under the Transition Program for Refugee Children to the activities supported under the Bilingual Education Program. In addition, a selection criterion has been added that measures the extent to which the applicant under the Development and Dissemination Projects Program will coordinate activities with existing resource and dissemination centers.

§ 122b.20 *What are the application requirements for grants under both types of State-administered projects?*

Comment. Several commenters expressed confusion about the application and child count requirements for SEAs. A few commenters suggested that the SEA report in its application its plans for administering and monitoring the grant. Other commenters stated that identification of an eligible child's country of origin was burdensome. They suggested that the identification requirement either be eliminated or that a list of possible countries of origin be attached to the application to simplify the identification process.

Response. A change has been made. The section outlining application requirements has been rewritten. An SEA is now required to briefly describe its plan for administering and monitoring the program. In addition, this section cites the EDGAR provisions that govern assurances required from applicants.

To minimize the reporting burden of SEAs and LEAs eligible for assistance under the various ED programs (this program, Educational Services for Cuban and Haitian Entrant Children Program, and Titles II and III of the Refugee Education Assistance Act of 1980) that provide educational services to different refugee and entrant groups, the Secretary requires from SEAs and LEAs a single count of refugee and entrant children that identifies whether the children are of Indochinese, Cuban and Haitian, or other origin and records the recency of their arrival in the United States (in years).

The Secretary will use the counts reported under the various categories for recency of arrival in the United States to determine those Cuban and Haitian entrant children eligible under the Educational Services for Cuban and Haitian Entrant Children Program and those Cuban, Haitian, and Indochinese refugee children eligible under the Refugee Education Assistance Act of 1980 based on the date of their entry into the United States. The Secretary will use the single count to determine the amount of funds available for SEAs and LEAs under each of the refugee and entrant assistance programs. The Secretary believes this counting and reporting format will provide the best estimate of children eligible for assistance under the various programs and will greatly simplify the reporting and administrative responsibilities and requirements for SEAs.

In the event that funds are made available to implement Title II of the

Refugee Education Assistance Act of 1980, the Secretary may make an additional request to States to identify those Cuban and Haitian entrant children who are enrolled in public schools, since the form recording the State's single count does not distinguish between eligible children enrolled in public or nonprofit private schools. To make awards under Title III of the Refugee Education Assistance Act of 1980 which weights the recent of arrival of eligible children in an LEA, the Secretary will compare the LEA's current count with previous counts to determine the number of children who are new arrivals.

Comment. A few commenters suggested a second child count be conducted to allow for increases in the enrollment of eligible children that may occur between the first count and the beginning of the school year for which funds are made available.

Response. A section has been added which explains how the Secretary may provide for a substantial and disproportionate increase in the enrollment of eligible children that may occur after grants have been made. If the Secretary determines that there has been such an increase in the enrollment of eligible children, the Secretary may invite SEAs with increased enrollments to submit recounts of the number of eligible children. Where funds are available, the Secretary may provide additional funds to the SEA based on the increases in the number of eligible children, using the weighting factors in the regulations.

§ 122b.21 *What are the application requirements for development and dissemination projects?*

Comment. A few commenters questioned how an application under this program should be developed. They asked whether the narrative should address the requirements in this section as well as the selection criteria listed in § 122b.34 or whether the requirements in the two sections are the same.

Response. A change has been made. Section 122b.21 has been deleted. An applicant under this program should develop an application that addresses the selection criteria.

§ 122b.32 *How is a subgrant under a State-administered subgrant project made?*

Comment. Several commenters questioned the rationale for establishing the provision whereby the Secretary may increase by up to 100 percent the amount an LEA may receive based on a high concentration of eligible children (at least four percent) in schools within

the jurisdiction of the LEA. Commenters suggested that the needs of LEAs with high concentrations of refugee children were not necessarily greater than the needs of LEAs enrolling few eligible children. They recommended that this provision be eliminated from the final regulations and that, to the extent possible, funds be distributed equitably among all eligible children according to the weighted formula in the regulations.

Response. The concentration provisions have been deleted from the final regulations.

§ 122b.33 *What formula will be used to distribute funds under both types of State-administered projects?*

Comment. Commenters on this section generally accepted the Secretary's definition of elementary school (grades K-6) and secondary school (grades 7-12). They supported the concept of additional costs associated with the education of secondary school students and acknowledged that recent arrivals have greater needs which generate additional costs. A few commenters recommended that the weights be set at intervals of two years, instead of the one year intervals in the proposed regulations. They noted that their educational experience indicated that refugee children generally required more than a single year of special educational services to adapt to the new environment and to achieve a satisfactory level of academic performance.

Response. No change has been made to the regulations. Through a notice published in the *Federal Register* the Secretary may increase or decrease the weighting factors, if such change is deemed appropriate. The Secretary will carefully consider the comments received on this section in making that determination.

§ 122b.40 *What are the restrictions on costs a grant or subgrant may support?*

Comment. One commenter suggested that travel costs be allowed, as well as stipends for inservice training. A few commenters questioned the rationale for the 15 percent maximum allowed for support services, such as training and counseling activities. One commenter recommended raising the \$200,000 limit on administrative costs. Several commenters suggested that a "supplement not supplant" requirement be added to this section.

Response. Under the final regulations, the restrictions on costs under this program do not apply where a subgrant, contract, or cooperative agreement is made, or direct services are provided, on behalf of 40 or fewer eligible children.

Since the anticipated level of funding for this program is low (less than \$300 per eligible child) compared to the needs of the eligible children, funds must be concentrated on the provision of direct services to the children. It is expected that LEAs will assume, or find resources to cover, the travel and stipend costs for education personnel. However, it is conceivable that the best use of a limited amount of funds may be to cover the costs of sending a teacher to a workshop on the education of refugee children or providing health care for a refugee child so that the child may attend school.

A similar provision has been added to the section in the final regulations describing eligible activities that makes the 15 percent limit on the amount of funds available for support services applicable only where a subgrant, contract, or cooperative agreement is made, or direct services are provided, on behalf of more than 40 children. The Secretary believes 15 percent to be a reasonable allowance for support services under this program. Experience under the Bilingual Education: Basic Projects Program (Title VII, ESEA) indicates that 15 percent is more than adequate to cover inservice training costs. The average expenditure for inservice training is ten percent under the Basic Projects Program, which supports programs of bilingual education for children of limited English proficiency. However, the final regulations have retained a provision that enables the Secretary to decrease or increase that limit if experience indicates that a change in the limit is needed.

Provisions governing support services and administrative activities have been deleted from this section and placed in the section in the final regulations that govern eligible activities under the State-Administered Program. Many commenters believed that funds should directly benefit eligible children. As a result, the program was greatly streamlined so more funds would pass directly to LEAs. A single State administered program replaced the dual programs of direct and indirect assistance to eliminate unnecessary and costly administrative burdens. Furthermore, to increase the total amount of funds reaching children, in light of the reduced administrative burdens on the States, the maximum administrative set-aside was reduced from 5% to 1% of the total grant. The Secretary believes that a 1% limit on administrative costs is more in keeping with the amount set aside for administration under a similar program

(the Refugee Education Assistance Act of 1980) and provides adequate support for State administrative costs.

The legislation does not authorize a "supplement not supplant" requirement.

§ 122b.41 To what extent must a grantee or subgrantee provide an opportunity for eligible private school students to participate in a project?

Comment. Several commenters requested clarification of the requirements pertaining to the participation of children enrolled in nonprofit private schools. A few commenters suggested that bypass provisions be added to permit an SEA to arrange for or provide services to eligible children enrolled in nonprofit private schools, if an LEA is unwilling or unable to provide services to those children and to permit the Secretary to arrange for services for eligible children enrolled in nonprofit private schools when an SEA is not permitted by law to serve those children.

Response. Bypass provisions have been added.

[FR Doc. 81-1246 Filed 1-13-81; 8:45 am]

BILLING CODE 4000-01-M

34 CFR Part 539

Educational Services for Cuban and Haitian Entrant Children

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues final regulations to implement the Educational Services for Cuban and Haitian Entrant Children Program under the Secretary's Discretionary Authority, Section 303 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended. These regulations provide supplementary educational assistance to meet the special educational needs of Cuban and Haitian entrant children and to enhance their transition into American society.

EFFECTIVE DATE: These final regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed if Congress takes certain adjournments. If you want to know the effective date of these final regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. James Lockhart, Office of Bilingual Education and Minority Languages Affairs, Department of Education, (Room 505, Reporters Building), 400

Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 472-7177.

SUPPLEMENTARY INFORMATION:

I. Authority

The statutory authority for this program is Section 303 of ESEA, as amended, Pub. L. 95-561 (20 U.S.C. 2943).

II. Backgrounds

On September 11, 1980, the Secretary of Education published a Notice of Proposed Rulemaking (NPRM) to implement the Transition Program for Refugee Children. Since the "entrant" status of the Cuban and Haitian children preclude them from receiving services under the Transition Program for Refugee Children, the Secretary proposed in the preamble to the NPRM that a program of educational services for those children be operated under the Secretary's Discretionary Authority using regulations that parallel the final regulations for the Transition Program for Refugee Children. Public comment strongly supported the Secretary's proposal. Therefore, except for a different definition of "eligible children" and the absence of State eligibility requirements that are specific to the Transition Program for Refugee Children, the regulations issued in this part (34 CFR Part 539) are identical to those issued for the Transition Program for Refugee Children (34 CFR Part 538).

Readers should review the preamble and the appendix to the regulations governing the Transition Program for Refugee Children for a discussion of the relationship between this program and other programs and legislation providing for Cuban and Haitian entrant/refugee children and for a summary of the public comments and the Secretary's responses. The regulations for the Transition Program for Refugee Children are published in this issue of the Federal Register.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority placed in parentheses on the line following each substantive provision of the regulations.

Dated: December 16, 1980.

Shirley M. Hufstetler,
Secretary of Education.

(Catalog of Federal Domestic Assistance Program No. 84.138, Educational Services for Cuban and Haitian Entrant Children)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 539 to read as follows:

PART 539—EDUCATIONAL SERVICES FOR CUBAN AND HAITIAN ENTRANT CHILDREN

Subpart A—General

Sec.

539.1 What is the Educational Services for Cuban and Haitian Entrant Children?

539.2 Who is eligible to apply for financial assistance?

539.3 What regulations apply to this program?

539.4 What definitions apply to this program?

Subpart B—What Activities May Be Supported under the Educational Services for Cuban and Haitian Entrant Children Program?

539.10 What activities are eligible for support under State-Administered Program?

539.11 What activities are eligible for support under the Development and Dissemination Projects Program?

Subpart C—How to Apply for a Grant or a Subgrant Under the State-Administered Program and the Development and Dissemination Projects Program?

539.20 What documents does the State submit to receive a grant?

539.21 How is the number of eligible children determined?

539.22 To what extent must a State provide educational services to eligible children enrolled in nonprofit schools?

539.23 When does a State submit its application for a grant?

539.24 What documents must an applicant submit to an SEA to receive a subgrant?

539.25 When does an applicant submit its application?

Subpart D—How Are Grants and Subgrants Made to Applicants Under the State-Administered Program?

539.30 How does the Secretary review an application submitted by an SEA?

539.31 What formula will be used to distribute funds to SEAs with approved applications?

539.32 How does the Secretary provide for a substantial and disproportionate increase in the enrollment of eligible children that may occur after a grant has been made?

539.33 How are the amounts available for eligible children in each LEA determined?

539.34 [Reserved]

539.35 What criteria does the Secretary use to review an application under the Development and Dissemination Projects Program?

Subpart E—How Are Funds Under the State-Administered Program To Be Spent?

539.40 What are the restrictions on costs under the State-Administered Program?

Authority: Secretary's Discretionary Authority, Section 303 of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978, Pub. L. 95-561, 20 U.S.C. 2943

Subpart A—General

§ 539.1 What is the Educational Services for Cuban and Haitian Entrant Children Program?

(a) This program provides educational services to meet the special educational needs of eligible children who are enrolled in public and nonprofit private elementary and secondary schools.

(b) This program funds—

(1) Formula grants to States (under the State-Administered Program) based on the number of eligible children in the States; and

(2) Discretionary projects (under the Development and Dissemination Projects Program) designed to produce and demonstrate exemplary approaches, materials, and strategies to meet the special educational needs of eligible children.

(20 U.S.C. 2943)

§ 539.2 Who is eligible to apply for financial assistance?

(a) *State Administered Program.* (1) A State educational agency (SEA) is eligible to apply for a grant to assist local educational agencies (LEAs) in its State in providing special educational services to eligible children.

(2) An LEA or a consortium of LEAs may apply to the SEA for a subgrant to provide services to eligible children enrolled in public and nonprofit private schools within its jurisdiction.

(3) If an LEA does not apply for a subgrant to serve eligible children in schools within its jurisdiction, an SEA—

(i) Arranges through subgrants, contracts, or cooperative agreements with public and nonprofit agencies, organizations, and institutions (including institutions of higher education (IHEs)) for the provision of services to those children; or

(ii) Provides services directly to those children.

(b) *Development and Dissemination Projects Program.* The following may apply for a Development and Dissemination project:

(1) An SEA;

(2) An LEA;

(3) An IHE; and

(4) Any other public or nonprofit public agency, organization, or institution.

(20 U.S.C. 2943)

§ 539.3 What regulations apply to this program?

The following regulations apply to this program:

(a) *General.* (1) The regulations in this part 539,

(2) The Education Division General Administrative Regulations (EDGAR) 34 CFR Parts 74, 77, and 78.

(b) *State-Administered Program.* The regulations in 34 CFR Part 76, except—

(1) Section 76.101(a)-(d);

(2) Section 76.102;

(3) Section 76.103; and

(4) Section 76.105.

(c) *Development and Dissemination Projects Program.* The regulations in 34 CFR Part 75.

(d) If any sections or provisions of 34 CFR Parts 74-78 do not apply to this program, the inapplicability of those sections or provisions is explicitly stated in these regulations.

(20 U.S.C. 3474(a))

§ 539.4 What definitions apply to this program?

(a) The following definitions are specific to these regulations:

"Application" includes the terms "State plan" and "general application" as used in the EDGAR 34 CFR Parts 74-78.

"Bilingual education" means instruction given in, and study of, both English and, to the extent necessary to allow the children to achieve competence in the English language, the native language of the eligible children.

"Eligible children" means aliens who—

(1) Are Cuban-Haitians entrants (status pending) who entered the United States on or after November 1, 1979; and

(2) Who are within the age limits for which the applicable State is required or permitted under State law to provide free public elementary and secondary school education for students in kindergarten through grade 12.

(b) The following definitions in EDGAR (34 CFR Part 77) apply to these regulations:

Applicant

Application

Award

Local educational agency (LEA)

Nonprofit

Private

Project

Secretary

State

State educational agency (SEA)

(c) The following definitions in the Elementary and Secondary Education Act of 1965, as amended, apply to these regulations.

Construction

Elementary school

Secondary school

(20 U.S.C. 2854, and 20 U.S.C. 3474(a))

Subpart B—What Activities May Be Supported Under the Educational Services for Cuban and Haitian Entrant Children Program?

§ 539.10 What activities are eligible for support under the State-Administered Program?

The following services may be provided:

(a) Supplemental educational services—with emphasis on instruction to improve English language skills of eligible children—to enable those children to achieve and maintain a satisfactory level of academic performance. These services include—

(1) Testing to determine the educational needs of eligible children;

(2) Special English language instruction;

(3) Bilingual education;

(4) Remedial programs of instruction; and

(5) Special materials and supplies.

(b)(1) Up to 15 percent of the award may be used to provide support services for the eligible children, including but not limited to—

(i) Inservice training for educational personnel to work with eligible children to enable them more effectively to provide services to those children;

(ii) Training for parents of eligible children to enable them to participate more effectively in the education of their children; and

(iii) School counseling and guidance services for eligible children, including referrals to appropriate social services and health agencies.

(2)(i) In a given year, the Secretary may increase or decrease the 15 percent limit in paragraph (b)(1) of this section, if the Secretary determines that the need for these services is proportionately greater or less than the need to provide special educational services.

(ii) To make this determination, the Secretary considers evaluations of ongoing projects under this program and recommendations from persons experienced in educating refugee children.

(iii) The Secretary announces any change in the 15 percent limit through publication of a notice in the *Federal Register*.

(3) The restrictions in paragraph (b)(1) of this section do not apply where a subgrant, contract, or cooperative arrangement is made, or direct services are provided, on behalf of 40 or fewer eligible children.

(c)(1) An SEA may use up to one percent of the total funds it receives under the State-Administered Program—

(i) To ensure proper and efficient administration of funds under this program; and

(ii) To provide technical assistance to subgrantees and others who are providing services under this program to eligible children.

(2) The total amount of funds used by an SEA for the costs in paragraph (c)(1) of this section may not exceed \$200,000.

(20 U.S.C. 2943)

§ 539.11 What activities are eligible for support under the Development and Dissemination Projects Program?

(a) The following activities are eligible for support—

(1) Development of innovative methods, strategies, curricula, instructional materials, instructional programs, personnel development, or other techniques to meet the special educational needs of eligible children, in general, or of eligible children from particular areas of the world;

(2) Examination of the extent to which various projects effectively meet the special educational needs of eligible children; or

(3) Dissemination through national or regional centers, curriculum materials or exemplary practices that meet the special educational needs of eligible children.

(b) The Secretary may, through a notice published in the *Federal Register*, select specific activities for funding from among those listed in paragraph (a) of this section to respond to the changing national needs for educating eligible children in general or for educating eligible children from particular areas of the world.

(20 U.S.C. 2943 and 20 U.S.C. 3474(a))

§ 539.21 How is the number of eligible children determined?

(a) On a date specified by the Secretary through a notice published in the *Federal Register*, an SEA shall count the number of eligible children enrolled in public and nonprofit private schools in each LEA, who have been admitted into the United States—

(1) Less than one year;

(2) One to two years;

(3) Two to three years; or

(4) Three to four years.

(b)(1) For each category in paragraph (a) of this section, the SEA shall count the number of children enrolled at the elementary school level and the number enrolled at the secondary school level.

(2) For the purpose of this count—

(i) Children who are "enrolled at the elementary school level" means children in grades K-6.

(ii) Children who are "enrolled at the secondary school level" means children in grades 7-12.

(20 U.S.C. 2943 and 20 U.S.C. 3474(a))

§ 539.22 To what extent must a State provide educational services to eligible children enrolled in nonprofit private schools?

(a)(1) The SEA shall provide opportunities for eligible children enrolled in nonprofit private schools to receive educational services under this program.

(2) The requirements which must be met by an SEA with respect to eligible children enrolled in nonprofit private schools are contained in EDGAR (34 CFR 76.651-76.662).

(b) If an LEA is unwilling or unable to provide educational services to eligible children enrolled in nonprofit private elementary and secondary schools, an SEA—

(1) Arranges through a subgrant, contract, or cooperative agreement with a public or nonprofit private agency, organization, or institution for the provision of services to those children; or

(2) Provides services directly to those children.

(c) If a State is prohibited by law from providing educational services to children enrolled in nonprofit private elementary and secondary schools, or if the Secretary determines that an SEA is unwilling or has substantially failed to provide educational services on an equitable basis to eligible children enrolled in nonprofit private schools, the Secretary may—

(1) Proportionally reduce the funds granted to the State; and

(2) Arrange for other means of providing services to those children.

(20 U.S.C. 3474(a))

§ 539.23 When does a State submit its application for a grant?

To be eligible for funds, an SEA must transmit its application in accordance with the application notice published in the *Federal Register* that establishes a deadline for the transmittal of State applications.

(20 U.S.C. 3474(a))

§ 539.24 What documents must an applicant submit to an SEA to receive a subgrant?

To receive a subgrant, an applicant shall submit to the SEA an application containing the following information:

(a) A count of the number of eligible children in its jurisdiction, as required in § 539.21.

(b) A brief description of the educational services to be provided for

the eligible children and the estimated costs.

(c) The assurances required in EDGAR (34 CFR 76.301(c)).

(Sec. 412(a)(4) of the Immigration and Nationality Act, as amended and 20 U.S.C. 3474(a))

§ 539.25 When does an applicant submit its application?

An SEA establishes a deadline for receipt of applications for subgrants under this program.

(20 U.S.C. 3474(a))

Subpart D—How Are Grants and Subgrants Made to Applicants Under the State-Administered Program?

§ 539.30 How does the Secretary review an application submitted by an SEA?

The Secretary reviews and approves an application submitted by an SEA if the application complies with the requirements in this part.

(20 U.S.C. 3474(a))

§ 539.31 What formula will be used to distribute funds to SEAs with approved applications?

(a)(1) The most weight will be given to eligible children who have been admitted into the United States for less than one year on the date the child count was made.

(2) Eligible children in paragraph (a)(1) of this section enrolled in elementary and secondary grades will be weighted equally.

(b)(1) Less weight will be given for eligible children who have been admitted into the United States for more than one year on the date the child count was made.

(2) Eligible children in paragraph (b)(1) of this section enrolled in secondary schools will be given more weight than eligible children enrolled in elementary schools.

(c)(1) The Secretary uses the weighting factors in paragraph (d) of this section.

(2) The Secretary may increase or decrease any weighting factor by one or two points to respond to changing needs of eligible children.

(3) The Secretary announces the weighting factors through publication of a notice in the Federal Register.

(d) Weighting factors for the fund distribution formula are presented in the following table:

Recency of arrival in the United States (in years)	Weighting factors by school level	
	Elementary	Secondary
2 to 3	4	7
3 to 4	1	3
More than 4	0	0

(e) To determine the amount of a grant—

(1) The applicant's child count for each recency of arrival category is multiplied by the weighting factor for the category;

(2) The products for each category are added; and

(3) The sum of the products are multiplied by the weighted per pupil allocation.

Example: The following table presents a computation for a hypothetical LEA based on the weighting factors in paragraph (d) of this section:

Recency of arrival in the United States (in years)	(a) Number of eligible children	(b) Sample weighting factor	Weighted count (product of col. a times b)
Enrolled in Elementary Grades			
0 to 1	10	10	100
1 to 2	10	7	70
2 to 3	5	4	20
3 to 4	0	1	0
More than 4	0	0	0
Enrolled in Secondary Grades			
0 to 1	10	10	100
1 to 2	10	9	90
2 to 3	5	7	35
3 to 4	0	3	0
More than 4	0	0	0
Total	50		415

(4) In the example above, if the weighted per pupil allocation is \$50, the grant award would be \$20,750. As an example of how much would be paid on behalf of an individual student, if the weighted per pupil allocation is \$50, the payment for a student who has been in this country less than a year would be \$500; for a secondary grade student who has been in this country between 3 and 4 years, the payment would be \$150.

(20 U.S.C. 2943 and 20 U.S.C. 3474(a))

§ 539.32 How does the Secretary provide for a substantial and disproportionate increase in the enrollment of eligible children that may occur after a grant has been made?

(a)(1) If the Secretary determines that there has been a substantial and disproportionate increase in the enrollment of eligible children, the Secretary may provide SEAs an opportunity to submit evidence of the

increase of the number of eligible children enrolled in schools in the State.

(2) Through a notice published in the Federal Register, the Secretary invites SEAs with increased enrollments of eligible children to submit a recount of the number of eligible children enrolled in schools in the State, according to the provisions in § 539.21.

(b) Where funds are available, the Secretary may provide additional assistance to an SEA based on the increase in the number of eligible children in the State, provided that the SEA submits a plan outlining how the additional funds would be spent to provide services for those children.

(c) In distributing funds under paragraph (b) of this section, the Secretary uses the weighting factors in § 539.31.

(d) The Secretary does not decrease the amount of an award to an SEA where there is a decrease in the enrollment of eligible children.

(20 U.S.C. 2943 and 20 U.S.C. 3474(a)).

§ 539.33 How are the amounts available for eligible children in each LEA determined?

In determining the amounts available for eligible children in each LEA, the SEA—

(a) Subtracts from the SEA's award the costs budgeted for the administration of the SEA grant award and for technical assistance (These costs may not exceed one percent of the SEA award.); and

(2) Applies the formula in § 539.31 to determine the amounts of funds available for eligible children in each LEA.

(20 U.S.C. 2943 and 20 U.S.C. 3474(a))

§ 539.34 [Reserved]

§ 539.35 What criteria does the Secretary use to review an application under the Development and Dissemination Projects Program?

The Secretary uses the following selection criteria worth a total of 100 points. The relative importance of each criterion is indicated next to the heading of that criterion.

(a) Plan of operation (20 points)

(1) The Secretary reviews each application for information that shows that quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

Recency of arrival in the United States (in years)	Weighting factors by school level	
	Elementary	Secondary
Less than 1	10	10
1 to 2	7	9

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

Note.—The qualification of project personnel should relate to the population served by the project. For example, when reviewing projects that serve Haitian children, the Secretary looks for project personnel who have extensive experience or expertise in the culture and language of the Haitian population.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 76.590—Evaluation by the grantee)

(2) The Secretary looks for information that show methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Problems addressed.* (20 points)

(1) The Secretary looks for information that shows the extent to which educational problems of national significance are addressed by the project.

(2) The Secretary looks for information that shows the extent to which the project addresses needs that cannot be, or are not being, effectively addressed by State or local efforts.

(g) *Innovativeness.* (20 points)

The Secretary looks for information that shows the extent to which the project involves techniques that are new nationally but that build on current knowledge and research.

(h) *Scope.* (10 points)

The Secretary looks for information that shows the extent to which the applicant proposes a project that—

(1) Is national or regional in scope; and

(2) Provides services, or is likely to improve educational programs, for eligible children throughout the area served.

(i) *Coordination.* (10 points)

The Secretary looks for information that shows the extent to which the project coordinates activities with existing resource and dissemination centers.

(20 U.S.C. 3474(a))

Subpart E—How Are Funds Under the State-Administered Program To Be Spent?

§ 539.40 What are the restrictions on costs under the State-Administered Program?

(a)(1) Funds may not be used under this program for—

(i) Construction, repair, remodeling, or alteration of facilities or sites;

(ii) Payments of stipends to participants in inservice training or other workshops, including costs of participant travel, meals, or lodging associated with this training; or

(iii) Payments for the provision of health or social services.

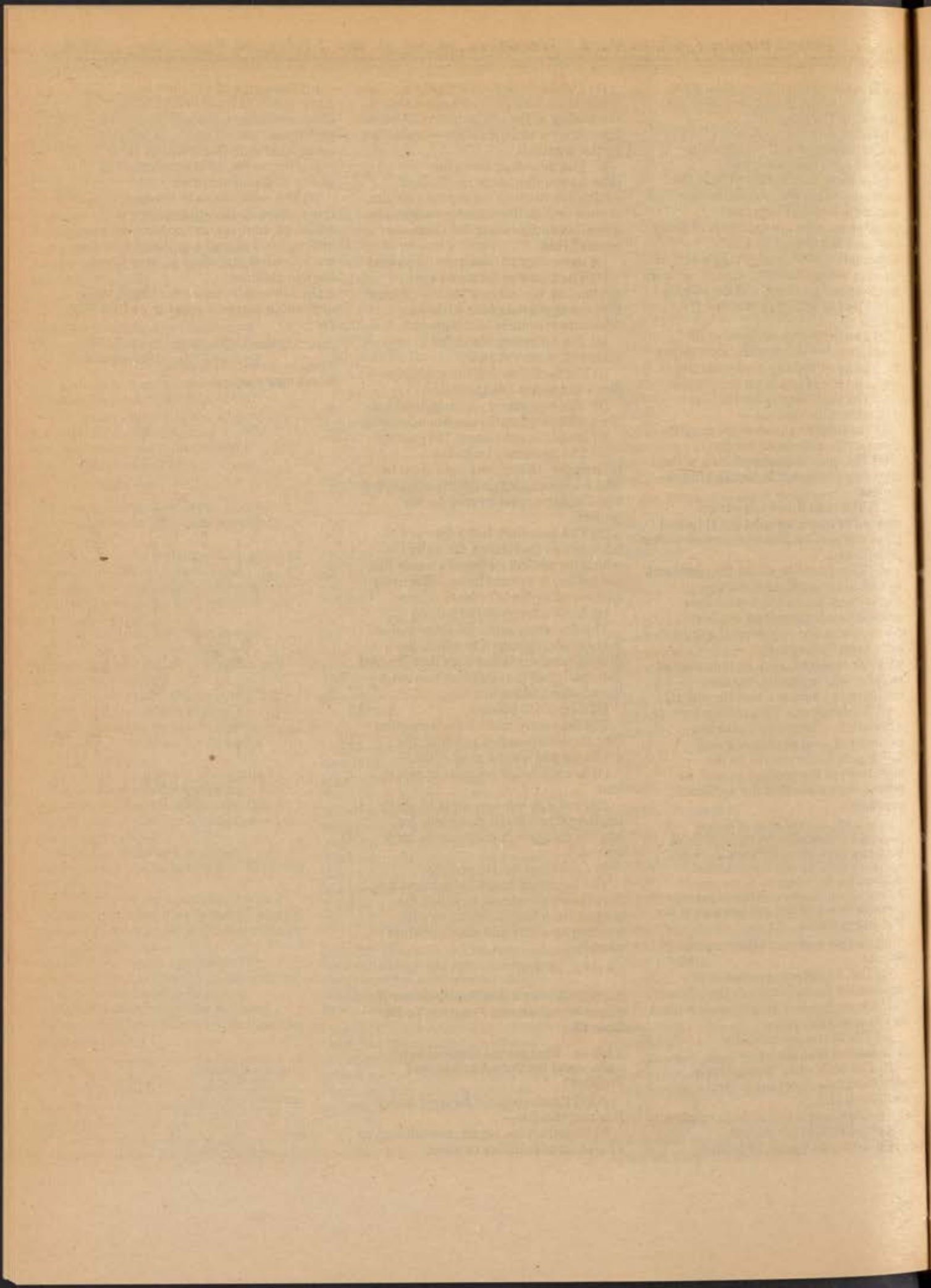
(2) The restrictions in paragraph (a) of this section do not apply where a subgrant, contract, or cooperative arrangement is made, or direct services are provided, on behalf of 40 or fewer eligible children.

(b) Allowable costs are subject to the applicable cost principles in 34 CFR Part 74.

(20 U.S.C. 2943 and 3474(a))

[FR Doc. 81-1247 Filed 1-13-81; 8:45 am]

BILLING CODE 4000-01-M



federal register

**Wednesday
January 14, 1981**

Part VII

Office of Management and Budget

**Cumulative Report on Rescissions and
Deferrals**

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

January 1, 1981.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This month's report gives the status as of January 1, 1981 of 26 deferrals contained in the first two special messages for FY 1981. These messages were transmitted to the Congress on October 1, and December 2, 1980.

Deferrals (Table A and Attachment A)

As of January 1, 1981, \$2,737.8 million in 1981 budget authority was being deferred from obligation and another \$0.7 million in 1981 obligations was being deferred from expenditure. Attachment A shows the history and status of each deferral reported during FY 1981.

Information From Special Messages

The special messages containing information on the deferrals covered by the cumulative report are printed in the **Federal Register** of:

Monday, October 6, 1980 (Part VIII, Vol. 45, No. 195)

Friday, December 5, 1980 (Part VII, Vol. 45, No. 236)

James T. McIntyre, Jr.,

Director.

Table A—Status of 1981 Deferrals

	Amount (in millions of dollars)
Deferrals proposed by the President.....	4,236.1
Routine Executive releases (-1,491.6 million) and adjustments (-0-) through January 1, 1981.....	-1,491.6
Overtaken by the Congress.....	-0-
Currently before the Congress.....	2,744.5

*This amount includes \$6.7 million in outlays for a Department of the Treasury deferral (DBI-19A).

Attachments.

BILLING CODE 3110-01-M

PAGE 1	ATTACHMENT A - STATUS OF DEFERRALS - FISCAL YEAR 1981				AS OF 01/03/81 17:11		
AMOUNTS IN THOUSANDS OF DOLLARS	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE / AGENCY RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 1-01-81
FUNDS APPROPRIATED TO THE PRESIDENT							
International Security Assistance							
Foreign military credit sales	BA D81-23	659,250		12 2 80	-409,250		250,000
Economic support fund	BA D81-24	1,984,500		12 2 80	-690,880		1,293,620
DEPARTMENT OF AGRICULTURE							
Forest Service							
Timber salvage sales	BA D81- 1	16,481		10 1 80			16,481
Expenses, brush disposal	BA D81- 2	37,342		10 1 80			37,342
DEPARTMENT OF AGRICULTURE TOTAL BA							
53,823							
DEPARTMENT OF COMMERCE							
General Administration							
Participation in U.S. expositions	BA D81- 3	2,867		10 1 80			2,867
National Oceanic and Atmospheric Administration							
Construction	BA D81- 4	10,230		10 1 80	-5,230		5,000
DEPARTMENT OF COMMERCE TOTAL BA							
13,097							
-5,230							
7,867							

PAGE 2		ATTACHMENT A - STATUS OF DEFERRALS - FISCAL YEAR 1981				AS OF 01/03/81 17:11		
AMOUNTS IN THOUSANDS OF DOLLARS ----- AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MD DA YR	CUMULA- TIVE DMB /AGENCY RELEASES	CONGRES- SIONALLY REQUIRED RELEASES	CUMULA- TIVE ADJUST- MENTS	AMOUNT DEFERRED AS OF 1-01-81
DEPARTMENT OF DEFENSE-MILITARY								
Procurement								
Procurement activities	BA D81- 5	139,300		10 1 80	-107,900			31,800
Research, Development, Test, and Evaluation								
RD&E Activities	BA D81- 6	46,500		10 1 80				46,500
Military Construction								
Military construction (medical facilities)	BA D81-25	111,300		12 2 80				111,300
Military construction, all services	BA D81- 7	6,983		10 1 80				369,790
BA D81- 7A			600,344b	12 2 80	-237,537			
Family Housing, Defense								
Family housing, Defense	BA D81- 8	18,651		10 1 80	-18,651			
DEPARTMENT OF DEFENSE-MILITARY								
TOTAL BA		323,134	600,344		-364,088			559,390
DEPARTMENT OF DEFENSE-CIVIL								
Wildlife Conservation, Military Reservations								
Wildlife conservation, all services	BA D81- 9	667		10 1 80	-136a			531
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Alcohol, Drug Abuse & Mental Health Administration								
Construction & renovation, St. Elizabeths Hospital	BA D81-10			10 1 80				10,698
Office of Assistant Secretary for Health								

PAGE 3			ATTACHMENT A - STATUS OF DEFERRALS - FISCAL YEAR 1981			AS OF 01/03/81 17:11		
AMOUNTS IN THOUSANDS OF DOLLARS	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULA- TIVE OMB /AGENCY RELEASES	CONGRES- SIONALLY REQUIRED RELEASES	CUMULA- TIVE ADJUST- MENTS	AMOUNT DEFERRED AS OF 1-01-81
AGENCY/BUREAU/ACCOUNT								
Special foreign currency program BA D81-11		8,000		10 1 80				8,000
Human Development Services								
White House Conference on Children and Youth BA D81-12		562		10 1 80				562
DEPARTMENT OF HEALTH AND HUMAN SERVICES TOTAL BA		19,260						19,260
DEPARTMENT OF THE INTERIOR								
Heritage Conservation and Recreation Service								
Land and water conservation fund BA D81-13		30,000		10 1 80				30,000
Geological Survey								
Payments from proceeds, sale of water BA D81-14		41		10 1 80				41
Bureau of Mines								
Drainage of anthracite mines BA D81-15		765		10 1 80				765
DEPARTMENT OF THE INTERIOR TOTAL BA		30,806						30,806
DEPARTMENT OF JUSTICE								
Federal Prison System								
Buildings and facilities BA D81-16		15,750		10 1 80				15,750
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Facilities & equip. (Airport & airway trust fund)								

PAGE 4 ATTACHMENT A - STATUS OF DEFERRALS - FISCAL YEAR 1981				AS OF 01/03/81 17:11			
AMOUNTS IN THOUSANDS OF DOLLARS	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULA- TIVE OMB /AGENCY RELEASES	CONGRES- SIONALLY REQUIRED RELEASES	AMOUNT DEFERRED AS OF 1-01-81
AGENCY/BUREAU/ACCOUNT							
BA D81-17		133,823		10 1 80			
BA D81-17A			240,603	12 2 80			374,426
DEPARTMENT OF THE TREASURY							
Office of Revenue Sharing							
State and local government fiscal assistance fund							
BA D81-18		111,773		10 1 80	-1,095		110,678
Bureau of the Mint							
Construction of mint facilities							
0 D81-19		5,485		10 1 80			
0 D81-19A			5,209	12 2 80	-3,956		6,738
Construction of mint facilities							
BA D81-20		5,730		10 1 80			5,730
DEPARTMENT OF THE TREASURY							
TOTAL BA		117,503			-1,095		116,408
TOTAL 0		5,485	5,209		-3,956		6,738
OTHER INDEPENDENT AGENCIES							
Federal Emergency Management Agency							
Emergency planning, preparedness, and mobilization							
BA D81-21		80		10 1 80			80
Tennessee Valley Authority							
Tennessee Valley Authority fund							
BA D81-22		17,000		10 1 80	-17,000		
BA D81-26		15,800		12 2 80			15,800
OTHER INDEPENDENT AGENCIES							
TOTAL BA		32,880			-17,000		15,880
TOTAL BA		3,384,493	840,947		-1,487,679		2,737,761
TOTAL 0		5,485	5,209		-3,956		6,738

FOOTNOTES

a. This amount was released before the special message containing the deferral was transmitted to the Congress.

[FR Doc. 81-1345 Filed 1-13-81; 8:45 am]

BILLING CODE 3150-01-C

federal register

**Wednesday
January 14, 1981**

Part VIII

**Department of
Education**

**Graduate and Professional Study
Fellowships**

DEPARTMENT OF EDUCATION

34 CFR Part 649

Graduate and Professional Study Fellowships

AGENCY: Department of Education.**ACTION:** Final regulations with invitation to comment.

SUMMARY: The Secretary issues final regulations for the Graduate and Professional Study Fellowships Program. The regulations, which implement Title IX, Part B of the Higher Education Act of 1965, have been amended to reflect the statutory changes in the Education Amendments of 1980 and to reflect changes required by the Education Department General Administrative Regulations (EDGAR).

These regulations specify the selection criteria the Secretary uses in evaluating applications for fellowships for graduate and professional study, public service education, and studies in domestic mining and mineral and mineral fuel conservation. These regulations also describe application procedures, eligibility requirements, and the terms and conditions of an award.

DATES: Comments must be received on or before March 16, 1981. The regulations are expected to take effect 45 days after they are transmitted to the Congress. Regulations are usually transmitted to the Congress several days before they are published in the *Federal Register*. The effective date is changed if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

ADDRESS: Comments should be addressed to: Donald N. Bigelow, Chief, Graduate Training Branch, Division of Training and Facilities, Room 3060, ROB #3, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Donald N. Bigelow, Telephone (202) 245-2347.

SUPPLEMENTARY INFORMATION:**Waiver of Proposed Rulemaking Procedures**

In accordance with Section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), it has been the practice of the Secretary to offer interested parties the opportunity to comment on these proposed regulations. The Secretary then reviews these comments and makes appropriate changes before

republishing the regulations in final form.

For the reasons described in the following paragraph, the use of that practice in connection with the provisions of these regulations is impracticable and contrary to the public interest under 5 U.S.C. 553(b). However, the Secretary invites the public to comment on these final regulations and will consider appropriate comments before publishing the final regulations again.

The Secretary has waived proposed rulemaking procedures because it would be impossible to invite applications against final regulations and still make awards by April 1, 1981, which is required if institutions of higher education are to be able to recruit qualified students for the 1981-82 academic year. With the publication of proposed regulations followed by a minimum thirty-day comment period, final regulations could be issued only by mid-to-late-March. If applications were invited against the final regulations, they would not be due until early May. Review of applications would delay awards until July. For 1981-82, this would undermine the program's purpose to recruit eligible students in supported academic areas.

Issues

Several changes were made in the program by the Education Amendments of 1980. Issues related to these changes include—

1. *Level of financial need.* The statute requires that an institution, in assessing applications for fellowships, apply a measurement of financial need approved by the Secretary. The Secretary intends to provide as much flexibility as possible to institutions of higher education in determining financial need.

Under these regulations, an applicant institution shall state in its application the method it proposes to use for determining financial need. The Secretary's approval of the application constitutes approval of the method.

2. *Broader authority of the statute.* Prior to the reauthorization of the Higher Education Act of 1980, Title IX-B consisted only of Graduate and Professional Opportunities Fellowships. Under the amended legislation Title IX-B consolidates these fellowships with those previously authorized in Title IX, Parts C and D, namely fellowships for Public Service Education and Domestic Mining and Mineral and Mineral Fuel Conservation.

Under the consolidated part, Section 922(e) requires that at least as much money be spent each year on Public

Service fellowships, Mining fellowships, and Graduate and Professional Opportunity fellowships, as was spent in fiscal year 1979 for each of these categories, namely, \$4 million, \$4.5 million, and \$8 million, respectively.

The Secretary interprets the authority of the amended Title IX-B not to be exhausted by these three categories of fellowships. The statute appears to be broad enough to authorize the establishment of additional fellowship categories for graduate students in financial need. However, given the minimum funding requirement in Section 922(e) of the Act, at present, no funds are being provided for this purpose. The Secretary will regulate with respect to this broader authority if funds are made available.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in any future revision of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3060, ROB #3, 7th and D Streets SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except for Federal holidays.

Assessment of Educational Impact

On November 14, 1980, the Secretary published a notice in the *Federal Register* of the Department's intent to publish regulations necessary to implement the Education Amendments of 1980. In that notice, the Department listed the existing regulations affected by the new law and requested comments whether those regulations required information that is already being gathered by or is available from any other agency or authority of the United States. The regulations in this document are based on regulations listed in the November 14, 1980 notice. Based on any comments received and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96-354, enacted Sept. 19, 1980) requires each Federal agency to prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis for each regulation that—

(1) Is published as a notice of proposed rulemaking after January 1, 1981, and

(2) Has a significant economic impact on a substantial number of small entities (small businesses, small organizations, or small governmental jurisdictions).

Because the Department has not yet established its own definitions of "small organization" and "small governmental jurisdiction," as contemplated by the Act, it is not possible to prepare a full initial regulatory flexibility analysis at this time. Further, since the regulations in this document are required by statute to be published in final form no later than May 31, 1981, it is impracticable to delay publication while the necessary definitions are being developed. As noted elsewhere in this preamble, it was impracticable to take public comments before publishing these regulations as final. For the same reasons, it was impracticable to delay the regulations while an initial regulatory flexibility analysis was prepared. In these circumstances, the Regulatory Flexibility Act permits a waiver or delay of the initial regulatory flexibility analysis. If it is determined that these regulations are subject to that Act, the Secretary will prepare the necessary analyses at a later date.

As an interim measure, this document, to the maximum extent possible, includes information of the kind contemplated by the Regulatory Flexibility Act, including the reasons for the regulations, the objectives and legal basis for the regulations, and any significant issues and alternatives for consideration by the public. To assist the Department in determining whether the Regulatory Flexibility Act applies to these regulations, and in complying with the Act's requirements, public comment is especially invited on the following matters:

(1) The number and kind of small entities (small businesses, small organizations, or small governmental jurisdictions) affected by the regulations;

(2) The reporting, recordkeeping, and compliance burdens imposed by the regulations on small entities;

(3) The type of professional skills necessary for preparation of any reports or records required by the regulations;

(4) Any Federal rules that may duplicate, overlap, or conflict with the regulations;

(5) Any significant alternatives that would accomplish the purposes of the applicable statute but would minimize any significant economic impact of the regulations on small entities. The Secretary is particularly interested in suggestions on alternatives such as the following:

- The establishment of differing reporting or compliance requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements for small entities.
- The use of performance rather than design standards.
- An exemption for small entities from coverage of part or all of the regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provisions of these regulations.

Dated: January 9, 1981.

Shirley M. Hufstедler,
Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.094, Graduate and Professional Study Fellowships)

Part 649 of Title 34 of the Code of Federal Regulations is revised to read as follows:

PART 649—FELLOWSHIPS FOR GRADUATE AND PROFESSIONAL STUDY**Subpart A—General**

Sec.

649.1 Fellowships for Graduate and Professional Study.

649.2 Eligible parties.

649.3 Regulations that apply to the Fellowship Program.

649.4 Definitions.

Subpart B—How Does an Institution Apply for and Obtain Approval of its Programs?

649.10 How to apply for funds.

649.11 How does the Secretary evaluate an application?

649.12 What selection criteria does the Secretary use for Graduate and Professional Opportunity Fellowships?

649.13 What selection criteria does the Secretary use for Public Service Fellowships?

649.14 What selection criteria does the Secretary use for Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships?

Subpart C—How Does a Person Apply for a Fellowship?

649.20 Application procedures.

Subpart D—How Are Fellows Selected?

Sec.

649.30 What are the criteria for selecting fellows?

Subpart E—What Conditions Must Be Met by an Institution and a Fellow?

649.40 Tenure of fellowship.

649.41 Vacated fellowships

649.42 Fellowship conditions.

Subpart F—What are the Administrative Responsibilities of the Institution?

649.50 Amount of a fellowship.

649.51 Institutional allowance.

649.52 Payment procedures.

Authority: Part B of Title I of the Higher Education Act, as amended by Pub. L. 96-374 (94 Stat. 1367, 1487; 20 U.S.C. 1134e-1134g).

Subpart A—General**§ 649.1 Fellowships for graduate and professional study.**

(a) Fellowships for Graduate and Professional Study—referred to in these regulations as the Fellowship Program—provides Federal assistance to enable institutions of higher education to make available fellowship awards in post-baccalaureate education to graduate and professional students who demonstrate financial need.

(20 U.S.C. 1134d)

(b) An institution of higher education may apply for a grant under this program to award one or more of the following types of fellowships:

(1) *Graduate and Professional Opportunity Fellowships*, awarded to individuals from groups who are underrepresented in graduate or professional study;

(2) *Public Service Education Fellowships*, awarded to individuals who plan to begin or continue a career in public service;

(3) *Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships*, awarded to individuals who plan to begin advanced study in domestic mining and mineral and mineral fuel conservation, including oil, gas, coal, oil shale, and uranium.

(20 U.S.C. 1134e(f))

§ 649.2 Eligible parties.

Institutions of higher education are eligible for grants under these regulations.

(20 U.S.C. 1134e)

§ 649.3 Regulations that apply to the fellowship program.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (General), except that §§ 75.116, 75.117, and 75.232

are inapplicable to this program; and §§ 75.510-.568 are inapplicable to the institutional allowances to institutions of higher education under this program.

(b) The regulations in this Part 649.

(20 U.S.C. 1221e-3)

§ 649.4 Definitions.

(a) The following terms used in this part are defined in 34 CFR Part 77 (EDGAR):

Applicant
Application
Award
Budget Period
Department
Secretary

(b) The following definitions apply specifically to this part:

"Academic area" means a professional school, academic department, or similar organizational unit within an institution of higher education.

"Academic career beyond high school" means a career as a teacher, administrator, or educational specialist at some level of postsecondary education.

"Act" means the Higher Education Act of 1965, as amended.

"Domestic mining" means the process of extracting from the earth mineral and mineral fuel resources of the United States.

"Fellow" means a fellowship recipient.

"Fellowship" means an award made by an institution of higher education to a person for graduate or professional study under Title IX-B of the Act.

"Financial need" means the difference between a student's projected costs for the year—including books, materials, supplies, room and board, and other reasonable costs—and the student's resources, including available income and other available assets.

"Independent institution" means an institution of higher education, other than one that is publicly controlled, that meets the definition of an institution of higher education in section 1201(a) of the Act.

"Internship" means a supervised administrative experience that provides a student with a practical introduction to a career in public service.

"Mineral and mineral fuel conservation" is the means by which an adequate supply of the Nation's non-renewable resources is maintained through exploration of new sources, more efficient extraction of existing reserves, or better use of already processed minerals and mineral fuels.

"Public service education" means the preparation for leadership and

management careers in local, State, or national government or in nonprofit community service organizations.

"Underrepresented groups" means minorities and other groups, including women, who are underrepresented in the specific graduate area of study or profession in which the award is made.

(20 U.S.C. 1134d-1134g)

Subpart B—How Does an Institution Apply for and Obtain Approval of its Program?

§ 649.10 How to apply for funds.

(a) In order to apply for a grant under this part, an institution of higher education must submit an application that responds to the appropriate criteria in §§ 649.12, 649.813, and 649.14.

(b) The application must describe how the institution of higher education will select eligible individuals to receive fellowships. This description must include evidence that the selected individual—

(1) Will achieve the academic goals of the fellowship; and

(2) Can demonstrate a level of financial need based on the institution's method or methods which the Secretary approves for determining financial need. An institution may—

(i) Use its own financial need analysis system, which may or may not incorporate or adapt a more general system such as that provided by the College Scholarship Service (CSS), the American College Testing Service (ACT), or the Graduate and Professional School Financial Aid Service (GAPSFAS); or

(ii) Use exclusively one of the systems referred to in paragraph (b)(2)(i) of this section; and

(iii) Under either paragraph (b)(2)(i) or (ii) of this section, take into account—as evidence of financial need—an individual's prior receipt of fellowship assistance under this program.

(20 U.S.C. 1134f(a))

§ 649.11 How does the Secretary evaluate an application?

(a) *Funding reservations.*

(1) The Secretary reserves funds for Graduate and Professional Opportunity Fellowships, Public Service Education Fellowships, and Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships in accordance with section 922(e) of the Act (referring to the amount the Secretary is required to expend for each category of fellowships) and applicable appropriation statutes.

(20 U.S.C. 1134e(e))

(2) Before considering applications that include support for new

fellowships, the Secretary provides funds to continue support for qualified students—

(i) Who were awarded fellowships under this program in a previous year; and

(ii) Who are maintaining satisfactory progress as determined by the institution.

(20 U.S.C. 1134f(b))

(3) From the sums appropriated under this program for any fiscal year, the Secretary does not make to a single institution of higher education a grant less than \$75,000, except to the extent that payments are made for continuation fellowships only—without any new fellowship—and the total sum equals less than \$75,000.

(20 U.S.C. 1134e(b))

(b) *Selection criteria.*

Subject to the funding reservations, the Secretary—in determining whether to select an institution of higher education for a grant and how many fellowships to authorize under the grant—assesses an application on the basis of the criteria in § 649.12 for Graduate and Professional Opportunity Fellowships; the criteria in § 649.13 for Public Service Education Fellowships; and the criteria in § 649.14 for Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships.

(1)(i) In assessing applications for Graduate and Professional Opportunity Fellowships, the Secretary ranks each academic area in which an applicant proposes to award fellowships. The Secretary ranks each academic area according to the combined scores for institution-wide criteria and criteria for that area.

(ii) The Secretary awards up to 56 possible points for the institution-wide criteria (§ 649.12 (a)-(e)), and up to an additional 44 possible points for the criteria specific to the academic area submitted (§ 649.12 (f)-(k)).

(2) In assessing an application for Public Service Fellowships, the Secretary awards up to 100 possible points.

(3) In assessing an application for Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships, the Secretary awards up to 100 possible points.

(4) The maximum possible score for each criterion is indicated in parentheses following the heading for that criterion.

(5) In evaluating an application from an institution that previously received a grant under this program, the Secretary assesses the extent to which the

previously funded grant achieved its objectives.

(20 U.S.C. 1134e(d) (1) and (2))

(c) *Other considerations.*

For applications of substantially equal quality, the Secretary gives priority to applications that will contribute to achieving the following:

(1) An equitable geographic distribution of grants.

(2) An equitable distribution of awards among eligible public and independent institutions of higher education.

(20 U.S.C. 1134e(b)(1))

(3) An appropriate balance of fellowships with regard to academic areas, taking account of present and projected needs for highly trained individuals in all academic careers beyond the high school level and in other than academic career fields of high national priority.

(20 U.S.C. 1124e(d))

§ 649.12 What selection criteria does the Secretary use for graduate and professional opportunity fellowships?

Institution-Wide Criteria

(a) *Institutional commitment.* (18 points)

(1) The Secretary reviews each application for information that shows the overall strength of an institution's commitment to meet the needs of the students it proposes to serve from underrepresented groups.

(2) The institution may demonstrate this commitment in such ways as the following:

(i) The provision of evidence that the institution's social and academic environment is supportive of the academic success of students from underrepresented groups on the applicant's campus.

(ii) The availability of other sources of financial aid and support mechanisms for these students.

(iii) The hiring of faculty and administrators from underrepresented groups.

(b) *Recruitment plan.* (14 points)

(1) The Secretary reviews each application for information that describes that institution's recruitment plan.

(2) The Secretary looks for information that shows:

(i) An active, aggressive, and imaginative effort to identify and attract qualified individuals from underrepresented groups.

(ii) The applicant's previous and current efforts in attracting and successfully preparing students from underrepresented groups for careers,

including Graduate and Professional Opportunity Fellows, and other graduate and professional and undergraduate students.

(c) *Net increase of underrepresented students.* (8 points)

The Secretary reviews each application for information that shows that the proposed arrangements to assign the fellowships to the approved academic areas—

(1) Will result in a net increase of students from underrepresented groups in each area; and

(2) Will not result in a decrease in the amount of the institution's own financial support available for other students from underrepresented groups in the academic area and in the institution as a whole.

(d) *Program director.* (8 points)

The Secretary reviews each application for information that shows that the director has clear responsibilities, ample time, and sufficient institutional or academic authority to coordinate the overall administration of the program.

(e) *Employment opportunities.* (8 points)

The Secretary reviews each application for information that shows that the institution's educational program leads to immediate career opportunities in the graduate or professional study areas for which students from underrepresented groups have been recruited.

Academic Area Criteria

(f) *Evidence of underrepresentation.* (10 points)

The Secretary reviews each application for evidence that the students whom the institution proposes to recruit are from underrepresented groups in the proposed academic areas.

(g) *Evidence of national need.* (10 points)

The Secretary reviews each application for information that justifies the need for more highly trained individuals in academic careers beyond the high school level or in other career fields of high national priority.

(h) *Quality of academic program.* (7 points)

(1) The Secretary reviews each application for information that shows high quality of the academic program in terms of course offerings and academic requirements for students.

(2) The Secretary also looks for information that shows the appropriateness of the level of the degree to prepare the individual for an academic or professional career.

(i) *Quality of key faculty.* (7 points)

(1) The Secretary reviews each application for information that shows the qualifications of the faculty in the academic area.

(2) The Secretary looks for information that shows that the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(j) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the academic area.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment that the applicant plans to use is adequate.

(k) *Special orientations and experiences.* (5 points)

The Secretary reviews each application for information that shows the applicant plans to provide special orientations, practical experiences, and necessary assistance designed to prepare fellowship recipients for academic careers or other professional careers of high national priority.

(20 U.S.C. 1134e(e)(3))

§ 649.13 What selection criteria does the Secretary use for public service fellowships?

(a) *Program objectives.* (10 points)

The Secretary looks for information that demonstrates present and projected needs for highly trained individuals in the fields of public service, including academic careers beyond the high school level focused on public service education.

(b) *Underrepresented groups.* (10 points)

The Secretary reviews each application for information that demonstrates the extent to which the program provides public service education to individuals from underrepresented groups.

(c) *Quality of academic program.* (10 points)

(1) The Secretary reviews each application for information that shows high quality of the academic program in terms of course offerings and academic requirements for students.

(2) The Secretary also looks for information that shows the appropriateness of the level of the degree to prepare the individual for a career in public service.

(d) *Practical experiences and internships.* (15 points)

The Secretary reviews each application for information that shows the program offers opportunities for relevant, supervised practical experiences and internships.

(e) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use in its program of public service education.

(2) The Secretary looks for information that shows—

(i) The qualifications of the program director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the program;

(iii) The time that each person referred to in paragraph (e)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the program, as well as other information that the applicant provides.

(f) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to its program of public service education.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment that the applicant plans to use is adequate.

(g) *Cooperative arrangements.* (10 points)

The Secretary reviews each application for information that shows that the program establishes arrangements with governmental agencies or other nonprofit agencies for such activities as program development, personnel exchanges among faculty and agency staff, and field workers.

(h) *Institutional cooperation.* (5 points)

The Secretary reviews each application for information that shows that the applicant has considered and, if appropriate, entered into cooperative

arrangements with other graduate units of the applicant in supportive efforts of practical benefit to public service education.

(i) *Success of graduates.* (5 points)

The Secretary reviews each application for evidence of past success of graduates of the program in achieving leadership and management positions in public service careers.

(20 U.S.C. 1134e(d))

§ 649.14 What selection criteria does the Secretary use for domestic mining and mineral and mineral fuel conservation fellowships?

(a) *Program objectives.* (15 points)

The Secretary reviews each application for information that shows the present and projected needs for highly trained individuals in the field of domestic mining and mineral and mineral fuel conservation—including academic careers beyond the high school level—in any of the following areas:

(1) The improvement of technologies for the efficient extraction and processing of nonrenewable minerals and mineral fuels including the development of—

(i) Improved systems of underground, underwater, and surface mining techniques;

(ii) Improved methods to protect the health and safety of people involved in extraction and processing operations; and

(iii) Improved methods to protect and restore the environment in extracting and processing operations.

(2) The development of ways to ensure the availability of nonrenewable minerals and mineral fuels through—

(i) Improved exploration or discovery techniques;

(ii) Optimum recovery of existing mineral and mineral fuel reserves;

(iii) Improved use of processed minerals and mineral fuels through recycling technology; and

(iv) Improved understanding of mineral economics.

(b) *Underrepresented groups.* (10 points)

The Secretary reviews each application for information that demonstrates the extent to which the program prepares individuals from underrepresented groups for careers in domestic mining or mineral and mineral fuel conservation.

(c) *Quality of academic program.* (20 points)

(1) The Secretary reviews each application for information that shows the high quality of the academic program in terms of course offerings and academic requirement for students.

(2) The Secretary also looks for information that shows the appropriateness of the level of the degree to prepare an individual for a career in domestic mining or mineral and mineral fuel conservation.

(d) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use in its program of domestic mining and mineral fuel conservation.

(2) The Secretary looks for information that shows—

(i) The qualifications of the program director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the program;

(iii) The time that each person referred to in paragraph (d)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the program, as well as other information that the applicant provides.

(e) *Adequacy of resources.* (20 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to its program of domestic mining and mineral fuel conservation.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment that the applicant plans to use is adequate.

(f) *Employment opportunities.* (10 points)

The Secretary reviews each application for information that shows that the educational program leads to immediate career opportunities in domestic mining and mineral fuel industries, including careers in teaching in those subject areas at institutions of higher education.

(20 U.S.C. 1134e(e)(2))

Subpart C—How Does a Person Apply for a Fellowship?**§ 649.20 Application procedures.**

(a) A student applies directly to an institution of higher education that has received an allocation of fellowships.

(b) The student must meet all the institutional eligibility requirements for admission into one of the approved graduate or professional programs for which the institution awards fellowships.

(20 U.S.C. 1134f(a))

Subpart D—How Are Fellows Selected?**§ 649.30 What are the criteria for selecting fellows?**

To receive a fellowship, a person must—

(a) Have been accepted for or be enrolled in a program of study leading to a postbaccalaureate graduate degree—such as a doctor of philosophy or doctor of arts—or to a postbaccalaureate professional degree—such as doctor of jurisprudence or master of business administration—necessary for professional practice in a given field;

(b) Have been accepted for or be enrolled in the program referred to in paragraph (a) of this section at an institution of higher education that has received a grant;

(c) Plan to pursue—

(1) An academic career or some other professional career of importance in the academic area of study approved by the Secretary;

(2) A career in public service; or

(3) A career in domestic mining or mineral fuel conservation.

(d)(1) Be a national of the United States;

(2) Be in the United States for other than a temporary purpose and intend to become a permanent resident; or

(3) Be a permanent resident of the Trust Territories of the Pacific Islands.

(e) Demonstrate financial need under an approved financial need analysis system as described in § 649.10(b).

(20 U.S.C. 1134e)

Subpart E—What Conditions Must Be Met by an Institution and a Fellow?**§ 649.40 Tenure of fellowship.**

(a) A fellowship award is for a period of up to 36 months.

(b)(1) A fellow who maintains satisfactory progress in his or her course of study may have the fellowship renewed annually, subject to the availability of funds.

(2) However, no fellow may receive assistance under this fellowship for

more than 36 months of support except as provided in paragraph (c) of this section.

(c)(1) Depending on the availability of funds and under special circumstances, the Secretary may provide for a fellowship extension of not more than 12 months in addition to the 36 months of support a fellow receives under this program. Generally, special circumstances would be the need for additional months to complete the doctorate or equivalent degree.

(2) A fellow who wishes to request an extension must make that request to the institution of higher education well in advance of the application closing date for the subsequent academic year.

(3) The institution of higher education must request approval for the additional support in its application and must request appropriate sums in the proposed budget.

(20 U.S.C. 1134f)

§ 649.41 Vacated fellowships.

(a)(1) If a fellow vacates a fellowship prior to the end of the first year of the award, the institution of higher education to which the fellowship is allocated may reaward the fellowship to another individual.

(2) This individual must meet the eligibility requirements stated in § 649.30 and be chosen in accordance with the institution's fellowship award procedures.

(b) A fellow awarded a vacated fellowship may apply for renewal of the fellowship for up to 36 months.

(c)(1) Second and third year continuation fellowships must be for the same individual who held the fellowship at the end of the first academic year.

(2) If a continuation fellowship is vacated after the first year, it may not be awarded to another individual. The fellowship terminates at that time.

(d) If a fellow graduates at any time during tenure of the fellowship, the fellowship terminates at that time.

(20 U.S.C. 1134f(b))

§ 649.42 Fellowship conditions.

In order to continue to receive payments under a fellowship, a fellow must:

(a) Maintain satisfactory progress as determined by the institution of higher education;

(b) Devote essentially full time to study or research in the field in which the fellowship was awarded; and

(c) Not engage in gainful employment during the period of the fellowship, except on a part-time basis in teaching, research, or similar activities approved by the Secretary.

(20 U.S.C. 1134f(b))

Subpart F—What Are the Administrative Responsibilities of the Institution?**§ 649.50 Amount of a fellowship.**

(a) The maximum stipend that an institution may award to any fellow is \$4,500 for a twelve-month year. A fellow who is enrolled in the program for an entire academic year that includes summer sessions will be considered to be enrolled in the program for the full 12 months.

(b) A fellow who is enrolled in the program for fewer than 12 months shall receive a pro rata share of the stipend.

(20 U.S.C. 1134f(a))

§ 649.51 Institutional allowance.

(a) In accordance with section 922(f) of the Act, the Secretary pays an institutional allowance to an institution of higher education in the amount of \$3,900 per 12-month period for each fellowship allocated to that institution.

(b) If the fellow is enrolled for fewer than 12 months, the Secretary pays the institution of higher education a pro rata share of this amount.

(c) If the institution of higher education charges a fellow for tuition or nonrefundable fees that are required by the institution as a part of the fellow's instructional program, the Secretary deducts that amount from the institutional allowance.

(d) The institutional allowance is in lieu of any administrative or other costs for an institution of higher education. The allowance is not subject to restrictions on allowable costs.

(20 U.S.C. 1134e(f))

§ 649.52 Payment procedures.

(a)(1) The Secretary pays to the institution of higher education the fellowship stipends and institutional allowances.

(2) The institution of higher education is responsible for disbursing stipends to the fellows.

(b) The institution of higher education determines the frequency with which payments of the stipend will be made to fellows, except that the institution shall make no fewer than two payments a year.

(c) If a fellow, for any reason, fails to complete the period of study for which any payment under the fellowship has been made, the institution of higher education is responsible for recovery of excess payments.

(d) If the institution of higher education does not award a vacated fellowship to another qualified student, the institution must refund to the

Federal government the remaining pro rata share of the institutional allowance and the stipends.

(e) If an institution of higher education is unable to use all of the amounts available to it under this program, the Secretary will—on such dates each fiscal year as determined by the Secretary—reallot the amounts not needed to institutions of higher education which can use the grants authorized under this program.

(20 U.S.C. 1134e(f), 1134f(a))

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